

\$~

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: July 30, 2019

Decided on: August 26, 2019

+ CRL.M.C. 4461/2016

NARESH BANSAL

..... Petitioner

Through: Mr. Shiv Charan Garg & Mr. Imran
Khan, Advs.

versus

STATE (GNCTD) & ORS.

..... Respondents

Through: Ms. Meenakshi Chauhan, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

J U D G M E N T

1. On 19.08.2004, the petitioner presented a criminal complaint (No.473/1/2004) in the court of Chief Metropolitan Magistrate, Delhi (CMM, Delhi) alleging offences punishable under sections 365/368/342/341/506/323/330 and 120-B of the Indian Penal Code, 1860 (IPC) having been committed by the second to eighth respondents herein, along with one another (Constable Vijay Kumar) (since deceased). The said criminal complaint was subjected to inquiry under sections 200 and 202 of the Code of Criminal Procedure, 1973 (Cr.P.C.) in the course of which three witnesses were examined, they including the petitioner (complainant before the Magistrate) himself appearing (as CW-1) on 07.06.2010, the other two witnesses examined being Raj Kumar (CW-2), an official of Dr. Baba

Saheb Ambedkar Hospital, Rohini and Rajeev Kumar (CW-3), an official of Bhagwati Hospital, Sector 13, Rohini, Delhi, the last said witness having been examined on 15.10.2012. Thereafter, at the stage of consideration of the material that had been brought on record, by order dated 22.01.2015, the Metropolitan Magistrate deemed it necessary to direct investigation to be carried out under section 202 (1) Cr.P.C. by the Deputy Commissioner of Police (DCP) through a responsible police officer. A report of investigation pursuant to the said direction for investigation under section 202(1) Cr.P.C. was submitted on 20.05.2015. Upon consideration of such material as had come on record during the inquiry, the Metropolitan Magistrate by order dated 17.12.2015 found no grounds to proceed further. It was instead concluded that the complaint lacked truthfulness. The complaint was, thus, dismissed under section 203 Cr.P.C.

2. The order dated 17.12.2015 of the Metropolitan Magistrate was challenged by the petitioner in the Court of Sessions invoking its revisional jurisdiction (by Criminal Revision Petition No.8/2016). The revision petition was dismissed, the view taken by the Metropolitan Magistrate having been upheld, by order dated 16.08.2016.

3. The present petition was filed bringing yet another challenge to the consistent orders of the two courts below, invoking inherent jurisdiction of this court under section 482 Cr.P.C. The petition has been resisted also by the first respondent/State, it having filed status

reports. Submissions of both sides have been heard at length and the record has been carefully perused.

4. It will be appropriate to take note of the chronology of events leading to the filing of the criminal complaint by the petitioner before the CMM and certain developments that took place along side or in its wake.

5. It is indisputable that the second to eighth respondents are members of the Delhi Police, all of them being posted and deployed as members of special staff of South District of Delhi Police during the relevant period. A case of robbery had been registered in Police Station New Friends Colony on 30.08.2003 vide first information report (FIR) No.368/2003 involving offences under sections 392/397/34 IPC (hereinafter referred to as “the robbery case”). The police records, as brought on record by the report dated 20.05.2015 of investigation under section 202 (1) Cr.P.C. show that there was a secret information received about some connection of the petitioner with the said robbery case. The gist of such input had been reduced to writing vide daily diary (DD) entry No.12, dated 28.08.2003 of special staff of South District, its copy having been submitted as part of the investigation report. In the wake of the said information other respondent police officials had set out for verification, making a formal departure entry at 9:05 a.m. on 28.08.2003, they being led by the third respondent. As per the police records contemporaneously prepared, the petitioner herein was brought to the office of special staff and subjected to questioning, this also being formally recorded

vide DD No.14 at 7:10 p.m. on 28.08.2003. The petitioner was eventually let off, after some interrogation, his questioning being inconclusive, the gist of the progress made having been recorded vide DD No.18 logged at 9:30 p.m. on 28.08.2003, he having concededly been handed over to his brother Tarsem, who was called to the said office for such purposes, his two wheeler motor vehicle also having been returned. Prior to this, the police record would also show, the petitioner had been sent to All India Institute of Medical Sciences (AIIMS) for medical examination, his family having been informed on telephone number 27532347, this being the subject matter of DD No.17 which had been logged at 8:20 p.m. on 28.08.2003. The record, which has been authenticated in corresponding proceedings arising out of a civil suit, to which reference would be made a little later, also includes a formal application made by the third respondent to the Casualty Medical Officer (CMO) of AIIMS for medical examination of the petitioner, the said document also bearing the clinical notes of the casualty medical officer in the emergency services department of AIIMS confirming that the petitioner had been duly examined and was found to have no external injuries, he being conscious and oriented, fit for statement.

