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

+ **W.P.(CRL) 580/2018 and CRL.M.A. 3431/2018**

SAMEER KOCHHAR

..... Petitioner

Through; Mr Siddharth Aggarwal, Mr Shri Singh, Ms Maneka Khanna and Mr Krishna Datta Multani, Advocates.

versus

GOVT OF NCT OF DELHI & ANR

..... Respondents

Through: Mr Rajesh Mahajan, ASC for State along with Ms Jyoti Babbar.
Mr Zoheb Hossain and Mr K. Mehrotra, Advocates for R-2.
Mr Anil Soni, CGSC for UOI.
Inspector Rajeev and SI Pramod, Cyber Cell, Crime Branch, Delhi.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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27.11.2019

1. The petitioner has filed the present petition, *inter alia*, praying as under:

- (a) Issue a writ of mandamus or any other appropriate writ, order or direction to quash case FIR No. 22 of 2017 dated 24.02.2017 registered at PS Crime Branch, New Delhi under Sections 406, 419, 426, 469, 34 and 120-B IPC, Sections 66 And 66C of the IT Act, 2000 and Section 29, 34, 37, 38, 42, 43 of the Aadhaar Act *qua* the Petitioner and all proceedings emanating therefrom;
- (b) Issue a writ of mandamus or any other appropriate writ, order or direction to quash Notice dated 12.09.2017 issued by the SHO, PS Crime Branch under Section 41-A CrPC read with Section 41(l)(b) to the Petitioner and all proceedings emanating therefrom;

2. Mr Siddharth Aggarwal, learned counsel appearing for the petitioner states that at this stage, he is not pressing for any relief regarding quashing of the FIR in question (FIR No. 22/2017). He has limited the relief in the present petition to seeking quashing of the notice dated 12.09.2017, issued under Section 41A of the Cr.P.C.

3. The petitioner claims to be a journalist. It is stated that he had published an article on 11.02.2017, captioned “Is a Deep State at Work to Steal Digital India?” The said article suggested that there were lapses in the UIDAI system and the Biometric data, as collected, could be misused. It was also suggested that Aadhaar Authentication could be done by using stored biometric data and, therefore, the system of authentication was flawed and wanting.

4. It is also submitted that the petitioner issued various statements in social media (tweets), raising several issues regarding the Aadhaar Authentication system.

5. The petitioner had embedded a video clip, in the article in question. The said video clip showed a person obtaining the Aadhaar Authentication by using stored biometric data. In a subsequent email sent by the petitioner to various authorities, including the CEO of UIDAI, the petitioner had stated that he had received the video and had urged the authorities to investigate, whether such transactions had been executed. He stated that the name of the person was visible on the video.

6. It appears that thereafter, the FIR in question was filed alleging various offences against unknown persons, including violation of Section 37

of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (hereafter 'the Aadhaar Act').

7. It is noteworthy that the petitioner has not been named as involved in any of the alleged offences and the FIR in question is against the unknown persons.

8. The counter affidavit filed on behalf of respondent no.2 also reiterates that the petitioner was not mentioned as an accused, but his name was mentioned only as an author of the article in question that was published on 11.02.2017.

9. The impugned notice has been issued under Section 41A of the Cr.P.C. It is premised on the basis that the petitioner is under suspicion for committing the offences as stated therein – offences under Sections 406/419/426/469/34/120B of the IPC read with Section 66/66C of the Information Technology Act, 2000 and Sections 29/34/37/38/42/43 the Aadhaar Act.

10. This Court had pointedly asked the learned counsel appearing for the respondents to point out any material, which could possibly lead to a suspicion that the petitioner had committed or was involved in any offence under Section 419 of the IPC. However, the counsel have been unable to point out any such material.

11. It is noticed that the impugned notice mentions several Sections, some of which appear to be wholly inapplicable, as far as the petitioner is concerned.

12. It is, thus, apparent that the said notice has been issued in a mechanical manner without application of mind as to whether the petitioner is under any suspicion of committing any such offence.

13. In view of the above, the impugned notice dated 12.09.2017 is set aside. However, it is clarified that this would not preclude the concerned authorities from issuing any appropriate notice for conducting appropriate inquiry or seeking any information that may be required from the petitioner. This would also not preclude the authorities from issuing a fresh notice after due application of mind as to whether the petitioner is suspected of committing any of the offences.

14. It is also clarified that all contentions of the petitioner are reserved, including the petitioner's challenge to the FIR in question.

15. The petition is disposed of in the aforesaid observations. The pending application is also disposed of.

VIBHU BAKHRU, J

NOVEMBER 27, 2019
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