

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

+ CRL.M.C. No. 3034/2011

% *Judgment delivered on: 09th September, 2011*

SHRIRAM PASWAN & ANR. Petitioners
Through: Mr.Mohit Mathur, Adv.
versus

STATE Respondents
Through:Ms.Ritu Gauba, APP for State.

**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)

1. Vide the instant petition, the petitioners have sought for the quashing of FIR No.124/2006 registered at P.S. Maurice Nagar, New Delhi under Sections 186/332/34/341/353 and subsequently during the investigation sections 145/149/148/151/152/336 and 427 of Indian Penal Code 1860 were added. Finally the prosecution has filed the charge-sheet against the petitioners under Sections 186/332/353/341/145/149/148/151/152/336/427/34 Indian Penal Code, 1860.

2. Mr.Mohit Mathur, learned counsel for the petitioners submits that an FIR No.125/2006 dated 09.09.2006 was registered against Pramod Sehwaq and Abhishek Gautam on the complaint of the petitioner No.2 under Sections 323/34/427/452/506 of Indian Penal Code, 1860. The said FIR has been quashed by this court vide order dated 28.11.2006 on the grounds of settlement and that petitioner No.1 was a practising advocate and respondent No.2 was a student of law.

3. As per the complaint dated 08.08.2006, made by the petitioner No. 2 that at 10:30PM, both Mr.Pramod Sehwaq and Mr. Abhishek Gautam along with their winning candidates of Law Centre – 1 students Union, entered into hostel premises of petitioner No.2 with a gathering of thirty followers. They threatened him to life and destroy the hostel property. They were in drunken condition and despite of the repeated requests to leave the hostel, they physically assaulted him and some of his friends.

4. On the aforesaid complaint, police did not register the case, therefore, on the next date, in a protest, number of

hostel mates stood on *dharna* on the Ring road. Only thereafter, FIR No.125/2006 dated 09.09.2006, was got registered.

5. It is pertinent to mention here that the FIR No. 125/2006 was quashed from this court on the intervention of friends and fellow hostel mates, to put an end to the mutual differences and disputes without resorting any further to the rigmaroles and turmoils of the legal process.

6. While, quashing the FIR, this court has taken a view that they are students and the pendency of the proceedings may affect their career. Accordingly, the proceedings arising from the FIR No.125/2006 under Sections 452/506/427/323/34 Indian Penal Code, 1860 registered at P.S. Maurice Nagar were quashed.

7. Learned counsel for the petitioner, further submits that the present FIR No. 124/2006 dated 09.09.2006 registered against the petitioners under the provisions as mentioned above. The contents of the complaint in this FIR are that, on 08.09.2006, at about 11:55PM, a DDNo.28A was received, upon which ASI Jile Singh and Constable Ajay Kumar reached

at the spot and found that the hostel students had jammed the Ring Road. The said ASI Jile Singh tried to find out the reasons of Jam from the students upon which, the petitioners said that Pramod Sehwaq along with his friend entered the hostel and abused and threatened them. He created a havoc in the hostel and destroyed the hostel property. They, further said that till the police do not register the case and arrest Pramod Sehwaq and his companions, Ring Road would be continued to remain jammed by the students.

8. As alleged, the said ASI Jile Singh tried to pursue them, upon which these two petitioners and their companions tried to obstruct him from performing his official duty and continued to block the road.

9. Vide DDNo. 29A, dated 09.09.2006, SI Parminder Singh reached along with fellow official namely HC Makhan Singh, Ct. Yogesh, Ct. Yag Dutt etc on Ring Road near Mansarovar Hostel, Khalsa College and saw that the students had blocked the Ring Road.

10. Upon requesting the said students to unblock the road, they refused and indulged into assault with Ct. Yogesh in

which Ct. Yogesh got mildly hurt. ASI Jile Singh also gave his statement on spot.

11 On the occurrence report and statements, the FIR No.124/2006 was registered under the provisions mentioned above.

12. Learned counsel submits that the present FIR has been registered only because of the fact that the petitioners were insisting the police to take legal action against the above said two persons namely Pramod Sehwaq and Abhishek Gautam, who entered their hostel premises with a gathering of 30 followers and then they threatened to life and also destroyed the hostel property. They were in drunken condition and despite of repeated requests to go outside they physically assaulted them and some of his hostel mates. They also abused petitioner No. 2 by using objectionable remarks such as *"Tuz Bihari ko Zinda nahi chodunga"*.

13. The learned counsel has drawn the attention of this court that the instant FIR No.124 was firstly registered against the petitioners on the instance of opposite group, the

police took action firstly against the petitioners and only thereafter, the subsequent FIR No.125 dated 09.09.2006 was registered. This fact proved on perusal of both the FIRs that the FIR No.125 is qua the incident occurrence of the offences on 08.09.2006, whereas, the instant FIR No.124/2006 has been registered on the occurrence of the offences on 09.09.2006.

14. Learned counsel for the petitioners has pointed out that for the occurrence taken place on 08.09.2006, the FIR should have been registered first, whereas, the said FIR got registered only after an FIR got registered against the petitioners. In spite of the fact that, the alleged incident took place as shown in the FIR, is of the subsequent date.

15. Learned counsel for the petitioners further submits that they were not aware about the FIR being registered against them. However, they only came to know after two years i.e. in the year 2008 when the police formally arrested them and thereafter they appeared in court on 20.11.2008, when cognizance being taken on 23.04.2008.

16. Learned counsel for the petitioners further submits that

the FIR against the petitioners are nothing but only due to the reasons that the petitioners had insisted the police to take action, whereas, the police was trying to shield the culprits who committed the offences punishable under Indian Penal Code, 1860.

