

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.M.C. 2417/2005**

Decided on 03.02.2011

IN THE MATTER OF :

VINOD SHARMA Petitioner
Through: Mr. Gautam Dutta, Advocate

versus

N.C.T. OF DELHI & ORS. Respondents
Through: Mr. M.N. Dudeja, APP for the State
Respondents No. 4 and 5 in person.

CORAM

* **HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner under Section 482 of the Cr.PC read with Article 227 of the Constitution of India, seeking *inter alia* two reliefs. The first relief is for quashing of the order dated 21.05.2005 passed by the learned Metropolitan Magistrate, whereunder an application dated 04.05.2005 filed by the petitioner for seizure of the case property was dismissed alongwith the complaint filed by him. The second relief is for directions to the learned Metropolitan Magistrate to register a case under Section 220 IPC against respondents No.4 & 5 and other police officers for arresting the petitioner on the basis of a false and planted FIR.

2. The basis of filing of the criminal complaint by the petitioner before the learned Metropolitan Magistrate against respondents No.4 and 5 under Section 200 of the Cr.PC, was that allegedly, illegal authority had been exercised by the said respondents No.4 and 5 to arrest the petitioner in a purportedly false and planted FIR, on account of some personal enmity. The incident, subject matter of the complaint, occurred on 12.04.2005, when as per the petitioner, he was illegally arrested by respondent No.4 while he was driving his vehicle to the High Court of Delhi to attend a hearing in a writ petition filed by his sister. He further stated that he was forced out of his car and taken to the Operation Cell situated at Maurice Nagar and allegedly assaulted by respondent No.4 and 5 so as to coerce him to record a false confession statement.

3. On the basis of the aforesaid incident, the petitioner filed a complaint on 03.05.2005 before respondent No.2/Commissioner of Police, requesting him to take action against respondents No.4 and 5, with copies marked to various authorities. Simultaneously, the petitioner filed a complaint under Section 200 of the Cr.PC before the learned Metropolitan Magistrate praying *inter alia* for registration of a FIR against respondents No.4 and 5. Based on the aforesaid complaint, vide order dated 04.05.2005, the learned Metropolitan Magistrate appointed the Reader of the court to conduct an inquiry and file a report with regard to the application preferred by the petitioner/complainant on 04.05.2005 for seizure of the case property. It is an admitted position that the Reader conducted an inquiry and filed a report with regard to the case property namely, a motorcycle bearing registration No.DL-8SR-7705, which stated that the engine of the motorcycle was found to have ceased.

4. In view of the submission made by the petitioner that cognizance be taken against the errant police officers, as he had been falsely implicated in FIR No.147/2005 at the instance of respondents No.4 and 5, the learned Metropolitan Magistrate decided to list the matter for further inquiry to be conducted by himself. Thereafter, counsel for the petitioner filed an application praying for summoning of eight witnesses alongwith certain documents. The learned counsel also filed his own affidavit and appeared as a witness before the court of the learned Metropolitan Magistrate. After considering the testimony of the witnesses and examining the documents on record and in the light of the arguments advanced by the parties, the learned Metropolitan Magistrate arrived at the conclusion that the documents placed on record did not point out any guilt towards the accused persons and that there was nothing that warranted that cognizance be taken against respondents No.4 and 5. As a result, the complaint as also the application filed by the petitioner for seizure of the case property were dismissed by the impugned order. The aforesaid order is, admittedly, an appealable order under Section 397 of the Cr.PC. However, the petitioner chose not to file any appeal before the Sessions Court and instead has approached this Court directly by filing the present petition under Section 482 of the Cr.PC read with Article 227 of the Constitution of India.

5. It is the contention of the counsel for the petitioner that while passing the impugned order dated 21.05.2005, the learned Metropolitan Magistrate did not take into consideration the vigilance report, which had been prepared at the directions of respondent No.2/Commissioner of Police, in pursuance of a complaint filed by the petitioner with respondent No.2 on

03.05.2005 (Annexure P-10). He submits that the petitioner had filed an application before the learned Metropolitan Magistrate for calling for the vigilance report but no orders were passed on that application, and the same remained pending in the file of the trial court.

