

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

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Reserved on: 1st December, 2016
Decided on : 5th December, 2016

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CRL.M.C. 3439/2012 & CrI.M.A. 17164/2012

MAHESH TYAGI & ORS.

..... Petitioner

Represented by: Mr. A.M. Tripathi with Mr.
Pramod Tyagi, Advs.

versus

STATE GOVT. OF NCT OF DELHI & ORS Respondent

Represented by: Ms. Rajni Gupta, APP with ASI
Hukum Chand, PS GTB Enclave.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Vide order dated 1st July, 2011 the learned Metropolitan Magistrate discharged the two petitioners i.e. Mahesh Tyagi and Vijay besides Vikas in case FIR No.92/2010 under Sections 356/379/323/341/506/34 IPC registered at PS Mansarovar Park on the complaint of respondent No.2 Sanjay Kumar Pandey. Challenging the order dated 1st July, 2011 Sanjay Kumar Pandey filed a revision petition before the learned Additional Sessions Judge who set aside the order of the learned Metropolitan Magistrate dated 1st July, 2011 discharging the petitioners Mahesh Tyagi and Vijay Kumar though upholding the same qua Vikas Sharma vide the impugned order dated 8th August, 2012. Hence the present petition by Mahesh Tyagi and Vijay Kumar.

2. Though notice had been served on respondent No.2 and he entered appearance, however for the last three dates he has refrained to appear, thus this Court after hearing learned counsel for the petitioner, learned APP for the State and perusing the record including the reply affidavit and written submissions of the respondent No.2 reserved the judgment.

3. A brief exposition of facts is that a complaint was lodged by respondent No.2 Sanjay Kumar Pandey stating that on 31st March, 2010 at around 9.30 AM when he was on his way to Tis Hazari Courts his car was hit by a bullet motor-cycle bearing registration No. DL-7SK-8966 and when respondent No.2 objected to the hitting of the car, 3-4 other persons surrounded him, started misbehaving and in the process his gold chain was snatched by Rajnish Kumar, the driver of the motor-cycle. This complaint was given by Sanjay Kumar Pandey in writing at PS M.S.Park as despite calling 100 number, no PCR van came. At around 7.20 PM on 31st March, 2010 itself SI Baldev Singh from PS Mansarovar Park called him at the Police Station. When he reached Police Post GTB Hospital, he found the three accused who were involved in the morning incident present and he identified all the three accused persons who got infuriated and started beating him. It was alleged that Rajnish Kumar inflicted fist blow on the left eye of Sanjay Kumar Pandey while other persons caught hold of him due to which he sustained injuries. Though MLC of Sanjay Kumar was prepared, however no action was taken. Thus a complaint case was filed. After directions were issued under Section 156(3) Cr.P.C., FIR was registered on a written complaint of Sanjay Kumar Pandey.

4. In the written complaint given on 18th April, 2010 on which the above-noted FIR was registered Sanjay Kumar Pandey made a consolidated complaint of the two incidents on 31st March, 2010 i.e. one in the morning at 9.30 AM and the other in the evening at about 7.30 PM. During the course of investigation, Sanjay Kumar Pandey identified Rajnish Kumar, Vijay Kumar and Mahesh Tyagi as three accused. In his supplementary statement recorded pursuant to an application dated 23rd May, 2010, he also named one Vikas as an accused.

5. The learned Metropolitan Magistrate while discharging Vikas, Mahesh and Vijay Kumar observed as under:

“I have heard the counsel for the parties and perused the record. Perusal of the file shows that three supplementary statements of complainant has been recorded. In one of the statement, he has stated that he come to know from the police officials that the name of fourth accused is Vikash. The second supplementary statement is with respect to preparation of site plan. The third supplementary statement is with respect to the fact that the gold chain was gifted to me by one of his relatives and thus he does not have any record of ownership. There is a statement of Rakesh Pal, who stated that on 17.04.2010, he had told the name of Mahesh Tyagi to the complainant.

