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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 16th January, 2019

+ CRL.M.C. 4419/2016

GOVIND RAM

..... Petitioner

Through: Mr. S.P. Aggarwal and Mr.
Himanshu, Advocates

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner is aggrieved and has approached this court invoking its inherent power and jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (Cr. PC) as his criminal complaint (CC 1575/1/09) was dismissed by the Metropolitan Magistrate by order dated 08.10.2013, the revisional challenge to the said decision in the court of Sessions (by petition – CR 99/2013) also having failed on 08.04.2016.

2. The documents placed on record, as highlighted also by the pleadings and submissions, indicate that the complaint case of the petitioner has not been appropriately dealt with in accordance with

law, the issues raised having been unceremoniously and without reason prematurely and unfairly trashed.

3. By the criminal complaint, the petitioner had alleged offences punishable under Sections 380, 391, 452 read with Section 34 of Indian Penal Code, 1860 (IPC) having been committed by certain persons who were named, they having allegedly acted in concert with certain others whose identity was not known to the petitioner, the incidents to that effect statedly having occurred on 03.07.2008, 10.07.2008 and 21.07.2008, the complaints lodged by the petitioner with various authorities in the police hierarchy having failed to evoke any action. The Metropolitan Magistrate initially called for an action taken report (ATR) presumably in view of the fact that certain complaints had been lodged with the police. A prayer had been made by the petitioner for direction to the police for investigation in terms of Section 156(3) Cr. PC. The said prayer, however, was declined by order dated 16.10.2008 of the Metropolitan Magistrate who, instead opted to take cognizance and hold an inquiry in terms of Section 200 and 202 Cr. PC.

4. In the inquiry, under Sections 200 and 202 Cr. PC, the petitioner examined himself (as CW-1), also examining four others, they being Gopal Sharma (as CW-2), Suman Lata (as CW-3), Manoj (as CW-4) and Madhu Pandey (as CW-5). The Metropolitan Magistrate considered the said evidence adduced in the preliminary inquiry by order dated 06.10.2010. He noted that the prime allegations levelled were that the persons named in the complaint had

trespassed into the premises held by the petitioner and had committed the offence of robbery by dishonestly removing his cattle and certain other movable properties. The Metropolitan Magistrate recorded, by order dated 06.10.2010, that it was expedient that the investigation be carried out by police in terms of Section 202 Cr. PC. He thus issued suitable directions to the police to carry out such investigation and make a report.

5. In the wake of the aforementioned directions dated 06.10.2010 of the Metropolitan Magistrate, the Station House Officer of police station DBG Road registered FIR no.12/2011 for offences punishable under Sections 452, 392, 34 IPC on 27.01.2011. Thus, the action that had been declined to the petitioner earlier on his complaints directly lodged to the police before he had approached the Magistrate was granted pursuant to the direction of the Metropolitan Magistrate under proviso to Section 202 Cr. PC. Be that as it may, the police carried out the investigation and submitted a report under Section 173 Cr. PC seeking cancellation of the case with its view that no such incident, as had been alleged, had occurred.

6. The aforementioned report of investigation came up before the Metropolitan Magistrate on 27.11.2012 and it was submitted on behalf of the petitioner that the court might consider the pre-summoning evidence that had been recorded and the cancellation report together to pass the appropriate orders thereupon.

7. By order dated 08.10.2013, the Metropolitan Magistrate dismissed the complaint observing that there was no sufficient ground

to proceed therewith, also adding that the complainant appeared to have come with some motive and not “*with clean hands*”, finding deficiencies in the evidence that had been led through aforementioned five witnesses.

8. The petitioner, feeling aggrieved, challenged the said order dated 08.10.2013 in the court of Sessions by Crl. Rev. Petition no.99/2013. His revision petition was dismissed by the said court on 08.04.2016, which order is under challenge by the petition at hand.

9. The core reasons why the revisional court was not satisfied with the material brought on record so as to grant the prayer of the petitioner for criminal action to be initiated against the person named by him is found in (para 9 of) the impugned order which reads thus:-

“9. I have heard the arguments at bar. CW 2 Gopal Sharma had named only three persons namely Manish, Kailash and S.K. Sharma entered into the premises of the complainant and took away cows by threatening the occupants. CW 4 Manoj had also named above three persons. Smt. Madhu Pandey had not named any person. She stated that the employees of the Gaushala had ransacked the house of the complainant and took away the cows by beating them and also the wife of the complainant. No doubt, the MLC was prepared. IO in his cancellation report placed on record stated that DD No.37 dated 10.07.2008 and the statements taken place. It is also an admitted fact that Kalandra under Section 107/ 150 of Cr. PC was prepared. It is also a fact that the complainant is the tenant of the Pinjar Pole Society and the Civil Suit is pending. If a person is known to each other, then they are not supposed to enter the house with intention to rob any person.”

10. This court finds the observations in the last sentence of the afore-quoted observations to be wholly devoid of any meaning. The revisional court's order, unfortunately, does not even deal with the evidence that had been led by the petitioner in the pre-summoning inquiry. Given the fact that the police had earlier declined to register the FIR and further the fact that the Magistrate had also declined to issue directions under Section 156(3) Cr. PC, the criminal complaint of the petitioner has to be adjudicated on the basis of evidence that he had led in the course of inquiry under Sections 200 and 202 Cr. PC. The said evidence cannot be wished away.

11. Undoubtedly, the Magistrate had issued directions for police investigation under Section 202 Cr. PC. But then, such direction and the result of compliance therewith would be the material that has to be considered alongside the evidence that has been adduced by the petitioner in his own complaint case. To put it simply, the evidence led by the petitioner in terms of Section 202 Cr. PC, on being called upon by the Magistrate to so adduce, does not get erased or effaced from the record only because a further direction under Section 202 Cr. PC, for police investigation also to be carried out, was later passed.

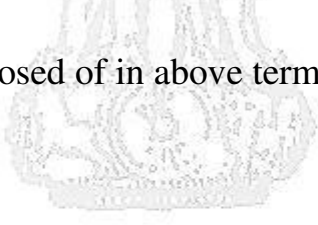
12. The revisional court's order dated 08.04.2016, thus, cannot be upheld or approved of. It is set aside. The criminal revision of the petitioner is restored on the file of the court of Sessions which shall

hear the concerned parties and pass a fresh order in light of the material on record of the criminal case in entirety.

13. In the above context, it may also be added that given the letter and spirit of the provision contained in Section 401(2) Cr. PC, it was incumbent on the part of the revisional court to implead the parties against whom the petitioner seeks the adverse order in as much as an order to their prejudice cannot be granted unless they also have had an opportunity of being heard either personally or by pleader in their own defence. In this view, it is directed that the court of Sessions shall issue notices to the parties indicated as prospective accused in the criminal complaint of the petitioner before proceeding further.

14. The revisional court shall take up the revision petition for further proceedings in accordance with law on 25.02.2019.

15. The petition is disposed of in above terms.


नान्यमेव जयते **R.K.GAUBA, J.**

JANUARY 16, 2019

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