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

+ **W.P.(CRL) 2688/2016**

PRATAP SINGH

..... Petitioner

Through: Mr. Manoranjan, Advocate.

versus

UOI & ORS.

..... Respondents

Through: Mr. Anil Soni, CGSC and Mr. Shivam Chanana, Advocate for respondent No.1/UOI.

Ms. Richa Kapoor, ASC and Ms. Seema Patnaha, Advocate along with Inspector Vinay Kumar, for the State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

20.12.2016

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1. The petitioner has preferred the present writ petition to seek quashing of FIR No.24/2014 registered at PS – Vigilance Branch, Delhi Police as against the petitioner, and the petitioner also seeks a direction to respondent No.2., namely the Commissioner of Police to set aside all consequential decisions as a result of registration of the said FIR against the petitioner.

2. The case of the petitioner is that he is working as Assistant Sub

Inspector in Delhi Police. On 01.01.2014, the petitioner was posted in the Traffic Unit of Delhi Police. He states that he was posted in Civil Lines Traffic Circle at the end of January 2014 after completing his training. The petitioner's claim is that on 18.05.2014, one of his subordinate staff Constable Punit, who was deployed for taking photographs/ videos of the traffic violators for sending notices to them, was involved in a sting operation. The complainant, whose son made the sting video recording made a complaint, on the basis of which the aforesaid FIR came to be registered, inter alia, against the petitioner. Three other constables including Punit were also named as accused in the said FIR on the basis of the complaint of one Rajbir Bansal. His son has made the sting video. After about 6 months of the registration of the FIR, the petitioner was suspended on 24.02.2015.

3. The petitioner has a story with regard to the reasons for his suspension. He claims that when he was performing his duty as a Traffic Inspector on 13.01.2015, he had challaned a vehicle and this was not to the liking of a senior police officer. He was then warned that the said senior officer shall ruin his career. Consequently, the petitioner claims that he was suspended.

4. The submission of learned counsel for the petitioner is that on the basis of the complaint made by the complainant Rajbir Bansal, an internal vigilance inquiry was conducted by the Public Redressal of Grievances Cell (PRG). The said inquiry, on perusal of Compact Disc (CD) provided by the complainant containing the sting operation, showed that Constable Punit had stopped the Santro car and the driver of the car was apprised of the offences

which had been committed by him and he was informed that a fine of Rs.4,300/- could be attracted. After several minutes of hankering Constable Punit accepted Rs.800/- from one of the occupants of the car and asked them to remove the film and sticker pasted on the car. After that the sting operators drove away. Allegedly the said Rs.800/- was accepted as a bribe, since no challan was prepared in respect of the traffic violations and no receipt was issued in respect of the fine collected by the said Constable. According to the petitioner, the PRG found from the CD recording that the other traffic staff on duty, at that point of time, were seen busy with drivers of other vehicles. Learned counsel for the petitioner submits that the petitioner is not seen interacting with the sting operators, or demanding any money in the said CD.

5. Even though the FIR came to be registered on 10.11.2014, no progress was made in the investigation. The petitioner and the other accused were not arrested. It was only after filing of the present writ petition that the voice samples of Constable Punit and Hari Singh were collected and sent to FSL for matching the same with the sting recording. The voice samples of the petitioner has not been collected, since he is not found to be speaking to the occupants in the Santro car in question/ sting operators, as he was not dealing with them.

6. Learned counsel for the petitioner submits that merely because he was the Team Leader would not be sufficient to name him as an accused in the case, unless and until the prosecution were to make out a case of common intention between the petitioner and the other accused to commit the offence of demanding and accepting the bribe, i.e. by invoking Section 34 IPC. The

petitioner submits that he is being harassed in the matter, and for nearly 20 months, he is under suspension.

7. Learned counsel submits that the petitioner has repeatedly made applications under the RTI Act to seek information with regard to the report prepared by the Vigilance Department in respect of the sting video, which has not been supplied to him in spite of direction being issued by the CIC.

8. He further submits that the petitioner's file was placed before the same senior police officer, who has turned inimical towards him, and it was at his instance that the petitioner was suspended. According to the petitioner, the said senior officer was, in the normal course, not empowered to deal with the case of the petitioner. When the petitioner asked for the said file notings under the RTI Act, the application has been declined by stating that the file has been lost. Learned counsel submits that the endeavour of the police is to suppress the involvement of the allegedly inimical police officer.

9. Ms. Kapoor submits that the report of the CFSL in respect of the voice samples of the two accused Consable Punit and Hari Singh is awaited in the case. She submits that once the report is received, the investigation shall stand concluded. She submits that the common intention between the petitioner and the other accused would be established from the evidences which may be gathered from the other accused upon their disclosure statements, and other independent evidences gathered to corroborate the said disclosures.

10. At this stage, learned counsel for the petitioner has submitted that the

statements of Constable Punit and other accused has already been recorded, and even those statements are not being provided to the petitioner, despite his asking for the same.

11. Having heard learned counsel for the parties, I find that the grievance of the petitioner with regard to the tardy manner in which the investigation is being conducted in the case is completely justified. The petitioner's voice sample has not been collected, which only shows that even according to the prosecution, he is not seen to be having conversation with the occupants of the Santro car/ sting operators, or with the other accused at the time when the sting operation was conducted. Therefore, the demand and acceptance of the alleged bribe, in any event, cannot be attributed to the petitioner.

12. The only manner in which the petitioner could be roped in is by invoking Section 34 IPC, namely on the ground that the petitioner had a common intention with the other accused to commit the offence under the PC Act. So far as the element of common intention is concerned, the same would be a matter to be derived from other evidences, namely the statements of the other accused and the other corroborative evidence gathered on the basis of the said statement. Since the FIR has remained pending for over two years, the prosecution should have collected evidence in that respect by now. Merely because the voice samples of the accused Punit and Hari Singh have been collected and sent to FSL, is no ground to claim that the investigation would progress only after a positive result is received from the FSL with regard to the voice samples of Constable Punit and Hari Singh.

13. In the counter affidavit as well, the State has not disclosed as to what

other evidence has been collected qua the petitioner to link him with the offence. In fact, the vigilance report relied upon by the petitioner shows that *“the other traffic staff on duty at the point is seen busy with drivers of other vehicles”*. The petitioner is suffering suspension since February 2015 on account of pendency of the case at the stage of investigation. If the prosecution dragged its feet and delayed taking of voice samples of Constable Punit & Hari Singh, it has only itself to blame. There is no explanation why the same were not taken soon after registration of the FIR since the CD containing the sting operation was available with the prosecution from the beginning, i.e. since 23.05.2014.

14. In view of the aforesaid circumstances, the State is granted three months time to file the final report in the case qua the petitioner. The FSL is directed, in the circumstances of this case, to ensure that the FSL report in respect of the voice samples of Constable Punit and Hari Singh is made available within ten weeks from today.

15. The petition stands disposed of.

16. The observations made on the merits hereinabove shall not come in the way of prosecution in case the charge-sheet is filed against the petitioner and the other accused.

17. Dasti.

VIPIN SANGHI, J

DECEMBER 20, 2016

B.S. Rohella