

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

Crl. M.C. No. 3548/2011

Date of Decision: 20th February, 2013

...Petitioner

Through: Mr. Ravi Bassi, Advocate

Versus

....Respondents

Through: Mr. M.N. Dudeja, APP for the State
with Inspector Brijesh Kumar, P.S.
Karol Bagh

&

Crl. M.C. No. 1510/2012

....Petitioner

Through: Mr. Ravi Bassi, Advocate

Versus

....Respondents

Through: Mr. M.N. Dudeja, APP for the State

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

ORDER

P.K. BHASIN, J:

The petitioner in Crl. M.C.No. 3548/2011 has sought quashing of the order dated 10th October,2011 passed by Shri Ajay Garg,

Metropolitan Magistrate(Tis Hazari) in complaint case no. 403/1/10 filed against him and many others by one Smt. Sushila Suryawanshi (respondent no.2 in this petition), whereby registration of an FIR was ordered under Section 156(3) of the Code of Criminal Procedure,1973('Cr.P.C.' in short) while in Crl. M.C. No. 1510 of 2010 the same petitioner as the complainant of the case registered against respondent no.2 Madan Lal Suryawanshi and his wife Smt. Sushila Suryawanshi abovenamed vide FIR No. 40/2009 at Karol Bagh police station under Sections 380/448 IPC has sought cancellation of bail granted by this Court vide order dated 21st December,2011 to accused Madan Lal Suryawanshi. As both the petitions were heard together and common submissions were advanced at the time of hearing the same are being disposed of by this common order.

2. On 26th May,2009 the petitioner Ashok Chawla had lodged a complaint with the police that part of his property no. 10972/5-A, Sat Nagar, Gali No. 6, WEA, Karol Bagh, New Delhi had been illegally trespassed into by the abovenamed Madan Lal Suryawanshi and his wife Sushila Suryawanshi. On the basis of that complaint FIR No.40/2009 was registered at Karol Bagh police station. During the course of investigation of that case it was found out by the police that the husband and wife had forged certain documents to support their claim that they were in lawful occupation of the property in question and accordingly many other sections of IPC including 420,467,468,471, 120-B were also invoked against them.

3. Sushila Suryawanshi then had filed a criminal complaint in Court under Section 200 Cr.P.C. in July,2010 against the petitioner herein and

many others, including the Delhi Police, State of NCT of Delhi and The National Commission for Women. In that complaint Section 156(3) Cr.P.C. was also invoked by the complainant Sushila Suryawanshi and a prayer was made to the Court for directing the police to register an FIR against all the persons arraigned in the complaint as accused.

4. Some portions of that complaint of Sushila Suryawanshi (respondent no.2 in CrI.M.C. No. 3548/2010), in which the petitioner herein was arrayed as accused no.1, are re-produced below:-

“1. That the complainant Smt. Sushila Suryawanshi is a simple house wife, and is less educated lady belonging to the SC community by birth, aged about 35 years.

2. That the husband of the Complainant Sh. Madan Lal Suryawanshi is a social and religious worker, and has been affiliated to several organizations in Delhi and two times had contested for the post of MLA from Karol Bagh Constituency, Delhi in the year 1998 and November, 2008.

3. That the main role of a politician is to participate in debates, oppositions, disputes, to take part in rallies/processions which is the main part of a politician, and due to this reason the husband of the applicant and all above said accused persons as well as C.M., Delhi, senior Congress leaders, MP's, MLA's, Corporators, etc. and leaders of Bahujan Samaj Party, one Ashok Chawla and his associates etc., some litigations are pending against these persons in the Hon'ble courts.

4. That the above named accused persons Nos.1 to 15 and others their associates, with Bahujan Samaj Party, Congress Party etc. are colluded with each other and almost every day have been carrying out illegal and wrongful activities against the complainant and her family members and husband of the complainant, and causing damage to the house, property, vehicles of the complainant and as per planning have been attempting to kill the complainant and attacking his house, family members etc., whose separate written complaints have been lodged in the Police station, but police have not taken any action so far in this regard against the accused persons, recorded from time to time with the PCR and police stations. Several times assaults have been made against the complainant, her husband but she has by God's help managed to save her life from the cruel hands of the accused persons.

