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THE HIGH COURT OF DELHI AT NEW DELHI

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Crl.M.C. No. 2950/2009

Reserved on: 30.11.2011

Pronounced on: 13.12.2011

RAJINDER SINGH

..... Petitioner

Through : Mr. Hariharan, Adv.

versus

THE STATE NCT OF DELHI & ANR

..... Respondent

Through : Ms. Jasbir Kaur, APP for the State
along with SI Alok Bajpei, P.S.
Samaipur Badli.
Ms. Neha Aggarwal, Adv. for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This is a petition under Section 482 CrPC for quashing of FIR No. 144/93, P.S. Samaipur Badli, under Sections 457/380 IPC and also the charges framed against the petitioner and others under Section 457/380/427/34 IPC and also all the proceedings initiated therein.
2. The petitioner and other co-accused persons are facing trial for the above offences in the aforesaid FIR. Large number of witnesses of the prosecution have already been examined and the matter is at the state of completion of prosecution evidence before the Trial Court.

3. Aforesaid FIR was registered on the complaint of Smt. Sulakshna on 07.4.1993 with regard to the incident that took place on 01/02.12.1992. The petitioner was named as one of the accused in the said FIR along with other co-accused persons namely Maharaj Singh, Yashpal and Satish. Subsequent to the registration of FIR, the matter was investigated by the police and the final report under Section 173 CrPC was filed in the court of M.M. as 'untraced' on 27th December, 1993. The learned M.M., however, vide his order dated 30.1.1996 took cognizance of the offence and issued summons to the accused persons including the petitioner. Thereafter, vide order dated 14.10.1999, the learned M.M. framed charges against the accused persons under Sections 457/380/427/341 IPC. The case is now at the stage of recording evidence of the prosecution with most of the material witnesses already been examined.

4. The present petition seeks quashing of FIR, charge sheet and charges and all the proceedings mainly on the ground that (1) the registration of FIR was highly belated; (2) the case is very old and it has taken large number of years; (3) copy of the documents were not supplied to the petitioner on time; (4) the list of witnesses was filed in the year 2002. In addition to above, it has also been averred that there was no case made out against the petitioner and it was a false case having been registered against the petitioner and others on account of personal enmity and other litigation going on between the parties.

5. I have heard learned counsel for the petitioner and learned APP for the State.

6. The way the things have been sought to be presented by the learned counsel for the petitioner are not that simple as are projected by him. It is noticed that the complainant Sulakshna reported the matter about the incident on the night on 1st/2nd December, 1992 before the police immediately thereafter but since no action was taken by police, she had to ultimately approach the DCP, who intervened and got the matter investigated through the Special Staff. It was on the basis of the report given by the Inspector of Special Staff that the aforesaid FIR came to be registered. The matter did not end here. The final report as untraced was filed by the police which was not accepted by the learned M.M. and he conducted enquiry and after having examined the statement of the complainant made during investigation and also in the court, took cognizance of the offences against all the accused persons namely Yashpal, Maharaj Singh and Satish and the petitioner. The order of taking cognizance was assailed in the revision petition which came to be dismissed vide order dated 1.10.1996 by the learned ASJ. Thereafter, vide his order dated 14.10.1999, the learned M.M. found prima facie case against the accused persons under Sections 457/380/427/34 IPC and accordingly, framed charges against them. The said order was also challenged in revision petition before the ASJ, who vide order dated 24.11.1999 dismissed the

same. After the framing of charges, the matter was proceeded for recording of evidence vide order dated 21.1.2009 of learned M.M. One of the accused namely Yashpal also filed a petition under Section 482 CrPC for quashing of the above-said FIR and also the charges and the proceedings before this court, which came to be dismissed vide order dated 26.2.2009. Thereafter, the case was listed for recording of prosecution evidence on various dates. Now, it is the petitioner who has filed the present petition for the same relief as was sought by the co-accused Yashpal and it has been noted above that it was dismissed vide order dated 26.2.2009 of this court. Co-accused Yashpal also made a false statement before the court of M.M. about the proceedings before the M.M. being stayed by this court in the petition and managed to get adjournment at the stage of recording of evidence. Ultimately, it had to be clarified by this court that there was no stay in the proceedings pending before the M.M. vide its order dated 16.9.2009.

