

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

% Order delivered on: 6th February, 2015

+ **Crl.M.C. No.1867/2011**

K.S. BHATNAGAR Petitioner
Through Mr. N.Hariharan, Sr.Adv. with
Mr. Siddharth S.Yadav, Adv.,
Mr.Amit S.Chauhan, Adv.,
Mr.Sahil Paul, Adv.

versus

STATE & ANR. Respondents
Through Mr.O.P.Saxena,APP and
Mr. M.P.Singh, APP for the State

**CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C. read with Article 227 of Constitution of India for quashing of complaint i.e. CC No. 98/1/09 titled as “Jawahar Lal vs. K.S.Bhatnagar & Ors” and the summoning order dated 18th September, 2010 passed by the Metropolitan Magistrate, Dwarka, Delhi whereby the petitioner was summoned under Section 409 read with Section 34 IPC.

2. The brief facts of the case are mentioned below:-

(i) On 8th October, 2006 an altercation took place between the neighbours i.e. Sh. Lal Singh and respondent No.2/

complainant Jawahar Lal in respect of part of disputed plot measuring 41 sq. yards in Najafgarh on which both the parties staked their claim.

- (ii) On 9th October, 2006, on the basis of cross-complainants by said Sh. Lal Singh and respondent No.2 two cross-FIR's were registered being FIR No. 966/06 and 967/06 at P.S. Najafgarh.
- (iii) On 10th October, 2006 another complaint dated 10th October, 2006 was received at P.S.Najafgarh from respondent No.2 alleging that Sh. Lal Singh along with his associates had come to his alleged plot on 9th October, 2006 and *inter alia* abused Sh. Jawahar Lal using caste based words. As there were already two cross-FIR's registered, a preliminary investigation was conducted before registering an FIR.
- (iv) On 25th October, 2006, on the basis of the preliminary enquiry, FIR No.1018/2006 under Section 3 & 4 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was registered by SHO.
- (v) On 8th November, 2006, during the investigation, respondent No.2 filed another complaint before the Home Minister against various Senior Police Officials and local residents in order to falsely implicate them and requested for transfer of the investigation.
- (vi) On 17th November, 2006, during the investigation of the FIR No. 1018/06, the petitioner in his official capacity acting as the

Investigating Officer (IO) issued a notice under Section 91 Cr.P.C. whereby the petitioner sought the photocopies of the property documents as well as the Schedule Caste Certificate etc. from respondent No.2.

- (vii) On 20th November, 2006, respondent No.2 submitted the photocopies of the documents, which were received in the office of the ACP: Najafgarh by Constable Sh. Bhompal (Diary Dispatcher), in absence of the IO/ACP (petitioner herein).
- (viii) On 10th January, 2007, the IO/petitioner filed the Challan before the Court of Metropolitan Magistrate, Concerned Court after conducting investigation in the abovementioned FIR. Thereafter, the investigation of FIR No. 1018/06 was transferred to the Crime Branch, Delhi Police, and on 1st February, 2007, respondent No.2/complainant vide his Letter dated 1st February, 2007 asked the IO/petitioner to return the property papers. On the same day, Sh. Johny Anto (SI of the petitioner and the co-accused) replied wherein he stated that all documents filed by respondent No.2 were photocopies and the same have been attached to the case file of FIR No.1018/06 and the investigation of the other cases has been transferred to Crime Branch, Chanakyapuri. Again on 3rd February, 2007, another reply was drafted by the IO/petitioner, wherein it was stated that the documents which were provided by respondent No.2 were photocopies.

- (ix) On 4th February, 2007 and 5th February, 2007, the complainant/respondent No.2 filed a complaint before the SHO, Police Station: Najafgarh as well as before the DCP (South-West), whereby respondent No.2 alleged that original documents were handed over to Sh. Johny Anto in presence of IO/petitioner herein and the same have been misappropriated and hence an FIR be registered against Sh. Johny Anto as well as the IO/petitioner.
- (x) On 20th February, 2007, the complainant/respondent No.2 filed his first complaint being Complaint No. 977/1 under Section 190 read with Section 200 of Cr.P.C. against the IO/petitioner herein before the ACMM, Patiala House Courts, Delhi alleging, in addition to other false allegations, that the original property papers were handed over to the petitioner, whereas, earlier in the complaint dated 4th February, 2007 filed before the SHO: Najafgarh, he had alleged that property papers were handed over to SI Johny Anto and that the petitioner had misappropriated the alleged original property documents.
- (xi) On 12th June, 2008, upon the transfer of investigation to the Crime Branch, concluded its investigation and also filed a Charge-sheet, wherein it categorically noted that the allegations of misappropriation of documents remains unproved against the petitioner and that documents were received by Constable Bhompal. It is alleged by the petitioner that the complainant malafidely changed his allegations and

filed another complaint on 20th August, 2009, i.e. after a lapse of two years and six months, which was registered as Complaint No. 98/1/09. In the first complaint i.e. Complaint No. 977/1 was already pending adjudication before the same Court itself but the same was not disclosed by complainant/respondent No.2.

