

\$~

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

+ **CRL.REV.P. 65/2016**

Date of Decision: 13.12.2019

IN THE MATTER OF:

KAPIL TANWAR & ORS

..... Petitioners

Through: Mr. Avadh Kaushik, Advocate
with petitioners in person.

Versus

THE STATE (NCT OF DELHI) & ANR

..... Respondents

Through: Ms. Manjeet Arya, APP for State
with SI Naeem Ali, P.S.
Bhajanpura.

Mr. Zahid Hanif, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI , J. (ORAL)

1. The present petition has been filed seeking quashing of CC No. 739/2011 titled as Mehmood & Anr. Vs. Kapil & Ors. registered under Sections 452/323/328/307/124/506/342/34 IPC which is pending before the Adll. Sessions Judge-03, North West, Rohini, Delhi being SC No. 5171/01/16 (earlier no. 11/14).

2. Learned counsels for the parties submit that petitioner nos. 1 and 2 are the son-in-law and daughter of respondent nos.2 and 3 respectively. It

is submitted that marriage between petitioner nos.1 and 2 was solemnized on 31.08.2010 against the wishes of the respondent nos. 2 and 3 on account of being an inter-caste marriage. A girl child namely, Bhawya was born out of the wedlock of petitioner nos. 1 and 2 on 17.05.2014.

3. On account of the aforesaid marriage between the petitioner nos.1 & 2, disputes arose between the parties. Prior to the aforesaid marriage, the respondent no. 2/complainant had lodged a missing report vide FIR No.439/2010 registered under Section 363 IPC at P.S. Bhajanpura against petitioner no.1 alleging abduction of his daughter. Subsequently, a cancellation report was filed which was accepted by the concerned court.

4. The petitioner nos. 1 & 2 filed a writ petition bearing W.P.(Crl.) 1324/2010 seeking protection. The respondent no.2 appeared and undertook before the Court for himself and other family members to not bother the petitioners. Accordingly, the writ petition was disposed of on 08.03.2011.

5. Thereafter, the responded no.2/complainant filed an application bearing no. 7239/2011 under Section 156(3) Cr.P.C. before the court of CJM, Bagpat, U.P. with respect to an incident dated 20.08.2011 alleging commission of offences punishable under Sections 452/323/328/307/504/506/342/34 IPC by the petitioners. It was alleged that an attempt was made to poison respondent no.2 and firing of a gunshot by the petitioners. A police report was called which stated that after investigation the allegations of the complainant were found to be false. The police report is reproduced below:-

“It is submitted that there is a dispute between Party No. II namely Kapil and others with the first party

namely Mahmood etc. on the issue of girl Shrimati Nagma @ Priya because Mahmood's daughter Shrimati Nagma @ Priya got married to Kapil after adopting Hindu religion and she is residing with Kapil under the order of the High Court. Due to this reason there is great tension between the two and Mahmood had lodged a false NCR at the police station on 20.08.2011 which was investigated by this SI and the same was found to be false.

It is, therefore, prayed that in order to ease the problem, notice may be issued to the aforesaid persons and they may be bound down with highest amount of bonds.

Challan report under section 107/116 Cr.P.C. is respectfully submitted accordingly."

6. On consideration of the police report, CJM Bagpat refused to direct registration of FIR and rather directed that the application filed by the complainant under Section 156(3) Cr.P.C. be treated as an application under Section 200 Cr.P.C. The complainant led pre-summoning evidence. On 15.10.2011, CJM Bagpat took cognizance under Section 328/323/504/506 IPC and summoned only petitioners no.1 and 2. The complainant challenged the aforesaid order before the Sessions Court, Bagpat, which remanded back the matter to the court of CJM for fresh consideration. Thereafter, on 28.04.2012, CJM Bagpat passed a fresh summoning order whereby all the petitioners were summoned under Sections 328/323/504/506 IPC. The typed copy of the order dated 28.04.2012 passed by CJM Bagpat (placed on record), which was passed on reconsideration, is reproduced below:

"...As far as statement of injured PW1 Manisha statement under Section 202 Cr.P.C. who stated in

her statement that these people made her captive in her house and her brother-in-law and fired upon them by his revolver does not appear to be believable because any person is knocked down after taking him into clutches then in his condition there is no possibility of making fire upon them. On behalf of complainant in respect of fire neither evidence is made available in the documents nor there has been any mark of injury of firing. If firing is done in a room there may be possible injury with the piece of shot to the person present there but no such incident has been stated. The evidence available on the record does not confirm the firing by the revolver.”

