

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

% *Judgment Reserved on: 27.07.2017*
Judgment Pronounced on: 23.08.2017

+ CRL.M.C. 1944/2017

Ms INDIRA VATI Petitioner
Through: Mr. Anupam Sharma, Advocate
with Mr. Prakash Avan, Advocate.

versus

STATE OF DELHI Respondent
Through: Mr. Tarang Srivastava, APP for
State with SI Harender Kumar, P.S Timarpur

+ CRL.M.C. 1949/2017

STATEPetitioner
Through: Mr. Sanjay Lao, ASC for State.

versus

AZAD AHMAD & ORS. ...Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J.

1. Both these petitions i.e. Criminal Miscellaneous Case 1944/2017 and Criminal Miscellaneous Case 1949/2017 have been filed under Section 482 of the Code of Criminal

Procedure, 1973 (in short 'the code') read with Article 227 of the Constitution of India to quash the impugned order dated 20.04.2017 passed by Sh. Ramesh Kumar-II, Additional Sessions Judge/SFTC-2 (Central), Tis Hazari Courts (in short 'ASJ') in case No.309619/16 vide FIR no. 236/2016 P.S Timarpur under sections 376/420/506/34 IPC. Since both the petitioners have sought quashing of the same impugned order, I find it expedient to dispose of both these petitions by this common judgment.

2. After filing of the charge sheet, case was committed to the court of the Sessions Judge. The case was assigned to the ASJ/SFTC-2 Central, Delhi.
3. On 28/02/2017 the ASJ ordered to summon the Investigating Officer (in short 'IO') for the next date of hearing i.e. 08.03.2017 and fixed the matter for arguments on charge. On 08.03.2017 it was observed by the ASJ that process in respect of the IO was not received back and therefore he issued fresh summon to the concerned IO and also summoned the Incharge of the V-B for 22.03.2017.
4. IO Harender Kumar and ASI Om Prakash, who was Incharge of the V-B of Police Station Timarpur, appeared before the ASJ on 22.03.2017. ASI Om Prakash informed the Court that he had not received any summons. Similarly Naib Court informed the court that he had also not received the summons. The ASJ observed that as per the record, summons had been issued to the

IO and felt that an enquiry was required regarding the loss of summons and directed the DCP concerned to conduct an inquiry regarding loss of summons.

5. It is submitted by the learned Counsel for the petitioner that the DCP/North got an inquiry conducted through ACP, Civil Lines and a detailed report was filed in the court of the ASJ which was taken on record on 03.04.2017. It was reported to the ASJ that the summons regarding the presence of SI Harender Kumar were neither received in the Police Station nor by the Naib Court.
6. It is further submitted by the learned counsel for the appellant that the ASJ did not find this enquiry conducted by the DCP to be satisfactory. The ASJ again observed that the summons were issued by his office and fixed the case for arguments on the point of charge on 20.04.2017.
7. The orders dated 22.03.2017 passed by the ASJ is reproduced below:-

“22.03.2017

Present: Sh.A.T. Ansari, Ld.Addl. PP for the State.

All accused persons are on bail.

Sh. Fakhruddin, Ld. counsel for Azad Ahmad.

Sh. Yunush Qureshi, Ld. counsel for accused Naeem.

Sh. Aftab Ahmad, Learned counsel for accused Tasleem.

Ms. Geeta Verma, Ld. counsel for DCW.

I.O. S.I. Harender Kumar in person.

Since matter was fixed for arguments on charge.

At this stage, accused Ayub states that he belongs to a poor family and he is not in position to engage counsel

and he is willing to get assistance of counsel on government expenses. Heard.

Ms.Dolly Nair, advocate is hereby appointed as Amicus Curiae for assistance of accused.

Ms.Dolly Nair, Ld. Amicus Curiae be informed accordingly.

ASI Om Prakash, Incharge V-B is present. He states that he has not received the summons and concerned Naib Court also states that he had not received the summons but as per record, summons have been issued to the IO. Therefore enquiry is required. DCP concerned is directed to conduct enquiry regarding loss of summons.

Copy of this order be sent to DCP concerned for necessary action and compliance.

IO SI Harender Kumar is discharged for today. Issue fresh summons.

Matter adjourned.

Matter be listed for arguments on charge on 03.04.2017.”

8. The orders dated 03.04.2017 passed by the ASJ reads as under:-

“03.04.2017

Sh. A.A. Ansari, Ld. Counsel for complainant with Sh. A.T. Ansari, Ld.Addl. PP for the State.

All accused persons are on bail.

Sh. Fakhruddin, Ld. counsel for accused Azad Ahmad.

Sh. Yunush Qureshi, Ld. counsel for accused Naeem.

Sh. Aftab Ahmad, Learned counsel for accused Tasleem.

Ms.Dolly Nair, Ld. Amicus Curiae for accused Ayub.

