

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

% Decided on: March 01, 2018

+ **W.P.(CRL) 1120/2017 & Crl.M.A. 6294/2017 (stay)**

RAHUL YADAV Petitioner
Represented by: Mr. Tarun Chandiok, Adv.

versus

STATE & ANR Respondents
Represented by: Mr. Rahul Mehra, Standing
Counsel with Ms. Kamna
Vohra ASC with ACP K.P.
Singh, Sub-Div. Najafgarh,
SHO Naresh Sangwan, PS
Najafgarh.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Petitioner by the present petition seeks quashing of FIR No.310/2015 under Sections 195A/506/34 IPC registered at PS Najafgarh, Delhi on the complaint of respondent No.2 herein.

2. Contents of FIR No. 310/2015 are as under:

“It is stated that I reside at the above-noted address along with my family. On 02.02.2015, FIR No. 88/2015 was registered upon my complaint against Rahul S/o Shri Bhagatram who had threatened me either to withdraw my complaint or else he would kill me and my family. That on 16.04.2015, at around 9:45 PM, when I was at my residence along with my family, someone knocked at the door. When my father opened the door, two persons asked him to come out to have a word with him. My father went out with them and after walking a little distance, two more persons joined them and one of them asked my father to advice his daughter that whatever case she has filed against Rahul be withdrawn else you and your family members will have to bear dire consequences and pushed me aside while

leaving. In the meanwhile, my other family members reached there and called up 100 no. In order to have the case withdrawn against him, Rahul has threatened me and my family through his friends. Appropriate legal action may be initiated against them. I can identify them when brought in my presence.”

3. Contention of learned counsel for the petitioner is two-fold, firstly that no FIR could have been registered by the State for offences punishable under Section 195A/506 IPC for the reason Section 506 IPC is non-cognizable and even if Section 195A IPC is a cognizable offence, the amendment brought in the Cr.P.C. by introducing Section 195A mandates that only a complaint could be filed for the said offence, thus no FIR could be registered. ‘Complaint’ as defined under Section 2(d) Cr.P.C. excludes a Police report. The second argument of learned counsel for the petitioner is that even on the facts as stated in the FIR, offence under Section 195A IPC is not made out for the reason the threat given to the complainant was to withdraw the case and not to give false evidence. To press his arguments, learned counsel for the petitioner refers to Section 191 IPC which defines giving false evidence, 192 IPC which defines fabricating false evidence and Section 193 IPC which provides for punishment for false evidence.

4. When the present petition came up for hearing, this Court deprecated the non-action on the part of the Police officers and directed the Commissioner of Police to conduct vigilance inquiry and submit a report. During the course of vigilance inquiry it was found out that there was dereliction/negligence on the part of two investigating officers i.e. ASI Krishan Chand and SI Hawa Singh and thus departmental inquiry was initiated against them. It was informed to the Court that simultaneously

investigation has been transferred to DIU, Outer District Delhi. Despite the investigation having been transferred to DIU Outer District as per the status report a final report was filed by the SHO PS Najafgarh that no evidence came forward seeking closure of the case for lack of evidence.

5. On the status report filed by the SHO, PS Najafgarh this Court raised a query to the learned Standing Counsel for the State as to once investigation has been transferred to DIU Outer District, how the SHO concerned filed the final report noting 'Not charge-sheeted for want of evidence' and that till date before this Court no status report has been filed by DIU Outer District.

6. A detailed status report has been filed by Additional DCP Dwarka District. According to the Additional DCP Dwarka District after the vigilance inquiry was conducted by PHQ pursuant to direction of this Court, the DCP Outer District transferred investigation of FIR No.310/2015 from PS Najafgarh to DIU Outer District and the order was circulated to the concerned officers. However, it never reached SHO Najafgarh in which regard the diary register of SHO Najafgarh has been checked up. Since no such order was received, the SHO filed the report as noted above giving the final opinion 'Not charge-sheeted for want of evidence'. Further, the file having not been transferred to DIU Outer District, no investigation was carried out by DIU Outer District. It is further stated that in the meantime due to the re-organization of the districts the jurisdiction is now with Dwarka District.

7. Learned Standing Counsel for the State on instructions submits that no doubt in the present case laxity has continued and there has been dereliction of duty. Thus departmental action has been initiated against the then SHO Najafgarh. He further states that since no investigation was

carried out by DIU Outer District, the DIU Dwarka District to which now case has been assigned will file a formal application before the learned Metropolitan Magistrate seeking permission for further investigation under Section 173(8) Cr.P.C. and subject to the permission granted would carry out further investigation if need be in accordance with law and file a report accordingly. As per the status report fresh inquiry by PG Cell, Dwarka District has also been instituted to see if there is some mala-fide exercise on the part of the officer and fix the responsibility if any.

