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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: 10th February, 2011

Date of Order: February 23, 2011

+ CrI. MC No. 2559/2010

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Ramesh L. Aneja @ R.L. Aneja

...Petitioner

23.02.2011

Versus

State & Anr.

...Respondents

Counsels:

Ms. Savita Rostagi for petitioner.
Mr. Sunil Sharma, APP for State/respondent.
Ms. Dhaneshwari for complainant

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

1. This petition under Sections 482 Cr.P.C has been preferred by the petitioner for setting aside an order dated 4th February 2010 passed by learned MM summoning the accused/ petitioner under Section 3 (10) of Prevention of Atrocities against Scheduled Castes/ Scheduled Tribes Act, 1989.

2. Brief facts relevant for the purpose of deciding this petition are that an FIR bearing number 98 of 2005 was registered against the petitioner on the basis of a complaint made by respondent/ complainant dated 3rd April, 2005 to SHO police station Chanakya Puri wherein he had alleged that the petitioner had called him names by caste and abused him.

3. The complainant was employed with HPCL as a station operator. His job was to operate the petrol pump. The petitioner was station manager with a duty to supervise the work at the petrol pump. This complaint was made with SHO by the complainant after an incident of 29th March, 2005. On that day, the petitioner was informed by Mr. G.C. Khoba that there was an excess collection of Rs.70,000/- at the petrol delivery pump. The reason for this excess collection seems to be defective petrol pump. The moment this fact was brought to the knowledge of the petitioner, the petitioner directed Mr. Khoba to reconcile the cash and deposit the excess cash with the bank by preparing a Bank Deposit Slip (BDS). He was later informed that out of Rs.70,000/-, Rs.10,000/- was claimed by the complainant as his money and the actual excess amount was Rs.59,620/-. The petitioner accepted this version and directed that Rs.59,670/- be deposited with the bank. On 30th March, 2005, Mr. Khoba prepared BDS number 130997 for this excess collection in the first shift of previous day for depositing it with Central Bank of India, Ashoka Hotel Branch in non-operative collection account number 100519. However, on next day, the petitioner was told that the amount has not been deposited and it has been handed over to M/s Adarsh Tourist Taxi Services by the complainant who claimed that the amount belonged to Adrash Tourist Taxi Services.

4. The petitioner, in charge of petrol pump and having the responsibility to supervise, had to initiate action against the respondent no.2/ complainant for this misappropriation of the excess collection which initially was Rs.70,000/- and on the claim of the complainant that out of this amount Rs.10,000/- belonged to him had come down to Rs.59,670/-. Even this amount of Rs.59,630/- was handed over by respondent no.2 to a customer. The respondent no.2/ complainant who took a stand that since the amount did not belong to HPCL, he was not supposed to deposit the same with Bank. It was a clear cut case of misappropriation and there was fiddling with the petrol pump with the result that the customers were not supplied actual quantity of petrol. This money actually

belonged to the customers collectively and it did not belong to the complainant or any one else. Only HPCL could have decided the fate of this money.

5. It is submitted by the counsel for the petitioner that respondent no.2/ complainant, sensing that an action will be taken against him at the instance of the petitioner, filed a false complaint under SC/ST Act with SHO. This complaint was thoroughly investigated. There were several other SC/ST employees working at the petrol pump and the investigation made by the police from all the SC/ST employees working at the petrol pump revealed that no such incident of abusing or calling names by caste had taken place as alleged by the complainant/ respondent no.2 herein.

6. A perusal of the investigation report/ closure report filed by the police after detailed investigation shows that the police had recorded statement of every employee working at the petrol pump at the time of alleged abuses and everybody denied about the incident. The complainant, however, stated that he had noted down the vehicle number of two customers who had come at the petrol pump and witnessed the incident. The police recorded even the statements of these two customers and found that they were not in unison about the incident and gave different versions. After recording statements of all the persons the police came to conclusion that the complaint was a false complaint.

7. The learned MM vide its order observed that since the two witnesses cited by the complainant supported the version of complainant, this was sufficient material to summon the petitioner/ accused.

8. An investigation by an investigating agency about a crime means that the police has to find out whether the crime was committed and if so who committed the crime. In this case, the crime allegedly committed was giving of abuses by the petitioner at a

public place viz. petrol pump by using caste name of the complainant. The police thoroughly interrogated the persons who were present at the spot. Since the incident had taken place at the petrol pump, the most natural witnesses were the employees present at the petrol pump. All these witnesses denied happening of incident despite the fact that they belonged to the same caste as the complainant. The two persons cited by the complainant as witnesses had not shown any petrol filling receipt. It has also been found in the investigation that the wife of the complainant was an advocate and she pre-dated a legal notice allegedly sent to the petitioner. It is known to every advocate that a notice is to be sent by registered post and the receipt of the post office is to be maintained. In this case, the notice was not sent by registered post and a UPC certificate was got prepared about which there was no record in the post office. This itself makes it clear that the complainant, in order to fabricate a case against the petitioner was assisted by his wife an advocate, otherwise there was no reason for allegedly sending an a pre-dated notice through UPC.

9. The court is not supposed to close its eyes to the investigation done by the police and believe that the police investigation has to be rejected for one or the other reason. Most of the criminal cases are based on police investigation. In the present case, the police investigation report seems to be much more reasonable and logical than the conclusion drawn by the learned MM on the basis of bare statements of two interested witnesses whose presence at the petrol pump was not even proved. The presence of every other witness at the petrol pump was undisputed, and was recorded in the attendance register. It seems that the learned MM acted in a biased manner while rejecting the investigation report of the police official who under law was competent to investigate the case and issued summons for the accused to face trial on the basis of partisan witnesses whose testimonies itself were doubted by the police.

10. The learned trial court had not given any reasons as to why he was turning down

the entire investigation done by the police and the conclusion arrived at by the police on the basis of testimony of a large number of witnesses and why he was relying only on two witnesses. Were these two witnesses more truthful; and if so why they were considered more truthful than other witnesses? A Magistrate is trained to give a reasoned order and must use his training in accepting or rejecting a report by giving cogent reasons as to why the report was accepted or rejected. In the present case, no reasons have been given by the learned trial court.

11. In the result, the petition is allowed and the order dated 4th February 2010 passed by learned MM summoning the accused/ petitioner under Section 3 (10) of Prevention of Atrocities against Scheduled Castes/ Scheduled Tribes Act, 1989 is hereby set aside.

February 23, 2011
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SHIV NARAYAN DHINGRA, J