- (xii) On 18th September, 2009, the SHO PS Najafgarh filed a detailed Status Report, wherein the SHO clearly indicated that the complainant/respondent No.2 had approached various authorities and has levelled the same baseless and false allegations. On 20th March, 2010, the Metropolitan Magistrate vide a detailed order dated 20th March, 2010 dismissed the first complaint i.e. Complaint No. 977/1 whereby noted the allegations pertaining to the misappropriation of original documents filed by the complainant/respondent No.2 and declined to take cognizance in absence of prosecution sanction under Section 197 Cr.P.C. The Revision Petition being No.37/2010 preferred by the complainant/respondent No.2 against the order dated 20th March, 2010 was also dismissed by Additional Sessions Judge vide order dated 15th April, 2011.
- (xiii) On 18th September, 2010, the Metropolitan Magistrate passed summoning order dated 18th September, 2010, whereby the IO/petitioner along with Sh. Johny Anto was summoned under Section 409 read with Section 34 IPC. The present petition

has been filed for quashing of the said order dated 18th September, 2010 passed by the Metropolitan Magistrate in the second complaint.

3. It is argued by the Senior counsel for the petitioner that complainant/respondent No.2 has filed an absolutely false and a frivolous complaint stating that the petitioner had taken his original property papers. In this regard it is absolutely clear that the petitioner had issued notice under Section 91 Cr.P.C. seeking photocopies of the property papers of the complainant/respondent No.2. It is also stated that the photocopies of the property papers were handed over to Constable Bhompal, when the IO was not present in Police Station and the complainant/respondent No.2 took a receipt of the said photocopy documents from Constable Bhompal.

It is argued that even if presumed though not admitted that there was a failure or omission to return papers pertaining to the property of the complainant, the same would not constitute an offence under Section 405 or 409 IPC. It is stated that the entire complaint is absolutely silent on the aspect of dishonest misappropriation of documents and converting the same to its own use by the IO/petitioner and in absence of any such allegation the ingredients of the offence under Section 409 IPC are not made out. Counsel has referred the decision of **Sardar Singh vs. State of Haryana**, 1977 (1) SCC 463 (para 2), **SW Palanitkar & Others vs. State of Bihar**, 2002 (1) SCC 241 (para 9, 20), **Kishore Kirtilal**

Mehta & Others vs. State of Maharashtra, 2008 Indlaw Mum 1243 (para 25, 26, 31, 37) in this regard.

4. In the complaint it was merely stated that documents were handed over to SI Johny Anto in presence of the petitioner. Admittedly, the documents were never handed over to the petitioner. It is argued that as per settled principle of law there is no concept of vicarious liability under criminal law. It is also submitted that the papers pertaining to the property of the complainant cannot be of any use to anybody as the same are not even registered documents. Above all, the said documents have neither been ever received or used or misappropriated by the IO.

5. The second complaint on the same facts and circumstances is against the settled principles of law. It is evident that the first complaint was filed on 20th February, 2007 and at paragraphs 13 and 22 of the complaint, the complainant had clearly narrated the story of seizure of original documents and alleged misappropriation of documents. The complainant filed a second complaint on 20th August, 2009 i.e. after a lapse of two years and six months. A bare perusal of the second complaint makes it clear that it is merely an improved version of the first complaint with the view to fill up the lacunas in the first complaint, which became evident after investigation of the Crime Branch. The second complaint was filed during the pendency of the first complaint and after the completion of the investigation done by the Crime Branch.

6. The Metropolitan Magistrate vide order dated 20th March, 2010, while dismissing the first complaint had duly noted the

allegations regarding alleged misappropriation of documents. Both first & second complaints are based on same complaint dated 4th February, 2010 filed by complainant with SHO Najafgarh.

7. As per the law laid down by the Supreme Court in the case of ***Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar*** AIR 1962 SC 876 (para 29-33) and a consistent view being held by the High Court(s) with respect to maintainability of a second complaint, conclusion can be summarized as below:

- A. Second complaint can be filed only after dismissal of first complaint on merits and not during the pendency of the First Complaint itself.
- B. The second complaint, on almost identical facts, can be entertained only in exceptional circumstances.
- C. The Complainant must disclose the dismissal of First Complaint.
- D. The “exceptional circumstances” have been interpreted under the following illustrative categories:
 - i. Manifest error,
 - ii. Manifest miscarriage of justice, and
 - iii. New facts, which the complainant had no knowledge of or could not with reasonable diligence have brought forward in the previous proceedings.
 - iv. where previous order of dismissal was passed on an incomplete record or a misunderstanding of the nature of the complaint or the Order which

was passed was manifestly absurd, unjust or foolish.

