

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on : April 04, 2016

+ CRL.M.C. 3712/2015
HARMANDEEP RAI @ HARMANDEEP S. RAI Petitioner
Through: Mr. V.K. Ohri, Advocate

versus
STATE (NCT OF DELHI) & ANR Respondents
Through: Mr. Mukesh Kumar, Additional
Public Prosecutor for the State with
Sub-Inspector T. Negi, Police Station
IGI Airport, Delhi

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

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P.S. TEJI, J.

1. By this petition filed under Section 482 of Cr. P.C., the petitioner seeks quashing of the charge sheet and the FIR No.298/2013 under Section 186/353 of IPC registered at Police Station IGI Airport, New Delhi.

2. The present case is registered against the petitioner on the complaint of Mr. Vinod Sharma, the then AFRRO/B, Arrival Wing, Bureau of Immigration, GOI, Ministry of Home Affairs. According to the complainant, on 29.09.2013, the petitioner arrived at IGI Airport Delhi on the strength of US Passport. After clearance of his immigration, he returned to the immigration area and forcibly tried to enter from duty free shop side. Upon asking as to why he was entering, the petitioner created disturbance and insisted on clearing a

lady pax namely Rupinder Kaur, who was also a US national from the same flight. It is further submitted by the complainant that the particulars of lady pax were matching with the LOC subject and the same fact was conveyed to the petitioner but still the petitioner continued to argue/abusing/using sarcastic and unparliamentarily language for immigration staff, Country (India) and created hindrance in immigration work. It is further alleged that the petitioner abused one of the staff member – Shri Vikas, SA/G, who was performing his duty at counter No.5 and also called him “son of a bitch” and also tried to manhandle him. It is further alleged that the petitioner created unruly scene in the arrival wing and tried to deter public servants from discharging their official duties.

3. Mr. V.K. Ohri, counsel for the petitioner contended that the petitioner alongwith his fiancée (both US National) visited India by Flight on 29.09.2013. Though the immigration regarding petitioner was cleared but due to delay of clearance in respect of his fiancée he raised the matter with an official of the Airport. Not getting satisfactory response from the officials, the petitioner approached higher authorities for lodging a complaint. As the officials got annoyed with the petitioner they called some of their colleagues and police officials, who told the petitioner that senior official wanted to speak to the petitioner and then they forcefully pushed the petitioner inside their meeting room and assaulted the petitioner. It is further contended that the petitioner was made to sit on the floor and cussed. Thereafter, a police complaint was registered against the petitioner

under Section 186/353 of IPC for his unruly behavior and the petitioner was taken into custody. The petitioner was not allowed to contact the Embassy of USA and on the next day i.e. on 30.09.2013, the petitioner was produced before the learned Metropolitan Magistrate and was granted bail in the matter.

4. Counsel for the petitioner further contended that the petitioner has also mentioned the details of the maltreatment meted out to a United States National for the Embassy to take up the matter with Government of India. It is further contended that due to fabricated complaint against the petitioner, the petitioner was replaced in his company with some other doctor and suffered a financial loss of about Rs.4.5 lacs apart from physical and mental torture suffered at the IGI Airport in India.

5. After filing of charge sheet and a formal complaint against the petitioner, the counsel for the petitioner moved two applications; one under Section 239 of Cr. P.C. seeking discharge in the above mentioned case and another for permanent exemption from personal appearance. Counsel for the petitioner further contended that CCTV footage produced by the prosecution alongwith the charge sheet itself shows that the petitioner never obstructed any official from doing his official duty nor has he used any criminal force against any public servant. It is contended that the petitioner was ill treated, harassed and assaulted by the custom officials in collusion with the police officials. The complaint was intended to meet the possible enquiries by the United States Embassy on a complaint of assault and ill treatment on

its National.

6. Mr. Mukesh Kumar, Additional Public Prosecutor appearing for the State submitted that the petitioner had misbehaved and tried to manhandle the immigration officers of IGI Airport. The petitioner has also called an immigration officer “son of a bitch” and the CCTV footage with relevant certificate under Section 65B of Indian Evidence Act is also filed with the charge sheet which shows that the petitioner was aggressive at the time of incident. Therefore, there is no illegality or infirmity in the order passed by learned Metropolitan Magistrate while taking cognizance of the offence and issuing summons to the petitioner in the present case. It is further contended on behalf of the State that the present petition filed by the petitioner is liable to be rejected.

7. I have heard the submissions made on behalf of the petitioner as well as the material placed on record. I have also gone through the impugned orders passed by learned Metropolitan Magistrate.

8. After careful scrutiny of the case in hand, this Court observes that there are clear and specific allegations against the petitioner in the complaint filed by the concerned officer and after investigation, the petitioner has been charged with the offence under Section 186/353 of IPC. Though the CCTV footage is also filed alongwith the charge sheet and in respect thereof, the petitioner has also contended his own version, but the same is the subject matter of trial and it can only be adjudicated by leading evidence in the matter.

9. For better appreciation of the principles regarding summoning of accused in a criminal trial, it would be relevant to reproduce the extract of a judgment of Hon'ble Supreme Court in ***Pepsi Foods v. Special Judicial Magistrate***, JT 1997(8) SC 705, which, time and again has observed that the summoning of accused in criminal case is a serious matter and criminal law cannot be set in motion as a matter of course. It read as under:

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course, it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or

otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

10. This Court is conscious of the fact that the complaint filed by the immigration officer lays specific allegations against the petitioner, which can be adjudicated during trial only. So far as the summoning order passed by the Trial Court is concerned, this Court is of the considered view that in deciding whether a process should be issued, the learned Magistrate can take into consideration improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations. The learned Magistrate has summoned the petitioner only after charge sheet has been filed alongwith the CCTV footage of the date of incident. In the considered opinion of this Court, once the learned Magistrate has exercised his discretion, it is not for this Court, to substitute its own discretion for that of the learned Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused.

11. It would also be relevant to refer to the decision in ***Dy. Chief Controller of Imports and Exports v. Roshanlal Agarwal and Ors.*** (2003) 4 SCC 139, wherein the Hon’ble Supreme Court, held as under:

“9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and

not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

12. It further went on observing that -

“The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order.”

13. In ***U.P. Pollution Control Board v. Dr. Bhupendra Kumar Modi and Anr.*** (2009) 2 SCC 147, this Court, in paragraph 23, held as under:

“23. It is a settled legal position that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused.”

14. This Court observes that the charge sheet has been filed in this

case against the petitioners for the offences punishable under Section 186/353 of IPC and there are very clear and specific allegations against the petitioners. This Court is also conscious of the fact that the petitioner has filed the present petition under Section 482 of Cr. P.C. seeking quashing of the complaint dated 26.11.2014, charge sheet and proceedings arising therefrom, and this Court is primarily required to see as to whether the petitioner has been able to make out prima facie case to exercise the discretion of this Court.

15. After going through the contents of the complaint made by the complainant, this Court observes that there are very specific allegations against the petitioners, therefore, this Court does not find any illegality or infirmity in the impugned order passed by learned Metropolitan Magistrate.

16. Resultantly, the present petition filed by the petitioner is dismissed being devoid of any merit.

17. A copy of this order be sent to Trial Court for information.

18. With aforesaid directions, the present petition stands disposed of.

P.S.TEJI, J

APRIL 04, 2016

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