

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

Judgment delivered on : November 03, 2016

+ CRL.M.C. 2172/2016
DURGA DEVI

..... Petitioner

Through: Mr. Jawahar Singh, Advocate

versus

STATE OF GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Ms. Meenakshi Chauhan, Additional
Public Prosecutor for the State with
Sub-Inspector Sandeep Kumar, Police
Station Mehrauli, Delhi
Mr. Subhash Chand Budhiraja,
Advocate for respondent No. 2
Ms. Sunita Ojha, Ms. Akanksha
Jotriwal, Advocate for respondent
No.3

**CORAM:
HON'BLE MR. JUSTICE P.S.TEJI**

JUDGMENT

P.S.TEJI, J.

1. By this petition filed under Article 227 of the Constitution of India read with Section 482 of Cr. P.C. the petitioner is seeking an order thereby quashing the impugned order dated 18.08.2015 passed by learned Additional Sessions Judge in Criminal Revision

No.30/2015, vide which the revision petition preferred by the petitioner was dismissed and the order passed by learned Metropolitan Magistrate summoning the petitioner in a complaint being CC No.146/01/09 for the offences punishable under Section 323 & 341 of IPC was upheld.

2. In brief, the facts of the case are that when the complainant was going to withdraw his pension through bus plying on route No.533 and when he deboarded the bus at Adhchini bus stop, the petitioner herein started beating him with a sandal/chappal from his behind. The petitioner is also alleged to have abused the complainant in filthy language. The complainant raised alarm whereupon public persons gathered to save him and a call on 100 number was made by one Rakesh Kumar after which a PCR van arrived at the place of incident. The complainant and petitioner were taken to Police Station Haus Khas, where the complainant was advised to approach Police Station Malviya Nagar. Statement of the complainant was recorded at Police Station Malviya Nagar. Since no action was taken on the complaint, the complainant made complaint to the public grievance commission and a letter was written to Additional Commissioner of Police (Vigilance). A complaint under Section 200 of Cr.P.C. was filed against the petitioner for committing offence under Section 323/341/500 IPC as well as against SHO of Police Station Malviya Nagar for not taking action on this complaint. On 18.01.2009, ASI Gopi Chand of Police Station Malviya Nagar recorded the statement of the complainant. Finding the statement of the complainant duly

corroborated with the various complaints made by him to the various authorities, the learned Metropolitan Magistrate, prima facie found the sufficient material for summoning the petitioner for the offence under Section 323/341 of IPC. However, due to lack of any specific allegation the petitioner was ordered to be summoned for offence under Section 323/341 of IPC.

3. Aggrieved by the aforesaid order passed by learned Metropolitan Magistrate thereby summoning the petitioner for the aforesaid offences, the petitioner filed a criminal revision petition before the Court of learned Additional Session Judge. The petitioner raised her contentions regarding delay in lodging the complaint, and misrepresentation of the true facts by the complainant before the learned Metropolitan Magistrate. The learned Additional Sessions Judge vide order dated 18.08.2015, dealing with all the averments made by the petitioner, dismissed the criminal revision preferred by the petitioner while upholding the order of summoning the petitioner passed by learned Metropolitan Magistrate in CC No.146/1/09 for the offence punishable under Section 323/341 of IPC. Aggrieved by the same, the petitioner preferred the present petition before this Court.

4. Learned counsel for the petitioner contended that the petitioner had preferred a petition for quashing the cognizance of offence taken against her vide order dated 17.12.2014 and the same is still pending before the learned Metropolitan Magistrate – 02/SD. The petitioner has prayed for taking cognizance of all her complaints made against

the various authorities and for registration of case of molestation committed by the complainant on 03.09.2009. The petitioner has referred various contentions regarding lodging and filing of various complaints against the complainant (respondent No. 2 herein) in relation to disputes relating to certain acts at her property.

5. Learned counsel for the petitioner contended that mere recording of the statement of the complainant does not amount to taking the cognizance of the offence. More so, the petitioner has taken the ground of limitation in preferring the complaint as well as the alleged molestation by respondent No. 2. To support her contentions, as raised in the petition, the following judgments are relied upon:

- i) ***S.R. Sukumar vs. S. Sunaad Raghuram (Crl. A. No.844 of 2015 arising out of SLP (Crl) No.4813/2012;***
- ii) ***S.K. Sinha, Chief Enforcement Officer vs. Videocon International Ltd. and Ors., (2008) 2 SCC 492;***
- iii) ***Sheikh Zakir vs. State of Bihar, AIR 1983 SC 911;***
- iv) ***Radhakrishna Nagesh vs. State of Andhra Pradesh (Crl. Appeal No.1707 of 2009);***
- v) ***State of Punjab vs. Gurmit Singh, (1996) 2 SCC 384;***
- vi) ***Rajinder @ Raju vs. State of H.P. (2009) 16 SCC 69;***

6. Learned counsel for the petitioner further contended that while

proceeding under Section 200 Cr.P.C. the learned Metropolitan Magistrate recorded the statement of the complainant on 12.05.2010 and no other material witnesses were examined and still found prima facie case against the petitioner, which is against the principles of law. Learned counsel for the petitioner has also referred various orders passed by learned Additional Sessions Judge while hearing the revision petition of the petitioner, which are matter of record and the same can only be referred in her defence before the appropriate Court.

