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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 31st July, 2018

\+ CRL.M.C. 2/2016 & CRL.M.A. 14/2016

PRAVEEN KUMAR GOEL ..... Petitioner

Through: Mr. N.P. Singh, Advocate.

versus

STATE (GOVT OF NCT DELHI) ..... Respondent

Through: Mr. Mukesh Kumar, APP for State.

Mr. Shiv Upadhyaya, Adv. for R-2.

\+ CRL.M.C. 1197/2016 & CRL.M.A. 5133/2016

ANAND KUMAR MAHAJAN & ANR ..... Petitioners

Through: Mr. Rajesh Rattan, Advocate

versus

THE STATE (GOVT OF NCT OF DELHI) ..... Respondent

Through: Mr. Mukesh Kumar, APP for State

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On the basis of supplementary report under Section 173 of the Criminal Procedure Code, 1973 (Cr. PC) in the wake of investigation into First Information Report (FIR) no.335/04 of police station Dwarka involving offences punishable under Sections 406, 420, 468, 471, 120B, 34 Indian Penal Code, 1860 (IPC), the petitioners stand summoned as accused by order dated 02.07.2015 of the Additional Chief Metropolitan Magistrate (ACMM).

2. By the petitions at hand filed invoking the inherent power of this court under Section 482 Cr. PC, challenge is brought to the said summoning order primarily on the submissions that the investigation leading to the said supplementary charge-sheet being field was illegal and unauthorized, reliance being placed on *Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel and Ors., (2017) 4 SCC 177.*

3. The FIR of the case was registered on 08.08.2004 on the complaint of Bimla Devi wife of Sh. Ram Chander, it being addressed to Deputy Commissioner of Police (South-west). The case was initially registered for investigation into offence under Section 420 IPC, the allegations having been made in the said complaint against Atul Garg and his wife Rama Garg, they having been described as the prime accused, who were sent up for trial by the charge-sheet that was put in court on 20.11.2009. A perusal of the FIR and the charge-sheet filed in November 2009 would reveal that the first informant Bimla Devi claimed to be the owner of residential property described as RPZ-255, Raj Nagar, Part-II, Palam Colony,

New Delhi-110 045. She claimed that it was a property built on a plot of land admeasuring 444 sq. yds. which had been purchased in her name by her father in January, 1984, she being the owner in possession. She alleged that she had come across Atul Garg, who claimed to be a press correspondent living in Hauz Khas. She stated that Atul Garg had induced her to develop the property into a school so that she could earn substantially. It is at the behest and at the instance of the said Atul Garg that she claims to have entered into certain transactions with his aid and assistance, including in the office of the Sub Registrar, under the impression that her property was to be developed into a school for which the financial support was being arranged through bank. She alleged that later it came to be revealed that her property had been used by Atul Garg for raising loans in the sum of Rs.10 Lakh and Rs.15 Lakhs respectively from Oriental Bank of Commerce and UCO Bank respectively and she had been made to sign as the guarantor. She alleged that she had been cheated by Atul Garg and his wife (who had also been aiding and assisting him), both having run away, rendering her embroiled in the proceedings relating to the recovery of the outstanding bank loan.

4. The supplementary charge-sheet would show that during the course of investigation, it came to be revealed that the documents in the nature of sanctioned building plans of Municipal Corporation of Delhi had been forged and fabricated, a bank account had been got opened in the name of the complainant, the blank cheque book which

was issued having been got signed from her, certain bogus bills also having been prepared and used in the context of the loan repayment. The charge-sheet while seeking trial of Atul Garg and his wife Rama Garg for offences under Sections 406, 420, 468, 471, 120 B, 34 IPC concluded with the remarks that further investigation in terms of Section 173 (8) Cr. PC was underway and supplementary charge-sheet would be filed in due course. The charge-sheet came up before the ACMM on 23.12.2009. By subsequent order dated 04.02.2010 cognizance thereupon was taken leading to the process being issued against Atul Garg and his wife Rama Garg.

