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

Reserved on: 10th July, 2018

Pronounced on: 08th August, 2018

+ CRL.M.C. 664/2015 & CrI.M.A. 2537/2015

DEEPAK KUMAR @ DEEPAK KUMAR SAHA Petitioner

Through: Ms. Priya Hingorani, Adv.

versus

OMBIR SINGH & ORS Respondents

Through: Mr. Arun K. Sharma, APP for
the State /R-5

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

1. The petitioner had approached the Metropolitan Magistrate with a complaint (CC-99/01/14) invoking the jurisdiction of the said court under Section 200 of the Code of Criminal Procedure, 1973 (Cr. PC) read with Section 156 (3) Cr. PC to seek initiation of action against the first to fourth respondents herein alleging offences punishable under Sections 120B, 166, 166A, 177, 181, 182, 187, 193, 195, 196, 197, 198, 200, 211, 209, 210, 219, 465, 466, 471 of Indian Penal Code, 1860 (IPC) having been committed by them. His said complaint and prayer under Section 156(3) Cr. PC were dismissed by the Chief Metropolitan Magistrate by order dated 05.11.2014. He challenged the said order before the court of Sessions by criminal revision petition (no.98/14) invoking its jurisdiction under Section 397 Cr. PC.

The revision petition was dismissed by the court of Sessions by order dated 07.01.2015.

2. Feeling aggrieved, the petitioner has come up before this court by the petition at hand invoking its inherent jurisdiction under Section 482 Cr. PC to assail the orders of the two courts below.

3. The name of the petitioner had figured in the investigation into FIR no.69/2007 of police station Special Cell of Delhi Police involving offences punishable under Sections 384, 387, 506, 34 of IPC. The said case was registered on 30.08.2007, on the complaint dated 29.08.2007 of Sudhir Singh, a resident of Varanasi, UP wherein he had alleged having received threatening telephone calls from two persons named Brijesh Singh and Tribhuvan Singh demanding Rs.50 Lakh to be paid to the petitioner herein and Rs.25 Lakh to be paid to one Sanjay and further for an affidavit in murder case of one Gajender Singh to be filed and his coal business to be shut down. It is stated that on the application of the investigating agency, non-bailable warrants against the petitioner were issued (assumably because he could not be found), it being followed up by initiation of proceedings under Sections 82 and 83 of Cr. PC.

4. The petitioner has described himself to be an ordinary resident of the area of police station Kotwali in District Bhagalpur, Bihar. He claims to have learnt about the initiation of action under Sections 82 and 83 Cr. PC against him in the said FIR upon inquiries being conducted by the District Magistrate, Bhagalpur, Bihar regarding immovable property held in his name. He filed a petition under

Section 482 Cr. PC (Crl. M.C. 787/12) against the order of the Additional Sessions Judge (in revisional jurisdiction) leading to the duress process being issued against him. The said petition was dismissed by order dated 21.03.2012. He took the matter to the Supreme Court by SLP (Crl.) 4538-39/2013 but the same was withdrawn and dismissed accordingly on 13.03.2013.

5. In the criminal complaint from which the present proceedings arise, it is alleged that the petitioner is innocent and has been falsely implicated in case FIR 69/2007 of police station Special Cell, no evidence having come up to connect him with the crimes alleged therein. This plea cannot be commented upon in present proceedings since the case in question is pending trial.

6. The first respondent is described as the investigating officer of the said case (FIR no.69/2007), he being a member of Delhi Police holding the rank of Sub-Inspector, posted at the relevant point of time in police station Special Cell, the duress process having been issued at his instance. It is stated that the second respondent, a Head Constable in Delhi Police assisting the investigating officer of the aforementioned case had made a false report and statement vis-a-vis the publication or execution of the processes under Sections 82 and 83 Cr. PC, which had been issued. It appears for purposes of the publication and execution of the said processes, the second respondent had purportedly gone to District Bhagalpur, Bihar and in such context reference has been made to station diary no.3, recorded at 7.30 a.m. on 30.12.2010 in the police station Kotwali. It is alleged by the petitioner

that the said station diary entry had been fabricated so as to mislead the court and make false statement in such respect and to dishonestly get him declared proclaimed offender in the case. He would rely on reply received by him in answer to his application to the local police station under the Right to Information Act, 2005.

