

IN THE HIGH COURT OF DELHI AT NEW DELHI**Judgment delivered on: 17.07.2015****W.P.(CRL) 2536/2014****MIRZA ISLAM BAIG & ORS**

..... Petitioners

versus

STATE & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Sukhbir Singh, Advocate
For the Respondents : Mr. Ashish Agarwal, ASC (Criminal) with Mr. Piyush Singhal,
Advocate for R-1
Mr. Faisal Naseem, Advocate for R-2

CORAM:**HON'BLE MR JUSTICE SIDDHARTH MRIDUL****J U D G M E N T****SIDDHARTH MRIDUL, J (ORAL)**

1. The present is a petition seeking the following reliefs:-

- (i) To summon the Trial Court Record.
- (ii) To set aside and quash impugned order dated 18.02.2014 passed by Sh. Ajay Kumar Malik, Ld. M.M., (Central-04) Delhi in CC No.25/1/2012, PS Hauz Qazi and order dated 10.11.2014, passed by Ld. ASJ-07 (Central), Delhi in CR No.131/14 wherein the petitioners have been summoned to appear before the Ld. M.M., Trial Court Sh. Ajay Kumar Malik, M.M., which is now pending in the Court of Sh. Rakesh

Kumar, M.M. (Central-04), Delhi and the petitioners be discharged in the CC No.25/1/2012, P.S. Hauz Qazi of the petitioners, in the interest of justice.

- (iii) To allow the cost, in favour of the petitioners and against the respondent No.2.

2. The complaint dated 26.04.2012 praying for registration of FIR under Sections 323/325/341/34 IPC against the petitioners herein was sent by Mirza Ibrahim Beg, father of the petitioner. No FIR was registered by the police in this behalf. The complaint, which is at page Nos.53 and 54 of the petition paper book reads as under:-

To,

1. The DCP
Distt. Central
Darya Ganj
Delhi
2. S.H.O.
P.S. Hauz Qazi
Delhi

Sub: Complaint for registration of an FIR U/s 323/325/341/34 IPC against Mirza Islam Beg son of late Sh. Ayub Beg R/o 4469, Third Floor, Gali Shahtara, Ajmeri Gate, Delhi and his wife Rizwana Begum.

Sir,

The complainant most humbly submits as under:-

1. That the complainant Haji Ibrahim Beg son of late Sh. Ayub Beg R/o 4469, Second Floor, Gali Shahtara, Ajmeri Gate, Delhi, aged about 60 years

old is a law abiding citizen and having status in the society.

2. That on 06.04.2012 at about 10.30 A.M. the complainant was busy in repairing his window installed in his own premises meanwhile Mirza Islam Baig reached at the spot and restrained the complainant from repairing the window upon which hot words were exchanged between the complainant and Mirza Islam Baig. On hearing the hubbub Rizwana Begum and her son Asad reached at the spot and caught hold the complainant by surrounding him with his collar and Mirza Islam Beg put a punch on the face of the complainant as a result of which the complainant fell down on the ground and all the accused persons started beating the complainant with fists and kicks blows, whereupon the complainant raised an alarm "Bachao Bachao", on hearing his voice Mirza Mehmood Beg and Mirza Ismail Beg also reached at the spot and tried to rescue the complainant from the clutches of the said accused persons but they were also beaten by Mirza Islam Baig, his wife and her son. Thereafter all the said accused persons fled away from the spot, by giving life threats the complainant should be killed in their hands. Meanwhile some one made a PCR call police reached at the spot and took up the complainant and his son Mirza Mehmood Beg to LNJP Hospital, where they were medically examined, vide MLC No.52432/12 (copy of the MLC is attached) however, local police did not record the statement of complainant despite the fact that the complainant approached before the I.O. Nitesh Kumar for recording his statement.
3. That local police of P.S. Hauz Qazi intentionally and deliberately tried to hush up the matter and did not take any action against the said culprits.
It is, therefore, most respectfully prayed that a necessary direction may kindly be issued to the SHO, P.S. Hauz Qazi to register the case U/s 323/325/341/506/34 IPC against the said accused persons.

Delhi
Dated: 26.04.2012

Complainant

Haji Mirza Ibrahim Beg
Son of late Sh. Ayub Beg
R/o 4469, Second Floor,
Gali Shahtara, Ajmeri
Gate, Delhi.”

3. Aggrieved by the inaction on the part of the police, respondent No.2 filed a complaint case No.25/1/2012 before the learned M.M. (Central). By way of the order impugned in the present petition dated 18.02.2014, summons were issued under Sections 323/341/325/452 read with Section 34 IPC by the M.M. (Central) to the petitioners herein. The said impugned order dated 18.02.2014 reads as under:-

“CC No. : 25/1
PS :

18.02.2014

Present : Sh. Nizamuddin, Ld counsel for
complainant.

Arguments heard at length.

It is submitted that on 06.03.2012, the accused No. 1 restrained the father of complainant and an altercation took place. Accused No. 2 and 3 caught hold of father of complainant and accused No. 1 gave punch blows to Mirazuddin Ibrahim Beig i.e father of complainant. On scream of Mirza Ibrahim Beig, complainant Mehmood came to rescue his father and scuffle took place and in that scuffle, complainant also suffered injuries. It is further submitted that a call to PCR was made and injured were taken to LNJP hospital.