5. That the Accused Nos.7, 8, 10, 11, 15, and their associates

intentionally and deliberately have got the husband of the Complainant implicated in a false criminal case F.I.R. No.808/04 U/s 147, 148, 149, 186, 326, 308 IPC, P.S. Punjabi Bagh, due to political rivalry, as her husband is involved in politics and he does not like the illegal activities of the accused persons/Opp. Party, and also because her husband has filed cases against the accused persons in the Hon'ble court as per law.

6. *That the accused No.7, 8, 10, 11 and 15 and their associates on 16.5.2005 one attempt to murder was made against the husband of the complainant due to which reason daughter of the complainant Kumari Pournima Suryawanshi aged about 7 years expired, and the husband of the complainant was sent to a state of coma and he recovered after two days. Thereafter F.I.R. No.222/05, U/s 279, 338, 304A IPC was lodged against the unknown persons and no person was arrested, and this incident was covered up only as a road accident, it was a case of attempt to murder.*

7. *That the accused Nos.7, 8 and 15 and their associates on dated 04.02.2006 some goonda elements had forcibly snatched our new tempo bearing No.DL 1LG 2285 Tata 410 from the gate of the police station, after beating up Babloo, the driver of the truck, and after breaking his teeth, driver was thrown in Mehrauli jungle. Several times there were incidents of stone throwing on the house of the complainant, causing damage to the glass panes of the windows, which are still preserved as a proof, and several times the car, and scooter of the complainant's husband were destroyed. Besides this, several other incidents have taken place. The above said accused persons have been working under the power, control and assistance/association of the Accused No.1 .*

8. *That on dated 2.8.2009 in the evening time, when the complainant had gone to purchase shoes for her son, the 5, 6 unknown accused persons/ associates of accused Nos.1 to 11 as per preplanning she was stopped in the way by the accused persons on the Hathiwala Chowk, Dev Nagar, Karol Bagh, New Delhi-110 005 on the main road/ Market and 5/6 unknown persons came near to her who started showing illicit expressions and started abusing her in filthy language, which she ignored. Then these persons again started speaking the same things, to which she resisted. Then they caught hold of her hair and manhandled her, and used abusive and filthy language against her and started behaving very indecently and violently, and started giving threats of killing her, they also threatened that whosoever sympathizes with her they would pick them from their house and beat them. Rs.6500/- of the Complainant which she had saved for the festival of Raksha Bandhan which was to be celebrated after two days, were also took forcibly from her in this incident. All these things were being witnessed by the people of the crowd, who did not have the courage to*

help the complainant. Then the complainant sent information of this incident to No.100 PCR and also informed her husband on phone. While the police were being made helpless and showed their inability to take any action against the said persons. Then she accompanied with her husband reached Ganga Ram Hospital, where M.L.C was made, and the M.L.C. and her Written Complaint was lodged with P.S. Prasad Nagar. But till date the police have not taken any action against the accused persons. Meanwhile on dated 2.10.2009 she along with her husband identified two of the accused persons when they were about to sit inside the car of Ashok Chawla with S.I. Mahipal Singh. Information about this was immediately given to the S.H.O of police station Parshad Nagar and Karol Bagh. All these incidents and events with all the facts on dated 3/14.9.09, 14.10.09, 30.12.2010, 8.1.2010, 10.2.2010 etc. against the accused persons Nos.1 to 11, 14, 15 and their associates and several other times submitted her written complaints with the police as well as Delhi Mahila Ayog, but still no action has been taken so far, and the situation remains the same. The incident which occurred on 2.8.09 was not only manhandling but it was a plan of the accused to kill the Complainant.

