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

DECIDED ON : 19th JANUARY, 2016

+ **W.P.(CRL) 1835/2014 & CRL.M.A.No.14088/2014**

GURMEET SINGH

..... Petitioner

Through : Dr.Ashwani Bhardwaj, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through : Ms.Richa Kapoor, ASC with
Mr.Rohit & Mr.Ashish Negi,
Advocates.

Mr.R.N.Yadav, Advocate for R4.
SI Des Raj, PS Vikas Puri.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.Garg, J. (Oral)

1. Present Writ Petition under Articles 226/227 of the Constitution of India read with Section 482 Cr.P.C. has been filed for seeking directions to quash the impugned order dated 18.10.2011 of learned Metropolitan Magistrate whereby the petitioner was summoned to face trial in case FIR No.138/2000 registered under Sections 354/452/34 IPC at PS Vikas Puri. Prayer has also been made to quash the proceedings

initiated under Sections 82/83 Cr.P.C. against him. Revision petition is contested by the respondent No.4 (herein after referred 'K'). Status report is on record.

2. I have heard the learned counsel for the parties and have examined the file. On perusal of the file, it reveals that FIR No.138/2000 under Sections 376/511/452/354/34 IPC was registered against the petitioner and one Virender on K's complaint on 31.03.2000 at PS Vikas Puri. On 19.06.2000, the investigation was transferred to District Crime Cell. During investigation, statements of the neighbours and other witnesses were recorded. Upon completion of investigation, cancellation report was furnished by the concerned Addl. Commissioner of Police before the learned Metropolitan Magistrate on 13.07.2000. Learned Metropolitan Magistrate after perusing the record cancelled the FIR vide order dated 18.07.2000. Subsequently to initiate proceedings under Section 182 IPC against the complainant 'K', a Kalandra was furnished before the Court on 19.01.2001 as she had made false statements.

3. It is relevant to note that earlier W.P.(Crl)No.855/2000 and Crl.M. 1660/2000 came before this Court for hearing. Order dated 14.03.2001 (page-15) records the factum of cancellation of FIR No. 138/2000 and initiation of the proceedings under Section 182 IPC against

‘K’. Apparently, order dated 18.07.2000 whereby the learned Metropolitan Magistrate had accepted the cancellation report became final. The respondents have not placed on record any document to show if the said order was challenged before the higher Courts. Perusal of the order-sheets in the ‘Kalandra’ reveal that the Trial Court was informed that a writ petition was filed to challenge the said order. However, no such proceedings or orders were placed before the Court. In its response, “K” has not informed if any such writ petition challenging the order dated 18.07.2000 was filed by her. Needless to say, proceedings in FIR No. 138/2000 had come to an end qua the petitioner after acceptance of cancellation report.

4. It appears that there was utter confusion before the Presiding Officers in the proceedings under Section 182 IPC initiated against the ‘K’. In those proceedings without taking into consideration order dated 18.07.2000 about cancellation of the FIR, it was inadvertently presumed that proceedings under Sections 354/452/34 IPC were pending against the petitioner. Vide order dated 30.06.2006, the matter was listed before Mahila Court. Order-sheet dated 07.07.2006 records that the final report for cancellation report in case FIR No.138/2000 along with ‘Kalandra’ under Section 182 IPC were pending on which appropriate orders are to

be passed. Vide order dated 18.10.2011, learned Metropolitan Magistrate due to inadvertence took cognizance against the petitioner for commission of offence under Sections 452/354/34 IPC. Prayer of the police to initiate proceedings under Section 182 IPC against 'K' was rejected. Obviously, the Trial Court was ignorant about the order dated 18.07.2000 whereby the learned Metropolitan Magistrate had already cancelled the FIR. In the proceedings initiated under Section 182 IPC, 'K' has been described as an 'accused' and at other places, as 'complainant'. It caused all the confusion and let the order dated 18.10.2011 passed.

5. Since the FIR in question has already been cancelled, there was no occasion / reason to take cognizance against the petitioner for commission of offences under Sections 452/354/34 IPC vide order dated 18.10.2011. One should not suffer due to the mistake of the Court.

6. In the light of above discussion, the impugned order dated 18.10.2011 taking cognizance against the petitioner for commission of offences under Sections 452/354/34 IPC and all other proceedings arising out of it including the proceedings under Sections 82/83 Cr.P.C. are quashed.

7. The Trial Court shall reconsider if R-4/ 'K' is to be proceeded for commission of offence under Section 182 IPC.

8. The Writ Petition stands disposed of accordingly. Pending application also stands disposed of.

9. Trial Court record (if any) be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

JANUARY 19, 2016 / *tr*