7. The aforesaid sequence of proceedings have been noted to point out the conduct of the petitioner and his co-accused and to meet the contentions of the learned counsel for the petitioner that the trial of the case was delayed for number of years. Without any fault of the complainant, it has been seen above that the petitioner and his co-accused persons did not leave any opportunity to try to delay the proceedings by challenging each and every order of proceedings taken by the Trial Court. The delay in lodging of the FIR could not be attributed to any fault of the complainant. The delay as

noted above had occasioned on account of inaction of the local police and from which, the investigation was transferred to the special staff. In any case, the delay was not that significant and unexplained which would have been fatal to the prosecution case. Mere delay, if any, as such is no ground to discredit or discard the FIR. In this regard, reference can be made to the cases **Chunni Lal Vs. State of U.P.**, 2010 CriLJ 3836 and **Ashok Kumar Chaudhary & Ors. Vs. State of Bihar**, AIR 2008 SC 2436.

8. With regard to the plea that the copies of documents were not supplied to the petitioner on time, it would be seen that despite the fact that the accused persons had been given copies of documents as mentioned in the order of 21st January, 2009 of the M.M. wherein it was specifically recorded that the complainant had vehemently argued that all the accused persons had been given the entire set of documents and there was an endorsement in this regard in the order dated 3.6.1996, but the accused were still complaining of non-supply of copies of documents and statement of witnesses. The learned M.M. found the plea of the complainant to be substantiated on record as the documents had been already been supplied. In fact, the counsel for the accused Sh. Pradeep Kumar also confirmed having received the entire documents. It was also specifically noted by M.M. that the perusal of the record revealed that list of witnesses were filed on 29.8.2002 and the copies of the same had been supplied to the accused persons. There was an endorsement of the receipt of the documents by the accused in the order

sheet. In view of this, the plea of the accused persons was found to be misconceived. The accused persons not being satisfied, approached this court through their co-accused Yashpal in CrI.M.C. 561/2009 again agitating the same issue of non-supply of copies of documents and the statements. Though the same was being disputed, this court taking note of the fact that this has been hanging fire for quite some time and without entering into any controversy in this regard, directed the supply of the another set of documents. Thereafter, case was adjourned for few dates for one reason or the other. It was only in the year 2009 that the counsel for the accused pointed out that only the statement of Constable Ram Narayan was not supplied. It was after the supply of this document that the petitioner seemed to have been satisfied and the matter proceeded further for prosecution evidence.

9. Having seen above, I do not see that there was any lapse on the part of the court or the prosecution and all the delay that has occasioned is attributed to the petitioner and his co-accused persons.

10. Now, with regard to the plea that there was no case at all against the petitioner, it may be suffice to say that on the next date, learned M.M. took cognizance against the accused persons on the statement made by the complainant during investigation and before him. The statement of the complainant wherein she has specifically levelled allegations and named the accused persons could not be brushed aside outrightly. In the revision

petition which was filed against the charges by the co-accused Yashpal before the ASJ, the similar grounds were taken which were repelled by the ASJ vide his order dated 24.11.2009. It was specifically observed by him and rightly so that the complainant has levelled specific allegations against the accused persons. They were not only known to the complainant but were close relatives to her. The veracity of the version of the complainant could only be tested after she was examined by prosecution and withstood the test of cross examination. At the stage of framing of charges, her statement was to be taken on the face of it and that gave rise to strong suspicion against the accused persons having committed the offences for which they have been charged. It is trite that at the stage of framing of charges, the meticulous consideration of evidence and the material on record which on the face of it makes out the offence committed by the accused persons is not required. It was not to be seen as to whether the said material would ultimately result in conviction or not. The material which was enough to raise grave suspicion about the commission of offences against the accused persons was also enough for framing of charges against them. The power of this court under Section 482 CrPC can be noted in the words of Supreme Court in the case of **State of A.P. Vs. Gourishetty Mahesh and Others**, 2010 CriLJ 3844, which reads thus:

“(12) While exercising jurisdiction under Section 482 of the 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 it accusation would not be sustained. That is the function of the trial Judge/Court. It is true that 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. Though High Court may exercise its power relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice, the power should be exercised sparingly. For example, where the allegations made in the FIR or complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused or allegations in the FIR do not disclose a cognizable offence or do not disclose commission of any offence and make out a case against the accused or where there is express legal bar provided in any of the provisions of the Code or in any other enactment under which a criminal proceeding is initiated or sufficient material to show that the criminal proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the High Court may step in. Though the powers possessed by the High Court under Section 482 are wide, however, such power requires care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. We make it clear that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of inherent powers under Section 482”.

11. In the present case, not only that the trial has proceeded a long way but most of the material witnesses have also been examined and the case of the prosecution is on its last legs. Thus, I do not find any justification in interfering in the proceedings having arisen out of the FIR and the charges

and I do not find it to be a case where the complaint does not disclose any commission of offence.

12. In view of the discussion above, the petition merits dismissal. Same is accordingly dismissed.

M.L. MEHTA, J.

DECEMBER 13, 2011
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