

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

**RESERVED ON : 8th FEBRUARY, 2013
DECIDED ON : 10th APRIL, 2013**

+ CRL.M.C.720/2011 & CRL.M.A.Nos.19440/2011 & 2784/2011

INSPECTOR SAMAY SINGH & ANR. Petitioners
Through : Mr.Manoj Sharma, Advocate with
Mr.Kapil Kaushik, Advocate.

versus

JOGINDER SINGH YADAV Respondent
Through : Mr.Ratnesh Bansal, Advocate.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. The present petition under Section 482 Cr.P.C. has been preferred by the petitioners for quashing of order dated 22.02.2010 in Criminal Complaint (CC) No.360/2001 by which they were summoned for committing offences punishable under Sections 342/365/34 IPC.

2. Complaint case under Sections 340/342/365/442/448/506/34 IPC was filed by Joginder Singh Yadav against Devender, Rajender, Insp.Samay Singh and Const.Sunil alleging that on 25.11.2003, they came in Indica car bearing No. DL 3CV 2652; entered his office and threatened him to implicate in a false case by planting 'katta' on him. They forcibly

dragged him into the car and took him to Police Station Prashant Vihar, New Delhi. He was threatened to pay ₹50,000/- or else he would be implicated in a case under Arms Act. He examined himself besides producing five witnesses. CW-5 (Gulshan Arora) exhibited details of incoming and outgoing calls from 24.11.2003 to 26.11.2003 on phone No.9811226899. CW-6 (Capt. Rakesh Bakshi) brought the record pertaining to phone No.9810587321 for the period from 24.11.2003 to 26.11.2003. Vide order dated 09.06.2006, learned Metropolitan Magistrate dismissed the complaint case. Complainant- Joginder Singh Yadav challenged the order in Criminal Revision No. 129/2006. By an order dated 04.12.2007, the learned Additional Sessions Judge (for short ASJ) allowed the revision petition and set aside the order. Case was remanded to the Trial Court to decide afresh on the point of summoning. After remand, learned ACMM vide impugned order dated 22.02.2010 summoned the petitioners only for offences under Sections 342/365/34 IPC. Complaint case against Devender and Rajender was dismissed. The petitioners filed Revision Petition Nos.50/2010 & 65/2010. However, the revision petitions were dismissed by learned ASJ by an order dated 28.02.2011. Being aggrieved, the petitioners have preferred the petition.

3. Learned counsel for the petitioners urged that the impugned summoning order cannot be sustained as the petitioners in discharge of their official duties had conducted the raid. They were having reasonable information that the complainant was engaged in the supply of country-made fire arms in Delhi from U.P. The said information was conveyed by petitioner No.1 to ACP, Anti Homicide Unit, and on his instruction, raid was conducted. Daily Diary (DD) No. 6 dated 25.11.2003 was recorded at Anti Homicide Section, Crime Branch, Prashant Vihar, Delhi. Search at the shop of the complainant was conducted. However, nothing incriminating was recovered. The complainant and Yogesh Kumar were brought by the raiding party at Crime Branch Office at Prashant Vihar for further interrogation/ enquiry. They both were let off at 06.00 P.M. for which DD No.7 was recorded. The complainant himself entered a written information dated 25.11.2003 at PS Vasant Kunj in this regard. There was no mala fide on the part of the petitioners. The Trial Court was not empowered to take cognizance of the offence without prior approval of sanction by a competent authority under Section 197 Cr.P.C. read with Section 140 of Delhi Police Act. Yogesh was not examined by the complainant and he did not lodge any such complaint.

4. Learned counsel for the respondent contended that there was no occasion for the petitioners to abduct the complainant and take him to Crime Branch, Prashant Vihar when nothing incriminating was recovered at his shop. The complainant was illegally detained at Crime Branch Office and was threatened to pay a sum of ₹ 50,000/-. The complainant is a permanent resident of Delhi. Allegations levelled by the petitioners cannot be considered in the present petition and all these facts require scrutiny during Trial.

