

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

% Order delivered on: 26th February, 2015

+ **Crl.M.C. No.3614/2011**

STATE Petitioner
Through Ms.Jasbir Kaur, APP

versus

RAJEEV BHARTI & ANR. Respondents
Through Ms.Arundhati Katju, Adv. with
Mr.Himanshu Suman, Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (Oral)

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C. for setting aside the order dated 6th June, 2011 passed by Additional Sessions Judge (FTC)/West, Delhi.

2. The case of the prosecution/petitioner is that the accused respondents are husband and wife. Accused respondent No.1 is a teacher and accused respondent No.2 is a lab assistant at S.D. Secondary School (Gujrat), Kirti Nagar, Delhi and the complainant S.K. Kapoor in the present FIR is the principal of the school. The case of the prosecution is that on 29th August, 2006, Sh.S.K. Kapoor was assaulted, given beatings as well as threatened by both the accused persons and in pursuance of complaint of S.K. Kapoor, FIR under Sections 323/341/500/506/34 IPC was registered against the

accused persons. Learned counsel for the complainant has argued that another FIR was registered against the complainant herein and the complainant in another FIR was respondent No.1 (one of the accused herein). Both the FIR were registered on the basis of the same incident. It is further alleged that on 29th August, 2006 complainant S.K.Kapoor alleged that about 10 am while he was passing through the corridor in the school, the respondent No.2 who was working as a Lab Assistant in the school was hurling out abuses to him. It is further alleged that the respondent No.2 was annoyed with the new time table as she was asked to work in Physics and Chemistry lab, which was not acceptable by her and she also declined to sign the order duty related register. It is further alleged that respondent No.1 also came there and started hurling abuses to the complainant at which the complainant told that he will talk to the Chairman and went to his office. It is further alleged that as the complainant entered in his office, both the accused persons also came there and thereafter respondent No.1 strangulated him and pushed him against the wall and also threatened to shoot him.

3. First witness Surender Singh had deposed before the trial court that he was posted as Waterman in the school and on the date of the incident he heard the cries of the principal and when he went there he saw that the respondent No.1 had strangulated the complainant from the neck and respondent No.2 was shouting and asking the accused to shoot the principal and thereafter he called Rakesh Babu and R.C. Sahni. Second witness Mukesh Kumar had stated that he is the

sweeper in the school and around 11 am he heard the cries of the principal and on entering in the office he saw that respondent No.1 had scolded the principal from his neck and the respondent No.2 was shouting and asking him to shoot the principal and in the meantime R.C. Sahni and Rakesh Babu came there. Third witness R.C. Sahni had stated that he saw respondent No.1 was scolding S.K. Kapoor and he was pushing him against the wall and respondent No.2 was asking him to shoot the principal.

4. The trial court discharged the accused/respondents from the case of FIR No.416/2006 registered at Police Station Kirti Nagar in view of the finding arrived that there are contradictions in the statements made by the witnesses in the cross cases regarding the same incident and offences are not made out.

5. The said order was challenged by the State by filing of the Revision Petition before the District & Sessions Judge, West District, Tis Hazari Courts, Delhi, under Section 397 Cr.P.C. against the impugned order dated 21st May, 2010. There was a delay in filing of the revision petition. The Sessions Judge dismissed the application for condonation of delay and consequently also dismissed the revision petition filed by the State. After dismissal of the revision petition, the present petition has been filed for setting aside the impugned order dated 6th June, 2011 passed by the Additional Sessions Judge, Delhi and also seeking the direction for the Additional Sessions Judge to hear the revision petition on merits. Admittedly, the Metropolitan Magistrate had passed the order dated

21st May, 2010. The revision petition was filed on 29th September, 2010 along with the application for condonation of delay. Admittedly, by order dated 28th October, 2010 passed by the Additional Sessions Judge by which the impugned order dated 21st May, 2010 was set aside and the revision petition was accepted. The said order was challenged by the respondents before this Court. The impugned order dated 6th June, 2011 was passed by the Additional Sessions Judge on the basis of the remand order passed by this Court on 1st February, 2011 in Crl.M.C. No.3936/2010 & Crl.M.A. No.18765/2010 whereby the application for condonation of delay was dismissed.

