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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 10th July, 2018

+ CRL.M.C. 999/2015

JITENDRA PRASAD

..... Petitioner

Through: Mr. Govind Narayan Kaushik and
Ms.Neha Dutt Sharma, Advocates

versus

PADAM SINGH RANA & ORS.

..... Respondents

Through: Mr. Rajiv Mohan and Mr.A.
Karthik, Advocates for R-1 & 2

Mr. A.K. Shrivastava, Adv. For R-3

Mr. Krishan Kumar, Mr. R.C.S. Bhadoria
and Mr. S.P. Nangia, Advocates for R-5

Mr. Mukesh Kumar, APP for the State with
Insp. Padam Singh Rana, 3rd Bn. DAP

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner had been arrested on 06.12.2005 during the course of investigation into the first information report (FIR) no.627/2005 registered on 06.12.2005 in police station Dwarka for investigation into offences allegedly committed as punishable under Sections 385, 389, 506 IPC, the said case having been investigated into by the second respondent, then working as Sub-Inspector in Delhi

Police. The third respondent was the complainant of the said case and had lodged the complaint on 23.11.2005. The matter was initially enquired into by the first respondent who was posted at the relevant point of time as Sub-Inspector in Delhi Police in the said police station.

2. On conclusion of investigation, a report under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC) was submitted in the court of the Metropolitan Magistrate seeking trial of the petitioner on the charge for the aforementioned offences. It was stated in the charge-sheet that evidence had come forth to show that certain messages in the nature of threats had been sent using the sim card bearing no.9891738188 which had been obtained on the basis of copies of the ration card, licence, etc. of the fourth respondent. The threats statedly were accompanied by demand of Rs.3,00,000/- with caution that in case of failure to comply, the complainant would be implicated falsely in a criminal case and his son and daughter would be kidnapped.

3. The Metropolitan Magistrate took cognizance on the aforesaid charge-sheet and summoned the petitioner and upon consideration of the material that was placed before the court, framed charges by order dated 30.10.2009.

4. The order framing the charge was challenged by the petitioner in the court of Sessions invoking its revisional jurisdiction, his petition (Crl. Rev. 14/2010) having been allowed by order dated 11.08.2010

thereby setting aside the charges and consequently discharging the petitioner.

5. It appears the Session court, while allowing the revision petition and discharging the petitioner *inter alia* observed that the investigation carried out was unduly hurried and there was no sufficient evidence to show that it was the petitioner who had obtained the aforementioned sim card. The Sessions court directed the Commissioner of Police to evaluate and probe the conduct of the police officials who had been associated with the investigation.

6. After the said order of discharge, the petitioner filed criminal complaint in the court of the Metropolitan Magistrate on 13.09.2010 alleging offences punishable under Sections 182, 191, 192, 193, 194, 195 and 211 read with Section 120B IPC having been committed, *inter alia*, by the complainant of the case and two other private persons besides the aforementioned two police officials. An application was made for direction to the police to register a case and investigate the same under Section 156(3) Cr. PC. The said application was dismissed by the Additional Chief Metropolitan Magistrate by order dated 25.01.2011. Thereafter, the case was taken up for consideration of the complaint in light of requirement of Section 197 Cr.PC. The said order was challenged in criminal revision no.18/2011 which was allowed by the court of Sessions by order dated 25.04.2011 and the Magistrate was directed to hold an inquiry by recording the statements of the complainant and his witnesses.

7. The complainant (petitioner) examined witnesses including himself as CW-1 besides Vikram Tiwathia (CW-2), an official of Cellular Company, Mr. C.K. Pathak (CW-3) and Mr. S.K. Bhatnagar (CW-4), their evidence also connected to the mobile sim. The Metropolitan Magistrate considered the evidence that was led and passed the order dated 16.08.2014 holding that no prima facie case had been made out against the persons arrayed as accused in the criminal complaint.

8. The aforesaid order was challenged by the petitioner in court of Sessions invoking its revisional jurisdiction. The criminal revision petition (4/2014), however, was dismissed by order dated 23.12.2014, *inter alia*, also observing that no case against the police officials could be made out for absence of sanction under Section 197 Cr. PC. It is the said result of the complaint before the two courts below which is under challenge by the petition at hand which invokes the extraordinary jurisdiction of this court under Section 482 Cr. PC.

9. This court has perused the judgment dated 11.08.2010 of the court of Sessions in criminal revision no.14/2010 whereby the order of the Metropolitan Magistrate framing charges against the petitioner was set aside and the petitioner was discharged. It reveals that the revisional court was not satisfied with the sufficiency of the material that had been placed with the charge-sheet in the court to put the petitioner on trial. There were several lapses and deficiencies in the material which may have justified the view taken by the Sessions court at that stage of the proceedings. But, from such conclusions or

from the fact that the investigation had been taken speedily, one cannot jump to the conclusion that it was a set-up or an effort to falsely frame the petitioner in a criminal case. The SMS messages did exist. Whether or not they could be traced to the door of the petitioner is beside the point. It does not necessarily lead to the inference that there was a criminal conspiracy hatched by the complainant of the said case with the police officials to create a false story and fabricated evidence so as to lead to prosecution of the petitioner on trumped up charges. The fact that the Magistrate court found grounds to proceed and thus to take cognizance on the charge-sheet against the petitioner under Section 173 Cr. PC substantiates this view.

10. The Sessions court in the impugned order passed in exercise of its revisional jurisdiction is correct in observing that the police officials who are sought to be prosecuted here were acting in discharge of their official duty when one of them subjected the complaint to preliminary enquiry and the other took up the case for investigation. If in such course they committed lapses in gathering the necessary evidence linking the various facts and connecting them to the persons accused, it was a lapse for which, the record shows, appropriate disciplinary action has already been taken against them. But, since the acts committed by them were in discharge of their official duty, the protective shield of Section 197 Cr. PC cannot be taken away. In absence of any such sanction, insistence on their prosecution is not proper.

11. This court finds no error, irregularity or illegality in the view taken by the courts below. The petition is found to be devoid of substance and, therefore, dismissed.

R.K.GAUBA, J.

JULY 10, 2018

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