

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

% Decided on: 22nd September, 2016

+ **CRL.M.C. 3504/2016**

DARYAO SINGH Petitioner

Represented by: Mr. S.K. Bhalla, Adv.

versus

STATE & ORS Respondent

Represented by: Mr. Ashok Kumar Garg, APP
with SI Himanshu Balyan PS
Adarsh Nagar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. 14802/2016

Exemption allowed subject to just exceptions.

CRL.M.C. 3504/2016 & Crl.M.A. 14801/2016 (stay)

1. A complaint was filed in May 1980 by the petitioner impleading as many as 24 accused as the Police failed to take action on the incident dated 30th November, 1979. In the complaint it was stated that the wife of the petitioner/ complainant was in cultivatory possession of the agricultural land in village Mukandpur and for the past few years litigations were going on between his wife Shanti and her sister-in-law Sona on one side and Udmi on the other side in various Courts. In this regard a civil suit seeking perpetual injunction was also filed wherein the parties were directed to maintain status quo. It is alleged that on 30th November, 1979 at about 5.00 PM Udmi with

the help of accused No.2 to 24 after forming an unlawful assembly suddenly entered the piece of land while his wife was working in the field with a sickle in her hand and started abusing her and threatening her to surrender the vacant possession of the said land by removing her hut, cattle and sign-board. The accused also brought a tractor with them and started ploughing and ruining the standing crops of barsem sown by the complainant. This attempt was foiled by Smt. Shanti who was pregnant at that time. It is further alleged that all the accused attacked Shanti Devi indiscriminately with lathi, sticks, kicks etc., thereby causing multiple injuries on her person which resulted in unbearable pain and miscarriage. It is also alleged that the accused person demolished and stole the jhuggi of the complainant.

2. After the petitioner led the pre-summoning, all the accused were summoned and the Trial Court proceeded with the complainant as a warrant trial case and on 8th April, 2011 it was converted into a summons trial case as the accused were summoned for offences punishable under Section 447/323/34 IPC only. After closure of the evidence of the complainant, all surviving accused persons were examined under Section 313 Cr.P.C. and they led their defence evidence. At the stage of final arguments, the petitioner filed an application on 4th July, 2016 seeking liberty to summon PW-3 Shankar Lal, Record Clerk of Irwin Hospital to prove the medical report of his wife. The Court noted that this witness has already been examined in the pre-summoning evidence and he has proved the medical report as Ex.PW-3/1.

3. The learned Trial Court vide order dated 28th July, 2016 rejected the prayer of the petitioner on the ground that after a trial which has spanned for 36 years the complainant's evidence cannot be re-opened. It also noted that

as many as 12 accused had since passed away during the pendency of the trial, one Santosh was deleted from the array of parties vide order dated 26th February, 1996 and merely because a new counsel was engaged liberty cannot be granted to the complainant to re-examine the witness. The learned Trial Court noted that accused persons were summoned only for offences punishable under Section 447/323 IPC in the year 1980 which order was not challenged and hence the same has attained finality. Now the petitioner by further adducing evidence with regard to miscarriage cannot re-start the trial again. The learned Court also noted that at the stage of final arguments petitioner had taken an objection that the present case is a Sessions trial case as his wife suffered a miscarriage and the objection of the petitioner was dismissed vide order dated 28th June, 2016. The order dated 28th June, 2016 was assailed in a revision petition before the learned ASJ which was also dismissed on 13th July, 2016. Thus the application under Section 311 Cr.P.C. was dismissed by the learned Metropolitan Magistrate on 29th August, 2016. Hence the present petition.

4. As noted above the trial is pending for the last 36 years. Accused have been summoned under Section 447/323 IPC, the said order has attained finality. PW-3 Shanker, Record Clerk from Irwin Hospital was examined on 23rd August 2000 who produced the entire medical record of the wife of petitioner as Ex.PW3/1 to 8 where after accused were summoned for offences punishable under Sections 447/323 IPC. However when the record clerk was re-summoned on 13th September, 2010, Shri B.S. Bhati appeared from LNJP hospital and stated that the records have been destroyed. Thus the Court closed pre-charge evidence. At this stage learned counsel for the

petitioner failed to point out that record had already been exhibited by PW-3 Shanker, Record Clerk from Irwin hospital on 23rd August, 2000.

5. Since the order of not summoning the accused for Section 313 IPC and no charge having been framed for the said offence has attained finality, I find no merit in the petition. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 22, 2016
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