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

Date of decision: 08.11.2019

+ CRL.M.C. 1614/2017

KRISHAN GOEL

..... Petitioner

Through

Mr. Satish Tamta Senior Advocate
with Mr. Shariq Iqbal, Advocate

versus

STATE & ORS

..... Respondents

Through

Mr. K K Ghai, APP for State
Insp. Surya Prakash, PS Kirti
Nagar

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner seeks direction thereby quashing of the order dated 28.01.2017 passed by the learned ASJ, West - 04, Tis Hazari, Delhi in Criminal Revision Petition No. 55860/2016 u/s 397 Cr.P.C. against the final order dated 28.01.2016 passed by learned Metropolitan Magistrate-08, West, Tis Hazari, Delhi whereby, Criminal Complaint No.312/1/14, P.S. Kirti Nagar, West District, Delhi for committing offences punishable under Sections

166/166A(a)/166A(b)/167/193/195/195A/196/199/323/330/452/447/448/
451/452/465/466/471/ 506, r/w Sec. 120-B IPC filed by the petitioner,
has been dismissed.

2. The case as stated in the present petition is that the petitioner and his son Chetan Goel had received notices u/s 160 Cr.P.C. dated 26.2.2014, for their appearance at P.S. Gulabi Bagh, Delhi on 27.02.2014, to join investigation in FIR No. 23/2014. The Petitioner and his son had accordingly appeared before Sanjay Kumar, ASI and SI Vimal Dutt, in P.S. Gulabi Bagh, Delhi. Investigation was carried on from 9.30 a.m. to 11.30 a.m. on 27.2.2014. During investigation in said case, the Petitioner came to know that he was falsely implicated in said case; by Shri Ashok Aggarwal, father-in-law of his daughter, namely, Ms. Monika Aggarwal. The Petitioner had continuously cooperated in investigation of said case and appeared before the IO, respondent No.3, on each and every date, as and when he was called by him and the petitioner had provided whatever information was asked by aforesaid Investigation Officers. On 19.3.2014 at about 7.10 p.m. the respondents No.2 to 4 along with two other police officials came to the residence of petitioner and asked the petitioner that respondent No.2 wishes to use the bathroom of his house. The petitioner without suspecting any foul play

on part of respondents No. 2 to 4 and their two other associates, had allowed respondent No. 2 to use the bathroom and escorted him personally till bath room. Immediately respondents No. 3 to 4 and their two other associates gathered in the resident office of petitioner and later respondent No.2 had also joined them. Thereafter, the respondent No. 2 and their other associates started misbehaving with petitioner and shouted and threatened loudly to severely beat him, besides abusing him in unpardonable language. Respondents Nos.2 to 4 and their associates had also threatened the son and daughter of petitioner to the effect that they should advise their father, otherwise, they would beside severely beating him, would also do maximum damage to him and cause prejudice to his rights and interest.

3. Accordingly, apprehending danger due to extended threat, daughter of petitioner had made a telephonic call to PCR and reported the aforesaid matter at about 7.20 p.m. The respondent Nos.2 to 4 and their two associates, physically assaulted, manhandled the petitioner, took away two mobile phones from his resident office, without issuing him seizure memo for the same.

4. Thereafter, the petitioner was dragged out of his house and was made to sit in a vehicle (gypsy). He was taken to P.S. Gulabi Bagh, there

he was put in lock up, physically tortured and mercilessly beaten. He was forced to sign on several blank sheets, under undue coercion, influence and duress. The Petitioner was arrested on the same day and when son of petitioner Sh. Chetan Goel, had come to see the petitioner at P.S. on 20.03.2014, he was also asked to sign on some blank papers, on the pretext that same were for issuing seizure memos of two Mobile Phones taken from office of Petitioner located within his residence. Despite repeated requests made by son of the petitioner, to fill those papers, the same were not filled. However, before appearing before the learned Metropolitan Magistrate, the petitioner was forced to sign on various documents, without allowing him to understand the contents and nature of those documents. The petitioner is in possession of legal and authentic documents to the effect that the two police officials who have been shown present at the time of his arrest in the aforesaid case, were actually not available there but were away at a distance far away from place of his arrest.