5. It is not disputed that on 25.11.2003 a raid was conducted by the officers/ officials of Anti Homicide Section, Crime Branch, Prashant Vihar, Delhi. DD No.6 dated 25.11.2003 was recorded at 12.00 Noon by Insp. Samay Singh and it was mentioned that on getting information from Const.Sunil that one Joginder Singh Yadav was engaged in supply of country-made pistol in Delhi from UP, he informed ACP, Anti Homicide Section who directed him to conduct raid. He with SI Anand Singh, ASI Bijender Singh, Const.Sunil and Const. Narender departed to the place of information at village Kishangarh, Vasant Kunj. The search was conducted in the presence of the complainant and his relative Yogesh. However, nothing incriminating was found. Thereafter, both complainant and Yogesh were brought to Police Station, Prashant Vihar. Petitioners'

case is that they brought complainant and Yogesh at Police Station Prashant Vihar to make further enquiry at about 03.00 P.M. and were let off at 06.00 P.M. Daily Diary (DD) No.7 dated 25.11.2003 was recorded by Insp.Samay Singh at 06.00 P.M. It was also mentioned therein that after the enquiries both were relieved. The proceedings conducted were brought to the notice of the ACP, Anti Homicide Section, Crime Branch. The petitioners have also placed on record letter written to the SHO, Police Station Vasant Kunj by the complainant whereby he informed that four persons of Crime Branch had taken him to Police Station Prashant Vihar in their vehicle and after enquiry, he was relieved. He had no complaint against anybody and did not want any action. The complainant has not denied this information given to the SHO, Vasant Kunj. The complainant was not implicated in any case. No illegal payment was received from him or his relatives for his release. On 16.03.2004, after inordinate delay of about five months, the complainant filed a complaint case not only against the petitioners but also against private persons Devender and Rajender alleging abduction, confinement and threats etc. Devender and Rajender were discharged. Only the petitioners were summoned for committing offence under Section 342/365/34 IPC. In my considered view, there was no sufficient material before the learned

ACMM to arrive at a prima facie view that the complainant was abducted or confined illegally by the petitioners. Yogesh did not file any complaint for alleged abduction or illegal confinement. He was not even examined as a witness. The petitioners had conducted raid with other members of the raiding parties who were not arrayed as accused. The petitioners had made necessary entries in the official record about their departure and arrival and the purpose of their raid. They had reasonable information about the complainant to be in the possession of illegal weapons and for the said purpose had conducted raid. They had brought the complainant at their office for further enquiry/investigation and released him after some time. All these facts were in the knowledge of the Superior Officers of the petitioners. The Trial Court did not find any material to prima facie view that any illegal demand was raised for the release of the complainant. The complainant was not taken to any undisclosed place. The complainant was aware that the persons who had taken him to the office of Crime Branch were police officials as in the complaint there is mention that identity cards were shown by the petitioners to him at the time of search. It was not unusual for the petitioners to interrogate the complainant as nothing incriminating was found pursuant to the secret information received. When they did not find anything material in the interrogation, the

complainant was discharged / released. Apparently, the proceedings were conducted by the petitioners in the discharge of their official duties. No sanction under Section 197 Cr.P.C. was obtained to proceed against the petitioners who were public servants and who acted or purported to act in the discharge of their duties. The raid/search at the complainant's office is not tainted. Subsequent interrogation of the complainant in the office to extract information is directly connected with their official duties and it was done in its discharge. There is nothing on record to infer that the petitioners acted in excess of their duties. There is a reasonable connection between the act and the performance of the official duty and there is no sufficient ground to deprive the petitioners of the protection under Section 197 Cr.P.C. It is relevant to note that initially ACP R.P.Meena had submitted enquiry report dated 06.06.2006 before the learned Metropolitan Magistrate in which allegations levelled by the complainant with regard to kidnapping, demand of money and false implication were not substantiated. The senior officers of the petitioners had no grievance against the conduct of the petitioners in conducting raid to recover weapons and to make enquiries from them at the office. All these developments were in their knowledge.

6. In the light of above discussion, the impugned order dated 22.02.2010 summoning the petitioners for committing offences under Sections 342/365/34 IPC cannot be sustained and is set aside. The petition is allowed. Criminal Complaint (CC) No.360/2001 and the proceedings emanating from it are quashed.

7. Pending applications also stand disposed of being infructuous.

(S.P.GARG)
JUDGE

APRIL 10, 2013

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