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

+ W.P.(C) 1303/2016

DESH RAJ

..... Petitioner

Through Dr.L.S.Chaudhary with Mr.Ajay
Chaudhary, Advocates.

versus

STATE (GOVT OF NCT OF DELHI) & ORS. Respondents

Through Ms.Prabhsahay Kaur, Advocate for R-
1 to 6 with Inspector Rajesh Kumar,
PS IGI Airport.

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Date of Decision: 27th April, 2016

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed challenging the order dated 21st July, 2015 whereby petitioner's application for grant of sanction to prosecute against respondent nos. 3 to 6 was rejected. Petitioner further seeks a direction to respondent nos. 1 to 2 to grant sanction to prosecute respondent nos. 3 to 6.

2. It has been averred in the petition that respondent nos. 3 to 6 filed a false case under Section 324 read with Section 34 IPC against the nephew and brother of the petitioner as they refused to give bribe to the said respondents.

3. Learned counsel for the petitioner states that the petitioner was kept in unwarranted custody for 33 hours. He also states that the impugned order denying sanction to prosecution is cryptic and non-speaking. In support of his submissions, he relies upon the judgment of the Supreme Court in ***Subramaniam Swamy Vs. Manmohan Singh & Anr.*, (2012) 3 SCC 64**, wherein it has been held as under:-

“72. The right of private citizen to file a complaint against a corrupt public servant must be equated with his right to access the court in order to set the criminal law in motion against a corrupt public official. This right of access, a constitutional right should not be burdened with unreasonable fetters. When a private citizen approaches a court of law against a corrupt public servant who is highly placed, what is at stake is not only a vindication of personal grievance of that citizen but also the question of bringing orderliness in society and maintaining equal balance in the Rule of Law.”

4. On the other hand, Ms. Prabhsahay Kaur, learned counsel for the respondents, who appears on advance notice, submits that the permission to grant sanction to prosecution is barred by virtue of Section 140(1) of the Delhi Police Act, 1978, which reads as under:-

“140. Bar to suits and prosecutions. – (1) In any case of alleged offence by a police officer or other person, or of a wrong alleged to have been done by such police officer or other person, by any act done under colour of duty or authority or in excess of any such duty or authority, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained and if entertained shall be dismissed if it is instituted, more than three months after the date of the act complained of;
Provided that any such prosecution against a police officer or

other person may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence.”

5. Ms. Kaur further states that the accused was arrested on 6th July, 2013 and was produced before the Magistrate on 7th July, 2013 in accordance with the law. She states that thereafter, the accused was kept in custody only in pursuance to the order passed by the Metropolitan Magistrate. She points out that in view of similar allegations having been made before the Additional Chief Metropolitan Magistrate (ACMM) on 8th July, 2013, the Court had directed an enquiry by the SHO, Police Station Indira Gandhi Airport.

6. Though the SHO did not find any merit in the allegations levelled by the petitioner, yet the ACMM on 9th October, 2013 at the complaint's request directed an enquiry to be conducted by the Assistant Commissioner of Police (ACP).

7. On 26th November, 2013, the ACP furnished a detailed report to the ACMM. The relevant portions of the findings of the ACP's report are reproduced hereinbelow:-

“ During the course of enquiry, I have gone through the case file pertaining to FIR No.192/2013 U/s 324/34 IPC PS IGI Airport and found that the investigation complete in all respect. I also examined SI Randhir Singh and HC Ram Singh who refuted the allegations of the complaintant at its bade and quoted the complaint as after though, fabricated & motivated simply made to exert pressure on the IO for not making Jai Bhagwan as accused. From the enquiry conducted, it has transpired that no witness even those whose names have been mentioned by the complainant in his favour, has supported the version of the complainant in its entirety nor anyone witnessed any kind of communication made between the complainant and

