

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

+ CRL.M.C. No.3101/2016

Date of Decision: September 05, 2016

VIPIN GULIA

..... Petitioner

Through Mr.Deepak Gandhi, Adv.

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through Ms.Meenakshi Chauhan, APP.

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

P.S.TEJI, J.

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of FIR No.476/2009 registered under Section 506 IPC together with all the subsequent proceedings arising therefrom.

2. The brief facts of the case, leading to the filing of present petition are that on 05.11.2009, a complaint was received at P.S Dwarka Sector-23, wherein complainant Sarita alleged that his son Sandeep Ahuja had been shot on 09.10.2009 by one Sachin Gulia. It was further alleged that on

05.11.2009, petitioner/accused had called Jyoti, daughter-in-law of complainant and threatened her that in case, matter is not compromised then he would kill all the family members. Since the complainant had disclosed a non-cognizable offence U/s 506 IPC, therefore, IO SI Mahesh Soni applied for permission from the Magistrate to investigate the matter and arrest the accused and the same was granted by Magistrate vide order dated 19.11.2009. Thereafter, FIR was registered vide No.476/2009, P.S Sector-23 Dwarka and matter was taken up for investigation.

3. After completion of investigation, petitioner/accused was charge sheeted for the offence U/s 506 IPC. Thereafter the Trial Court after hearing the arguments on the point of charge vide order dated 04.02.2011 held that charge u/s 506 IPC was *prima facie* made out against petitioner/accused. Thus, petitioner was charged for the offence U/s 506 IPC and matter was put up for trial. During the course of trial, the complainant and her daughter-in-law were examined as PW-2 and PW-3 respectively. The petitioner/accused thereafter filed an

application under Section 239 Cr.P.C seeking discharge, which was dismissed by the Trial court vide order dated 05.01.2016. Aggrieved by the same, the petitioner/accused filed a revision petition before the Sessions Court, which was dismissed vide order dated 08.06.2016. Being aggrieved, the petitioner has filed the present petition.

4. The learned counsel for the petitioner in support of his petition has taken the grounds that entire proceedings conducted before the trial court were void ab-initio as in a non-cognizable offence, police had no power to register a FIR and carry out the investigation. It was further submitted that no charge sheet could have been filed in the instant case and only a non-cognizable report could have been filed and that even the arrest of petitioner was not proper as required permission of the Magistrate was not sought for the arrest of the petitioner/accused. It was further submitted that since prescribed procedure for investigation of non-cognizable offence as provided U/s 155 Cr.P.C was not followed, therefore entire proceedings were void ab-initio. Accordingly,

it was prayed that impugned order be set aside and petitioner be discharged. In support of his contention, petitioner has relied upon the judgment of Supreme Court of India delivered in *Keshav Lal Thakur Vs. State of Bihar, 1996 VII AD SC 838* and that courts below have failed to appreciate that if these types of illegal and unlawful activities will not be actionable as per the provisions of law, then definitely the right, title and interest of bona fide persons of society will be defeated; and that in the present case, the petitioner/accused has been falsely implicated after a PCR call was made against the then IO SI Mahesh Soni as he had abducted the petitioner/accused unlawfully from his shop under the shadow of the case in which FIR has been registered against the real brother of the petitioner/accused.

5. The learned APP for the State, per contra, stated that there is no illegality or perversity in the impugned order as Trial court after perusing the judgment of Apex Court in *Keshav Lal's case (Supra)* had dismissed the application of petitioner seeking discharge. It was submitted that in the

present case, since the IO had sought prior permission from Magistrate to investigate a non-cognizable offence, therefore the facts of the present case were distinguishable from the facts mentioned in the *Keshav Lal's case (Supra)* and therefore, no illegality was committed by Trial court.

6. In the present case, charge was framed against the petitioner on 04.02.2011 and an application seeking discharge of petitioner has been dismissed on 05.01.2016. The said order dated 05.01.2016 has been upheld by the Sessions Court in Crl.Revision Petition No.06/2016 filed by the petitioner. The testimony of three prosecution witnessess has been recorded. There is no provision for quashing of an FIR in a warrant trial case especially when the prosecution evidence is being recorded in the matter and three witnesses including the complainant have already been examined. Therefore, on this ground alone, the present petition is not maintainable.

7. Even on merits, the present petition is not maintainable as in the present case, a perusal of charge sheet reflects that IO had obtained prior permission of Magistrate to investigate and

arrest in the non-cognizable offence u/s 506 IPC. Therefore, compliance of Section 155 (2) of Cr.P.C was duly made.

8. The judgment relied upon by the petitioner in Keshav Lal's case (Supra) is distinguishable as in the facts before the Supreme Court of India, in a non-cognizable offence U/s 31 of the Representation of the People Act, 1950, the matter was investigated after registration of FIR without seeking any order from the Magistrate. Accordingly, proceedings arising from the FIR were quashed. However, in the present case as discussed hereinabove, the requisite permission U/s 155(2) of Cr.P.C was sought to investigate and arrest by the IO from the Magistrate, therefore, no illegality was committed.

9. The contention of the learned counsel for the petitioner that in a non-cognizable offence, no FIR could have been registered and no charge sheet could have been filed U/s 173 Cr.P.C also deserves to be rejected. The reason for the same is that as per Section 155(3) of Cr.P.C if the police has taken the permission from the Magistrate to investigate the non-cognizable offence, then officer in charge of the police station

can exercise all the powers which are available to him in a cognizable case. Since in a cognizable case, police officer has the power to register a FIR and on completion of investigation, file a chargesheet U/s 173 Cr.P.C, therefore no illegality was committed in the present case in either registering the FIR u/s 154 Cr.P.C or in filing the charge-sheet U/s 173 Cr.P.C. Therefore, this contention is also accordingly rejected.

10. Also, since the application of the petitioner under Section 239 Cr.P.C. has been dismissed, consequentially, the provisions of Section 240 Cr.P.C. are to follow. In the present case, the application seeking discharge under Section 239 Cr.P.C. was filed by the petitioner after framing of charge by the Trial Court. It is a settled law that provisions of Section 240 Cr.P.C. are subsequent to Section 239 Cr.P.C. and not vice versa. Once a charge has been framed in the matter, there is no question of an application Section 239 Cr.P.C. being entertained as the said remedy can be availed only prior to framing of charge. In warrant trial cases instituted upon the investigation conducted by police, after framing of charge

under Section 240 Cr.P.C., the consequential result would be either acquittal or conviction of the accused as provided under Section 248 Cr.P.C. and not a discharge as sought by the petitioner/accused.

11. In the light of above discussion, I do not find any ground to quash the FIR in question exercising powers under Section 482 Cr.P.C. Hence, the present petition is accordingly dismissed. However, the petitioner would be at liberty to argue the contentions made in the present petition at the time of final arguments.

SEPTEMBER 05, 2016
dm/dd

(P.S.TEJI)
JUDGE