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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 23rd August, 2018

+ CRL.M.C. 4234/2018 and Crl. M.A. 30471/2018

DAYA RAM

..... Petitioner

Through: Mr. Vipul Pankaj Sanghi and Ms.
Ananya Kar Sanghi, Advocates

versus

STATE & ANR.

..... Respondents

Through: Ms. Meenakshi Dahiya, APP for
the State with SI Rajeshwar

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The second respondent had lodged a criminal complaint (CC no.9107/17) in the court of the Chief Metropolitan Magistrate (CMM), District Shahdara, Kakardooma on 26.10.2017 invoking the jurisdiction of the said court under Section 200 of the Code of Criminal Procedure, 1973 (Cr. P.C.) to seek criminal action for offences punishable under Sections 325, 452, 457, 354, 506, 504, 393, 34 of Indian Penal Code, 1860 (IPC), naming *inter alia*, one Rahul Kalra as the prime accused, he having been allegedly associated with eight persons unknown to the complainant, also mentioning the name of the petitioner herein as the second prospective accused. The complaint was accompanied by an application under Section 156 (3) of the Cr. P.C. with a prayer for direction to the Station House Officer (SHO) of police station GTB Enclave for investigation. The CMM by order dated 16.03.2018 found it to be a case involving cognizable offences that required investigation by the police. He, thus, directed

the SHO, PS Shahdara to register the first information report (FIR). The said order was challenged by the petitioner in the court of Sessions invoking its revisional jurisdiction (Crl. Rev. no.72/18), the said petition having been dismissed by order dated 13.08.2018.

2. The orders of the Chief Metropolitan Magistrate and the revisional court are sought to be assailed by the petition at hand invoking the inherent power of this court under Section 482 Cr. P.C.

3. To say the least, the petition is misconceived. There is no adverse order passed against the petitioner by any court till date. All that the court of the Chief Metropolitan Magistrate has done, as has been upheld by the court of Sessions in revision, is issuing direction to the police to investigate into the complaint of the second respondent. The allegations in the said criminal complaint are primarily directed against the person named Rahul Kalra and his associates, they not only having forcibly entered into her house armed with iron rods and hockey sticks but also having assaulted her, causing mischief by damaging her property, using abusive language, extending threats and causing injuries. The role attributed to the petitioner concerns the time when he statedly had come to the spot, based upon information having been received by the police control room telephonically. The complaint undoubtedly attributes certain misconduct to the petitioner, wherein he had not only used abusive language but also slapped the son of the complainant and upon protest being lodged, he having extended threats to arrest his family members.

4. Given the sequences of events narrated in the complaint, the allegations of the complainant will have to be investigated into in as much as they make out cognizable offences. Consequently, the direction for probe there-into by the Magistrate is within the four corners of law.

5. If during the course of investigation any act attributable to the petitioner is brought to light, the investigating agency will be obliged to bear in mind that he was a public servant, present at the scene, attending to the duty which he had been called upon to discharge in the wake of the call received by the police control room. Necessarily, the investigating agency will also have to probe whether the petitioner had committed any acts of commission or omission as have been alleged thereby exceeded the duty which he was expected to perform in the given fact situation and, if so, whether he is entitled to the protection of law, either under Section 197 Cr. P.C. or under Section 140 of Delhi Police Act, 1978.

6. There is no occasion at this stage for the abovesaid protective shields to be invoked to put a stop to the investigative process for the simple reason no court has yet taken cognizance of any offence resulting in the petitioner being summoned or being prosecuted.

7. For the foregoing reasons, the petition and the application filed therewith are dismissed.

R.K.GAUBA, J.

AUGUST 23, 2018/yg