7. Thus, both the police report and the summoning order show that the complainant’s allegations of firing by the petitioners, was disbelieved.

8. In spite of the above stated facts, the petitioner nos. 1 and 2 were arrested by the Bagpat police on 14.06.2012 and released on bail vide order dated 20.06.2012. The petitioners filed a transfer petition bearing Transfer Petition (Crl.) No. 277/2012 before the Supreme Court and vide order dated 12.08.2013, the present case was transferred from the court of CJM Bagpat to the court of CMM, North West, Rohini, Delhi.

9. The Sessions Court, Delhi vide impugned order dated 29.10.2014, not only framed charges under Sections 323/328/504/506 IPC but also added Sections 307/452/342/34 IPC. The impugned order on charge reads as under :-

“I have carefully gone through the statements recorded during the investigation of the case, documents and the materials placed on record.

In view of the facts and circumstances of the case, I am of the considered opinion that prima facie case is made out to try the accused persons Kapil, Ramesh, Priya Tanwar @ Nagma and Ashok for the offences punishable U/s 452/323/328/307/504/506/342/34 IPC. Accordingly, charge is so framed against the accused persons to which they have pleaded not guilty and thus claimed trial.

On request, put up for PE on 06.01.2015. PW Mehmood and IO be summoned for the next date.”

10. The petitioners had initially assailed the aforesaid order on charge by filing a petition bearing CrI. M.C. No. 08/2014 under Section 482 Cr.P.C. which, later on, vide order dated 05.01.2015 was directed to be converted into a revision petition i.e., CrI. Rev. P. 65/2016, i.e. the present petition. The proceedings before the trial court were stayed.

11. I have learned counsels for the parties and have also gone through the case records.

12. A perusal of the impugned order on charge shows that the same was passed without having any additional material before the court other than what was before the court of CJM, Bagpat at the time of issuance of process against the petitioners.

13. The initial summoning order as well as the subsequent summoning order were passed by the court of CJM Bagpat on the basis of not only the police report but also after considering the pre-summoning evidence led by the complainant.

14. The trial court, while passing the impugned order has neither given any reason nor justification for framing additional charge under Sections 452/307/342 IPC. It is trite law that at the stage of framing of charge, no

reasons are required to be recorded, however, if the court disagrees with the police case/complainant case, then reasons are required to be given in support of its decision.

15. In Om Wati vs. State reported as **(2001) 4 SCC 333**, the Supreme Court has held as under :-

“7. Section 227 of the Code provides that if upon consideration of record of the case and the documents submitted therewith, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused for which he is required to record his reasons for so doing”.

16. In an analogical situation, where the complainant had filed objections to the closure report submitted by the police, Supreme Court in Dharmatma Singh v. Harminder Singh, reported as **(2011) 6 SCC 102**, held that it was just and desirable that the reasons, for overruling the objections of the complainant, be recorded by the Court as the same were necessary for the Court while exercising power under Section 190 Cr.P.C to decide whether to take cognizance or not.

17. A co-ordinate Bench of this Court in Abhilasha Chahalia v. State, reported as **2017 SCC OnLine Del. 8638**, held that summoning of the accused under additional sections which are not invoked in the chargesheet, the Magistrate was required to give reasons for differing with the request for initiation of prosecution made in the chargesheet.

18. The reasons are the hallmark of any judicial order. As noted above, the police report submitted to the CJM Bagpat clearly stated that the allegations were found to be false. The Court of CJM Bagpat after considering the material available on record in the form of complaint,

police report and statement of witnesses recorded during pre-summoning evidence, summoned the petitioners only for the offences punishable under Sections 323/328/506 IPC by categorially holding that the complainant case with respect to offence under Section 307/452/342 IPC was not believable.

19. Even otherwise, there is no material on record to justify the allegations with respect to offences punishable under Section 307/452/342 IPC.

20. In view of the above enunciation of law and the fact that the impugned order shows non-application of mind as it does not give any reason or justification for framing additional charge under Sections 307/354/452 IPC, the same is set aside to the aforesaid extent.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 13, 2019
ga/ 'dc'