5. Learned senior counsel for the petitioner submits, petitioner was allowed bail in aforesaid case by the ASJ-05, Central, Tis Hazari Courts, Delhi on 22.03.2014 but he was released from jail on 25.03.2014. Upon his release from the jail, the Petitioner had sent a detailed complaint to

the Commissioner of Police, Delhi with all aforesaid facts, against Respondents No. 2 to 4 and their two associates on 26.03.2014. He had also lodged-a complaint to this effect to the SHO, P.S. Kirti Nagar, Delhi, on 31.03.2014. Since no action was taken on his complaint, the petitioner filed a complaint U/s 200 Cr.P.C. before the Court of CMM, West, Tis Hazari Courts, Delhi for committing the aforementioned offences. Petitioner had also filed another complaint dated 28.06.2014 to the Commissioner of Police, Delhi, vide DD No. 36-B. The petitioner had also sent a detailed complaint dated 24.07.2014, to the Joint Commissioner of Police (Vigilance) vide DD No. 1743 General. The Petitioner had filed an application dated 17.07.2015 under the provisions of the RTI Act seeking status report of his complaint. In reply thereto, vide diary No. 691/R/SHO/GB dated 22.07.2014, the petitioner was informed that 'complaint was enquired into and the same has been filed as allegations leveled were found fake and fabricated. In reply to his application under RTI, in the status report dated 5.8.2014, filed by Inspector Narender Kr. [ATO] Gulabi Bagh, Delhi, along with reply No. 1345/RTI/ACP/S Rohilla, dated 04.12.2014, it was stated that the investigation in aforesaid case has been done within the ambit of law and nothing wrongful was done against the petitioner. The petitioner had

filed appeal, on 29.08.2014 against information provided to him, before the DCP, North District, at Civil Lines, Delhi. Vide order No. 844/Appeal/RTI/North Distt., dated 30.09.2014, Sh. Madhur Verma, IPS, had upheld the reply of PIO to the application of petitioner dated 30.10.2014, under RTI Act. The petitioner had sought status report of his complaints, vide his application dated 30.10.2014, under RTI Act. In reply thereto same report dated 5.8.2014 was provided to the Petitioner, alongwith reply No. 1345/RTI/ACP/S. Rohilla, dated. 4.12.2014. The learned MM-08, West, Tis Hazari, Delhi, vide order dt. 28.01.2016, dismissed the Complaint No. 312/1/17, P.S. Kirti Nagar, u/s 200 Cr.P.C. filed by the petitioner on the grounds, inter alia, that because prior sanction to prosecute the Respondents No.2 to 4, as enumerated U/s. 140 of Delhi Police Act and U/s. 197(1) Cr. P.C. has not been taken. Feeling aggrieved, the petitioner preferred a revision petition before the District & Sessions Judge, West, Tis Hazari Court, Delhi which was assigned to the learned ASJ-04, Tis Hazari Courts, Delhi on 03.03.2016 who dismissed the same vide order dated 28.01.2017.

6. The present petition has been filed on the ground that the learned courts below have failed to appreciate the fact that it is not the duty of police officers to put a person to unlawful arrest, subject him to illegal

confinement and custodial torture and fabricate or manufacture false evidence against him, at the behest of any person. The learned Trial Courts have failed to appreciate the provisions of section 140 of Delhi Police Act and the corresponding provisions of Cr.P.C., which are *pari materia* with the provisions of Section 140 of Delhi Police Act, are meant to protect the police officers acting bonafide -and within the scope of their duties. Any act of the police officers beyond the scope of duties is not protected. Any offence committed by the police officer is not protected, i.e., to subject a person to custodial torture and to fabricate or manufacture evidence against him which is not part of lawful duties of a police officer and is not protected by any law or statute. The petitioner was subjected to fabrication of a false case against him and custodial torture by the respondents No.2 to 4 and other persons, acting in conspiracy with them, without any cause or reason on his part. In view of aforesaid facts and circumstances, there is ample evidence that the respondents No.2 to 4 are guilty for misusing their power and position, beyond their official duty, however, with their vested and selfish interest, at the instance of complainant in case FIR No. 23/14, P.S. Gulabi Bagh, Delhi, U/s. 308/34 IPC, who has inimical and strained relations against the petitioner and his family members; caused severe beating, abused,

insulted, misbehaved, hardships, humiliations, mental and physical shock, torture, agonies, pains and sufferings to the petitioner, without any cause or reason on his part. There is ample evidence on record against respondents No. 2 to 4, for committing offences complained against them, also to the law enforcing authorities i.e., Commissioner of Police, Joint Commissioner of Police (Vigilance), immediately on next day, after release of petitioner from jail, however, unfortunately the law enforcing authorities, instead of taking appropriate action, by taking sanction for prosecuting the delinquent police officials, i.e., respondents No. 2 to 4, have protected them and furnished a false and absolutely self created status report, into the complaints of petitioner.