- E. However, in case the allegations levelled against the accused in both the complaints are one and the same and no new allegations are disclosed in the second complaint, it would not be maintainable, provided the first complaint has been adjudicated on merits.
- F. While dealing with the second complaint, there must be good reasons why the Court thinks that there is "sufficient ground for proceeding" with the second complaint, when a previous complaint on the same allegations was dismissed.

8. Reliance is also placed on ***Hira Lal and Others vs. State of U.P. and Others*** (2009) 11 SCC 89 (para 15), ***Poonam Chand Jain and Another vs. Fazru*** (2010) 2 SCC 631 (para 16, 17, 20), ***Aekta Limited Vs. Neelam Lamboria*** (2005) 4 CHN 431 on the aspect of filing a second complaint during the pendency of first complaint. The decisions referred are directly the law set in the aforementioned case is clearly applicable to the facts and circumstances of the present case. Therefore, the second complaint filed by the complainant is absolutely barred in law and untenable in the eyes of law.

9. It has come on record that various complaints of respondent No.2 were investigated by Senior-most officials of the department and the same were found to be false. In this regard the petitioner has already placed on record the Vigilance Enquiry Report bearing No. 47/P/Sec/DCP/Vig., wherein the petitioner herein has been

exonerated from every allegation raised by the complainant. The said Vigilance Enquiry Report has never been challenged by the complainant and therefore, the said Vigilance Enquiry Report has attained finality. The said Report was sent to the Chairman of the SC & ST Commission through Spl. C.P. (Vigilance) and C.P. (Delhi). The Vigilance Report bearing No. 47/P/Sec/DCP/Vig. clearly mention as follows :

“Allegations of being under the influence of Insp. Satpal Yadav, forgery/overwriting in the challan conspiracy to let off some accused persons, delaying of registration of case under SC/ST Act or registration of false case against him are not substantiated. Case FIR No. 966/06 and 967/06 have already been challaned and pending trial in the court since 21.8.2007. Case FIR No. 1018/06 u/s SC/ST (POA) Act is still pending investigation with Sh. Joy Tirkey, ACP/Crime.

If approved a reply to this effect would be sent to National Commission for Scheduled Caste and also CVC”

10. It is an admitted fact that Dr. Joy Tirkey (ACP/Crime Branch) had also investigated the allegations of alleged misappropriation of documents and other allegations of the complainant, while further investigating the FIR No.1018/06. A bare perusal of the Charge-sheet filed by Dr. Joy Tirkey makes it amply clear that there was no basis for submitting the original documents when photocopies of the documents had been summoned by the IO. It is only after the completion of investigation by the Crime Branch, the complainant has filed the second complaint with the sole intention to cover-up the complainant's own illegal and malicious acts.

11. The complainant has failed to obtain any sanction from the Sanctioning Authority under Section 140 of the Delhi Police Act nor has the Sanctioning Authority granted the same to the complainant. Further, the Lt. Governor has dismissed the application of the complainant under Section 197 of the Code of Criminal Procedure Code, 1973. Therefore, prosecution of the petitioner on the illegal, malicious and mis-leading complaint of the complainant is bad in law.

12. The complainant has also not challenged the Status Report dated 17th September, 2009 which was filed by the local police, wherein detailed description of malicious and vindictive acts of the complainant was enumerated. A bare perusal of the Status Report makes it clear that the second complainant is based on false allegations.

However, the Metropolitan Magistrate has not even considered the Status Report, while summoning the petitioner, which is against the law laid down by this Court. Reliance is placed on **Avtar Singh vs. State**, 138 (2007) DLT 653 (para 11-14); **Ramesh L Aneja vs State**, Crl. M.C. No. 2559 of 2010 (para 9-10). The impugned order passed by the Metropolitan Magistrate is perverse and against the settled principles of law, facts and circumstances. It is admitted by the complainant that the said papers of suit property have not been used by the petitioner directly or indirectly against the complainant. The petitioner has also given an undertaking to the Court that firstly he has no papers of the suit property and secondly that he has no intention to do so in future. The suit property is still with the

complainant. Thus, both complaints filed by the complainant are false, frivolous and unnecessary. The same have been filed with ulterior motive and are not maintainable. The same are dismissed.

13. The impugned order dated 18th September, 2010 passed by the Court of Metropolitan Magistrate, Dwarka New Delhi and the impugned Complaint No.CC-98/1/09 is set aside/quashed.

(MANMOHAN SINGH)
JUDGE

FEBRUARY 06, 2015