

\$~21.

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

+ W.P.(CRL) 615/2016 and CrI. M.A. No.3360/2016

LAL SINGH K. KARKI

..... Petitioner

Through: Mr. Jaimon Andrews & Mr. Rakesh
N.P., Advocates.

versus

GOVT OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Avi Singh, ASC and Ms. Megha
Bahl & Mr. Ananya Mohan,
Advocates for the State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

18.10.2016

%

1. The petitioner has preferred the present writ petition to seek writ of certiorari quashing the decision taken by respondent No.1, namely, the Government of NCT of Delhi on 12.11.2013 denying grant of sanction under Section 197 Cr.P.C. to the petitioner to prosecute Sh. Sunil Kumar, Inspector, PS – Crime Branch, District – Crime & Railways, Delhi. The said order is also in respect of a police officer at serial number 11 and sanction to prosecute the said police officer has been declined on the ground that the petitioner/ applicant had not mentioned the name of the concerned officer. The petitioner is aggrieved by the impugned order only qua the refusal to grant sanction to prosecute Sh. Sunil Kumar, Inspector, PS – Crime Branch, District – Crime & Railways, Delhi.

2. The submission of learned counsel for the petitioner, firstly, is that the impugned order does not give any reasons and, therefore, the same should be set aside on that short ground.

3. Learned counsel further submits that he was falsely implicated in a case registered by Punjab Police at PS – Rajpura, being FIR No.30/2010 registered at PS – City Rajpura even though Punjab Police had no jurisdiction to register the said FIR. The petitioner was a small fry and the allegations were primarily against his employers. The petitioner was based in Mumbai and on account of registration of the said FIR, he was, firstly, brought to Delhi, subjected to physical & mental torture, and then taken to Punjab. At the instance of prime accused in the said FIR, a writ petition was preferred before the Punjab & Haryana High Court and it was conceded that Punjab Police had no jurisdiction to deal with the case.

4. The submission of learned counsel for the petitioner is that despite that being the position, the FIR in question was registered at Delhi, being the second FIR, i.e. FIR No.143/2012 by respondent No.2/ Sh. Sunil Kumar, Inspector of Police at PS – Crime Branch contrary to the well-settled legal position, i.e. second FIR could not be registered in respect of the same alleged crime. Learned counsel for the petitioner submits that this Court quashed FIR No.143/2012 registered at PS – Crime Branch, District – Crime & Railways, Delhi on 30.08.2012 in CrI. M.C. No.2380/2012 titled *Samdeep Mohan Varghese Vs. State & Others* preferred by the other accused. The petitioner had also preferred a separate petition for the said relief. However, before the same could be listed, the aforesaid order came to be passed by the Court on 30.08.2012.

5. Learned counsel submits that respondent No.2/ Sh. Sunil Kumar acted with mala fide while registering the FIR No.143/2012 inasmuch as the place of occurrence was mentioned in the second FIR as 'New Delhi', whereas in the first FIR registered at Punjab, the place of occurrence was shown as 'Rajpura'.

6. The respondent No.1 has filed a counter-affidavit opposing the petition. The respondents have stated that police officials of Delhi Police have acted in the legal manner as per the procedure and without any mala fide intention in discharge of their official duties and there was no justification for grant of sanction to prosecute respondent No.2/ Sunil Kumar.

7. Mr. Singh has pointed out that the petitioner himself had disclosed in his application seeking grant of sanction under Section 197 Cr.P.C. that the ADGP Crime of Punjab Police had issued a letter to the SSP Patiala directing transfer of the case to Delhi. He stated that he had come to know that the State of Punjab had sent one ASI to handover the files to Delhi Police on 18.05.2012 and the said ASI filed an application before the learned Metropolitan Magistrate, Saket Courts, New Delhi for direction and the learned MM transferred the investigation of the transferred case to the DCP Crime/ DCP South, Delhi. Mr. Singh submits that the FIR in question came to be registered on account of the direction issued by the learned MM on 18.05.2012. He has tendered in Court a copy of the said order which, in its operative part, *inter alia*, reads as follows:

“In these circumstances, I am of the considered view that the indulgence of the Commissioner of Police is required to look

into the matter and to pass proper direction regarding handing over of the investigation either to the DCP (South) or to the DCP (Crime) whoever to whom he deem it fit to handover.”