7. Learned counsel for the petitioner submits that the courts below have erred in not perusing the record, evidence, documents available on record, which prima-facie proves the guilt of respondent Nos. 2 to 4 for committing offences punishable under the sections above mentioned. The complaint case was filed by the petitioner before learned Trial Court on 02.06.2014 and the same was taken on record by learned Trial Court on 04.06.2014. After making the trial go on for almost 1 year and 8 months, recording the pre-summoning evidence, collecting various important documents as evidence, CD of conversation obtained from

Delhi Police Control Room etc., learned Trial Court had taken note of Section 140 of Delhi Police Act and Section 197(1) Cr.P.C. A want of sanction or non compliance with the provisions of Section 140 Cr.P.C., if attracted, should have engaged the attention of the learned Trial Court at the very beginning, however, opined that prosecution of respondent No.2 to 4 for committing aforesaid offences is not maintainable, without getting prior sanction for their prosecution U/s. 140 of D.P. Act, and/or U/s. 197 Cr.P.C. If that was the legal position, the learned Trial Court would not have recorded the pre-summoning evidence of petitioner, his son and daughter in the above noted case. Once the trial in a complaint case is commenced, the sanction U/s. 140 of D.P. Act, and/or U/s. 197 Cr. P.C., for prosecuting the public servant is not required and they are liable to be prosecuted on merits. But, learned courts below have erred in not considering aforesaid vital aspect while passing the impugned orders dated 28.01.2016 and 28.01.2017. The facts remain that respondents No. 2 to 4 are guilty for committing aforesaid offences and they are liable to be prosecuted and punished for committing offences punishable as mentioned above.

8. In support of his contentions, learned counsel for the petitioner has relied upon a decision of this Court in the case of SI Manoj Pant vs. State

of Delhi, reported as 1999 (48) DRJ, decided on 05.11.1998 wherein it was observed that challan against the petitioner (therein) was filed on 6 March 1993 and at the stage of consideration for charge, an objection was raised before the trial court on behalf of the petitioner that his prosecution having been instituted more than three months of the act complained of and without proper and valid sanction of the Lt. Governor, requisite under section 140 of the Delhi Police Act, 1978 (hereinafter referred to as the Act) no charge could be framed against him.

9. Accordingly, the first question falling for consideration was whether in the matter of institution of prosecution against a police officer in respect of acts done by him under the colour of duty or authority or in excess of such duty or authority, the period of limitation contained in section 140 of the Act would apply or the general provisions in Chapter XXVI of the Code will apply?

10. Accordingly, this Court observed that the Act was enacted to amend and consolidate the law relating to the regulation of police in the Union Territory of Delhi. It is axiomatic that it is a special enactment in respect of matters referred to therein and, therefore, the provisions contained in a special law must prevail over the provisions contained in the general law, like the code, which generally apply to all the

complaints, challans etc., and other proceedings connected thereto. Section 140 of the Act, falling in the miscellaneous Chapter XI, imposes certain restrictions and limitations in the matter of institution of suits and prosecutions against police officers in respect of the alleged offences or wrong acts by them. This Court opined, the Act being a special law, restrictions and limitations enumerated therein should apply to cases falling within the ambit of section 140 of the Act. Support to this view is lent by a decision of the Supreme Court in Prof. Sumer Chand v. Union of India and Ors. JT 1993 (5) SC 189, wherein while dealing with the question whether the period of limitation in filing a suit for malicious prosecution against a member of the Delhi Police is governed by the provisions of Section 140 of the Act or by Article 74 of the Limitation Act 1963, their Lordships held that since the Act is a special law, if the suit filed falls within the ambit of Section 140 of the Act, then the period of limitation for institution of the suit would be that prescribed in Section 140 and not the period prescribed in Section 74 of the Limitation Act.

11. It is further observed, Sub-section (1) provides that no prosecution for the offence or wrong, if committed or done, was of the character mentioned therein, shall be entertained and if entertained shall be dismissed if it is instituted more than three months after the date of the

act complained of. However, proviso thereto relaxes the said condition and permits entertainment of such prosecution by the Court, if it is instituted with the previous sanction of the Administrator within one year from the date of the offence.

12. The observation made by this Court in the aforesaid case is not in regards to sanction required under Section 140 of the Act. In the said provision, it is prescribed, the complaint shall be filed within three months from the date of the incident. Further, the complaint can be filed within a period of one year if pre sanction is obtained from the Competent Authority.

13. Thus, in my considered view and in view taken by the two courts below, in both the situations, sanction is required. Time period of 3 months is granted under Section 140 of the Act, from the date of offence committed by an officer of Delhi Police, however, sanction may follow but not beyond one year. Further, one year is granted if due to some reason the complainant is unable to lodge complaint within three months. Thus, in both the cases, sanction is required to sue or prosecute the erring police officials.

14. Accordingly, in view of the above discussion, I find no illegality or perversity in the orders passed by the two Courts below.

15. Finding no merit in the present petition, the same is accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 08, 2019

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