

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

% Decided on: 9th December, 2016

+ **CRL.M.C. 2565/2015**

MEERA GIRI

..... Petitioner

Represented by: Mr. Yogesh Swroop, Mr. S.P.
Rana, Advs.

versus

STATE (NCT OF DELHI) & ORS

..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP.
Mr. S.A. Rajpur, Adv. for
R-2 to 8.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CrI.M.A. 9109/2015

For the reasons stated in the application delay of 23 days in refiling the petition is condoned.

Application is disposed of.

CRL.M.C. 2565/2015

1. The petitioner filed a complaint case being CC No.657/4/11 before the learned Metropolitan Magistrate seeking summoning of the respondents under Sections 376/452/323/504/506/34/120B IPC against 8 accused wherein they were summoned vide order dated 21st October, 2013 after evidence was led by the petitioner and two other witnesses including her daughter. In the deposition before the Court, the daughter of the petitioner stated that on 29th May, 2011 at about 5.45 PM while she was coming to her house from the market she saw a white coloured maruti car in which few

persons were sitting. Samiullah accused No.5 asked her about her mother and threatened her to withdraw the case. Samiullah exhorted the other persons to lift her when all the other persons came out of the van, Saleem held her head, Jamaludin and Iqbal held her from back and rest tried to lift her and put her in van. However the neighbor CW-3 arrived at the spot and on seeing CW3 and others the accused persons threw her on the ground and left her. She alleged that her modesty was outraged.

2. The learned Trial Court thus summoned the nine accused for offences punishable under Section 354/366/511/506 IPC vide order dated 21st October, 2013. The order dated 21st October, 2013 was challenged by the respondents No.2 to 9 wrongly mentioning two of the respondents as respondent No.2 wherein vide the impugned order dated 30th January, 2015 the learned Additional Sessions Judge set aside the order summoning the petitioners. The learned ASJ vide the impugned order noted as under:

“8. The complainant when examined as CW-1 on 03.08.2011 has deposed as per complaint in respect of threats received by her on 28.05.2011 and on 29.05.2011. She also endorsed the complaint made to police dt. 30.05.2011 as Ex.CW-1/A and fax receipt Ex.CW-1/B. She has also mentioned that the occurrence (dt. 29.05.2011) was witnessed by her daughter, her son and one Ms. Baby (CW-2).

9. The daughter of the complainant namely ‘K’ when examined in court has deposed that on 29.05.2011 at about 05.45 pm, she was present at her house and his mother had come from outside and asked her to prepare tea and she told to her mother that there was no milk in the house. Further that her mother asked her to bring the milk from the mother dairy booth situated near their house and when she was purchasing milk from the mother dairy booth, she saw Smt. Baby who has residing near their house and Smt. Baby was also purchasing milk from the said booth. Further that when she was

approaching her house and arrived about 10-15 yards from her house, she saw a white colour Maruti Van standing there and some people were sitting in the said van. Further that the accused No.5 Samiullah @ Munna was also sitting in the said van and Samiullah called her as he was known to her earlier and asked where was her mother and she told him that her mother was at home. Further that then Samiullah threatened her and said to withdraw a case which is got registered by her mother against Zafar, Naim and Ikhlakh and others u/s 376 IPC and other provisions of IPC. Further that she requested him not to threaten and said that she shall tell the truth in the court as and when required. Further that he again said that we have to withdraw the case u/s 376 IPC under all circumstances and on this she refused. Further that Samiullah caught her hand and he shouted and asked the accused persons sitting in the van to lift her and put her in the van. Further that all accused came out of the van and accused Saleem held her hand and Samiullah, Jamaluddin and Iqbal held her from her back. Further that accused Anwar and Idris have held her legs and all the accused persons tried to put her in the van forcefully and she shouted "Bachao-Bachao". Further that at that time their neighbor Smt. Baby have also arrived at the spot along with her mother Smt. Meera and her brother Chandan and all of them also shouted Bachao-Bachao. Further that the accused persons threw her on the road and ran away in the aforementioned white colour Maruti Van. Further that all her family members got scared and could not note down the registration number of the Mauti Van. Further that all accused threatened her at the time of leaving that, "today you are saved but they shall come again with more muscle power and kidnap you and they shall not allow her to appear in any evidence against Zafar, Naiem and Ikhlakh who are in custody in case u/w 376 IPC". Further that accused persons have tried to outrage her modesty by pressing her breast. Further that even today the accused persons are chasing her and she had seen them many times at the door of the school situated near their house called Govt. Sarvodya Kanya Vidyalaya. Further that there is apprehension to her life, modesty at the hands of the accused persons

