

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

RESERVED ON : 3rd MARCH, 2015

DECIDED ON : 14th JULY, 2015

+ **CRL.M.C. 2014/2007 & CRL.M.A.No.7159/2007**

P.S.SHARMA (P-1) Petitioner

Through : Mr.Vijay Aggarwal, Advocate with
Ms.Chaitali Jain & Mr.Vaibhav,
Advocates.

versus

STATE & ANR. Respondents

Through : Ms.Kusum Dhalla, APP.
Mr.K.T.S.Tulsi, Sr.Advocate with
Mr.Gaurang Vardhan, Advocate for
R2.

+ **CRL.M.C. 2015/2007**

GOPAL (P-2) Petitioner

Through : Mr.Vijay Aggarwal, Advocate with
Ms.Chaitali Jain & Mr.Vaibhav,
Advocates.

versus

STATE & ANR. Respondents

Through : Ms.Kusum Dhalla, APP.
Mr.K.T.S.Tulsi, Sr.Advocate with
Mr.Gaurang Vardhan, Advocate for
R2.

+ **CRL.M.C. 2039/2007 & CRL.M.A.No.7249/2007**

DEEPAK KATHPALIA (P-3) Petitioner

Through : Mr.Pavan Narang, Advocate with

Mr.Anish Dhingra, Mr.Shivam
Takiar & Ms.Vasundhara Chauhan,
Advocates.

Versus

STATE & ANR. Respondents

Through : Ms.Kusum Dhalla, APP.
Mr.K.T.S.Tulsi, Sr.Advocate with
Mr.Gaurang Vardhan, Advocate for
R2.

AND

+ **CRL.M.C. 2040/2007 & CRL.M.A.No.7251/2007**

SUSHIL ANSAL (P-4) Petitioner

Through : Mr.Pavan Narang, Advocate with
Mr.Anish Dhingra, Mr.Shivam
Takiar & Ms.Vasundhara Chauhan,
Advocates.

versus

STATE & ANR. Respondents

Through : Ms.Kusum Dhalla, APP.
Mr.K.T.S.Tulsi, Sr.Advocate with
Mr.Gaurang Vardhan, Advocate for
R2.

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

S.P.GARG, J.

1. Aggrieved by an order dated 19.06.2007 of learned ACMM
by which the petitioners were summoned for commission of offences

punishable under Sections 188/506/509 IPC read with Section 120 B IPC, they have preferred the instant petitions to challenge its legality and correctness. Respondent No.2 / complainant has contested the revision petitions.

2. Briefly stated, the facts giving rise to the instant petitions were that a complaint dated 11.05.2007 was lodged by respondent No.2 before learned Addl. Sessions Judge conducting trial CBI vs. Sushil Ansal to the effect that on 10.05.2007 at about 03.55 p.m. when she along with her husband and two members of the Association of the Victims of Uphar Tragedy (AVUT) came out of Court after attending proceedings, P.S.Sharma (P-1) and Deepak Kathpalia (P-3), Ansals' employees started clicking her pictures on their mobile with some ulterior motive and it could be misused. They were accompanied by two security guards of Ansals that time. Finding to have been noticed, all of them fled the spot. She further averred that earlier also she had brought to the notice of the Court certain lewd remarks passed by the security guards. She requested the learned Presiding Officer to take strict action as it was illegal to click pictures without consent in Court-premises where photography was prohibited. When the application was taken up for consideration on 23.05.2007, learned Addl. Sessions Judge by order dated 23.05.2007

directed the application to be placed before 'appropriate' authority for taking appropriate action as per provisions of the law. It was directed to be sent to learned ACMM who had the 'administrative powers'. On receipt of the application / complaint, learned ACMM issued Court notice to respondent No.2 for appearance on 25.05.2007. On 28.05.2007, statement of the complainant as CW-1 was partly recorded. On 18.06.2007, statements of the complainant and other witnesses examined by her were recorded. By an order dated 19.06.2007 the petitioners were summoned for the commission of aforesaid offences.

3. I have heard the learned counsel for the petitioners and learned Senior Counsel for the respondent No.2 and have examined the file. I have also gone through the written submissions filed on record along with citations.

4. Learned counsel for the petitioners urged that the impugned order being without jurisdiction is unsustainable. It was not permissible to take cognizance for commission of offence under Section 188 IPC in the absence of any complaint in terms of Section 195 Cr.P.C. Section 196(2) Cr.P.C. specifically created a bar to take cognizance of the offence punishable under Section 120B IPC. The impugned order was passed mechanically without appreciation of legal evidence. The complaint did

not disclose commission of any offence under Sections 506 and 509 IPC. Issuance of process without compliance of the mandatory provisions of Section 204 Cr.P.C. was bad. Learned Trial Court fell in grave error to take into consideration the previous complaints lodged by the complainant to infer conspiracy.

