

\$~45

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

Judgment delivered on: 10th September, 2015

+ **CRL.M.C. 1050/2015**

SWARAJ ALIAS RAJ SHRIKANT THACKREY Petitioner

Represented by: Mr.Arvind K Nigam,
Senior Advocate with Mr.Arunabh
Chowdhury, Mr.Amit Sharma and
Mr.Vaibhav Tomar, Advs.

Versus

STATE AND ANR

..... Respondents

Represented by: Mr.Mukesh Kumar, APP
for the State with ASI Omkar Mal,
PS Dwarka South, New Delhi in person.
Mr. Ajit Sharma, Adv. for complainant with
complainant Mithilesh Kr. Pandey in
person.
Mr.Vivek Goyal, CGSC with Mr. Dharendra
Yadav, Adv. for UOI.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

+ **CRL.M.C. 1050/2015**

1. Vide the present petition, petitioner seeks directions thereby setting aside the order dated 07.10.2014 passed by Id. MM, Dwarka Courts, New Delhi whereby cognizance for the offences punishable under Sections 153A/153B IPC was taken and summon was issued to the petitioner for trial.

2. The brief facts of the case are that, respondent no.2 filed a complaint against the petitioner on 05.09.2012 alleging therein that the petitioner had made a speech on 11.08.2012 while addressing a rally at Azad Maidan, Mumbai (Maharashtra) which has hurt the sentiments of people of UP, Bihar and Jharkhand and there was a possibility of riots in various States of India which resulted in attacks on North Indians living in Mumbai. Moreover, the petitioner was seeking to tarnish the relationship between India and Pakistan by abusing the sentiments of Pakistani Artists.

3. It is not in dispute that prior to approaching the Police by filing the complaint, respondent no.2 had filed a complaint under Section 156 (3) Cr.P.C. vide CC. No. 8431/2012 before Additional Chief Metropolitan Magistrate-01, Dwarka Courts, New Delhi seeking registration of FIR against the petitioner. Accordingly, vide order dated 08.02.2013, the said Court directed SHO, PS-Dwarka, New Delhi to register FIR under the relevant provisions and file a compliance report on 08.04.2013. Consequently, FIR No. 73/2013 for the offences punishable under Sections 124/124A/153A/153B/295A / 149/332/353/504/511/120B IPC was registered against the petitioner.

4. After conclusion of the investigation in the aforesaid FIR, the Investigating Officer filed a chargesheet / final report under Section 173 Cr P C on 23.04.2014 before the Id. Magistrate, whereby the petitioner was placed in Column no.12 stating that there is no sufficient material to chargesheet the petitioner. Accordingly, on 05.05.2015, Id. Trial Court put up the matter for consideration on 27.05.2014. On 17.07.2014, Id. Magistrate issued notice to the

complainant, who filed a Protest Petition. After hearing arguments on 07.10.2014, Id. Magistrate took cognizance against the petitioner for the offences punishable under Sections 153A/153B IPC *inter alia* holding that *prima facie* an offence for promoting the enmity between different regional groups is made out against the petitioner.

5. Ld. Sr. Counsel appearing on behalf of the petitioner submits that admittedly, there is no sanction from the Central Government to prosecute the petitioner, despite, the Id. Trial Court has taken cognizance and issued summons to the petitioner vide order dated 07.10.2014. He further submits that the complainant initially filed a complaint on 05.09.2012 whereon the Id. Trial Court vide order dated 08.02.2013 directed the Police to register the FIR mentioned above. Accordingly, the whole process was on the complaint of the respondent no. 2 / complainant. Thus, in that situation, impugned order dated 07.10.2014 and FIR against the petitioner shall be quashed. He has fairly conceded that if the complainant has material against the petitioner, he may approach the Id. Trial Court, who may accordingly issue directions as per law.

6. Ld. Sr. Counsel further submits that in the chargesheet filed by the Police in the aforementioned FIR, there was no evidence against the petitioner. Therefore, his name was mentioned in Column no. 12. The case in hand is not that there are other accused also whose names were mentioned in Column no. 11 and the petitioner is put in column no.12. Therefore, the chargesheet has no meaning because it is not filed against the petitioner and if it is accepted by the Trial Court against the petitioner for the other offences and the impugned order

dated 07.10.2014 is passed without having any power, then the effect of the FIR and the chargesheet will automatically go.

7. To strengthen his arguments, Id. Counsel appearing on behalf of the petitioner has relied upon a case of ***Raghuraj and Ors. v. State of NCT of Delhi and Anr.***, decided by the Coordinate Bench of this Court in ***Crl.M.C.4623 and 4859-71/2005 on 05.02.2010***, wherein held as under:

“10. Having considered the materials on record and the submissions of learned Counsel for the parties, this Court finds that the complaint and the impugned summoning order call for interference only with regard to the offence under Section 153A IPC. There can be no manner of doubt that Section 196(1)(a) Cr.PC mandates the prior sanction of the Central Government for proceeding to prosecute the accused for that offence. In this case admittedly such sanction was not obtained. Therefore there is no difficulty in quashing the summoning order as regards the offence under Section 153A IPC is concerned.”