I.O. S.I. Harender in person.

Ms.Neha Jain, Ld. counsel for DCW.

DCP has filed enquiry report in compliance of order dated 22.03.2017 of this court. It be taken on record.

Report perused. This court is not satisfied with the enquiry of DCP. Record of this court shows that

summons were issued by this office. Therefore, DCP is required to be appear in person on next date of hearing. DCP be summoned to appear in person on next date of hearing.

Since matter was fixed for arguments on charge.

Ld. counsel for accused persons seeks some time to advance their arguments on charge. Heard.

At the request of ld. counsel for accused persons, matter adjourned.

IO SI Harender is discharged for today.

Matter be listed for arguments on charge on 20.04.2017.”

9. It is submitted by the learned counsel for the appellant that on 20.04.2017, the DCP could not appear in person as he was busy because of the upcoming Municipal Elections in Delhi on 23.04.2017 but he directed the ACP, Civil Lines and SHO Timarpur to remain present in the court to answer all the queries of the Court and to apprise the Court of all the facts of the case.
10. It is submitted that on 20.04.2017, the ASJ observed that the enquiry was not conducted properly by DCP and he just enquired from Ct. Khem Chand and ASI Om Prakash. He observed that DCP did nothing. The ASJ observed that the DCP had not taken pain to go through record of the Court to find out as to whether summons were issued or not. The ASJ observed that DCP did not make enquiry from the Naib Court. The ASJ further observed that the DCP does not know how to conduct an enquiry. The ASJ further observed that due to such negligence, matters are delayed and prosecution cases are demolished. The

ASJ further observed that his order had nothing to do with the role of the Naib Court in getting the summons served. The ASJ then directed the Commissioner of Police, New Delhi to take appropriate action against the DCP and ACP, Civil Lines vide order dated 20.04.2017. This order is reproduced below: -

“20.04.2017

Present: Sh.A.T. Ansari, Ld. Addl. PP for the State.

All accused persons are on bail.

Sh. Fakhruddin, Ld. counsel for accused Azad Ahmad.

Sh. Yunush Qureshi, Ld. counsel for accused Naeem.

Sh. Aftab Ahmad, Ld. counsel for accused Tasleem.

Ms.Dolly Nair, Ld. Amicus Curiae for accused Ayub.

Ms.Neha Jain, Ld. counsel for DCW.

ACP Indravati V. Rathore in person with enquiry report. It be taken on record.

ASI Ranvir Singh from Legal Cell, North District has also filed enquiry report. It be also taken on record.

Report perused. It reflects that enquiry has not been conducted by concerned DCP in proper manner and according to law. He has just enquiry from Ct. Khem Chand and ASI Om Prakash and done nothing else. Further, concerned DCP has not taken pain to go through the record of this court whether summons have been issued or not. Nor he had made any enquiry from the Naib Courts of this court regarding the summons. It shows that DCP has not followed the proper proceedings of the enquiry and does not know how the enquiry should be conducted. Due to such negligence, matters are being delayed and causes demolition to the prosecution cases. It is highly objectionable that officer of higher level also does not know how to conduct the enquiry.

ACP also could not reply to the question of the court.

Despite opportunity given by this court, DCP has been failed to take due course of enquiry. Hence, I am not satisfied with the report of concerned DCP.

This order has nothing to do with the role of Naib Courts in getting the summons served as this order pertains to enquiry conducted in very perfunctory manner by DCP.

The Commissioner of Police, New Delhi, is directed to take action against the concerned DCP and ACP.

Copy of this order be sent to the Commissioner of Police, New Delhi, for necessary action and compliance.

Ld. Counsel for accused persons seek some time to advance their arguments on charge. Heard.

At the request of Counsel for accused persons, matter adjourned.

Matter be listed for arguments on charge on 09.05.2017.”

11. In the present case, the controversy started when the process with respect to summons issued to ensure the presence of IO Harender Kumar on 08.03.2017 was not received back and fresh summons were issued to IO Harender Kumar and also to the Incharge of V-B of Police Station Timarpur for 22.03.2017. Pursuance to these summons, IO Harender Kumar and ASI Om Prakash, who is the Incharge of V-B Police Station Timarpur, appeared before the ASJ and informed the Court that summons were not received in the Police Station.
12. The purpose of issuing summons was to ensure the presence of the concerned person i.e. IO Harender Kumar in the Court which was achieved when on the issuance of fresh summons, IO Harender Kumar appeared before the ASJ on 22.03.2017. Further, IO Harender Kumar had also appeared on 03.04.2017.