5. Learned Senior Counsel for the respondent No.2 urged that the petitioners had taken pictures of the complainant with ulterior motive. Security guards, whose identity was not known to the complainant, had uttered lewd remarks to criminally intimidate the complainant with the sole object to prevent her from pursuing her legal remedies. Such an attempt was made earlier also on various occasions for which complaints were lodged. Infraction of procedure in initiating proceeding against the petitioners is not sufficient to disbelieve the complainant and dislodge her version. Assuming that there were certain lapses, for that reason alone, the petitioners can't be let off.

6. Admitted position is that respondent No.2 along with her husband and other victims who had formed Association of the Victim of Uphaar Tragedy (AVUT) used to regularly attend Court proceedings in a case CBI vs. Sushil Ansal etc. Undeniably, on 10.05.2007 respondent No.2 and the petitioners had attended the Court proceedings.

7. Complainant's grievance in her complaint dated 11.05.2007 (Ex.CW-1/A) was only against P-1 and P-3 for clicking her pictures on mobile. In the said complaint, she at nowhere averred about hatching of any conspiracy by the petitioners for commission of any such offence. She had accused two security guards (of Ansals) also who were allegedly present at the time of clicking of her pictures. In the complaint (Ex.CW-1/A), there are no allegations if at that time any of the security guards passed any specific lewd remark to her. The complainant desired to take strict action barely for clicking her pictures illegally without her consent only against P-1 and P-3. She apprehended that any inaction would encourage them to continue to misbehave in future.

8. The complaint was assigned by the learned Addl. Sessions Judge vide order dated 23.05.2007 to the appropriate authority i.e. ACMM who had administrative powers, to take appropriate action as per provisions of law. Apparently, the learned Addl. Sessions Judge herself did not take cognizance of the complaint. No complaint under Section 195 Cr.P.C. was filed by the Court concerned.

9. In her deposition as CW-1 in pre-summoning evidence, the complainant made vital improvements and assigned specific 'lewd' remarks allegedly uttered by one of the security guards. She further

proved her earlier complaint (Ex.CW-1/B), lodged before Judge Incharge, Patiala House Courts on 13.09.2004; complaint (Ex.CW-1/C) lodged at PS Tilak Marg against one Ajeet Chaudhary, Manager, Uphar Cinema (Ansals' employee); (who had allegedly misbehaved and threatened her of dire consequences on 18.09.2000); statement (Ex.CW-1/D) recorded therein at the police station. She further informed that in the past also, certain documents were tempered with for which FIR No. 207/2006 dated 17.05.2006 at Police Station Tilak Marg was lodged. Somewhat similar are the statements of CW-2 (R.Krishnamoorthy) – respondent's husband, CW-3 (R.S.Rahi), CW-4 (Durga Dass) and CW-5 (Naveen Sahni), the other victims.

10. For offence under Section 188 IPC, complaint of the public servant whose order has been disobeyed is necessary. It was not permissible for the Trial Court to take cognizance of the offence under Section 188 IPC in the absence of any regular formal complaint under Section 195 Cr.P.C. in writing by the public servant who issued the prohibition order.

11. Gopal (P-2) and Sushil Ansal (P-4) were summoned to face trial under Sections 188/506/509 IPC with the aid of Section 120 B IPC.

There is, however, not an iota of evidence / material on record to prima

CrI.M.C. 2014/2007 & connected petitions.

facie infer if at any stage both of them hatched conspiracy with P-1 and P-3 to commit the said offences. Indisputably, neither of them was present at the spot outside the Court room when snaps were allegedly clicked. Nothing is on record to show that the said offenders were in constant touch with P-2 and P-4 or had their express or tacit instructions / orders to click respondent No.2's photographs without her consent. There is nothing in evidence if soon after clicking photos, these were passed on or forwarded to them or they retained or used / misused them any time. In complaint (Ex.CW-1/A), the complainant did not assign or attribute any role whatsoever to P-2 and P-4. In her statement as CW-1, there are no specific allegations for hatching conspiracy. Lodging of the earlier complaints (Ex.CW-1/B and Ex.CW-1/C) by the respondent No.2 were not sufficient to infer conspiracy among the petitioners. Complaint (Ex.CW-1/B) was lodged way back on 13.09.2004 before the learned Administrative Judge, Patiala House Courts. The said complaint was primarily against one lady advocate who had put appearance on behalf of the accused Radha Krishan Sharma, Manager, Uphar Cinema on 09.09.2004 and had allegedly misbehaved with her at P-2's behest. Apparently, at that time also, P-2 and P-4 themselves had not extended any such threat. Complaint (Ex.CW-1/C) dated 19.09.2000 was against

one Ajeet Kumar Chaudhary, former manager of Uphar Cinema for threat and criminal intimidation. The said complaint has no bearing as Ajeet Kumar Chaudhary is not a party in the complaint. It is not clear if any action was taken on the said complaints or the complainant instituted any complaint case in the Court in the absence of any action by the police. Merely because P-2 and P-4 were employers of P-1 and P-3, it cannot be presumed that they hatched conspiracy with them to commit the offence in question.

