

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

Judgment Reserved on: September 11, 2013

Judgment Pronounced on: October 07, 2013

+ Crl. M.C. No.1981/2006

DR. R.M.NAIR & ANR Petitioners

Through: Mr. Kaushal Yadav, Advocate

versus

STATE OF DELHI & ORS. Respondents

Through: Mr. Vinod Diwakar, Additional
Public Prosecutor for respondent
No.1-State

Mr. A.C. David, Advocate for
respondent No.2

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

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JUDGMENT

1. Quashing of summoning order of 5th March, 2005 in Criminal Complaint Case No.33/02 *Avtar Singh Tyagi v. Dr.R.M.Nair and Anr.* for the offences under Section 420/468/471/506/307/120 B IPC is sought on the following grounds:-

- (i) *The final report filed by the concerned police station is totally overlooked by Metropolitan Magistrate that no case is made out against the petitioners.*
- (ii) *The present case is an outcome of old enmity between the Respondent no.2 and petitioner nos.1 & 2 wherein the respondent no.2 had approached*

the “Industrial Dispute Tribunal” against the petitioners.

- (iii) *Respondent no.2 is relying upon the photocopy of fake warrants issued from Raipur. No original have either been produced by respondent no.2 or any police authority.*
- (iv) *Even as per the FSL report the handwriting on the alleged fake warrants could not match the handwriting of the present petitioners which fact has not been either discussed or looked into at the stage of passing the summoning order.*
- (v) *The statement of the complainant in the court is contrary to the statement made before Investigating Officer of the FIR No.88/2000.*
- (vi) *Instead of filing a protest petition against the report in FIR No.88/2000, the respondent no.2 has withdrawn the writ and filed the present complaint which is nothing but forum hunting.*
- (vii) *The petitioners were interrogated and the specimen handwritings were taken and sent for examination but nothing incriminating was found against the petitioners. The FSL report mentions that the handwriting in the alleged fake warrants does not match with the handwriting of the petitioners.*
- (viii) *Metropolitan Magistrate is totally dependent on the submission of the complainant alone and all the evidence recorded by the respondent no.2 is based on hearsay.*

2. At the hearing, it was vehemently contended by learned counsel for petitioners that second respondent herein had in the first instance filed writ petition seeking direction for registration of FIR against petitioners

for the offences of cheating, forgery etc. with the allegations that petitioners had got fake arrest warrants issued against second respondent from the court of Chief Judicial Magistrate, Raipur, Madhya Pradesh and in pursuance to the directions issued in the aforesaid writ petition, an FIR was registered for the aforesaid offences and after proper investigation, nothing was found against petitioners and second respondent herein had withdrawn the aforesaid writ petition and thereafter had lodged instant complaint for the aforesaid offences in which petitioners have been summoned vide impugned order of 5th March, 2005. Alleging double jeopardy, quashing of impugned order is sought by petitioners counsel while contending that the pre-summoning evidence of CW-1 to CW-4 is a fabricated version put forth by second respondent.

3. It was next contended by learned counsel for the petitioners that since original warrants of arrest are not available, so no expert opinion from FSL could be obtained and since the ingredients of the offences alleged are lacking, therefore, summoning of petitioners in the complaint case in question amounts to abuse of the process of the court. In support of above submissions, reliance was placed upon decisions in *S.W. Palanitkar v. State of Bihar* (2002) 1 SCC 241; *Punjab National Bank v. Surendra Prasad Sinha* AIR 1992 SC 1815; *Pepsi Foods Ltd. v. Special Judicial Magistrate* (1998) 5 SCC 749 and *Laloo Prasad v. State of Bihar* (1997) 2 Crimes 498 (Patna).

