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

Date of decision: 24th March, 2021

+ **CRL.M.C. 542/2021**

PINKI KAUSHAL

..... Petitioner

Through: Mr. Jitender Sethi, Mr. Hemant Gulati &
Mr. Anshika Sethi, Advocates

Versus

STATE, NCT OF DELHI

..... Respondent

Through: Mr. Panna Lal Sharma, Additional Public
Prosecutor for State with SI Vipin

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. By this petition, petitioner is seeking setting aside of order dated 05.05.2018 passed by the learned ACMM and order dated 05.03.2020 passed by the learned court of Sessions.

2. In complaint case bearing CC No. 5006631/2016, registered at police station Uttam Nagar, Delhi, the learned ACMM, while refusing to summon the accused arrayed by the petitioner in her complaint, dismissed petitioner's application under Section 200 Cr.P.C. vide order dated 05.05.2018. The said order was challenged by the petitioner/complainant

and the learned Revisional Court vide order dated 05.03.2020, dismissed the revision petition holding it to be devoid of merits.

3. Aggrieved against the aforesaid orders, petitioner has preferred the present petition on the ground that both the courts below have passed the orders without considering the settled proposition of law and material aspect on record and therefore, these deserve to be quashed being improper and illegal.

4. The crux of the complaint in question, are that petitioner had filed an application under Section 200 Cr.P.C. against WSI Rajni, WSI Sushma and SHO, Uttam Nagar, New Delhi under the relevant provisions of law. The allegation leveled in the complaint are that on 15.11.2016, the complainant was standing in the que outside SBI Bank, Mohan Garden Branch, Uttam Nagar, New Delhi to deposit a sum of Rs.85,000/- for change of old currency notes with the new currency notes, as by that time currency in the denomination of Rs.500/- and Rs.1,000/- notes were discontinued and there was huge rush, in order to maintain law and order, WSI Rajni suddenly started hitting people with danda which she was carrying and in the said process, she hit the petitioner on her shoulder and hands while uttering abusing language. It is alleged when petitioner protested to the beatings, she

was dragged inside the entry portion of the bank and was given slaps. The petitioner/complainant, who had suffered chikungunya fever, was not in good health and physical state due to which she along with a few others fell down. It is stated in the complaint that the petitioner had called PCR at number 100 at 15:48 hrs; 15:51 hrs and 16:02 hrs and when PCR reached the spot, instead of hearing the grievance of petitioner, WSI Rajni along with other male police officials manhandled her and snatched her bag, which was containing the old currency notes. When petitioner reached the police station to complain the SHO regarding alleged incident, she was made to sit till 09:30 PM and WSI Rajni threatened her that she would be taught a lesson.

5. Further, when the police did not register the case, she filed a petition under Section 156(3) Cr.P.C. and the same was dismissed and thereafter, petitioner proceeded to lead pre-summoning evidence under Section 200 Cr.P.C.

6. Before the trial court, petitioner got herself examined as CW-1 and reiterated the facts of the complaint and also modified her complaint stating that the accused persons used the words such like “*Sali ko aur maro aur maro, tum ek wahiyat aurat ho, abhi to men tumahara ilaz karoongi etc.*” .

7. She had also got her husband Kewal Singh Kaushal examined as CW-2, who has supported the version put forth by the complainant by stating that he had sent her to deposit the amount of Rs.85,000/- and when he had called her, she informed him that she was standing in the que with the said amount.

8. Petitioner had also got examined Ms. Meena Devi as CW-3, who is her neighbor. This witness had stated that she knew the complainant for last 15 years and on the said day, she had accompanied her to the bank to deposit the amount of Rs.85,000/-.

9. After closing of pre-summoning evidence on 20.03.2018, the learned ACMM vide order dated 05.05.2018 dismissed petitioner's complaint under Section 200 Cr.P.C. The learned Revisional Court after analyzing the pre-summoning evidence and material on record upheld the order passed by learned ACMM while passing a detailed order.

10. At the hearing, learned counsel for petitioner submitted that at the time of taking cognizance of the offence and summoning of the accused, the courts are only required to see that a prima facie case is made out against the accused person and not to go into the details of the case and the evidence to find out if the conviction would be possible or not. To strengthen his arguments, learned counsel placed reliance upon decision of Hon'ble

Supreme Court in *Sau. Kamal Shivaji Pokarnekar vs. State of Maharashtra & Ors.: 2019 (2) RCR (Crl.) 38*.

11. Further, learned counsel submits that the petitioner has also produced medical documents before the concerned SHO as well as before the trial court to show that petitioner had suffered chikengunia and was not in fit state of health which have not been taken into consideration while passing the impugned orders.

12. On the other hand, learned Additional Public Prosecutor for State has supported the impugned orders and he submits that after hearing and perusal of material on record, the learned trial court has passed the detailed impugned orders which do not call for any interference and hence, this petition deserves outright dismissal.

13. After hearing counsel for the parties and upon perusal of the impugned orders, material placed on record, and decision relied upon, it cannot be disputed that at the time of summoning, the trial court has to take a *prima facie* view of the matter but no doubt, courts cannot mechanically pass order for summoning without applying the mind.

14. A perusal of impugned orders reveals that the complaint in question was a counter blast to the FIR No. 807/2016, under Sections 186/353/332

IPC, filed against the petitioner for allegedly slapping WSI Rajni while on duty. The court has also taken view of the fact that the version put-forth by the complainant in her initial complaint and complaint under Section 200 of the Code is varying with regard to allegations leveled against WSI Rajni qua the language and wordings used by her. It also stands noted in the impugned order that the medical documents placed before the court were much prior to the happening of alleged incident and that petitioner did not get herself medically examined if at all she had received injuries on her shoulder or hands and there was no MLC on record to establish that petitioner was beaten with lathi or was manhandled by WSI Rajni or any other police official.

15. During pre-summoning evidence, petitioner has examined her husband as CW-2 but he is not eye witness to the alleged incident and his statement is recorded only on hear say facts and so, this witness has rightly not been relied upon. Further, CW-3 is known to petitioner for last 15 years and her testimony could not be relied upon being interest witness. Petitioner has not been able to bring any witness from bank, in whose internal premises she was allegedly beaten up.

16. With regard to allegation of WSI Rajni and police official robbing her

money from her bag, learned trial court has taken note of the fact that in the complaint petitioner has alleged that when she counted the money, she could find Rs.55,000/- in her bag and not Rs.85,000/- but she has nowhere stated that the accused had taken the money.

16. In my considered opinion, the observations of the courts below are based upon pre-summoning evidence brought before the court by the petitioner herself and I find that the learned trial court has meticulously dealt with every aspect possible for arriving at a just decision.

17. In this view of the matter, I do not find any reason to interfere with the impugned orders.

18. This petition is accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

MARCH 24, 2021

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