12. I am conscious that generally conspiracies are not hatched in the open, by their nature, they are secretly planned. It is not always possible to give affirmative evidence about the date of its formation, about the persons who took part in it, about the object which the conspirators set before themselves and about the manner in which the object of the conspiracy was to be carried out. Conspiracy can be established by direct or circumstantial evidence or conduct of the parties. At the same time, it is also settled position of law that mere suspicion is not enough to proceed. If reliance is placed upon circumstantial evidence, a clear link has to be established and the chain has to be completed. Conspiracy cannot be assumed from a set of unconnected facts or from a set of conduct exhibited by different accused persons at different places and time without

a reasonable link. Meeting of minds or the element of agreements is the essence of the offence under Section 120 B IPC. Mere relationship of employer and employee ipso facto can't lead to an inference beyond doubt that there was a meeting of mind; it cannot constitute a valid foundation for proceedings against P-2 and P-4 for commission of the aforesaid offence with the aid of Section 120 B IPC for individual acts of P-1 and P-3. Offence of conspiracy requires some kind of physical manifestation of agreement such as by way of meetings and communications which is lacking herein.

Imputations in the complaint (Ex.CW-1/A) do not relate to P-2 and P-4. The complaint wanted action against P-1 and P-3. It seems that the Trial Court without legal evidence enlarged its scope to summon P-2 and P-4. Since there was no worthwhile evidence on record to infer conspiracy, summoning of P-2 and P-4 with the aid of Section 120 B IPC cannot be sustained and proceedings against them are ordered to be quashed.

13. Ingredients of Section 506 IPC for which P-1 and P-3 have been summoned are not attracted as at the time of clicking the complainant's photographs, no threat whatsoever was extended to her to cause any injury to her person, reputation or property or to cause alarm.

The threat referred to under Section 503 IPC (Criminal Intimidation) must be a threat communicated or uttered with the intention of its being communicated to the person threatened for the purpose of influencing his or her mind. Observations of this Court in ‘*Kanshi Ram Vs. State*’, 2000 (54) DRJ 112 are relevant :

“So far as the offence under Section 506 IPC is concerned, the complainant Israr Ahmed stated in his case diary statement that at the relevant time the petitioner had exhorted his security personnel to thrash the journalists. According to Israr Ahmed, the exact words used by the petitioner were “Maro Salon Ko”. Strangely enough, Israr Ahmed has nowhere stated in his statement that the alleged threat had caused an alarm to him. On the contrary the circumstances of the case clearly go to show that even after the alleged threat, the complainant or other media persons did not retrace their steps. It is well settled that mere threat is no offence. That being so, the threat alleged to have been given by the petitioner does not fall within the mischief of Section 506 IPC. Consequently, no charge under Section 506 IPC can be framed against the petitioner on the basis of the said evidence.”

14. The Trial Court apparently fell in grave error to take cognizance of offence under Section 506 IPC.

15. I am of the considered view that P-1 and P-3 can be proceeded against for commission of offence under Section 509 IPC. In

complaint (Ex.CW-1/A), the complainant categorically accused them of clicking her photos on mobile without her permission. They have not given any reasonable explanation as to what had prompted them to click complainant's photographs on their mobile without her permission and consent. It is to be ascertained during trial as to what was their real intention / motive to click her photographs. It is true that Section 509 IPC does not specifically prohibit a person from photographing a woman without her consent. Nevertheless, it punishes a person who intentionally insults the modesty of a woman in any of the ways specified therein. It intends to protect the modesty of a woman. It deals with word, gesture or act intended to insult the modesty of a woman. In the instant case, the petitioners – P-1 and P-3 employees of Ansals facing trial before the Court of learned Addl. Sessions Judge had no plausible reasons to take complainant's photographs in a public place in the Court premises on their mobile. They will have to explain as to for what purpose, the photographs were taken clandestinely without complainant's permission. The allegations made in the complaint and the solemn statements of the complainant and her witnesses CW-2 to CW-5 are enough to proceed against them prima facie for commission of offence under Section 509

IPC as no minute and exhaustive inquiry is required to be conducted at this stage.

16. In the light of above discussion, Crl.M.C.Nos.2015/2007 and 2040/2007 preferred by petitioners – P-2 and P-4 are allowed and the proceedings pending against them before the Trial Court are quashed.

17. P-1 and P-3 shall face trial for the commission of offence under Section 509 IPC only. They shall appear before the Trial Court on 21st July, 2015. Crl.M.C.Nos. 2014/2007 and 2039/2007 are disposed of accordingly.

18. Pending applications also stand disposed of.

19. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

JULY 14, 2015 / *tr*