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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 14th March, 2019

+ CrI.M.C. 3727/2016 & CrI. M.A. 15596/2016, 20060/2016

SATISH SHARMA

..... Petitioner

Through: Mr. Viresh B. Saharya, Adv.

versus

STATE & ORS.

..... Respondent

Through: Mr. K.S. Ahuja, APP for the
State with ASI Omvir Singh, PS
CAW Cell.
Mr. Manoj Chaudhary, Adv. for
R-2 to 4.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. Amit Sharma, son of the petitioner, was married to Pooja Kaushik on 01.02.2013. The marriage having run into rough weather, Pooja Kaushik statedly left the matrimonial home on 11.01.2014. She eventually lodged first information report (FIR) no. 125/2014 dated 03.04.2013, with police station Pul Prahlad Pur, alleging offences punishable under Sections 498A/406/354/34 of Indian Penal Code, 1860 (IPC), against the members of the matrimonial family, including the petitioner and his son Amit Sharma. In the wake of the said FIR, the petitioner had moved the Court of Sessions for anticipatory bail, his application having come up for consideration on 15.05.2014. He was granted protection against arrest, the matter having been

adjourned to 04.06.2014, with some directions about recovery and return of *stridhan* articles.

2. It is alleged that pursuant to the said order on 15.05.2014 the second to fourth respondents herein, accompanied by the complainant of the said case, visited the house of the petitioner at about 5.00 p.m., at Flat no. 405, Charmwood Village, Surajkund, Faridabad and made certain seizures adopting a procedure which was wholly illegal and in violation of the directions of the additional sessions judge in order dated 15.05.2014; certain properties having been taken away without formal proceedings being drawn, seizures being made not as per law or after verification, the same having been made over to the complainant of the FIR no. 125/2014.

3. Alleging that such action as above constituted offences punishable under Sections 166, 167, 403, 409, 467, 468 and 34 IPC, a criminal complaint was presented on 28.04.2016 before the Chief Metropolitan Magistrate South-East District, seeking summoning and prosecution of the second to fourth respondents (shown in the array as first to third accused) in addition to the said Pooja Kaushik and her father Rambir Kaushik (shown in the array as fourth and fifth accused).

4. In the complaint presented under Section 200 of the Code of Criminal Procedure, 1973 (Cr.P.C.), a prayer was made, *inter alia*, for cognizance to be taken as also for a direction to be given to the police under Section 156 (3) Cr.P.C. for investigation. The Metropolitan Magistrate, by order dated 14.05.2016, allowed the second said prayer and directed the station house officer of police station Pul Prahalad

Pur to investigate and file report under Section 173 (2) Cr.P.C. The said order was challenged by the second to fourth respondents herein in the court of Sessions, by Crl. Rev. 65/2016. The petition was allowed by the additional sessions judge, by order dated 03.08.2016, thereby setting aside the order dated 14.05.2016 of the Metropolitan Magistrate though observing that it was “without prejudice to the rights” of the complainant (the petitioner herein) to pursue other legal remedies.

5. The petition at hand has been filed under Section 482 Cr.P.C. to assail the order of the revisional court, a lot of argument being raised on the issue as to whether the revisional court could or should have entertained such a challenge against such an order under Section 156 (3) Cr.P.C.

6. Having regard to the facts and circumstances of the case, as briefly stated above, in the considered view of this Court, besides the reasons set out in the impugned order of the revisional court, there is one more reason, rather a weightier one, as to why the order of the Metropolitan Magistrate cannot be upheld or restored.

7. The submissions made and the general agreement reached, more on offers made on behalf of the petitioner himself, besides the directions given at the time of consideration of his application for anticipatory bail in the context of FIR no. 125/2014, by order dated 15.05.2014 of the additional sessions judge may be taken note of by extracting the following part thereof:

“Further, this case involves allegations not just of Section 354 IPC but also Section 498A/406 IPC. Ld. Counsel for

the accused/applicant submits that the accused/applicant is ready to return the entire stridhan to the complainant. IO submits that till date the complainant has not given the list of her stridhan. Complainant who also is present in person submits that she will deliver the list to the IO today itself. Ld. Counsel for accused/applicants submits that whatever stridhan is lying with the accused, the same shall be delivered to the IO at PS Pul Prahladpur today itself by about 05.00 p.m. It is submitted by Ld. defence counsel that the entire stridhan is lying in a flat and permission of security agency is required. For that purpose, IO shall contact the concerned official of the security agency so that the entire stridhan is recovered. Thereafter, the recovered stridhan shall be returned to the complainant.

Request of the IO for more time is being allowed but it is clarified that there shall be no further adjournment and it is expected that in view of seriousness of the charges, proper investigation shall be carried out.”

8. Concededly, the afore-mentioned observations had been recorded in the order dated 15.05.2014 on the application of the petitioner himself, he also being one of the persons accused of the offences which have been the subject matter of FIR no. 125/2014. Reference to the submissions made on behalf of the accused are clearly references to what was argued for and on instructions of the petitioner, also for the reason that the description “accused” is qualified by the expression “applicant”. It was his own offer that he was ready to deliver “whatever *stridhan* was lying with him” (the accused), making reference to “a flat” without specifying its particulars. The arrangement for recovery of such part of *stridhan* in the evening of 15.05.2014 and its return to the complainant had thus been put in position with the express consent of the petitioner.

9. The acts attributed to the second to fourth respondents herein relate to the events that statedly occurred on 15.05.2014, that too in Faridabad, not within the territorial jurisdiction of the Metropolitan Magistrate at Delhi.

10. Be that as it may, the fact remains that the averments in the complaint of the petitioner themselves demonstrate that the second respondent, assisted by the third and fourth respondents, were members of Delhi Police, responsible for the investigation of the case arising out of FIR no. 125/2014. The acts attributed to them were committed in the course of investigation of the said case and, therefore, clearly in discharge of their official duty. Assuming there have been irregularities in the procedure adopted – though given the import and effect of the directions of the Additional Sessions Judge in the order dated 15.05.2014, there are serious doubts in that regard – in absence of any further averment or material affirming basis thereof, it cannot be said that such irregularities were indulged in with dishonest or fraudulent intent.

11. Be that as it may, being members of Delhi Police, second to fourth respondents are entitled to the protection of Section 140 Delhi Police Act, 1978, which, to the extent necessary, may be quoted as under:-

“140. Bar to suits and prosecution.—(1) In any case of alleged offence by a police officer or other person, or of a wrong alleged to have been done by such police officer or other person, by any act done under colour of duty or

authority or in excess of any such duty or authority, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character as aforesaid, the prosecution or suit shall not be entertained and if entertained shall be dismissed if it is instituted, more than three months after the date of the act complained of:

Provided that any such prosecution against a police officer or other person may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence”.

12. The petitioner initiated steps to seek prosecution of the second to fourth respondents, by presenting the complaint on 28.04.2016, which was more than two years after the events in which the offences he alleges were statedly committed. He has not approached the administrator for sanction for such prosecution in terms of the proviso to Section 140 (1) of Delhi Police Act, 1978.

13. In above facts and circumstances, this Court declines to interfere with the order of the revisional court which had set aside the order dated 14.05.2016 of the Metropolitan Magistrate on the complaint case (CC No. 17/3/2016) of the petitioner.

14. The petition and the applications filed therewith are, thus, dismissed.

R.K.GAUBA, J.

MARCH 14, 2019

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