

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

+ **Crl. M.C.1502/2011**

Date of Decision : 10.05.2011

V. P. WADHWA

..... Petitioner

Through: Mr. Aman Jain, Adv.

Versus

C.S. PARASHER

....Respondent

Through: counsel for the respondent
(appearance not given).

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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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 |

V.K. SHALI, J. (oral)

1. This is a petition filed by the petitioner for quashing the order of summoning dated 19.02.2010 passed by the learned Metropolitan Magistrate in complaint case no. 479/1999 (5202/1) titled **C. S. Parasher Vs. Suresh Kaushik & Ors.** Under Section 220/341/342/357/506/500/120B IPC and Section 124 of Delhi Police Act and also to quash the said complaint.
2. Briefly stated the facts of the case are that the respondent no. 2 filed a complaint under Section 220/341/342/357/506/500/120B IPC read with section 124 of Delhi Police Act against Suresh Kaushik, Ved Pal

Singh and V. P. Wadhwa. It was alleged in the complaint that on 23.05.1999 the complainant was sitting in the office of Mr. R. K. Saini, Advocate at 114-A and 115-A, Ekta Enclave, Peera Garhi, Rohtak Road, Delhi who is also a partner in M/s C.S. Parasher & Co. It is alleged that R. K. Saini had some dispute with his neighbour V. P. Wadhwa/petitioner who is running the business of property dealing from his flat bearing no. 112A Ekta Enclave, Peera Garhi, Delhi. It is alleged that the flats of R. K. Saini and V. P. Wadhwa are facing each other. It is alleged that the present petitioner who is an accused in the complaint had put up a big shutter on the main door of his flat and he opens his office from 8.00 A.M. till 11.00 P.M., which causes disturbance, annoyance and inconvenience to Mr. R. K. Saini, Advocate. On 23.05.2009, a complaint was lodged by Mr.R.K.Saini with P.S. Paschim Vihar, Delhi regarding the unlawful and illegal activities carried out by the present petitioner as he was creating public inconvenience and annoyance etc.

3. It is alleged that on learning this fact that a complaint has been made by the complainant against the petitioner, on 23.05.2009 that V.P.Wadhwa along with some police officials barged into the office of R.K.Saini in the afternoon and manhandled them. The exact sequence of allegations made in the complaint in para (7) and (8), reads as under:

- (vii) *That to utter shock and surprise Mr. Suresh Kaushik Incharge P.P. Mianwali himself along with a posse of policemen including Mr. Ved Pal Singh constable barged into the office of Mr. R. K Saini advocate on 23.05.1999 in the afternoon and asked all of us to accompany him to the police post Mianwali. When we protested and wanted to know the reason and asked for the warrant, he himself manhandled complainant and dragged him by holding the collar and the shirt while uttering filthy language and saying "SALE MAN TERE KO ABHI DEKHATA HUN WARRANT". He further threatened all of us to kill saying, "JO MERA MUH LAGTA HAIN WAHA JINDA NAHI BACHTA TUMEHE TO ENCOUNTER DIKHAKAR KABHI BHI KHATAM KAR DOONGA". The other policemen Mr. Ved Pal Singh dragged and pushed the colleagues of the complainant Mr. R. K. Saini and Mr. Sunial Kumar Shahi into the police van and took all of us to the above said police post and kept us in illegal detention for six hours without any rhyme and reason and provocation. The complainant and his colleague were let out by the accused only after the intervention of Mr. H. R. Banga, Advocate of Sales and Tax Bar Association.*
- (viii) *That complainant thereafter made representation to the Delhi Bar Association on 24.05.1999 and Delhi Bar Council. In response to the complaint Mr. Rajender Rana Executive Member Delhi Bar Council also made complaint to the Commissioner of Police on 25.05.1999 against the highhandedness and illegal detention of the Advocates by the police Sub Inspector and accused no. 1 in conspiracy with the accused no. 3. No action has however been taken so far. The complainant is therefore constrained to move this Hon'ble Court for justice having no other efficacious remedy against the illegal and unjust detention and the defamation caused by the accused persons of the complainant and his colleagues in addition to other illegal acts as stated in the complaint.*

4. The complainant examined himself as CW-1 and supported the averments made in the complaint and also examined Sunil Kumar as CW-2. The learned Magistrate after hearing the arguments and examining the record summoned the present petitioner and the other police officials as accused persons to face the trial for an offence under Section 220,

341, 357 and 506 IPC read with 34 IPC. This order was passed on 19.02.2010. The petitioner feeling aggrieved by the said order of summoning has assailed the same. It has been contended by the learned counsel for the petitioner that the order of summoning has been passed in a mechanical manner without an application of mind, and therefore, the summoning order deserves to be set aside. In this regard, the petitioner has placed reliance on **Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors.** (1998) 5 SCC 749.