9. That in September, 2009 the complainant made an Appeal to Delhi State Mahila Ayog concerning her grievances, at which Delhi Mahila Ayog 4/5 times sent notice to I.O. concerned, but even after receiving summons / notices the I.O. through DCP put his appearance before the Delhi Mahila Ayog only accused Nos.1 to 9 and 11 to 15 once, and presented his report in which he stated that doctor in the M.L.C. No.2324 has opined only simple blunt injuries sustained by the Complainant, thus no F.I.R. could be lodged, and no police action could be taken in this matter, and thus he has covered up the matter. The above said Delhi Mahila Ayog on dated 20.4.10 passed an order stated that S.I. Puran Chand has filed his report stating that as per the MLC report the injuries were simple and no further action was taken by the police, and thus the Complainant is asked to go to court if the complainant is not satisfied. And, vide these observations the case file is being closed. Thus the case file of the Complainant was closed on 20.4.10 after a period of 8/9 months of continuous proceedings, and after spending a lot of money and time, and they flatly refused to help the Complainant in any manner stating that lodging of F.I.R. was the responsibility of the Police, but they (Delhi Mahila Ayog) did not have the power to give directions to the police to lodge the same. It seems that the Delhi Mahila Ayog under the pressure and control of the Accused Nos.1 to 9, 11 to 15 had done this act. The Delhi Mahila Ayog has not helped the Complainant, but rather under the power and control of the Accused persons, had done this act. Thus they advised me to lodge a Complaint case U/s 200 Cr.P.C. in the court, as this was the job of the police, and they could not make the police to lodge the F.I.R. The above said accused persons managed to show their

influence and power to the Delhi Mahila Ayog, so much so that not only Delhi Mahila Ayog.

10. That thereafter the complainant had lodged a complaint / request to the National Commission for Women against the accused Nos.1 to 11, 13 to 15 and their associates on 6.5.2010 and also to the President of India/Commissioner of Police/L.G. Delhi and Ministry of Bal Kalyan Mantri, Smt. Krislma Teerath. who is neighbour and also of the cast of the Complainant, against which no action has been taken so far. The Complainant has received a letter dated 2.6.2010 which has been received by the Complainant saying that, "The Commissioner cannot intervene in the matter, as the complaint does not fall under the NCW's mandate, hence, the Commission has closed the case and you are accordingly informed."

14. That the above said accused persons Nos.1 to 6, 14, 15 and their associates on several occasions the window panes/meter of the complainant's new car, and their associates damaged her husband's new Eterno scooter and at the complainant's house the windows, doors and other articles have been damaged by the accused persons which are lying in her house, at regular intervals, and a number of complaints have been lodged in the concerned Police Stations in this regard, but no action taken against the accused persons till date and the police is also co-operate with them. And about 200 false calls to the PCR were made against the complainant and her family members, involving them in false litigations such as rape, or attempting the murder, abducting persons, fire alarms, quarrels are going on, etc. and the PCR call forms Certificates the complainant and her husband/have already deposited with the concerned police stations and D.C.P.(Central), Lt. Governor, Delhi ,Commissioner of Police, Delhi, Minister of Home Affairs etc., but no action has been taken by the police against the said accused persons Nos.1 to 9 and 13 to 15 and their associates because the police is also involved in this offence with the above all accused persons.

15. That the phone calls made by Accused Nos.1 to 10 & 15 to the complainant frequently are of indecent nature, using filthy language, threats, abusive language etc. against which the complainant has given written intimation/ report to PCR No.100, D.C.P. (Vigilance), D.C.P. (Central), A.C.P./Incharge, Indecent phone calls/SMS Women Cell, Sector-18, Rohini, and Nanak Pura, Crime Against Women Cell, D.C.P. (Central), D.C.P. (Vigilance) & SHOs concerned etc. and the Complainant let the phone calls coming and she took her mobile phone to the police station and made the S.H.O., Duty Officer, I.O. to hear the said calls and also to answer them back. But inspite of all this, the police concerned have not initiated any action so far. This incident took place on 2.8.09, but other incidents/events are being shown so that the circumstances, evidence, solutions can be found out.