6. On 29.08.2003, the petitioner made a formal complaint to the Commissioner of Police, Delhi alleging offences punishable under sections 365/368/342/341/506/323/330 IPC and sections 13(1)(d) read with section 13(2) of Prevention of Corruption Act, 1988 having been committed by the aforementioned respondent police officials. During

the inquiry into the complaint, he referred to copy of the said complaint as Ex.CW-1/D. It is not disputed that the said complaint had led to a vigilance probe, the report of Assistant Commissioner of Police (ACP) of the vigilance branch of Delhi Police, however, concluding the allegations to be unfounded. It may be mentioned here that the petitioner also got issued a legal notice dated 30.08.2003 to the Commissioner of Police Delhi (vide Ex.CW-1/E) and made yet another complaint dated 18.09.2003 (vide Ex.CW-1/F).

7. The allegations of the petitioner in the aforesaid complaint and the legal notice, *inter alia*, to the Commissioner of Police were that on 28.08.2003 he was telephonically called at about 5:00 p.m. to a motor vehicle repair shop in Sector 4, Rohini and from there he was picked up by the aforementioned police officials, they carrying him in a vehicle (Tata Sumo) forcibly holding him physically, questioning him on the way to the office of special staff, South District located behind police post Madain Garhi, falling within the jurisdiction of Police Station Ambedkar Nagar. He alleged that in the office of the special staff he was disrobed, his hands tied behind his back and he was hung on a pipe with the help of a rope, this rendering him unconscious. He alleged that he had been abused in filthy language by the aforementioned police officials and falsely accused of being involved in the offence of dacoity, he being confronted with an individual with whom he may have had some business transaction in the past. He alleged that he was subjected to torture, beaten up with wooden stick on the soles of his lower limbs and arms and let off after he had

refused to identify certain persons whose photographs were shown to him. He stated that his brother Tarsem was called to the office of special staff, and that he was taken to AIIMS for medical examination and threatened that he would be killed or implicated in a case of Arms Act if he were to disclose the incident to the medical officer at the time of examination.

8. Broadly setting out the aforementioned allegations, the petitioner had filed writ petition (Civil) No.1248/2003 in this court seeking registration of an FIR, which matter remained pending till 19.10.2005 on which date it was withdrawn and dismissed accordingly. But, the Court had recorded its views on the matter before permitting withdrawal. It will be appropriate to extract relevant part of the order dated 19.10.2005 as under:-

“ It is contended by counsel for the petitioner that Dr. Bhaba Saheb Ambedkar Hospital has given a certificate to the extent of the injuries sustained by the petitioner on the day when he was examined, namely, 29.08.2003. He submits that these injuries have been caused by the police while the petitioner was being interrogated.

Counsel for the respondent on the other hand draws my attention to the medical examination conducted by AIIMS on 28.08.2003, where it has been observed that there is no external injury, pulse rate is 72, he is conscious and oriented and fit for statement.

From this it is evident that on his being released from the police interrogation and examination by the AIIMS no injury was found on the person. However, on 29.08.2003 when the petitioner is examined by Dr. Bhaba Saheb Ambedkar Hospital he has complained of assault by unknown persons, even from the injuries found on him, in

the photograph there are external injuries noticed on the chest.

From this prima facie it cannot be made out that he has been assaulted by the police while interrogation. However, since the petitioner has alternative remedies other than by way of a writ petition, he may advert to those, if so advised”.

9. On 28.11.2003, the petitioner instituted a civil suit (No.274/2003) in the court of District Judge, Delhi seeking reliefs of damages, declaration and injunction, (prohibitory and mandatory) impleading, besides certain State authorities (lieutenant governor of Delhi, Commissioner of Police, etc.), four of the above mentioned police officials (viz. second to fourth respondents and one another named Head Constable Ajay). The prime allegations set out in the said civil suit were identical to those levelled in the complaint to the Commissioner of Police, which are also the averments in the criminal complaint before magistrate. The civil suit, it may be noted here itself, went to trial in which both sides led evidence, the case of aforementioned acts of commission or omission by the police officials having been eventually disbelieved and the suit dismissed by the Additional District Judge, by detailed judgment dated 14.07.2008. It has, however, been submitted by the petitioner at the hearing that his appeal against dismissal of the civil suit is pending.

10. Almost around the time of filing of the aforementioned civil suit, the petitioner had filed another writ petition – writ petition (civil) No.7493/2003 – whereby he had prayed for compensation for the alleged custodial violence. The said writ petition was not entertained

and disposed of by order dated 10.08.2004, in view of pendency of the civil suit and availability of alternative remedies.

11. As mentioned earlier, the criminal complaint from which these proceedings arise was presented before the Metropolitan Magistrate on 19.08.2004. The record of proceedings of the court of Metropolitan Magistrate, however, shows that though cognizance had been taken on 21.08.2004, the petitioner having been called upon to adduce his evidence (for pre-summoning inquiry), the petitioner did not lead evidence immediately. He took one adjournment after the other keeping the said matter pending at that stage, even failing to appear on certain dates, till he offered himself as his first witness (CW-1) for the first time on 07.06.2010, almost six years after instituting the criminal complaint.