policemen ISI Randhir Singh and HC Ram Singh seeking any favour of consideration for minimizing the offence so called hushing up matter. However, the case file suggests otherwise that the investigation has been conducted by the IO in all respect and nothing has been left which may give any kind of loope/rope/benefit to the accused persons. During the course of enquiry, it has also been found that the complainant Desh Raj is a real brother of the accused Jai Bhagwan and real uncle (Tau) of accused Roby. Hence, the complainant is an interested party and has filed complaint to exert pressure on the IO. It has also been revealed that the accused Jai Bhagwan is a habitual complainant and in the habit of preferring complaints against the IOs when arrested. One of the similar instance come in light when the accused Jai Bhagwan was arrested vide DD No.26 dated 21/03/2011 U/s 107/151 Cr.P.C. PS Domestic Airport and the accused used the same tactics and filed a complaint against the IO Ram Kanwar Dahiya and HC Surender. The IO has specifically recorded the threat hurled by the accused in the above DD. The IO states that the accused Jai Bhagwan extending threats saying "MUJHE POLICE WALO KI SHIYAKAT KARNA BHI AATA HAI". The enquiry was conducted on the complaint of Jai Bhagwan and the same was found to be false and motivated. Hence, the same was filed. The behaviour and conduct of the accused Roby reflects from getting the false recovery of weapon of offence i.e. screwdriver at his instance. However, during the course of investigation, the independent witnesses 'A Burfwala' and 'Pani Rehniwala' had deposed that the accused Roby had snatched a pointed object i.e. Ice Breaker in local parlance from them and inflicted injuries to the injured Pradeep Kumar. In this way, the accused intentionally and deliberately got the wrong recovery effected to mislead the investigation.

From the enquiry conducted, no clinching/material evidence has emerged that may suggest beyond reasonable shadow of doubt that SI Randhir Singh or HC Ram Singh has sought any consideration for botching the investigation. The allegations have been made by the complainant as the IO did

not act upon according to the expectation of the complainant. The statements of the witnesses recorded during the course of enquiry and the relevant portion of the instances cited above are enclosed herewith for your kind perusal please. It is also pertinent to mention here that the investigation of case FIR No.192/2013 U/s 324/34 IPC PS IGI Airport has been transferred from the present IO SI Randhir Singh under the prevailing circumstances.

Submitted please.”

8. Thereafter, the petitioner filed a private complaint under Section 156(3) of Cr.P.C, which was also disposed of by the ACMM vide order dated 19th February, 2015. The relevant portion of the said order is reproduced hereinbelow:-

“Having regard to the ratio of aforesaid judgments and the facts of the present case, I am of the considered opinion that there is no requirement for sending the present case for investigation and that too when the local police has already formulated an opinion that no police action is required as the present complaint is a counter blast of the pending criminal case vide FIR no.192/2013 against the complaints brother and nephew. Further detailed enquiry into the allegations has already been carried out by the SHO as well as ACP. Even otherwise, primarily the instant complaint pertains to allegations of demand of bribery which is punishable under the Prevention of Corruption Act and therefore, can be dealt only by designated Special Judge under PC Act. The application of the complainant under Section 156 (3) Cr.P.C. is accordingly dismissed.”

9. Upon a revision petition being filed before the Additional Sessions Judge, the counsel for the petitioner withdrew the revision petition with liberty to file a fresh complaint under Section 156(3) of Cr.P.C. before the competent court.

10. Having heard the learned counsel for the parties, this Court is of the view that though the impugned order does not give detailed reasons, yet from the enquiries that have been conducted from time to time by different authorities at the instance of the concerned Courts, the allegations made by the petitioner do not inspire confidence.

11. It is pertinent to mention that an enquiry from the ACP, Palam was ordered by the ACMM at the instance of the petitioner. The relevant portion of the order dated 9th October, 2013 passed by the ACMM is reproduced hereinbelow:-

“Counsel for complainant however submits that all the police officials are still working in the same PS and hence, inquiry report may be sought from the ACP concerned. In view of the same, let a report be sought from ACP, IGI Airport for 26.11.2013.”

(emphasis supplied)

12. The ACP in its report has after detailed investigation concluded that the petitioner's complaint was an afterthought, fabricated and motivated and simply to exert the pressure on the Investigating Officer for not making petitioner's brother as an accused. During the enquiry, it was also found that no witness had supported the case of the petitioner. It has also been stated that the petitioner is a habitual complainant who is in the habit of preferring complaint against the Investigating Officer when arrested.

13. This Court is further of the opinion that the judgment of the Supreme Court in **Subramaniam Swamy** (supra) offers no assistance to the petitioner as the said case dealt with delay in grant of sanction.

In the present case as there is no delay in disposing of the sanction application filed by the petitioner, the said judgment is inapplicable to the facts of the present case.

14. This Court is also in agreement with the submission of learned counsel for the respondents that the permission to grant sanction is time- barred by virtue of Section 140(1) of the Delhi Police Act, 1978

15. Keeping in view the aforesaid, this Court is of the view that this is not a case where this Court in writ jurisdiction should either grant sanction to prosecute or quash the decision to refuse sanction. Consequently, the present writ petition is dismissed. No order as to costs.

APRIL 27, 2016
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MANMOHAN, J