21. *That all the accused persons Nos.1 to 15 and their associates have committed the offences of making dangerous devices against the Complainant, misbehaving with a woman, showing vulgar expressions to her, threatening to kill her, making/ causing an accident etc. for causing damage to the property and vehicle of the Complainant, for defaming and causing mental harassment, torture and agony, and they should be booked under sections 109/141/193/194/199/200/201/294/307/324/341/342/354/355/358/362/363/364/366/392/406/407/418/419/ 420/427/428/497/500/506-II/509/120-B/34 IPC and other appropriate sections against the accused persons, and any other accused persons related to this case."*

5. Before the Magistrate could pass any orders in the complaint case Madan Lal Suryawanshi was arrested on 01.10.2010 in the aforesaid case registered against him and his wife at the instance of the petitioner herein and he failed to get bail from Sessions Court as well as from this Court. It appears that in order to get bail for her husband Sushila Suryawanshi and the petitioner entered into a compromise on 16.05.2011 and in pursuance of that compromise she received a payment of twelve lacs of rupees from the petitioner to vacate the part of petitioner's property in Sat Nagar and both also agreed to withdraw all cases registered against each other including the one got registered by the petitioner vide FIR No.40/09 and the petitioner had also agreed to have no objection for the release of Madan Lal Suryawanshi on bail.

6. Though there was a settlement between the parties but the Sessions Court still did not grant bail to Madan Lal Suryawanshi and not only that the police succeeded in arresting his wife also on 14th July, 2011 in the case in which her husband was already languishing in jail. It appears that since Sushila Suryawanshi was arrested she thought that she had been got arrested by the petitioner despite the settlement and for that reason she

did not inform the Magistrate before whom her complaint case was still pending at the pre-cognizance stage about the aforesaid settlement and that is evident from the following order passed by the learned Metropolitan Magistrate on 10th October, 2011:-

“Present: Complainant in person (produced from J/C).
Arguments on application u/s 156(3) Cr.P.C. heard.
Status report filed. Record considered.

As per allegations levelled in the application, on 02.08.2009 complainant was restrained in a public way and was manhandled and beaten up. MLC placed on record prima facie substantiate allegations levelled by the complainant. In view of the allegations made by the complainant, prima facie cognizable offence is made out which requires thorough investigation. As the complainant is behind bars she is not in a position to collect the evidence. Custodial interrogation may be required.

In these circumstances, I hereby direct SHO, Prasad Nagar to register an FIR on the basis of allegations of the complainant and investigate the matter thoroughly. However, it is made clear that the police shall not be influenced by the sections of law mentioned by the complainant in the complaint nor by the names of the accused as shown by the complainant. Complainant is directed to supply the copy of the complaint to the concerned Naib Court for onward transmission to the P.S concerned.

Let a copy of FIR be forwarded to this Court within 15 days from today.

List for filing status report on 01.11.2011. Copy of this order be sent to SHO concerned. Copy of order be given dasti to the complainant as prayed.

Sd/-
Ajay Garg
MM/C-01/Delhi
10.10.2011”

7. After the accused wife had got an order from the Court for registration of FIR against the petitioner and his associates herein, accused husband Madan Lal Suryawanshi received payment of Rs.2,50,000/- on 21st December,2011 from the petitioner herein at the

time of hearing of his second bail application(B.A.No. 1145/2011) before this Court . After taking into consideration the fact that a compromise had been arrived at between the complainant(petitioner herein) and the two accused persons, namely, Madan Lal and Sushila Suryawanshi, and that the accused had received payment of Rs.12 lacs this Court granted bail to Madan Lal Suryawanshi on 21st December, 2011.

8. In the meanwhile, the petitioner had already approached this Court on 20th October, 2011 by filing CrI.M.C.No.3548/2011 for quashing of the order dated 10th October,2011 of the Magistrate directing registration of FIR on the complaint of Sushila Suryawanshi. He primarily relied upon the settlement with her for getting the Magistrate's order quashed.