4. On behalf of the respondent-complainant, it was strenuously contended that FIR case was consigned as untraced because the original warrants of arrest of second respondent were not traceable and so second

respondent had withdrawn the writ petition and had filed the complaint in question as photocopy of the warrants of arrest was later-on found. Learned counsel for second respondent had contended that the offence committed by petitioners is heinous and is based on the circumstantial evidence and the offence of criminal conspiracy qua petitioners can be reasonably inferred from the circumstances of this case as petitioners were inimical to second respondent who had reported the matter of electricity theft committed by petitioners and they were fined ₹ 5 lac. It was pointed out by respondent-complainant's counsel that petitioners were instrumental in terminating the service of second respondent regarding which an industrial dispute was raised and second respondent was granted compensation of ₹60,000/- in the year 2007 on account of illegal termination of his service. It was asserted by learned counsel for second respondent that petitioners are highly influential persons and they have managed to get the FIR case untraced and that petitioners are also involved in other criminal cases. According to learned counsel for second respondent, the ingredients of the offences alleged are very much present providing sufficient ground to proceed with the complaint case in question. While relying upon the decision in *S. Bains, Director, Small Saving-cum-Dy. Secy. Finance v. State (Union Territory of Chandigarh)*, (1980) 4 SCC 631, it was contended by learned counsel for second respondent that the version put forth by second respondent is quite plausible and the offences alleged are clearly made out and so the complaint in question deserves to be taken to its logical end. Lastly, it was submitted on behalf of second respondent that this petition is not maintainable as petitioners have an effective opportunity to get their

version tested by putting it to second respondent in cross examination at the stage of recording of pre-charge evidence and it is required to be so done because on disputed facts quashing of impugned order is sought.

5. The parameters governing exercise of inherent jurisdiction by the High Courts have been reiterated by the Apex Court in *Mahavir Prashad Gupta and Another v. State of National Capital Territory of Delhi and Others* (2000) 8 SCC 115 which holds the field till date and needs no reiteration.

6. Upon hearing both the sides and on perusal of the impugned order, complaint in question, pre-summoning evidence, the decision cited and the trial court record, it becomes evident that the grounds on which petitioners seek quashing of impugned order vide which they have been summoned in the criminal complaint case in question, pertain to realm of evidence and version of petitioners is required to be tested during the course of recording of pre-charge evidence and thereafter only it has to be seen whether a *prima facie* case to put petitioners on trial is made out or not. At this initial stage, it cannot be said that no case for summoning petitioners as accused in the complaint in question is made out or that the ingredients of the offences alleged are lacking. Neither can it be said that the continuance of the proceedings arising out of complaint in question are an abuse of the process of the court. On a cursory perusal of the pre-summoning evidence recorded, it cannot be said that petitioners have nothing to do with the alleged commission of the offences complained of. It cannot be also said that even if the complaint in question is taken on its

face value, still no offence is made out. To say the least, plea of double jeopardy put forth on behalf of petitioners is misconceived.

7. The allegations levelled in the complaint in question cannot be said to be absurd or inherently improbable. Nor can it be said that there is an express legal bar to continue with the proceedings arising out of the complaint in question. Apex Court in *State of Haryana v. Bhajan Lal* AIR SC 1992 604 has sounded a note of caution to the effect that the power of quashing a criminal proceedings should be exercised very sparingly and with circumspection and that to in the rarest of rare cases and the court is not justified in embarking upon an enquiry as to reliability or genuineness or otherwise of the allegations made in the criminal complaint of petitioners having got fake warrants prepared, which if proved is a serious offence.

8. This Court is conscious of the fact that extra ordinary inherent jurisdiction ought to be exercised in a case where a criminal proceeding is found to be manifestly attended with malafide or where the proceedings are maliciously instituted with an ulterior motive of wreaking vengeance on the accused and with a view to spite him/her due to private and personal grudge. In the considered opinion of this court, case of petitioners does not fall in any of the seven categories illustrated by Apex Court in *State of Haryana v. Bhajan Lal (Supra)*.

9. On the touchstone of afore-noted cardinal principles, petitioners' case has been tested and it is found that the grounds on which quashing of impugned summoning order is sought, ought to be raised at the hearing on the point of charge after petitioners cross examine second respondent

and his witnesses at the pre-charge evidence stage. Finding no good ground to quash impugned summoning order, this petition is dismissed while refraining to comment upon merits of the pleas raised by petitioners lest it may prejudice them at the hearing on the point of charge.

10. This petition is disposed of with liberty to petitioners to raise the pleas taken herein before trial court at the stage of hearing on the point of charge and trial court shall deal with the pleas so raised by passing a speaking order.

(SUNIL GAUR)
Judge

OCTOBER 07, 2013
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