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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 16th January, 2019

+ CRL.M.C. 1859/2016 and Crl. M.A. 7885/2016

AJAY KUMAR SINGH

..... Petitioner

Through: Mr. Vikram Saini, Advocate

versus

CRANE OPERATOR RAJ KUMAR & ORS Respondents

Through: Mr. Sanjeev Sabharwal, APP for
State

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner had filed a criminal complaint (CC no.53/11) alleging offences punishable under Sections 166, 176, 379, 427, 120 B of Indian Penal Code, 1860 (IPC) having been committed by the first to seventh respondents. The allegations, in a nutshell, were that he is the registered owner of a bus bearing registration no.DL-1PB 3581 (bus) which had been illegally impounded on 11.01.2011 from the area of Bihari Colony Bus Stand by the first and third respondents even though the petitioner had due authorization to park the vehicle on the roadside, he having paid the municipal charges (parking fee). He alleged that the manner in which the vehicle was taken to the traffic circle had resulted in wrongful loss on account of damage

suffered. He alleges that inspite of the complaint made to the superior authority i.e. the other respondents, no action was taken. Reference is also made to a prayer made by him initially before the Metropolitan Magistrate (Traffic) for an inventory of the articles illegally removed from the bus to cause wrongful loss to him, orders passed thereupon having been taken to this court through Crl. M.C. 4121/2011 which was decided by a learned single Judge of this court by order dated 12.12.2011 with some directions.

2. Be that as it may, the petitioner had made a prayer before the Metropolitan Magistrate for a direction to the police for investigation under Section 156(3) of the Code of Criminal Procedure, 1973 (Cr. PC). The said prayer was declined by the Chief Metropolitan Magistrate, Shahdara (CMM) by his order dated 05.08.2013, whereby the case was listed for a later date for consideration of the matter for taking of cognizance.

3. The order dated 05.08.2013 of the CMM, Shahdara was challenged in the court of the Sessions invoking its revisional jurisdiction (by CR no. 98/2013). The revisional court upheld the view taken by the Metropolitan Magistrate and dismissed the revision petition though observing that the option for appropriate directions to be given in future was being kept open. The orders dated 05.08.2013 of the Metropolitan Magistrate and 11.10.2013 of the revisional court were assailed before this court by Crl.M.C. 573/2014. A learned single Judge of this court dismissed the said petition by order dated 04.02.2014, the relevant part whereof reads thus :-

“...Both the courts below have given the liberty to petitioner-complainant to file fresh application under Section 156(3) of Cr. P.C. in future. Such a course has been adopted as, at this stage, it appears that the evidence sought to be led is within the reach of petitioner-complainant.

Finding no palpable error in the impugned order of 11th October, 2013 and trial court’s order of 5th August, 2013, this petition and the application are accordingly dismissed. Needless to say, if petitioner is not able to effectively collect the evidence, then he would be at liberty to file similar application before the court concerned.”

4. In the wake of the dismissal of the CrI. MC 573/2014, the petitioner moved another application under Section 156(3) Cr. PC before the CMM, Shahdara. It appears that, in the meanwhile, there had been a change in the presiding officer of the said court. The new Judicial Officer working as CMM, Shahdara, initially had some doubts as to the maintainability of the second application under Section 156(3) Cr. PC. Nonetheless, by her order dated 16.12.2015, she granted the said direction instructing the Station House Officer of police station Vivek Vihar to register an FIR against unknown persons and report the matter by the date fixed.

5. The order dated 16.12.2015 of the CMM, Shahdara was assailed by the first respondent by CrI. Revision No.94/2016. The Additional Sessions Judge sitting in revisional jurisdiction, by his order dated 04.03.2016, found substance in the objection. He set aside the last said order of the CMM observing, *inter alia*, that the law would not permit review of the previous order dated 05.08.2013 and referring in

this context to the ruling of the Supreme Court in *Adalat Prasad Vs. Rooplal Jindal and Ors.*, (2004) 7 SCC 338.

6. By the said order, the CMM was “*advised*” by the revisional court to go through the record before passing any further order. As a result of the said conclusion of the matter before the revisional court, the proceedings before the CMM stood revived for consideration as to whether the matter required cognizance to be taken in exercise of the power vested in the said court under Section 190 read with Sections 200-202 Cr. PC.

7. The present petition was filed invoking the jurisdiction of this court under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, the prime contention being that in the wake of liberty that had been granted by a learned single Judge of this court by order dated 04.02.2014 whereby Crl. MC 573/2014 had been disposed of, the impugned order of the CMM dated 16.12.2015 could not have been taken exception to.

8. It is clear from the submissions made on behalf of the petitioner that the import and effect of the observations in the concluding part of the order dated 04.02.2014 of the learned single Judge of this court has not been properly understood and appreciated by the petitioner. The expression “*similar application*” does not mean liberty having been given for a second application under Section 156(3) Cr. PC being moved. It is trite, as is observed in the revisional court’s order, that the criminal court did not have the power of review. The application under Section 156(3) Cr. PC which had been earlier

moved had been declined by the previous order dated 05.08.2013. The said order had merged in the order of the revisional court dated 11.10.2013 which had upheld the view taken thereupon. Further, both the said orders stood subsumed in the order dated 04.02.2014 passed in Crl. M.C 573/2014 whereby the learned single Judge of this court observed that there was no “*palpable error*” in the view taken and consequently the challenge to the said decision was repelled.

9. It has to be understood that once the Metropolitan Magistrate had declined to issue a direction under Section 156(3) Cr. PC, the only course remaining for the said court was to examine whether the petition brought in the nature of a complaint before it discloses any offence of which cognizance required to be taken under Section 190 Cr. PC and, if so, as to how the said offence required to be inquired into. For this, necessarily the Metropolitan Magistrate would have to proceed into a pre-summoning inquiry in terms of Sections 200-202 Cr. PC. It also has to be remembered that once the petitioner – who is clearly abreast of the relevant facts and is in possession of substantial part of the evidence as to the acts of commission and omission he alleges – has examined himself under Section 200 Cr. PC, the Metropolitan Magistrate would be called upon by the law to consider whether further inquiry was required under Section 202 Cr. PC. It is at that stage of the process that another opportunity comes up for consideration as to whether a “*similar*” prayer for investigation by the police can be allowed to be made, considered or granted. The concluding part of the order dated 04.02.2014 of the learned single

Judge in Crl. MC 573/2014, as quoted above, will have to be understood in this light.

10. In the above facts and circumstances, the view taken by the revisional court in the impugned order dated 04.03.2016 on Crl. Revision Petition 94/2016 cannot be faulted. The petition and the application filed therewith are dismissed with observations that should the Metropolitan Magistrate proceed to take cognizance and commence a preliminary inquiry in terms of Sections 200-202 Cr. PC, the petitioner would have the liberty to make an appropriate prayer for direction to the police for investigation when the matter reaches the stage of Section 202 Cr. PC which prayer, if made, shall be considered and adjudicated upon by the concerned criminal court in accordance with law.

R.K.GAUBA, J.

JANUARY 16, 2019

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