5. I have considered the submissions made by the learned counsel for the petitioner and have gone through the record. At the very outset, it may be pointed out that normally a petition challenging the order of summoning and a revision petition can be filed in three months from the date of passing of the order of summoning or alternatively if within three months from the date when the petitioner learnt about the order of summoning. But in the instant case not only the petitioner has not chosen to file the revision petition but has also filed the present petition challenging the order of summoning under Section 482 Cr.P.C. after a lapse of more than a year, therefore, prima facie the present petition under Section 482 against the summoning order is not only highly belated but ought not to be entertained on account of an inordinate delay challenging the order of summoning so as to circumvent the period of limitation within which a revision

petition ought to have been filed. On this ground itself, the petition deserves to be dismissed.

6. Even if the petition is seen on its merit no doubt the learned counsel for the petitioner has referred to **Pepsi Foods case (Supra)** wherein the Apex Court has observed that the order of summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is also not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and whether that be sufficient for the complainant to succeed in bringing charge home to the accused. Similar is the observation passed by the Apex Court in **Punjab National Bank & Ors. Vs. Surendra Prasad Sinha** AIR 1992 SC 1815 wherein it has been observed that the process should not be issued mechanically as a vendetta to harass a person.

7. There is no dispute about these propositions of law that the order of summoning must reflect application of mind on the

part of the learned Magistrate or that summoning order should not be issued mechanically.

8. The question which arises for consideration is that as to whether the order of summoning which has been passed by the learned Magistrate reflects application of mind on the part of the learned Magistrate or not. I find that the order of summoning which has been passed by the learned Magistrate shows due application of mind after examining the complaint as well as the witnesses examined by the complainant. The learned Magistrate has also taken note of the fact that at the stage of passing a summoning order minute dissection of evidence is not required to be done as is normally done at the stage of final decision. At the stage of order of summoning, the Court has to only see as to whether the prima facie ingredients are satisfied or not. While doing so the learned Magistrate has also considered the question as is warranted under Section 197 Cr.P.C. It has been observed by the learned Magistrate that when a public official does something which is beyond the scope of his official duties he does not enjoy the protection of Section 197 Cr.P.C. In the instant case the complainant has deposed as witness that the police official has connived with the petitioner in extending not only threat but also in committing various other offences. The exact sequence of the complaint is produced in para (7) and (8) of the complaint. Therefore, I feel that in the light of the

order passed by the learned Magistrate, by no stretch of imagination, it could be said that the learned Magistrate has not applied his judicial mind. A minute dissection of evidence is not required to be done at this stage. I, accordingly, feel that there is no ground for quashing the summoning order.

9. So far as the quashing of the complaint is concerned, no argument has been addressed by the learned counsel for the petitioner. However, I have considered the question of quashing of the complaint also with reference to the ground which has been taken. The law regarding the quashing of the complaint or the FIR has been laid down exhaustively by Apex Court in case titled **State of Haryana Vs. Bhajan Lal** 1992 Supp. (1) SCC 335 wherein the Apex Court has given seven illustrative contingencies in which the FIR can be quashed. The only contingency which could have been raised by the present petitioner is the fact as to whether the averments made in the complaint prima facie satisfied the ingredients of the offence or in other words that a prima facie case against the petitioner is not made out. I do not think that on a perusal of the complaint and the testimony adduced by the complainant, it can be said that no prima facie case for the various offences in respect of which summons have been issued, is not made out against the present petitioner. The question of previous enmity and various other things raised

by the petitioner are in the nature of defence which he can take during the course of trial as these are disputed question of fact. In addition to this in **Bhajan lal case (Supra)** the Apex Court has also put the High Court on caution by stating that the ousting power must be exercised very sparingly and not as a matter of course. I do not find that this is a case which warrants the quashing of the summoning order and complaint. For the reasons mentioned above, I do not find any merit in the petition, and accordingly, the same is dismissed.

MAY 10th, 2011
KP

V.K. SHALI, J.