6. A perusal of the order-sheets of the trial court reveals that on 18.05.2005, the learned Metropolitan Magistrate took notice of the application filed by the petitioner calling for the vigilance inquiry report, which was directed to be kept pending for 19.05.2005. On 20.05.2005, i.e., one day before passing of the impugned order, the learned Metropolitan Magistrate dismissed the aforesaid application filed by the petitioner on the ground that inquiry was being conducted by the Court itself and the inquiry conducted by the police was not needed to arrive at any conclusion. It was further observed that even otherwise, the inquiry may create a bias in the mind of the court in favour of the party in whose favour the vigilance report had been given. Based on the very same reasoning, the learned Metropolitan Magistrate declined the request of SI Jai Bhagwan, Respondent no. 4 herein for permission to produce some documents against the counsel for the petitioner as also the wife of the petitioner/complainant, on the ground that the same were not required for the decision of the inquiry.

7. After passing of the aforesaid order dated 20.05.2005, the court recorded the fact that arguments had been heard in detail and the matter was put up for orders on the next date i.e., on 21.05.2005. Pertinently, there is not a whisper of passing of the aforesaid order dated 20.05.2005 in the body of the present petition, nor has the order been enclosed with the paper book. Even the detailed list of dates and events filed by the petitioner, which runs into 6 pages, makes no mention of the order dated

20.05.2005. It is also relevant to note that the aforesaid order dated 20.05.2005 was appealable, but the same has, admittedly, not been assailed by the petitioner before any forum, including this Court.

8. The learned APP for the State vehemently opposes the maintainability of the present petition on the ground that the petitioner had failed to seek his remedies, as were available to him in law. He further states that the whole story set up by the petitioner about being falsely implicated by respondents No.4 & 5 in a case, is concocted and the truth is that on 12.04.2005, the petitioner was apprehended with a stolen Hero Honda motorcycle on the basis of secret information and FIR no. 556/2004 was registered against him. He further submits that neither was any money demanded from the petitioner nor was he beaten up by any police official, which can be evidenced from the fact that he was medically examined thrice on 13.04.05, 18.04.05 and 21.04.05, but no injuries were found on him. It is also submitted by the learned APP for the State that as per the status report, the petitioner is a history-sheeter and allegedly, a notorious auto-lifter and that there are 22 cases pending against him at different police stations of Delhi and Jammu & Kashmir. He, therefore, submits the learned Metropolitan Magistrate had rightly refused to take cognizance against Respondent no. 4 and 5 in the impugned order dated 21.05.2005.

9. Though a strong objection has been taken, and rightly so, to the maintainability of the present petition, when an equally efficacious alternate remedy is available to the petitioner in law, this court, being mindful of the fact that the dismissal of the present petition may render the petitioner remediless at this belated stage and in such circumstances, ends of justice would require that the case of the petitioner be examined on merits, has

permitted the learned counsel for the petitioner to address arguments against the impugned order on merits as well. However, after considering the submissions made on behalf of the petitioner, it has to be observed that the contention of the counsel for the petitioner that the petitioner kept insisting that the vigilance report be called for by the learned Metropolitan Magistrate, who did not heed the request, and instead, proceeded to pass the impugned order, is not borne out from the record. On the contrary, as noticed above, the petitioner had in fact, filed an application before the learned Metropolitan Magistrate for calling for the vigilance report, which was dismissed on 20.05.2005. The aforesaid order was, however, not placed on the record by the petitioner. No explanation is forthcoming from the counsel as to the reason for not referring to the said order. An adverse inference has therefore to be drawn against the petitioner and it has to be assumed that because the said order was inconvenient, the petitioner deliberately chose to conceal the same from this Court and he intentionally failed to reveal the fact that the learned Metropolitan Magistrate had duly considered his application calling for the vigilance report and thereafter, rejected the same by passing a speaking order.

