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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Crl.MC. No.623/2011

% Judgment delivered on:20th July, 2011

JITENDER KUMAR

..... Petitioner

Through : Mr. Rajeshwar K. Gupta,
Adv. with Petitioner in person.

versus

STATE

..... Respondent

Through : Mr. M.P. Singh and Mr. Sunil
Gupta, APPs for State along with SI
Jitender Joshi, ASI Ramesh Chand,
Police Station K.N.Katzu Marg in
person.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

SURESH KAIT, J.(Oral)

CRL. MA. 2395/2011(Exemption)

Allowed subject to all just exceptions.

Crl. M.C. 623/2011 & CRL. M.A. 2394/2011

1. The petitioner lodged a complaint dated 15.10.2009 for the incident of 05.10.2009 to SHO Sector 16 Rohini, Delhi regarding assault, beatings and criminal intimidation

against Rakesh Rana who threatened the petitioner with dire consequences. The complaint dated 05.10.2009 reads as under:-

**"To
SHO**

**SECTOR 16 Rohini
Delhi-110089**

Subject: Regarding assault/beating and criminal intimidation by a person named Rakesh Rana to me (Jitender Kumar) and he threatened with dire consequences.

Sir,

Today on 05.10.2009 at about 12.30hrs., I was going from Pocket G-8, Sector 16, demolition of a house was being carried there and I took a break to know about the same. I came to know that the house belonged to one of known person. Then Rakesh Rana came to me and started beating and said that "tujhe aur tere pariwar ko to mein jaan se mar dunga" because you are getting demolished houses of all. I request you to please help in the above matter and after registering my report, the whole matter be investigated.

Thanks

Yours faithfully,

Sd/-

Jitender Kumar"

2. After this assault, the petitioner went to hospital Dr. Baba Saheb Ambedkar Hospital, Rohini, wherein, it is recorded on MLC as case history of alleged physical assault at 12.30pm on 05.10.2009 and further recorded that the petitioner sustained injuries on mastoid region, tinnitus both ear and low hearing, reddish urinal discharge etc.

3. Learned counsel for the petitioner submits that no

action was taken on this complaint by the SHO. Thereafter, on 15.10.2009, petitioner sent reminder to the police but all in vain.

4. Thereafter on 09.02.2011, the petitioner was again given beatings and assaulted by Mr. Rakesh Rana with baseball stick. Mr. Rakesh Rana was possessing revolver and threatened the petitioner and his mother to kill them. A call at No. 100 was made when SI Jitender Joshi from P.S. K.N. Katzu Marg came who instead of taking the petitioner to the hospital took the petitioner to Police station thereby causing delay for treatment.

5. He waited for Police action about a week. But no action was taken by the Police. Thereafter, on 18.02.2011, the petitioner made a complaint to the Commissioner of Delhi Police Headquarter, ITO, New Delhi in which the petitioner stated that he was being assaulted and threatened by Mr. Rakesh Rana. The petitioner stated that Rakesh Rana said ***“Teri maa ki nigam parshadi nikalenge”*** and showing his revolver threatened and stated ***“tuhe aur teri maa ko jaan se maar dunga ek murder ka case tumhare naam ka bhi sahi. Teri maa humare dwara banaye gaye avaidh nirman ko shikayat karke turwa rahi hai, tumhara ilaaz to karna hi parega”***.

6. It is submitted that no action was taken by the police authorities on the above mentioned complaints of the petitioner.

7. I have perused the complaints and MLC of the petitioner on record.

8. Vide order dated 19.07.2011, both the above mentioned I.O's H.C. Kiran Pal and HC Ramesh Chand of Police Station K.M. Katzu Marg were ordered to remain present in court for today.

9. Today, ASI Ramesh Chand(promoted, the then H.C. Ramesh Chand) appeared in person and submits that since both the petitioner and Mr. Rakesh Rana belonged to respectable families and both were residents of the same locality and in order to maintain the harmony of the society, he did not lodge the FIR.

10. Learned counsel for the State submits on the date on which the petitioner/Mr. Jitender Kumar sustained injuries, on that day itself, Mr. Rakesh Rana also sustained injuries and he also approached Baba Saheb Ambedkar hospital, Rohini, wherein Doctor has recorded history of physical assault and chest pain. Therefore, the police has not registered the case against either of the parties.

11. Learned counsel for the petitioner has drawn attention of this court towards the complaint dated 18.02.2011, wherein the petitioner has alleged that after assaulting the petitioner the said Mr. Rakesh Rana caused self scratch on his head and got a MLC prepared at Ambedkar Hospital and despite the fact that the petitioner sustained serious injuries SI Jitender Joshi instead of taking

the petitioner to hospital, took him to Police station so that the aforesaid Rakesh Rana may get the MLC prepared prior to that of the petitioner. Since, Rakesh Rana is from the local M.L.A's family, therefore, the police was in connivance.

12. Learned counsel for the petitioner vide this instant petition challenged the proceedings initiated against him under Sections 107/111 Cr.P.C. by the Special Executive Magistrate, Outer District, PP Sector 3, Rohini Delhi.

13. Though, the petitioner has not sought the relief against both the aforesaid complaints, it is shocking for the Court that firstly the incident took place on 05.10.2009 and thereafter 09.02.2011, and in spite of MLCs on record, the police did not take any action against the offenders. If the police had taken action on the first incident itself i.e on 05.10.2009, the incident of 09.02.2011 could not have taken place.

14. Apart from maintaining law and order, the police has a duty to maintain harmony in the society, at the same time, when, if any crime is being committed under IPC, then the police is bound to take action against the offenders. This depiction of negligent and careless attitude of concerned Police officials in the instant case shows how the police has totally failed to take action in the two above mentioned complaints.

15. In the interest of justice, I order that both the aforesaid complaints be transferred to Crime Branch, Delhi

who shall investigate and take proper action as per law.

16. The copy of the order be sent to Deputy Commissioner of Police, Outer Delhi, who shall take proper action against the erring officials, and shall place the report on record.

17. Learned counsel for the petitioner submits that instead of taking action against the offenders, the police proceeded against the petitioner under Sections 107/111 Cr.P.C. and made a kalandra against the petitioner.

18. Learned Additional Public Prosecutors for the State, Mr. M.P. Singh and Mr. Sunil Gupta, submit that two kalandras were made against both the parties. It is further stated that since both the parties got injuries and caused injuries on each other, therefore, the police proceeded vide kalandra under Sections 107/111 Cr. P.C.

19. In view of the seriousness of the complaint and injuries caused to the petitioner the police should have lodged the complaint against the offenders as per law, whereas kalandras vide DDNo. 26 A, File NO. 10 AB under Sections 107/111 Cr.P.C. were made. I find no sense in making these kalandras, therefore, I quash the aforesaid kalandras against the petitioner Mr. Jitender Kumar and the offender Mr. Rakesh Rana.

20. CRL. M.C. 623 is disposed of in the above terms.

21. CRL. M.A. 2394/2011 disposed of being infructuous.

22. A copy of the order be given dasti to both the parties

and a copy of the order be also sent to DCP concerned for compliance.

SURESH KAIT, J

JULY 20, 2011

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