mentioned in the complaint and whose names are mentioned above. Further that police is not taking appropriate legal action against the accused persons who are harassing her and her family members. Further that they had made complaint to the police but no action has been taken by the police.

10. CW-2 Smt. Baby has deposed that on 29.05.2011 at about 05.45 pm, she was present on the mother dairy booth situated near her house and there she had gone to purchase milk for her house. Further that when she was on her way back to home, she saw Ms. Kanchan D/o Sh. Surender R/o Flat No.829, DDA Flats, Hastal, Uttam Nagar, who was also on her way back to her home after purchasing the milk from the mother dairy. Further that she saw a maruti van in which eight persons were sitting and they were trying to lift Ms. Kanchan by holding her body and they were trying to put her in the aforesaid van and Ms. Kanchan was shouting "Bachao-Bachao" and on this she also shouted "Bachao-Bachao" as she knew Ms. Kanchan being her neighbour. Further that at the same time, mother and brother of Ms. Kanchan had also reached the spot after hearing the noise. Further that she can identify those persons namely Zafar, Naim, Iqbal, Munna, Samiullah, if they were shown to her. Further that the aforesaid persons were armed with deadly weapons and knives and were threatening to Ms. Kanchan "Ask your mother to withdraw the case u/s 376 IPC so that our relatives and friends may come out of the jail, otherwise, we shall come again with more muscle power and kidnap you and will commit a gang rape upon you". Further that thereafter the aforesaid persons left the spot. Further that police came on the spot after half an hour but no action was taken by the police against the accused persons. Further that the accused persons are anti-social elements and they may convert their threat into reality at any point of time.

11. Although, the complainant had already been examined as CW-1, she has again been examined as CW-3 without any specific order or directions in this regard which is quite strange. When examined as CW-3, the complainant has put forward an entirely different and improvised version. She deposed that on 29.05.2011 at about 05.45 pm, she was at her

house as she had come after attending her court date, she asked her daughter Ms. 'K' to prepare tea for her and she was informed that there was no milk in the house and the complainant asked her daughter to bring him from mother dairy near her house. Further she deposed that the petitioners herein were waiting with pre-planned conspiracy outside her house and they tried to lift her daughter 'K' by holding her body near her house when she was coming back after purchasing the milk. It is further deposed that the complainant heard the noise of people and came out of her house and saw the aforementioned incident, she shouted Bachao and somehow they succeeded to save her daughter from the clutches of accused persons. Further that those persons i.e. the petitioners threatened her daughter to ask her mother to withdraw the case u/s 376 IPC. This time also the witness has referred to the complaint made to DCP on 30.05.2011 i.e Ex.CW-1/A.