7. Learned counsel for the petitioner further contended that the learned Additional Chief Metropolitan Magistrate as well as learned Additional Session Judge failed to appreciate the fact that the summoning of an accused has serious consequences for the accused/petitioner as she has to face trial in a criminal case which may go on for years altogether.

8. Learned counsel for the petitioner has also raised the contention regarding inordinate delay in making the complaint before the learned Metropolitan Magistrate.

9. On the other hand, learned counsel appearing on behalf of respondent No. 2 (complainant) contended that there is no illegality or infirmity in the order passed by learned Metropolitan Magistrate as well as by learned Additional Session Judge while upholding the order of summoning the petitioner in a case under Section 323/341 IPC, therefore the present petition filed by the petitioner is liable to be rejected outrightly.

10. I have heard the submission made by both the sides and also gone through the contents of the petition as well as the impugned order passed in this case.

11. After careful scrutiny of the case in hand, this Court is conscious of the fact that the complaint filed by the respondent No. 2 relates to the offence under Section 323/341 IPC and there are specific allegations made against the petitioner in the complaint itself. This Court also finds that the petitioner had raised several other incidents and the complaints made against the complainant (respondent No. 2 herein) as well as legal issues regarding issuance of summoning order, which in the considered opinion of this Court can be adjudicated during trial. So far as the summoning order passed by the Trial Court is concerned, this Court is of the considered view that in deciding whether a process should be issued, the Trial Court can take into consideration improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations. It is also a settled principle that the Trial Court has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by it. In the considered opinion of this Court, once the Trial Court has exercised its discretion, it is not for this Court, to substitute its own discretion for that of the learned Metropolitan Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused.

12. It would be relevant to refer to the decision in ***Dy. Chief Controller of Imports and Exports v. Roshanlal Agarwal and Ors.*** (2003) 4 SCC 139, wherein the Hon'ble Supreme Court, held as under:

“9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

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“The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing a detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order.”

13. In ***U.P. Pollution Control Board v. Dr. Bhupendra Kumar Modi and Anr.*** (2009) 2 SCC 147, this Court, in paragraph 23, held as under:

“23. It is a settled legal position that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused.”

14. This Court observes that the complaint was filed in this case against the petitioner for the offence punishable under Section 323/341 of IPC and there are very clear and specific allegations against the petitioner which can be adjudicated during trial of the case. So far as the grounds taken by the petitioner herein are concerned, those are the subject matter of trial and need not to be tried here. The petitioner has filed the present petition under Section 482 of Cr. P.C. seeking quashing of the summoning order dated 17.12.2014 passed by the learned Metropolitan Magistrate, and this Court primarily ought to see as to whether any prima facie case has been made against the petitioner or not and in the considered opinion of this court, the court below had found prima facie material available on record to summon the petitioner.

15. On the point of limitation, the learned Additional Sessions Judge has referred to section 468 of Cr.P.C., which provides limitation for the complaint under Section 156(3) read with section 200 of Cr.P.C. The admitted fact of the case is that the incident is of 02.09.2008 and the complaint under Section 156(3) read with section

200 of Cr.P.C. was filed on 09.03.2009, and the petitioner is summoned for the offence punishable under Section 323/341 of IPC. Section 323 of IPC provides the imprisonment of either description for a term which may extend to one year or with fine. Therefore, the learned Additional Sessions Judge has rightly held that the complaint is very well within limitation as section 323 of IPC is punishable with imprisonment which may extend to one year.

16. After going through the contents of the petition as well as the impugned orders, this Court does not find any illegality or infirmity in the impugned orders passed by learned Metropolitan Magistrate as well as learned Additional Session Judge.

17. Resultantly, the present petition filed by the petitioner is dismissed and the petitioner is directed to appear before the Trial Court and to take appropriate legal remedies as available under the law.

18. Before parting with the order, this court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the present petition. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

19. A copy of this order be sent to Trial Court for information.

20. With aforesaid directions, the present petition stands dismissed.

(P.S.TEJI)
JUDGE

NOVEMBER 03, 2016
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