Complainant got examined four witnesses in his pre summoning evidence and depose in terms of

complainant. It is observed that there are allegations of fists blows by Mirza Islamuddin to Mirza Ibrahim Beig and similar observations has been made in the MLC. It is further observed that in the MLC of Mirza Mehtab Beig, correct name is Mirza Mehmood Beig, it is reported that no bony injuries seen which is at running page No. 9 of the complaint.

In view of the above observations, there are sufficient evidence to summon the accused persons.

Issue summons to accused Mirza Islam Beig, Rizwana Begum and Arshad U/s 323/341/325/452 r/w Section 34 IPC on filing of PF.

Matter be adjourned for appearance of accused persons and be listed on 07.06.2014.

(Ajay Kumar Malik)
MM (Central)-04/THC/Delhi
18.02.2014”

4. The petitioners preferred a criminal revision petition No.131/2014 against the summoning order dated 18.02.2014 whereby they had been summoned in the said CC No.25/1, under Sections 323/341/325/452 read with Section 34 IPC. The said revision petition came to be dismissed by the Additional Sessions Judge, Delhi by way of the impugned order dated 10.11.2014. The said order dated 10.11.2014 reads as under:-

“10.11.14

Present: Sh. Sukhbir Singh Counsel for the petitioners with petitioner No.1 & 2.
Sh. Rohit counsel for the respondent.

This is a revision petition against the summoning order dated 18.02.2014 whereby petitioners had been summoned in the complaint case u/s 323/341/325/452/34 IPC.

Ld. Counsel for the petitioner has stated that Ld. Trial Court while summoning accused did not note that there were inherent inconsistency with the

contents of the complaint as well as statement of the witnesses. The name of the complainant in the complaint and the MLC was different. There was delay of about 20 days even for lodging complaint by post with the Police. There was delay in medical examination of the alleged victim as the incident is reported to of 10:30 a.m. and MLC was prepared at about 08:00 p.m. Further the present complaint was filed only as a counter blast of FIR lodged against the respondent and the respondent was facing trial in the said case.

At the stage of summoning Ld. Trial Court was only required to see statement of the witnesses and if from the statement of witnesses and documents available on record there were prima facie material for assuming that offence was made out summons were required to be issued to the accused persons.

As per record CW1, CW2 & CW4 had deposed in respect of complaint. CW3 had produced the original MLC of Mirza Mehmood Beg. CW1 has stated that his name was inadvertently typed as Mirza Mehtab Beg instead Mirza Mehmood Beg in the MLC.

At the stage of summoning the Ld. Trial Court was not require to minutely scrutinize each and every contradiction of the witness. There is therefore, no infirmity in the order of the Ld. Trial Court. Accordingly, the revision petition is dismissed. File be consigned to Record Room. Copy of order be sent to Ld. Trial Court. Order Dasti.

(DINESH BHATT)
ASJ/Delhi/10.11.14”

5. Counsel for the petitioner states that the order passed by the learned M.M. (Central) dated 18.02.2014 summoning the petitioner in CC No.25/1 displays complete non-application of mind since no details of the incident had been furnished on behalf of Mirza Ibrahim Beg (father of the complainant) by the complainant/respondent No.2 herein.

6. It is next urged by counsel appearing on behalf of the petitioners that the said complaint CC No.25/1 was a counterblast and an act of vengeance to an FIR registered against the respondent No.2 by the petitioners herein being FIR No.37/2012, under Sections 323/308/341/34 IPC. Consequently, counsel for the petitioner would urge that the impugned orders dated 10.11.2014 and 18.02.2014 passed by the Additional Sessions Judge and the M.M. are bad in law and unsustainable.

7. The provisions of Section 204 of the Code of Criminal Procedure, 1973 (Cr.P.C.) insofar as it is relevant reads as follows:-

“S. 204. Issue of process. – (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be –

- (a) A summons-case, he shall issue his summons for the attendance of the accused, or
- (b) A warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.”

8. A plain reading of the above provision clearly indicates that if a Magistrate having jurisdiction is of the opinion that a cognizable offence has been committed, he may issue summons for the attendance of the accused.

9. In the present case, it is observed that the complaint clearly specifies the details of the incident, a bare reading of which clearly and unequivocally disclose the commission of a cognizable offence. In that view of the matter, the order summoning the petitioners herein under Section 323/342/325/452 read with Section 34 IPC dated 18.02.2014 after recording the substance of the complaint cannot be found fault with. The the impugned order dated 10.11.2014 in Criminal Revision No.131/2014 passed by the Additional Sessions Judge in the criminal revision preferred by the petitioners herein against the summoning order dated 18.02.2014 clearly elucidates the circumstances that warrant issue of summons by a Magistrate under Section 204 Cr.P.C. The Additional Sessions Judge has delineated the requirements for issuance of summons as follows:-

“ At the stage of summoning Ld. Trial Court was only required to see statement of the witnesses and if from the statement of witnesses and documents available on record there were prima facie material for assuming that offence was made out summons were required to be issued to the accused persons.

As per record CW1, CW2 & CW4 had deposed in respect of complaint. CW3 had produced the original MLC of Mirza Mehmood Beg. CW1 has stated that his name was inadvertently typed as Mirza Mehtab Beg instead Mirza Mehmood Beg in the MLC.

At the stage of summoning the Ld. Trial Court was not require to minutely scrutinize each and every contradiction of the witness. There is therefore, no infirmity in the order of the Ld. Trial Court. Accordingly, the revision petition is dismissed.”

10. In view of the foregoing, I am in complete agreement with the orders impugned herein. The present petition is devoid of merit and is accordingly dismissed. No order as to costs.

SIDDHARTH MRIDUL, J

JULY 17, 2015
dn