5. It appears that earlier the investigating agency had reported that the prime accused Atul Garg and his wife Rama Garg had been absconding. On the request of the investigating police, the ACMM issued warrants of arrest which, however, could not secure the presence of the said persons. This led to initiation of proceedings under Sections 82 and 83 Cr. PC. After publication, and attempt at execution of the attachment warrant, the ACMM by order dated 19.07.2011 declared Atul Garg and his wife Rama Garg as proclaimed offenders in the case.

6. While the case was listed for proceedings under Section 299 Cr. PC, the first informant filed an application styled as protest petition in the court of the ACMM in March 2014. Her grievance in this petition primarily was that the role of the officials of the two banks who had been connected to the loan transactions on the basis of

forgery leading to she being cheated also required probe. The ACMM, by his order dated 25.11.2014, examined the issues raised and found the grievance to be correct in that there had been no investigation made into the role of the bank officials even though the documents on the basis of which the loan had been taken included forged and fabricated ones. He thus directed the police to investigate such aspects as well.

7. The police filed the supplementary charge-sheet in May 2015 seeking prosecution of the petitioners (they being bank officials) as well. On consideration of the said supplementary charge-sheet, the ACMM by his order dated 02.07.2015 issued process against the petitioners.

8. There is no parity with the case of *Amrutbhai Shambhubhai Patel* (supra) as the facts and the background are distinguishable. There was no investigation made into the role of the petitioners at the earlier stage of the probe leading to the charge-sheet of November 2005 being submitted. Rather, at that stage the complainant of the case was not even aware of the possible complicity of the bank officials in the fraud. It is not a case where the role of the petitioners had been earlier investigated into leading to a report under Section 173 Cr. PC being filed on which the ACMM may have taken cognizance as may give rise to inhibition against the Magistrate directing further investigation. The subject matter of the protest petition submitted in March 2014, took the matter beyond the

allegations set out in the FIR initially lodged. Therefore, the said protest petition was in the nature of a criminal complaint made before the ACMM. The order of the ACMM directing probe into the same in this view, was more in the nature of exercise of his power and jurisdiction under Section 156(3) Cr. PC rather than a direction for "further investigation".

9. The impugned order of the ACMM passed on 25.11.2014 may be examined from another angle. Even if it were to be taken as an order directing "further investigation" into the FIR, it cannot be construed as an order which triggered such further investigation. As noted earlier, the charge-sheet which had been submitted initially itself had informed the court of the ACMM that further investigation under Section 173 (8) Cr. PC was underway. The police had yet to come up with its supplementary charge-sheet pursuant to such further investigation in exercise of its discretion under Section 173 (8) Cr. PC when the complainant approached the ACMM with the protest petition. The further investigation being still pending with the police, the ACMM could not have held an inquiry into the allegations in the protest petition on his own in view of the inhibition under Section 210 Cr. PC. He thus passed on the protest petition to the police for a probe. The order dated 25.11.2014 from this perspective, turns out to be an order wherein the court of the ACMM acted more as a post office for the grievances of the complainant to be brought to the

notice of the investigating agency so that it could complete the comprehensive probe covering all possible angles.

10. The learned counsel for the petitioners also wanted to address the court on the merits of the case. The submissions with reference to the proceedings before the Debt Recovery Tribunal or the appellate authorities in relation thereto give rise to the questions of facts which cannot be addressed conclusively in the jurisdiction under Section 482 Cr. PC. In this context, the following observations of the Supreme Court in *Rajiv Thapar and Ors. Vs. Madan Lal Kapoor, (2013) 3 SCC 330* need to be borne in mind.

> *"29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by*

the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice."

(emphasis supplied)

11. There is no material of sterling or impeccable quality presented by the petitioners at this stage of the proceedings on which it could be concluded that the case set out against them by the supplementary charge-sheet is unfounded or not credible.

12. For the above reasons, this court finds no ground to interfere in the proceedings before the court below against the petitioners under Section 482 Cr. PC at this stage of the process. The contentions of the petitioners as to the allegations against them in the case of prosecution are reserved to be agitated by them at the time of consideration of charge.

13. With above observations, the petitions and the applications filed therewith are dismissed.

R.K.GAUBA, J.

JULY 31, 2018
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