12. While the complaint was pending in the court of Metropolitan Magistrate, the petitioner had filed another writ petition (criminal) No.1971/2006, the prime prayer being for grant of sanction to prosecute three of the above mentioned police officials, they having been impleaded as sixth to eighth respondents. The writ petition was dismissed, it having been found to have no merit, by a learned single Judge, by order dated 22.02.2007, the court declining to issue the mandamus to the lieutenant governor of Delhi in the matter observing, *inter alia*, that to grant or withhold sanction was within the domain of the concerned authority, it being impermissible for the court to sit as a court of appeal over its decision, exercise of such power amounting to usurpation of the authority of the government as would have the effect

of nullifying the provision contained in section 197 Cr.P.C. The petitioner challenged the said decision before the Supreme Court by special leave to appeal (criminal) No.5432/2007 which was, however, dismissed by order dated 01.10.2009.

13. As is clear from the corresponding police records, which have come on record pursuant to the investigation that was ordered under section 202(1) Cr.P.C. by the Metropolitan Magistrate, the police officials (the respondents herein) attached to the special staff of South District had specific inputs about connection of the petitioner with certain persons whose possible involvement in the case of robbery was subject matter of investigation at the relevant point of time. The petitioner had been called to the office of special staff for purposes of such investigation, the police officials having acted in discharge of the official duties entrusted to them. The evidence, including the formal police record contemporaneously prepared, clearly shows that the petitioner was called upon for questioning by the police officials, there being no attempt to conceal the said exercise. On the contrary, formal entries were recorded in the daily diary register.

14. The petitioner, however, alleges that he was subjected to physical torture by acts of commission or omission mentioned earlier. He seeks to substantiate this allegation by placing reliance on the pre-summoning evidence adduced through CW-2 and CW-3. It is his case that after he had been let off by the respondents police officials late in the night of 28.08.2003, he had gone to Baba Saheb Ambedkar Hospital in Rohini at New Delhi where he had been medically

examined. The MLC (Ex.CW-2/1) has been proved with OPD ticket (Ex.CW-1B), the former document through the official of the concerned hospital (CW-2) and the latter by the petitioner himself. He also places reliance on another medical examination at Bhagwati hospital, Rohini, again on 29.08.2003, the discharge slip (Ex.CW-1/C) having been proved by him and also by the official (CW-3) called from the said hospital, he referring to the relevant documents as Ex.CW-3/1 (discharge slip), Ex.CW-3/2 (admission card), Ex.CW-3/3 (other medical documents), besides bill dated 29.08.2003 (Ex.CW-3/4).

15. The Metropolitan Magistrate accepted the investigation report under section 202 (1) Cr.P.C. and disbelieved the allegations of the complainant referring, *inter alia*, to the fact that the petitioner had failed to examine his brother Tarsem in corroboration even though he was shown by the sequence of events to be with him from the time of his release after the alleged beatings by the police officials. The revisional court endorsed the said view and the reasoning, adding that the medical record of examination of the concerned doctor in Baba Saheb Ambedkar Hospital on 29.08.2003 also contradicted the case of the petitioner in that it showed the history of injuries noted therein to have been caused by certain “*unknown people*” on the previous night, the medical record of AIIMS concerning the examination on 28.08.2003, around the time of his release by the special staff police, instead showing he suffering from no external injuries.

16. In the considered view of this court, there is no error, illegality or impropriety committed by the courts below in taking the above view. Dr. Avdhesh Chander of AIIMS who had prepared the MLC on 28.08.2003 in the emergency department of the hospital at the time of the petitioner having been taken there vide DD No.17 had been examined in the course of the trial of the civil suit (as DW-13) his testimony having gone unchallenged. The State has made available a copy of the said deposition. It is clear that at the time of his medical examination in AIIMS, the petitioner had not complained of any ill-treatment or physical assault. He was found to be suffering from no injuries at the time of his release at or about 8:20 p.m. on 28.08.2003. The petitioner himself had gone to Dr. Baba Saheb Ambedkar Hospital at Rohini on 29.08.2003. He was not under any duress by the police officials at that point of time of his such medical examination in the other government hospital. He had given the history as one of “*assault by lathi by unknown people yesterday night*”. The examining medical officer of Dr. Baba Saheb Ambedkar Hospital was also examined (as DW-6) during the trial of the civil suit and he confirmed that the contusions which he had noticed on the left arm, chest and left sole of the petitioner at the time of medical examination on 29.08.2003 could be “*self-inflicted*”. Even if the theory of the injuries being self-inflicted were to be ignored, the fact remains that the petitioner had not attributed the said injuries to assault by police officials. On the contrary, he alleged role of certain unknown public persons. The subsequent record of medical treatment after a day in

private medical institute (Bhagwati hospital) cannot efface the effect of MLC of Dr. Baba Saheb Ambedkar Hospital.

17. The concerned Metropolitan Magistrate has examined the material adduced during pre-summoning inquiry in proper light and has reached correct conclusions, such order having been upheld by the revisional court for sound reasons. There is no case made out for interference by this court in exercise of the inherent jurisdiction.

18. In the foregoing facts and circumstances, this court finds no merit in the petition at hand. The petition is dismissed.

R.K.GAUBA, J.

AUGUST 26, 2019

vk