

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

% Decided on: 8th May, 2018

+ **W.P.(CRL) 1425/2018**

HARUN SHEIKH Petitioner
Represented by: Mr.Gurmeet Singh, Advocate

versus

STATE & ANR Respondent
Represented by: Ms.Kamna Vohra, ASC for the State
with ASI Rajender Kumar, PS Farsh
Bazar.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By this petition, the petitioner seeks quashing of FIR No.235/2017 under Sections 224/225/34 IPC registered at PS Farsh Bazar. This is the second petition filed by the petitioner seeking quashing of the above noted FIR. This Court vide order dated 31st January, 2018 dismissed the writ petition being W.P. (Crl.) No.2006/2017 filed by the petitioner as under:-

“By this petition the petitioner seeks quashing of FIR No.235/2017 under Sections 224/225/34 IPC registered at PS Farsh Bazar. The genesis of the above noted FIR is a complaint by the learned Metropolitan Magistrate, Karkardooma Courts who stated that the petitioner is an accused in an ongoing investigation in case FIR No.312/2016 under Section 420/34 IPC. Despite efforts the petitioner could not be traced and was not joining the investigations. Since the petitioner was appearing in another FIR No.46/2016 under Section 365 IPC registered at PS Krishna Nagar for recording of her statement under

Section 164 Cr.P.C., the Investigating Officer of the case sought permission to arrest the petitioner which was granted. When the Investigating Officer was preparing the arrest memo of the petitioner to formally arrest her, she fled away.

Considering the nature of allegations and the conduct of the petitioner, no case is made out for quashing of the FIR and the proceedings therefrom.

The petition and the application are dismissed.”

2. Contention of learned counsel for the petitioner in this petition is that the advocate who appeared on 31st January, 2018 was not authorized to argue the matter and thus second petition seeking quashing of the abovenoted FIR is maintainable.

3. Though the present petition is barred by res judicata and as noted above the learned counsel who appeared was heard at length, however, still this Court has heard learned counsel for the petitioner. The contentions raised by learned counsel for the petitioner are that firstly no offence under Sections 224/225/34 IPC is made out; secondly, the learned Metropolitan Magistrate could not have issued directions in violation of the decision of the Supreme Court in 2015 (6) SCC 287 Priyanka Srivastava & Anr. vs. State of U.P. & Ors. and thirdly, the Magistrate could not have issued directions since the offence related to outside his territorial jurisdiction.

4. FIR No.235/2017 under Sections 224/225/34 IPC registered at PS Farsh Bazar reads as under:-

*“FIR No.235/2017 PS Farsh Bazar U/s 224/225/34 IPC
State Vs. Harun Sheikh*

Present : Ld.APP for the State. IO in person. Accused Harun Sheikh in person.

IO has moved an application seeking permission of formal arrest and interrogation of accused (In muffled face) the ground that accused has committed the offence of cheating by taking money from Victims in the name of starting of franchise of some company. Heard Record perused. The complaint of the Victim Ashish Chauhan and Ms.Hiya Raj is also on record. IO has submitted that accused was absconding and now she has appeared in this Court in case FIR No.46/2016 u/s 365 IPC PS Krishna Nagar for recording of her statement u/s 164 Cr.P.C. in the present application. IO has further submitted that co-accused Anil who used to work with the present accused is also absconding and therefore the present application is moved stating that she may abscond again. Submissions heard. Record perused. Sufficient material is available on record to show prima facie involvement of accused in the present case. Hence present application is allowed. IO is allowed to arrest the accused and interrogate her for 30 minutes (Deepti Devesh) Duty MM (East) KKD Courts/Delhi 16.06.2017 at 5:00 PM. At this stage IO SI Rahul Kumar has appeared again before the Court stating that as he was preparing the arrest memo of accused ran away from outside the Court. He has submitted that accused as a registered advocate and therefore, 6-7 advocates had gathered outside the Court surrounding the accused and by the time he could fill out arrest memo of accused she fled away Despite being aware of the orders of the Court regarding her arrest and her interrogation she has deliberately fled away to avoid her arrest and further custody. It has already been noted that the accused was absconding and she has appeared before the court in case FIR No.46/16 u/s 365 of PS Krishna Nagar. In view of this conduct of the accused, concerned SHO is directed to register the FIR against present accused for running

away from the custody and deliberately evading arrest. Copy of this order be sent to concerned SHO for compliance. Copy of this order be also sent to Ld. District and Sessions Judge (East), KKD Courts Delhi and Ld.CMM (East) KKD Courts, Delhi for their information. Compliance report be called from the concerned SHO for 19.06.2017. Copy of this order be given dasti to IO for compliance (Deepti Devesh) Duty MM (East) KKD Courts, Delhi.”

5. It is trite law that an accused is deemed to be arrested not only when a formal arrest memo is prepared or he is put behind the bars but the moment the person is restrained from movement he is deemed to be in the custody. Once an accused is in custody of the police officer, any violation thereof and any fleeing away from there would amount to commission of offences punishable under Sections 224/225/34 IPC. Section 190 Cr.P.C. provides that a Magistrate can also proceed upon an information received or upon his own knowledge. As noted in the FIR above, it was direction of the Magistrate to formally arrest the accused and interrogate for 30 minutes. It is during these proceedings, when the Magistrate was seized of the matter and the arrest memo was being prepared even though outside the Court room that the petitioner fled from the custody. It is thus not a case of a complaint being formally filed before the Magistrate but an information received by the Magistrate and partly upon his own knowledge. Once the information to the Magistrate is on its own, there is no need of any affidavit as per the requirement of the Supreme Court's decision in Priyanka Srivastava. The offence having taken place right in front of the Magistrate's Court, he was within the jurisdiction to pass the orders. The Magistrate cannot be a silent spectator to an illegality happening in his proceedings.

6. Thus this Court finds no ground to quash the FIR noted above and the proceeding therefrom.

7. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

MAY 08, 2018

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