8. Mr. Singh submits that in the FIR registered by Delhi Police, i.e. FIR No.143/2012, the respondent No.2 had, *inter alia*, recorded:

“To, The Duty Officer PS Crime Branch Sir, In pursuance of court order dt.18/5/12 passed by the court of Ld. ACMM (South), case file of FIR No.30/10 PS City Rajpura, Punjab was taken up for investigation on 18/5/12 from ASI Baljinder Singh of Punjab Police. Sh. Baldev Singh authorised reg. Of M/s Jay Polychem (India) Ltd has given the above complaint form the contents of the complaint prima facie a case u/s 65/66A/66C/D/E OF IT Act & 419/468/469/471/420/120B IPC is made out. Hence a case be registered and investigation be handed over to me. Rukka is being sent through Ct. Rakesh No.2028/Crime. Date & Time of offence:- Nov. 2009 onwards. Place of occurrence:- D-143, Defence Colony, Delhi, Date & time of sending Rukka:- 25/5/12 at 9.10PM, Sd English Inspr. Sunil Kumar D-3446 PIS NO.1694025 Spl. Unit/Crime Branch.”

9. Mr. Singh further submits that despite registration of the said FIR on 25.05.2012, i.e. after a week of the passing of the order dated 18.05.2012 by the learned Magistrate, the petitioner was not arrested in the case and when the quashing petition was preferred by the co-accused Samdeep Mohan Varghese, the Delhi Police, in fact, did not even oppose the same, which is evident from the order passed by the Court on 30.08.2012. Mr. Singh submits that merely because, according to the petitioner’s perception, the procedure may not have been appropriately adopted, it would not lead to an inference that respondent No.2 acted with any mala fide against the petitioner while registering the FIR, which was done in view of direction

issued by the learned Magistrate in the order dated 18.05.2012.

10. Having heard, learned counsel for the parties, I am of the view that there is no merit in this petition. No doubt, the order dated 12.11.2013 per se does not record detailed reasons for declining grant of sanction to prosecute respondent No.2/ Sunil Kumar. However, the reasons can be gathered on a perusal of the petitioner's own application and the counter-affidavit/ reply filed on behalf of respondent No.1. From a perusal of the petitioner's own application, it is clear that the learned Magistrate issued a direction to the Commissioner of Police to look into the matter and pass a proper direction regarding handing over the investigation either to the DCP (South) or the DCP (Crime), whichever he considered fit. In the present case, the FIR came to be registered by the Crime Branch.

11. There is merit in the submission of Mr.Singh that it was essential for the Delhi Police to register the FIR since Delhi Police could not have acted on the basis of the FIR registered by Punjab Police at Rajpura. Even if there was some procedural or technical glitch in the method adopted by Delhi Police and particularly by respondent No.2 in registering the second FIR and showing the place of occurrence as Delhi (when the place of occurrence disclosed in the earlier FIR was at Rajpura, Punjab), the same would not lead to the inference that respondent No.2 acted with any mala fide against the petitioner or the other accused.

12. Pertinently, there was a gap of nearly 3 months between the date of registration of the FIR in question at Delhi and the date of its quashing by this Court. It is not the petitioner's case that during this period, the

petitioner was sought to be arrested or subjected to any harassment. The FIR in question has already been quashed by this Court, as noticed hereinabove, and a perusal of the order shows that it was conceded by the police that registration of the second FIR was bad in view of the judgment of the Supreme Court in *T.T. Antony Vs. State of Kerala & Others*, (2001) 6 SCC 181.

13. Consequently, I find no merit in this petition and dismiss the same.

VIPIN SANGHI, J

OCTOBER 18, 2016

B.S. Rohella