9. Notice of that petition was sent to Sushila Suryawanshi and while issuing notice this Court had stayed the operation of the order dated 10th October,2011 of the learned Magistrate. Though she entered appearance in the matter and filed her counter affidavit opposing the petition on the ground that the petitioner himself had backed out from the settlement by getting her arrested after execution of the settlement agreement but on the date of hearing her counsel did not come and so counsel for the petitioner only was heard. However, later on when on the same date her counsel came to Court he was permitted to file written submissions which he did.

10. While the petitioner's petition for quashing of the complaint case was still pending the petitioner filed another petition for cancelling the bail granted to Madan Lal Suryawanshi by this Court in view of the

settlement since Sushila Suryawanshi was not showing any inclination to have her complaint case quashed.

11. I have heard the counsel for the petitioner and also considered the common written submissions in respect of both these petitions filed on behalf of Madan Lal Suiryawanshi and his wife.

12. It is not in dispute that accused Madan Lal Suryawanshi was granted bail by this Court in view of the settlement between the petitioner herein and his co-accused wife in pursuance of which the petitioner had paid to her Rs.9,25,000/- and when her husband's bail application was heard by this Court on 21st December,2011 he received another sum of Rs.2,25,000/- on that date from the petitioner herein. That settlement between the petitioner herein and his co-accused wife was relied upon by Madan Lal Suryawanshi himself also for getting bail. Learned counsel for the petitioner had submitted that in view of the settlement between the parties civil cases between them already stood withdrawn by him and he had also no objection for the quashing of the case registered against the accused at his instance vide FIR No.40.09 but the accused had not so far filed any quashing petition. It was also submitted that it was very unfair on the part of the husband-wife duo in not giving no objection for the quashing of complaint case against him even after having received payment of Rs.12 lacs from him and further that when during the pendency of his quashing petition(Crl.M.C.3548/2011) this Court had vide order dated 21st March,2012 directed Sushila Suryawanshi to return the money paid by the petitioner as per the settlement alongwith interest she did not return the money and, therefore, in these circumstances this

Court should set aside the order of the learned Magistrate directing registration of FIR on the complaint of Sushila Suryawanshi.

13. The main grievance of the two accused is that since even after a settlement had been arrived at between the parties accused Sushila Suryawanshi was also got arrested by the petitioner in case FIR No.40/09it was evident that the petitioner himself was not interested in honouring the terms of settlement and, therefore, he could not take any advantage of that settlement.

14. It was rightly submitted by the counsel for the petitioner that for the arrest of Sushila Suryawanshi he could not be held responsible as that was the act of the police. The petitioner could be expected to give only no objection for grant of bail to her and her husband which he was always ready to do even for the quashing of FIR against them. It was also submitted in the written submissions that it was recorded in the order dated 21st Dember,2012 of this Court in bail application that the parties were to enter into a formal MoU in respect of the settlement and so there was no final settlement. However, in my view that would not make any difference since already there was a settlement agreement dated 16th May,2011 between the petitioner and Sushila Suryawanshi which was accepted and acted upon Madan Lal Suryawanshi also and not only that accused husband and wife have received twelve lacs of rupees also and which money they did not refund despite order of this Court.

15. In the aforesaid facts and circumstances, this Court is of the view that it would be an abuse of the process of Court in case the impugned order of the learned Magistrate directing registration of FIR on the

complaint of Sushila Suryawanshi in which primarily the petitioner herein only was being targetted as the main culprit, as is more than evident from a bare reading of the averments made in the complaint which have already been reproduced in extensor, is allowed to stand and, therefore, the same is liable to be set aside.

16. As far as the petition for cancellation of bail of accused Madan Lal Suryawanshi is concerned the same is liable to be dismissed since by this order the case ordered to be registered on the complaint of his wife has been set aside because of the settlement between the parties.

17. In the result, Crl.M.C.No.3548/2011 is allowed and the order dated 10th October,2011 of the learned Metropolitan Magistrate in the complaint case is set aside. It is, however, made clear that as when the accused husband wife duo file any petition for quashing of the case registered against them the petitioner herein shall stick to the assurance given on his behalf in the present matters for giving no objection to the quashing of that case also. Crl.M.C. No.1510/2012 is dismissed.

P.K.BHASIN,J

February 20, 2013