13. The controversy should have been put to rest on 22.03.2017 itself by the ASJ but he chose to step over the boundaries of judicial propriety and unnecessarily directed to conduct an enquiry by the DCP about the loss of the summons allegedly issued to IO Harender Kumar.
14. It is important to mention here that the usual practice followed by the courts of Additional Sessions Judges to serve summons is that the summons are issued by the Ahlmad of the concerned Court. These summons are handed over to the Naib Court posted in the court. The Naib Court sends the summons to the Incharge of the V-B of the concerned Police Station for execution.
15. Instead of calling the Ahlmad and perusing the record himself as to whether the summons were issued by Ahlmad/court officials and to whom the summons were handed over, the ASJ without applying his mind unnecessarily chose to direct the DCP concerned to conduct an enquiry regarding the loss of summons. This particularly when the Naib Court informed the ASJ on 22.03.2017 itself that he had not received the summons. The ASJ should have confronted his Ahlmad with the Naib Court and the matter would have ended then and there.
16. Even if the ASJ in his wisdom found it appropriate to conduct an enquiry into loss of the summons by the DCP, the report of the DCP clearly stated that the Naib Court posted in the Court informed that he had not received the summons from the Court

and therefore the controversy could have been put to rest at this stage also.

17. The ASJ should have heard the arguments on the point of charge on 22.03.2017 instead of becoming egoistic in directing the DCP to conduct an inquiry. This was not done and instead of making short enquiries from his own staff/Ahalmad, the ASJ whimsically directed an enquiry by the DCP who is completely alien to the records of the court and is already burdened with many other important responsibilities. The ASJ made disparaging remarks against the DCP in his order dated 20.04.2017 which were not at all warranted. I find it hard to comprehend why the ASJ did not conduct the enquiry himself. ASJ himself faulted in not conducting an enquiry by perusing the record kept by the Ahalmad to find out whether the Ahalmad had issued the summons to the IO and if so to whom summons were handed over.
18. The ASJ did not hear arguments on point of charge on 22.03.2017, 03.04.2017 and 20.04.2017 and himself faulted in delaying the matter and casted aspersion on DCP/ACP by observing that cases are being delayed due the negligence of such officers. Had the ASJ put to rest the controversy and proceeded with the case, precious time of the Court as well as the litigants would have been saved and it was due to the serious lapse on the part of the ASJ himself that the matter was delayed and arguments on charge could not be advanced.

19. The DCP had clearly stated that he could not be present in Court on 20.04.2017 as he was busy in preparations of the upcoming Municipal Elections in Delhi. The ASJ before making scathing remarks on the conduct of the DCP and ordering an enquiry against him and the ACP, Civil Lines, did not even bother to seek an explanation or give them an opportunity to represent themselves which is clearly against the principles of natural justice.
20. The DCP being not available for justifiable reason, before the ASJ on 20.04.2017 seems to have hurt the ASJ's ego who was under the belief that high ranking executive officials are somehow inferior to members of the Judiciary and bound by all their directions. The ASJ to satisfy his own sadistic pleasures seems to have forgotten that Judges are to remain humble and not be guided by their ego or prejudices.
21. Time and again the Apex Court has deprecated the practice of Courts summoning senior Police and Government officials by observing that Judges should have modesty and humility. They should realise that summoning a senior official, except in some very rare and exceptional situation, and that too for compelling reasons, is counter-productive and may also involve heavy expenses and valuable time of the official concerned.
22. The Hon'ble Supreme Court in ***Testa Setalvad v. State of Gujarat, (2004) 10 SCC 88*** had deprecated the practice of Courts in making remarks about the incompetence or character

of either the parties, their counsels or other Government officials. The Hon'ble Supreme Court held as under: -

“9. Observations should not be made by courts against persons and authorities, unless they are essential or necessary for decision of the case. Rare should be the occasion and necessities alone should call for its resort. **Courts are temples of justice and such respect they also deserve because they do not identify themselves with the causes before them or those litigating for such causes.** The parties before them and the counsel are considered to be devotees and pandits who perform the rituals respectively seeking protection of justice; parties directly and counsel on their behalf. There is no need or justification for any unwarranted besmirching of either the parties or their causes, as a matter of routine.

10. Courts are not expected to play to the gallery or for any applause from anyone or even need to take up cudgels as well against anyone, either to please their own or anyone's fantasies. Uncalled-for observations on the professional competence or conduct of a counsel, or any person or authority or harsh or disparaging remarks are not to be made, unless absolutely required or warranted for deciding the case.”

23. Therefore, I find that the order of the ASJ in ordering an enquiry against the ACP, Civil Lines and DCP to be highly arbitrary and unbecoming of a Judge who is supposed to maintain judicial propriety at all times and is not to be guided by his ego or personal prejudices against someone or a particular group or class of people/officers.

24. In the facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court, the impugned order of the ASJ dated 20.04.2017 passed in case no.173/2017 is set aside.
25. Copy of this judgment be circulated to all Judicial Officers for their guidance. The Ld. District & Sessions Judges are requested to sensitise the Judicial Officers under their jurisdiction.

AUGUST 23, 2017
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VINOD GOEL, J.