8. Sections 191, 192 and 195A IPC read as under:

“191. Giving false evidence.—Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

192. Fabricating false evidence.—Whoever causes any circumstance to exist or [makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement], intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said “to fabricate false evidence.

195A. Threatening any person to give false evidence.—Whoever threatens another with any injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested, with intent to cause that person to give false evidence shall be punished with imprisonment of either

description for a term which may extend to seven years, or with fine, or with both;

and if innocent person is convicted and sentenced in consequence of such false evidence, with death or imprisonment for more than seven years, the person who threatens shall be punished with the same punishment and sentence in the same manner and to the same extent such innocent person is punished and sentenced.

9. Sections 2(d) and 195 and 195A Cr.P.C. read as under:

2(d). “complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance-

- (a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or*
- (ii) of any abetment of, or attempt to commit, such offence, or*
- (iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;*
- (b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or*

- (ii) *of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or*
 - (iii) *of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub- clause (i) or sub- clause (ii),
except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.*
- (2) *Where a complaint has been made by a public servant under clause (a) of sub- section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:
Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.*
- (3) *In clause (b) of sub- section (1), the term" Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.*
- (4) *For the purposes of clause (b) of sub- section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil*

jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that-

- (a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;*
- (b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.*

195A. Procedure for witnesses in case of threatening, etc. –A witness or any other person may file a complaint in relation to an offence under Section 19A of the Indian Penal Code (45 of 1860).”

10. Indubitably in view of the order passed by this Court in Rajeev Mehra vs. State in W.P. (C) No. 2596/2007 staying the operation of invocation of declaring Section 506 IPC as cognizable offence, the offence on the date it was allegedly committed was non-cognizable however, as per the schedule to the Cr.P.C. offence punishable under Section 195A IPC is a cognizable offence. Thus, the Investigating Officer was within his power to have registered a FIR since the complaint disclosed the commission of a cognizable offence.

11. Contention of learned counsel for the petitioner that as Section 195A Cr.P.C. prescribes the procedure for witnesses in case of threatening etc., to file a complaint in relation to an offence punishable under Section 195A IPC

and as Section 2(d) Cr.P.C. defines ‘complaint’ to be other than ‘a police report’ only complaint would be entertained and no FIR can be registered deserves to be rejected.

12. Section 195A Cr.P.C. was added by way of Act 5 of 2009 w.e.f. 31st December, 2009. No corresponding amendment was brought in Section 195 Cr.P.C. which bars a Court from taking cognizance except on the complaint in writing as prescribed under the provision. Section 195A Cr.P.C. provides an added remedy of filing a complaint in relation to offence punishable under Section 195A IPC and it does not declare Section 195A IPC as non-cognizable. Section 2 (c) Cr.P.C. defines a “cognizable offence” to mean an offence for which and “cognizable case” to mean a case in which a police officer may in accordance with First Schedule or under any other law for the time being in force arrest without warrant.

13. Section 154 Cr.P.C. mandates an officer in-charge of a Police Station to record the information in writing relating to the commission of a cognizable offence. Thus by addition of Section 195A Cr.P.C. to the Code, the offence punishable under Section 195A IPC cannot be held to be non-cognizable.

14. Contention of learned counsel for the petitioner that the allegations as noted above in FIR No. 310/2015 do not constitute offence punishable under Section 195A IPC as the same relates to giving false evidence and not threat to witness also deserves to be rejected. As noted in the contents of FIR No. 310/2015 the complainant and her family members were being threatened to withdraw the complaint or else they would be killed. The effect of withdrawal of the complaint would be not to support the contents of FIR and thus threaten a person to give false evidence. Hence the second contention

of learned counsel for the petitioner also rejected.

15. Finding no merit in the arguments of learned counsel for the petitioner for quashing of FIR No.310/2015 under Sections 195A/506/34 IPC registered at PS Najafgarh, prayer 'a' in the petition is declined. However in view of the statement of learned Standing Counsel for the State assuming that a further investigation would be carried out if permitted by the learned Metropolitan Magistrate, no further orders are required to be passed by this Court in the present petition, petition is dismissed.

MARCH 01, 2018
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(MUKTA GUPTA)
JUDGE



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