8. Further relied upon a case of ***Manoj Rai v. State of MP***¹, wherein held as under:

“2. Since the learned counsel for the State fairly states, on instructions, that no sanction was given in accordance with Section 196(1) of the Criminal Procedure Code to prosecute the appellants for the offence under Section 295-A of the Indian Penal Code, we allow this appeal and quash the impugned proceedings. Let the written instructions received by the learned counsel for the respondent-State in this regard be kept on record as desired by him”

9. On the other hand, Id. Counsel appearing on behalf of the

¹ ***1999 1 SCC 728***

respondent no. 2 has fairly conceded that cognizance was taken on 07.10.2014 and summoning order was issued in the absence of any sanction. However, submits that the FIR mentioned above was registered pursuant to order dated 08.02.2013 before the issuance of the summoning order. The said order dated 08.02.2013 was not challenged by the petitioner. Therefore, respondent No.2 has no objection, if the order dated 07.10.2014 is set aside, however, FIR against the petitioner shall remain in force.

10. To strengthen his arguments, ld. Counsel has relied upon a case of ***Bakhshish Singh Brar v. Smt. Gurmej Kaur and Anr.***², wherein the Hon'ble Supreme Court held as under:

“It is true that Section 196 states that no cognizance can be taken and even after cognizance having been taken if facts come to light that the acts complained of were done in the discharge of the official duties then the trial may have to be stayed unless sanction is obtained. But at the same time it has to be emphasised that criminal trials should not be stayed in all cases at the preliminary stage because that will cause great damage to the evidence.”

11. Further relied upon a case of ***Dhramesh @ Nanu Nitinbhai Shah v. State of Gujarat***³, wherein the Hon'ble Supreme Court held as under:

“We are not inclined to discuss the issue further and express our opinion on the question formulated in the proceeding paragraph. We are of the view that it is not a fit case to interfere by granting leave in exercise of jurisdiction under Article 136. Firstly, as already noticed, the petitioner did not choose to raise the

² ***1988 SCR (1) 450***

³ ***(2002) 6 SCC 370***

objection regarding sanction either before the Magistrate or even before the Sessions Court. The only point urged before the learned Sessions Judge in the application for discharge was that there is no evidence even prima facie to connect the accused with the offence. The contention regarding non-production of the order of sanction before the Magistrate was urged for the first time in the Revision filed in the High Court. Even then, we could have considered this contention, if substantial relief could be granted to the petitioner or if injustice could be averted. Assuming that the petitioner is right in his contention, at best, the matter has to be sent back to the Magistrate to go through a fresh process of committal after receiving the sanction order filed by the prosecution. In any case, the matter would have to come up to the Sessions Court again. The compliance with the formality would only result in further delay in holding the trial, with any corresponding advantage to the petitioner. Such a situation should not be permitted to happen while exercising the jurisdiction under Article 136, more so when the petitioner inexplicably failed to raise the objection at the earliest. Evidently, he chose to raise the objections in piecemeal without apparent justification”

12. On perusal of the order passed in **Raghuraj and Ors.** (*supra*), it is observed that there can be no manner of doubt that Section 196 (1) (a) Cr.P.C. mandates the prior sanction of the Central Government for proceeding to prosecute the accused for those offences.

13. It is not in dispute that FIR No.73/2013 was registered on the complaint case no. 8431/2012 filed by respondent no. 2 under Section 156(3) Cr.P.C. Thereafter, concerned Police Station investigated the case and filed the chargesheet wherein the petitioner was put in Column no. 12 stating therein that there is no evidence against the petitioner to connect with the offences. Accordingly, the said report

was accepted by the Id. Trial Court. However, before accepting the same, Id. Trial Court issued notice to respondent no. 2, who thereafter filed the Protest Petition and accordingly, Id. Trial Court issued summons against the petitioner under Sections 153A/153B IPC without having sanction under Section 196 Cr P C from the Central Government on the record.

14. Moreover, after investigation, Police has filed the chargesheet, whereby stated that there is no evidence against the petitioner, which connects him with the offences. Therefore, chargesheet and FIR does not exist against the petitioner. Thus, FIR registered against the petitioner pursuant to directions dated 08.02.2013 passed by the Id. Trial Court under Section 156 (3) Cr.P.C. goes. However, if the respondent No.2 is able to establish any offence against the petitioner, he may proceed with the complaint before the Court of law for action, but as per the law.

15. In view of above, order dated 07.10.2014 and FIR No.73/2013 of PS Dwarka, New Delhi, are quashed.

16. At this stage, Id. Counsel appearing on behalf of the respondent no. 2 submits that some petitions are pending before the trial court against the petitioner. To this effect, I hereby make it clear that those petitions shall be adjudicated as per the law taking note of the order passed by this Court.

17. I further make it clear that the complaint of respondent no. 2 shall not be dismissed on delay. The petitioner has no objection thereto.

18. The petition is accordingly allowed.

Crl. M.A. Nos. 3922/2015 and 6054/2015

Dismissed as infructuous.

SURESH KAIT, J

SEPTEMBER 10, 2015

jpg