12. It is clear from the material available on record that the case of complainant is suffering from improvement and material contradictions. The complaint u/s 200 Cr.P.C. and the complaint dt. 30.05.2011 made to police i.e. Ex.CW-1/A are totally silent about the alleged act of attempt of kidnapping and outraging the modesty of the daughter of complainant on 29.05.2011. The complainant when examined at the initial stage on 30.08.2011 as CW-1 has also not uttered a single word about the above mentioned act. She has simply talked about the alleged threats given by the accused persons to her at about 06.00 pm on 29.05.2011 along with telephone threats dt. 28.05.2011. The story of alleged attempt of kidnapping and outraging the modesty of the daughter of complainant has come on record first time in the statement of Ms. 'K' on 18.08.2012. After deposition of Ms. 'K', it seems the complainant has decided to stick to the version put forward by her daughter and accordingly the CW-2 Ms. Baby and the complainant herself as CW-3 deposed on similar line on 30.01.2013. The contents of the complaint made to police on 30.05.2011, complaint u/s 200 Cr.P.C. filed on 09.06.2011 and statement of complainant recorded in court on 03.08.2011 are totally different from the case put forward by the daughter of complainant on 18.08.2012

and CW-2 and CW-3 on 30.01.2013. If such a major incident regarding attempt to kidnapping or outraging the modesty of the daughter of complainant had occurred in the presence of complainant on 29.05.2011 the same should have been incorporated in the complaint Ex.CW-1/A, court complaint or at least in the statement of complainant recorded by court on 03.08.2011. Not only this, the CW-2 Smt. Baby has gone a step forward and has named accused Jafar and Naim also along with Iqbal, Munna, Samiullah in respect of the incident dt. 29.05.2011 while admittedly accused Jafar and Naim were in J/C at that time.

13. The inherent contradictions and improvements in the case of complainant as discussed above have rendered the case of complainant totally unreliable. The evidence led by the complainant has to be considered in its entirety and extracts thereof cannot be picked to search the ingredients of any possible offences. It is not disputed that on 29.05.2011, the complainant had come from court and the bail application of one of the accused namely Naim was to be taken up by the court on 30.05.2011. In such circumstances, possibility of an attempt to create a false ground for opposing the bail application cannot be ruled out.

14. It is well settled law that summoning of a person as accused in a criminal case is very serious matter and summoning order cannot be passed in a routine manner. In this regard, reference can be made to the judgment of Hon'ble Supreme Court in case titled as Pepsi Food Ltd. & Anr. Vs. Special Judicial Magistrate & Ors., AIR 1998 SC 128. The Court has the duty to evaluate the evidence led by the complainant before passing summoning order. If the impugned order passed by the Ld. MM is analysed in the light of material available on record and above discussion, the same is not sustainable under law and likely to cause miscarriage of justice. There are no sufficient grounds to proceed against any of the accused persons/ petitioner herein for any of the offences. Accordingly, the impugned order of summoning dt. 21.10.2013 passed by Ld. MM is set aside and the complaint filed by the respondent stands dismissed."

3. It is well-settled that at the stage of summoning the accused the Trial Court is required to apply its mind and see even though a strong suspicion may not arise for framing of charge but whether there was a prima facie case or not. The learned Additional Sessions Judge vide the impugned order noted that in the complaint made to the Police there were no allegations as were stated by the daughter of the petitioner who was the only victim/ eye-witness as even the petitioner was admittedly not present when the incident took place.

4. In the complaint to the Police the complainant had stated that her daughter was the only eye-witness in the complaint lodged by her. However Jaffar's relations i.e. Ashfaq, Iqbal Haji Harkan R/o Mohan Garden and brothers of Akhlaq and Naim i.e. Salim and Jamaluddin, Anwar, Idris and Shamlullah @ Munna R/o A-2/39 Mohan Garden were threatening to kill her daughter and her son. Further they abuse in front of her house. She has to go to the Court and they stop her from going to the Court stating that if she wants the safety of her children, she should withdraw the case.

5. It is apparent that the deposition of the three witnesses and the complainant are at total variance with the complaint. Though the complaint was general in nature with no specific instance, in the deposition specific instance is sought to be attributed. Thus, the order passed by the learned Additional Sessions Judge cannot be held to be perverse warranting interference. Hence the present petition is dismissed.

(MUKTA GUPTA)
JUDGE

DECEMBER 09, 2016 /'ga'