

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

Judgment delivered on : 31st March 2016

+ CRL.M.C. 4075/2015 & CrI.M.A. No.14552/2015

SUBHASH & ORS

..... Petitioners

Through: Mr.Shiv Charan Garg, Advocate with
Mr.Imran Khan, Advocate.

versus

STATE (GNCTD)

..... Respondents

Through: Ms. Manjeet Arya, Additional Public
Prosecutor for the State with Inspector
Krishan Lal, Police Station DIU/N.W.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

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P.S. TEJI, J.

1. The petitioner is invoking the discretionary powers of this court under Section 482 of Cr.P.C. and challenging the order dated 09.09.2015 passed by the learned Metropolitan Magistrate 04, North West District, Delhi passed in FIR No. 720/14 under Section 30734 of IPC registered at Police Station Keshav Puram, Delhi, whereby the learned Metropolitan Magistrate has ordered for transfer of investigation to some other agency under the control of DCP/North West District.

2. The facts in brief as enumerated from the impugned order are that on the night of 01.11.20144 two unknown boys riding on a

motorcycle had fired from revolver at the complainant who was going towards his house on his scooter and on 02.11.2014, FIR No. 720/14 under Section 307/34 of IPC and under Section 27/54/59 of Arms Act was registered at Police Station Keshav Puram upon the statement of complainant Rajbir @ Bobby. On the suspicion of the complainant that some unknown persons had fired at him at the instance of Ashok Sharma, Faisal and Subhash, the investigation of the case was started. One fired cartridge was recovered from the spot and all the suspects have been examined in detailed with their call details records. The CCTV footage of the place of incidence was also examined but no clue was found. The application of the complainant for getting the polygraph test of the alleged persons was also filed. There is no eye witness of the incidents in this case.

3. The learned Metropolitan Magistrate vide order dated 09.09.2015 observed that despite the passage of around 11 months, no clue has been found about the accused. It was also observed that there is no eye witness of the incident and the CDRs of the suspects as well as the persons with whom they were in contact on or prior to the date of incident have not been examined properly by the Investigating Officer.

4. The Trial Court also went through the case diary and observed that the Investigating Officer has not made any effort to collect the dump data of all the mobile phones operating in the area on the date of the incident as well as prior to the happening of the incident, which

was required to be done in the cases like blind cases where there is no eye witness or other evidence and instead of collecting the dump data and other material evidence, the Investigating Officer has suspected the credentials of the complainant as the complainant is an accused in a case FIR No. 472/14 filed by the accused persons and proceeded further for conducting the polygraph test of the complainant also alongwith the suspects.

5. The court further went on to observe that the investigating agency straightway decided to get the polygraph test conducted upon the complainant alongwith accused persons instead of subjecting the accused persons first to the polygraph test shows that the investigating agency is believing the version of innocence of accused persons and suspecting the complainant's version without any ground which reflects malafides of the investigating agency.

6. Considering the aforesaid progress and facts and circumstances of the case, and gravity of allegations, the Trial Court observed that the investigation was not being conducted properly and even the SHO and ACP were not supervising the investigation effectively. Thereafter, the Trial Court has directed the Joint Commissioner of Police, concerned range to take necessary action against errant officials and DCP concerned was directed to transfer the investigation to some other agency under his control.

7. Mr. Shiv Charan Garg, counsel for the petitioners contended that the Trial Court has erred in holding that *"the very fact that the*

investigating agency straightaway decided to get the polygraph test conducted upon the complainant alongwith accused instead of subjecting the accused persons first to the polygraph test shows that the investigating agency is believing the version of innocence of accused persons and suspecting the complainant's version without any ground which reflects malafides of the investigating agency". In this regard, it is contended that the concerned police officials have taken the stand of conducting polygraph test only on the request of the petitioners and they have filed a criminal complaint under Section 156(3) of Cr. P.C. whereby the same Metropolitan Magistrate had ordered the police to submit status report and a different and contrary view has been taken by the learned Metropolitan Magistrate on the application filed by the complainant.