7. The Chief Metropolitan, however, found it difficult to refer the complaint of the petitioner for investigation to the police or to take cognizance thereupon in view of the ruling of the Supreme Court in *Anil Kumar and Ors. Vs. M.K. Aiyappa and Anr.*, (2013) 10 SCC 705. Thus, the complaint of the petitioner was dismissed by order dated 05.11.2014. As noted earlier, the challenge before the revisional court to the said order was also unsuccessful, the said court by its order dated 07.01.2015 endorsing the view of the Chief Metropolitan Magistrate, both referring in this context to the bar under Section 197 Cr. PC.

8. The reliance by the petitioner on the judgments reported as *Matajog Dobey Vs. H.C. Bhari*, (1955) 2 SCR 925; *Raj Kishore Roy Vs. Kamleshwar Pandey and Anr.*, (2002) 6 SCC 543; *Rakesh Kumar Mishra Vs. State of Bihar and Ors.*, (2006) 1 SCC 557; *A.V. Papayya Sastry and Ors. Vs. Govt. of A.P. and Ors.*, (2007) 4 SCC 221; *Anjani Kumar Vs. State of Bihar and Anr.*, (2008) 5 SCC 248 and *State of Uttar Pradesh Vs. Paras Nath Singh*, (2009) 6 SCC 372 in the present context is misplaced. Undoubtedly, the statutory protection cannot be used as a cloak for doing objectionable acts and when called upon to consider as to whether the case involves offences for which prior

sanction would be mandatory, the criminal court is called upon to examine if, the acts of commission or omission attributed to the public servant were such as purported to be “*in discharge of official duty*”. As laid down in the case of *Centre for Public Interest Litigation Vs. Union of India*, (2005) 8 SCC 202 by a bench of three Hon’ble Judges of the Supreme Court, in the particular context of protection under Section 197 Cr. PC, the safe and sure test is to find if the omission or neglect to commit the act complained of would have made the public servant answerable for charge of dereliction of his official duty. He may have acted in excess of his duty but if there is a reasonable connection between the impugned act and the performance of the official duty, the protective umbrella of Section 197 Cr. PC cannot be denied.

9. It is not in dispute that the first to fourth respondents, who are being accused of the aforementioned offences vis-a-vis the proceedings in relation to the investigation of the FIR no.69/2007 of PS Special Cell were members of Delhi Police at the relevant point of time, they being public servants under the protective cover of Section 197 Cr. PC, as indeed of Section 140 of Delhi Police Act, 1978. The conduct attributed to them undoubtedly pertains to the acts of commission and omission in discharge of their official duties. In the present case, processes under Sections 82 and 83 Cr. PC had been issued by a criminal court of competent jurisdiction. It being the official duty of the concerned police official to publish / execute the said processes, it naturally follows that failure to do so in accordance

with law would have attracted the charge of “*dereliction of duty*”. This brings in the protective shield of statutory provisions making sanction for prosecution pre-requisite.

10. In *M.K. Aiyappa and Anr.* (supra), the Supreme Court ruled thus :-

“15. The judgments referred to hereinabove clearly indicate that the word “cognizance” has a wider connotation and is not merely confined to the stage of taking cognizance of the offence. When a Special Judge refers a complaint for investigation under Section 156(3) CrPC, obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage. When a Special Judge takes cognizance of the offence on a complaint presented under Section 200 CrPC and the next step to be taken is to follow up under Section 202 CrPC. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at pre-cognizance stage.

16. A Special Judge is deemed to be a Magistrate under Section 5(4) of the PC Act and, therefore, clothed with all the Magisterial powers provided under the Code of Criminal Procedure. When a private complaint is filed before the Magistrate, he has two options: he may take cognizance of the offence under Section 190 Cr.PC or proceed further in enquiry or trial. A Magistrate, who is otherwise competent to take cognizance, without taking cognizance under Section 190, may direct an investigation under Section 156(3) Cr.PC. The Magistrate, who is empowered under Section 190 to take cognizance, alone has the power to refer a private complaint for police investigation under Section 156(3) Cr.PC.

21. *The learned Senior Counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-section (3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) CrPC. The above legal position, as already indicated, has been clearly spelt out in Paras Nath Singh [(2009) 6 SCC 372] and Subramanian Swamy [(2012) 3 SCC 64] cases.*

(emphasis supplied)

11. In view of the above, the orders of the Chief Metropolitan Magistrate and of the revisional court, which are impugned by the petition at hand, cannot be faulted.

12. The petition and the application filed therewith are, thus, dismissed.

(R.K. GAUBA)
JUDGE

AUGUST 08, 2018

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