17. Learned counsel for the petitioner further submits that the FIR was registered on 09.09.2006, cognizance was taken on 23.04.2008 and the petitioners appeared before the learned trial court on 20.11.2008. Since, then the matter is pending for framing of Charge.

18. Both the petitioners have completed their studies. The alleged offence was committed when they were pursuing their studies. The police has made as many as 17 prosecution witnesses and the police chosen malafidely only the petitioners to prosecute as accused, whereas, number of students were gathered over there.

19. The learned APP for the State submits that the case is pending for framing of Charge and if the petitioner has to submit, they are free do so before the trial court. They had created nuisance and prevented the Government personnel

from performing their duty. The police officer is the complainant in the case, therefore, the case is of a serious nature and the FIR should not be quashed at this stage.

20. Learned APP has relied upon the Judgment of the Hon'ble Supreme Court reported as 2011 (1) SCC Crl. 142 in a case of State of Andhara Pradesh Vs. Gaurishetty Mahesh and Ors. Learned APP has also referred to State of Andhra Pradesh Vs. Golconda Linga Swamy (2004) 6 SCC 522, wherein it was held that under three circumstances, the inherent jurisdiction may be exercised, which are as follows:-

- (i) to give effect to an order under the Code,
- (ii) to prevent abuse of the process of court, and
- (iii) to otherwise secure the ends of justice.

21. Ld.APP has also relied upon a case of State of Haryana Vs. Bhajanlal, 1992 Supplementary (1) SCC 355, wherein it was held that, while exercising jurisdiction under Section 482 of the Criminal Procedure Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable

appreciation of the evidence, the accusation would not be sustained. This is the function of the trial Court. It is true that the Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, otherwise, it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, Section 482 is not an instrument handed over to an accused to short-circuit a prosecution and brings about its closure without full-fledged enquiry.

22. The settled law is that, the inherent jurisdiction may be exercised to prevent the abuse of process of court and to otherwise secure the ends of justice.

23. It is revealed from both the above mentioned FIRs, one is registered on the complaint of petitioner No. 2 and other on the complaint of ASI Jile Singh against the petitioners. This is not in dispute that the petitioner No. 2 had made complaint against Pramod Sehwaag and Abhishek Gautam and their colleagues, however, the police did not take any

action on this complaint, till the alleged new incident took place.

24. Admittedly, in protest, the hostel mates of *Mansarover* came on road and stood at *Dharna* which led to traffic jam on the Ring Road. It is also not in dispute that till that time, no FIR was lodged against the offenders. The police officer malafidely registered an FIR, firstly; against the petitioners and only thereafter, registered the FIR against the above mentioned two students in order to justify the FIR No.124/2006.

25. Undoubtedly, FIR No.125/2006 had been quashed by this court on the ground of settlement between the students, and the alleged accused No.1 was an Advocate and No.2 was a student of Law.

26. In the present case, both the petitioners have completed their studies and waiting for their placement, however, the present FIR No.124/2006 is in their way. As the Apex Court has held in *State of Andhra Pradesh Vs. Golconda Linga Swamy* (*supra*) to secure the ends of justice and to prevent the abuse of the process of court, the inherent

jurisdiction may be exercised.

27. In the present facts and circumstances, the present case is fully covered under the above mentioned two principles.

28. After going through the FIR and charge-sheet, it is revealed that some heated arguments took place between the petitioners and the Police Officer and i.e. only to pursue their complaint, the police malafidely got registered the present case.

29. I have perused the police file, submitted by the learned APP. In the charge-sheet, petitioners are booked under section 148 of Indian Penal Code, 1860.

Section 148.—Rioting, armed with deadly weapon.—*Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both”.*

30. As per the aforesaid section, the offender should have been armed a deadly weapon, whereas, in the present case, and in the FIR, it is not alleged anywhere that the petitioners

were armed with any kind of deadly weapon.

31. Section 149 of Indian Penal Code, 1860 can be also resorted to when an offence is committed by members of unlawful assembly.

Section 149.—Every member of unlawful assembly guilty of offence committed in prosecution of common object.—*If an offence is committed any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence”.*

32. In the present case, only two persons are made accused, but as per Section 141 of Indian Penal Code, 1860 an assembly of five or more persons is designated as unlawful assembly.

Section 141.—Unlawful assembly.— *An assembly of five or more persons is designated an “unlawful assembly”, if the common object of the persons composing that assembly is –*

First.– To overawe by criminal force, or show of criminal force, [the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or

Second.-- To resist the execution of any law, or of

any legal process; or

Third.—To commit any mischief or criminal trespass, or other offence; or

Fourth.—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do”.

33. From above discussion, it is clear that Section 148 of Indian Penal Code, 1860 is not applicable in this case.

34. It is also undoubtedly stated that initially the FIR was registered under Section 186/332/34/341/353 of Indian Penal Code, 1860 and subsequently Section 145/149/148/151/152/336/427 were added in the charge-sheet. This also creates a doubt of the dubious malafide intentions of the police officers who added Sections without application of mind.

35. After the perusal of both the FIRs, it is very difficult to establish as to who did what and keeping in mind the time

gap of five years, there is no allegation from the prosecution that the petitioners have committed any other offence during this period. Therefore, the petitioners are not habitual offenders and just to give a substantial justice, I am of the view that this case should be put to an end. Petitioners were of young students, pursuing their studies from University of Delhi. Undoubtedly, this FIR will come in the way of their career.

36. Therefore, in the interest of justice, FIR No.124/2006 registered at police station Maurice Nagar, New Delhi and the proceedings emanating therefrom are quashed.

37. Accordingly, Criminal M.C. 3034/2011 is allowed and disposed of accordingly.

38. No order as to costs.

SURESH KAIT, J

September 09, 2011

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