8. Learned counsel for the petitioners further contended that the learned Metropolitan Magistrate has exceeded his jurisdiction as the Magistrate can only order to the SHO of the concerned Police Station but cannot issue any directions to any senior officer for transfer of investigation. In support of this contention, counsel for the petitioners relied upon the judgment of Hon'ble Supreme Court in ***Chandra Babu @ Moses vs. State through Inspector of Police & Ors., 2015 VIII AD (SC) 363*** as well as decision of this court in ***Ajay Raj Sharma vs. State, 2001 (1) JCC (Delhi) 16.***

9. Counsel for the petitioners further contended that the petitioners have been falsely implicated in the present case and they also got

protection from this court while considering the anticipatory bail of the petitioners. It is further contended on behalf of the petitioners that the complainant of the FIR in question is running a criminal gang and is involved in many cases in different police stations. In fact the petitioner No.1 has already lodged a complaint dated 14.06.2014 alleging that the complainant of the present FIR had illegally entered into his house physically assaulted him and attacked on his private parts. MLC of the petitioner was prepared by Babu Jagjeevan Ram Hospital, Delhi and FIR No. 472/2014 was registered and the complainant of the present FIR for taking revenge from the petitioners, has falsely implicated the petitioners in the present case.

10. Ms. Manjeet Arya, Additional Public Prosecutor appearing on behalf of the State submitted that the investigation of the case registered under FIR No. 720/2014 under Section 307/34 of IPC and Section 25/54/59 of Arms Act, at Police Station Keshav Puram, Delhi has been transferred to District Investigation Unit of North West District vide order dated 12.09.2015 by the order of Deputy Commissioner of Police, North West District vide order No.8135-39/SO/DCP/North West District.

11. Learned Additional Public Prosecutor for the State has further drawn attention to the aforesaid order. Perusal of the order dated 12.09.2015 passed by the DCP, North-West Distt., Delhi, whereby the investigation of the present case has been transferred to DIU/North-West Distt., reveals that it does not reflect that the same has been

passed in pursuance to the impugned order passed by learned Metropolitan Magistrate. For better appreciation the order passed by the DCP, North-West Distt., Delhi is reproduced hereinbelow:-

“ORDER

The investigation of case FIR No. 720/14 U/s 307/34 IPC & 27/54/59 Arms Act, PS Keshav Puram, Delhi is hereby transferred to DIU/North-West Distt. With immediate effect. ACP/DIU will monitor the investigation and put up the guard file.

*Sd/- 11.09.2015
(VIJAY SINGH) IPS
DY. COMMISSIONER OF
POLICE
NORTH-WEST DISTT., DELHI*

No. 8135-39/SO/DCP/North-West Distt. dated Delhi the 12/09/2015

Copy forwarded for information and necessary action to:-

- 1. Addl. DCsP/NW Distt.*
- 2. ACP/PG to enquiry of the above said case.*
- 3. ACsP/Ashok Vihar & DIU/NW Distt.*
- 4. SHO/Keshav Puram & Insp. Legal Cell for necessary action.”*

12. From the perusal of the aforesaid order passed by the DCP reveals that the order regarding transfer of investigation of the present case itself is an independent order passed by the DCP and not in pursuance of the order passed by the Trial Court. Therefore, in the considered opinion of this court the change of investigation of any case, which is under the domain of DCP of the concerned district and in the present case, this court observes that the order for transfer of investigation is passed by the DCP after due application of mind and not in pursuance to the order passed by learned Metropolitan Magistrate. Once the investigation has been entrusted by the concerned DCP to further agency under his control, in the considered

opinion of this court, it would not be fair to reverse the order passed by the DCP, who is competent authority to transfer the investigation, rather it would be tantamount to unnecessarily interference in the administrative power vested in the DCP of the district.

13. In view of the aforesaid discussion, this court does not find any merit in the contentions raised by the petitioner. Accordingly, the present petition, as filed by the petitioner, is dismissed.

14. The petition stands disposed of as such.

MARCH 31, 2016

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**(P.S.TEJI)
JUDGE**