6. Learned counsel for the respondents has also referred following judgments in support of her submissions:

- i) ***Balwant Singh (Dead) vs. Jagdish Singh & Ors.***, (2010) 8 SCC 685.
- ii) ***Union of India vs. Ram Charan (Deceased) through his Legal Representatives***, AIR 1964 SC 215.
- iii) ***Central Excise vs. State***, Crl. M.A. 14500/2010 in Crl. Rev. P. 473/2010 before Delhi High Court.
- iv) ***Yogesh Prasad Soti vs. Ram Narayan @ Balti Baba***, (2003) 102 DLT 669.
- v) ***Soorajmull Nagarmal vs. Golden Fibre and Products***, AIR 1969 Cal 381.

7. She has argued that there was no sufficient cause and true facts which were given in the application for condonation of delay by the State. Therefore, Additional Sessions Judge has rightly rejected the application for condonation of delay.

8. The contention of learned APP for the State is that the trial court has fell in error and is swayed by the copies of two different applications obtained through RTI and filed by the respondents regarding condonation of delay. On the other hand, the State had only preferred condonation of delay on account of delay in decision making and nothing else as per court record. She further argued that earlier the revision petition was allowed on merit. The Additional Sessions Judge did not appreciate that the benefit of small delay should not go in favour of the accused persons. The Revisional Court did not appreciate that there were different authorities taking decision and nothing contrary was placed on record and it was not a case where the revision petition was already prepared and the State slept over the same or took it casually. Learned APP submits that there are several illegalities in the final order passed by the Metropolitan Magistrate in discharging of respondents and the same have not been taken into account while passing the impugned order.

9. The Additional Sessions Judge has not applied his judicial mind to appreciate the case law in the matter of ***State of Nagaland vs. Lipok AO & Ors.***, AIR 2005 SC 2191 in its right perspective.

10. It is the admitted position that the trial court has dismissed the revision petition on grounds of limitation when it is a settled position in law that a revision under Section 397 Cr.P.C. should not be dismissed on grounds of limitation when a clear illegality can be demonstrated. Reference can be made to the judgment in the case of ***Municipal Corporation of Delhi vs. Girdharilal Sapru and***

Others, (1981) 2 SCC 758. The relevant para 5 is reproduced as under:

“It, however, appears that the respondents contended that the revision petition was barred by limitation. Even this contention is founded on a very technical ground that even though the revision petition was filed very much in time the requisite power of attorney of the learned Advocate on behalf of the petitioner was not legally complete and when it was re-submitted the limitation had expired. Without going into the nicety of this too technical contention, we may notice that Section 397 of the Code of Criminal Procedure enables the High Court to exercise power of revision suo motu and when the attention of the High Court was drawn to a clear illegality the High Court could not have rejected the petition as time barred thereby perpetuating the illegality and miscarriage of justice. The question whether a discharge order is interlocutory or otherwise need not detain us because it is settled by a decision of this Court that the discharge order terminates the proceeding and, therefore it is revisable under Section 397(1), CrPC and Section 397(1) in terms confers power of suo motu revision on the High Court, and if the High Court exercises suo motu revision power the same cannot be denied on the ground that there is some limitation prescribed for the exercise of the power because none such is prescribed. If in such a situation the suo motu power is not exercised what a glaring illegality goes unnoticed can be demonstrably established by this case itself. We, however, do not propose to say a single word on the merits of the cause because there should not be even a whimper of prejudice to the accused who in view of this judgment would have to face the trial before the learned Magistrate.”

11. Having considered the facts and circumstances of the case, I accept the arguments of the learned APP for the State and under the

circumstances of the present case, the present petition is allowed. The order dated 6th June, 2011 passed by the Additional Sessions Judge is set aside. The application of the State for condonation of delay is allowed. The revision petition is restored to its original position. The Additional Sessions Judge is directed to hear the revision petition on merits. The petition is accordingly disposed of.

(MANMOHAN SINGH)
JUDGE

FEBRUARY 26, 2015