In the present case, the FIR was registered not on the complaint filed by the complainant in the Court but on the statement made by him on 18.04.2010 almost after 3 days of the order passed by the Court. In the original complaint, only name of accused Rajnish Kumar finds mention. The name of the other two accused persons have been incorporated later on. As per statement dated 18.04.2010, it is not clear from where he came to know the name of accused Vijay Kumar. Further when on 17.04.2010, he was buying sweets, he was told by Rakesh Kumar (although in the statement recorded u/S 161 Cr.P.C., the name is Rakesh Pal) that the name of the third person is Mahesh Tyagi. Rakesh Kumar is not an eye witness to the incident, neither in the statement u/S 161 Cr.P.C. nor in the statement recorded on 18.04.2010, it is clear that how Rakesh Kumar knew accused Mahesh Tyagi and whether he was the person who was involved in this case. The statement dated 18.04.2010 is only after thought. There is no explanation by the prosecution regarding the factum of delay in FIR. There is no reason given by the complainant as to why he had come to the PS after three days. Hence, for the purpose of framing charge, the statement cannot be relied on. There is no evidence against accused Vikash. Hence, accused Vikash, Mahesh and Vijay Kumar are discharged from the case in hand as there is no prima facie case against these accused persons. Nothing said herein shall tantamount to an expression of opinion on the merits of the case.”

6. Vide the impugned order, learned Additional Sessions Judge held the discharge of Mahesh Tyagi and Vijay Kumar to be erroneous for the reason the

complainant had mentioned the number of offenders and had identified them as accused persons on 18th April, 2010 itself. The learned ASJ held that the discrepancy in naming the witness as Rakesh Kumar instead of Rakesh Pal does not warrant discharge of the accused at this stage because this aspect shall be considered when testimony of PW Rakesh Kumar/ Rakesh Pal is recorded. It was further held that even if the offender are not named in the FIR their identity can be fixed later on and the three accused having been mentioned in the first instance there appears to be strong suspicion to proceed against Rajnish, Vijay Kumar and Mahesh Tyagi as offenders. However, the order of discharge qua Vikas Sharma was upheld.

7. Relying upon the decision of the Supreme Court in Rajiv Thapar & Ors. Vs. Madan Lal Kapoor (2013) 3 SCC 330 learned counsel for the petitioner contends that this Court in a petition under Section 482 Cr.P.C. can look into material of impeccable character. It is contended that 5 independent eye-witnesses had witnessed the incident who stated that there was only a minor scuffle and no incident of chain snatching took place. The parties were living in the same locality, knew each other and Vijay is the real brother of Rajnish against whom charge had been framed and he has been implicated only to build the pressure. Similarly, Vikas the third brother of Rajnish was also implicated so as to put pressure on the accused. Two Courts below have found that no charge should be framed against him. Thus parity is also required to be granted to Vijay thereby discharging him. Further petitioner No.1 is known to Sanjay Kumar Pandey since the last more than four years i.e. prior to registration of the case as one another case bearing FIR No.163/2006 under Sections 323/342/506 IPC was pending in the Court of learned Metropolitan Magistrate wherein respondent No.2 is the counsel of the complainant of the said case and Mahesh Tyagi and his wife were accused and appearing regularly in the Court.

8. In Rajiv Thapar (supra) the Supreme Court laid down the steps to determine the prayer for quashing while invoking power vested with the High Court under Section 482 Cr.P.C. and held:

“23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Code of Criminal Procedure. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

9. As regards Rajnish and Vijay Kumar, no material has been placed to show that respondent No.2 knew him prior to registration of FIR. The claim of the petitioner Mahesh Tyagi that Sanjay Kumar Pandey knew him prior to the registration of FIR is not substantiated from the order sheet dated 9th September, 2011 in case FIR No.163/2006 registered at PS Dilshad Garden, for the reason the same was after the registration of FIR in question. The evidence placed on record by the petitioners is not of a nature which non-suits the complaint. Thus at this stage this Court finds no reason to modify the impugned order dated 8th August, 2012 passed by the learned ASJ as prima facie there is a strong suspicion of the petitioners having been involved in the offence. Further in case the petitioners have any material to show the falsity of the allegations, they can confront respondent No.2 or his witnesses with the same during the course of trial.

10. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

DECEMBER 05, 2016
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