10. Pertinently, the petitioner has raised 32 grounds in the petition to assail the order dated 21.05.2005, out of which not a single ground makes a mention of the order dated 20.05.2005; nor is the same referred to in the chronological list of dates and events. The aforesaid order has been carefully perused by the Court and the same does not appear to suffer from any arbitrariness, illegality or perversity. While rejecting the application of the petitioner for calling for the vigilance report, the learned Metropolitan Magistrate clearly stated that the court did not wish to be biased against any

party by perusing the said report. Instead, the Court preferred to carry out its own inquiry in the matter, to arrive at an objective conclusion, in a free and fair manner. For the same reason, the Court declined the request of respondent No.4 for permission to place on record, some documents pertaining to the wife of the petitioner and the counsel for the petitioner, so as to avoid any bias against the petitioner. The approach of the learned Metropolitan Magistrate was even handed and fair to both parties and by no stretch of the imagination, can the same be faulted by the petitioner.

11. As the counsel for the petitioner still insists that the vigilance report called for vide order dated 15.05.2007 passed in the present proceedings be perused, this Court has perused the same. Pertinently, the report of the ACP (Vigilance) dated 12.05.2005, which was favourable to the petitioner, was considered by his senior officer, i.e., the Joint Commissioner of Police (Vigilance), who, vide order dated 27.05.2005, observed that the learned Metropolitan Magistrate had conducted a detailed inquiry in the matter, in the course of which, all the records pertaining to the case of the alleged incident were examined alongwith a number of witnesses and in view of the conclusion of the learned Metropolitan Magistrate that no case of cognizance against the accused was made out, the complaint was dismissed. The aforesaid report was in turn placed before the Competent Authority, i.e., Commissioner of Police, who had initiated the inquiry on the basis of a complaint made by the petitioner on 3.5.2005, and vide his order dated 01.06.2005, the complaint was ultimately filed.

12. Simply because the Vigilance Department of the respondents was conducting an inquiry on the complaint of the petitioner, does not mean that the learned Metropolitan Magistrate was precluded from conducting his

own inquiry on the basis of the material placed on record by the petitioner. In the said proceedings, the petitioner chose to summon as many as eight witnesses, i.e., CW-1 to CW-8 and he also filed documents in support of his complaint. After examining the entire evidence, the learned Metropolitan Magistrate passed a detailed order running into 15 pages dealing with the testimonies of all the witnesses and the material placed on record, to arrive at a conclusion that the petitioner had failed to make out a case for taking cognizance against the accused. At this stage, counsel for the petitioner states that while the ACP (Vigilance) examined as many as fourteen witnesses, the learned Metropolitan Magistrate examined only eight witnesses. It is not understood how that can have any bearing in the present case, when it was the petitioner himself who submitted a list of witnesses before the trial court for them to be summoned. If the petitioner was inclined to summon more witnesses, he could have filed an additional application for the said relief before the trial court. Admittedly, no such application was filed. Further, if it is the grievance of the petitioner that he had requested for more witnesses to be summoned, which was declined by the learned Metropolitan Magistrate, he could have assailed the said order in appeal. That neither of the aforesaid steps were taken by the petitioner, makes it abundantly clear that the aforesaid argument is a sheer afterthought, based on a perusal of the vigilance report, which saw the light of the day during the pendency of the present proceedings, as the said report was filed by the learned APP for the State only in July 2008.

13. Even otherwise, the powers vested in this Court under Section 482 of the Cr.PC are extraordinary in nature and it is settled law that the same ought to be exercised with restraint. In the much celebrated

judgment in the case of State of Haryana v. Bhajan Lal reported as **1992 Supp (1) SCC 335** the Supreme Court held that "...the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice." (para 103). The present case is hardly one which deserves interference by this Court, in exercise of its extraordinary powers.

14. Having regard to the facts and circumstances of the present case, this Court declines to exercise its powers either under Section 482 of the Cr.PC or under Article 227 of the Constitution of India, in favour of the petitioner, as the impugned order dated 21.05.2005 does not suffer from any illegality, arbitrariness or miscarriage of justice. The petition is, therefore, dismissed.

FEBRUARY 3, 2011
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(HIMA KOHLI)
JUDGE