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

+ **W.P.(CRL) 1543/2019**

MANISH POPLI

..... Petitioner

Through: Mr Maninder Singh, Ms Aekta Vats,
Mr Dinhar Takiar, Mr Sankalp Kohli,
Mr Sarthak Garg and Mr Vikram
Kalra, Advocates.

versus

STATE (GOVT. OF NCT OF DELHI) & ORS Respondents

Through: Mr Sanjay Lao, Addl.
Standing Counsel with Mr Karanjeet
Sharma, Advocate with SI Manju,
STF/Crime Branch.

Mr Jayant K. Sud, Senior Advocate
with Mr Sachin Gupta, Mr Shailesh
Poddar and Ms Sanya Sud, Advocates
for R-5.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **09.01.2020**

CRL.M.A. 139/2020

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

**W.P.(CRL) 1543/2019 and CRL.M.A. 11318/2019 & CRL.M.A.
139/2020**

3. The petitioner has filed the present petition, *inter alia*, praying as
under:-

- a) Issue Writ/s or Order/s in the nature of Mandamus, thereby, directing Respondent No. 2 to constitute a Specialized Investigating Team to follow, in letter and in spirit, the findings/recommendations in the Vigilance Enquiry Report bearing No. **Enq.No.75/P Sec./Addl.Dcp/Viq.Dated 21.3.18**, submitted on 30.07.2018;
- b) Issue Writ/s or Order/s in the nature of Certiorari, thereby, Quashing FIR No. 162/2018, P.S: Defence Colony, New Delhi, U/S 376/506, IPC, dated 28.11.2018, as it reeks of malice, deceit and has been filed by Respondent No. 5 to wreck vengeance, against the Petitioner, by blatantly abusing & misusing the process of law;
- c) Issue Writ/s or Order/s in the nature of Mandamus, thereby, directing the Respondents No. 2 & 4 to conduct fair & impartial investigation in FIR No. 281/2018, P.S: Crime Branch, Delhi, U/S 384/120B, IPC, dated: 02.11.2018, so that criminal and illegal activities of Respondent No. 5 & the rest of the members of her honey-trap gang are nipped at the bud;
- d) Issue Writ/s or Order/s in the nature of Mandamus, thereby, directing Respondent No. 2 to conduct enquiry against persons named as the perpetrators in the Vigilance Enquiry Report bearing No. **Enq.No.75/P Sec./Addl.Dcp/Viq.Dated 21.3.18**, submitted on 30.07.2018, on charges of criminal misconduct, corruption & bribery which include both public and private persons;
- e) Close any L.O.C against the Petitioner, in case, the same has been opened by the Investigating Officer in FIR No. 162/2018, P.S: Defence Colony, New Delhi, U/S 376/506, IPC, dated 28.11.2018;
- f) Summon the Trial Court Record from the Court of Sh. Gagandeep Jindal, Ld. MM, Saket District Courts, New

Delhi, in Ct. Case No. 11059/2018, titled, “***Simran Manchanda @ Tarun Sharma vs. Manish Popli***;

4. The petitioner is an Australian citizen and it is his case that he has been a victim of honey-trapping by respondent no.5 and other accomplices, including officials of the Defence Colony Police Station.

5. It is the petitioner’s case that respondent no.5 had sent messages to him on various occasions. One such message was sent on 09.03.2018 where respondent no.5 had called the petitioner to come to Haldirams, Rajouri Garden. The petitioner claims that he had refused to do so and had asked her to meet him in his office. The petitioner states that on 10.03.2018, he had met the petitioner at Swagat Restaurant, Defence Colony for collecting documents for a student visa form. Thereafter, the petitioner and respondent no.5 had proceeded to Swagat Hotel. The petitioner claimed that at the said hotel, respondent no.5 had made certain sexual advances towards him. However, the petitioner had refused and had left the said premises.

6. It is stated that on the same date, respondent no.5 along with one of her relatives (her *massi*) had approached the PS Defence Colony to lodge a complaint against the petitioner for committing offences punishable under Sections 376/506 of the IPC.

7. Respondent no.5 alleged that the petitioner had raped her at the hotel and had filed a complaint alleging commission of offences under Sections 376/506 of the IPC. However, she stated that she did not want any action with respect to the said complaint.

8. The petitioner claims that although no FIR was filed at the material

time, the petitioner was picked up by officers of Police Station Defence Colony on 12.03.2018 on the pretext of questioning him regarding certain visa papers. He states that he was taken to Police Station Defence Colony where respondent no.5 as well as two of her relatives (her *Massi* and her *massi's* husband) were also present. The petitioner claimed that at that stage, he was informed that there was a complaint regarding sexual assault against him and he was advised by the SHO and SI Amit Mann of Police Station Defence Colony to take care of it. He alleges that SI Amit Mann stated that he would get the matter settled and the petitioner would be free by 09:00 p.m. He states that initially a demand of ₹1.5 crore was made by him but the amount was finally settled at ₹50 lacs. The petitioner claimed that at that stage, he contacted his wife (who was residing in Australia at the material time). He also contacted some friends to arrange a sum of ₹40 lacs and the same was paid. He states that SI Amit Mann instructed the petitioner's brother-in-law to park his car behind the police station where one of the relatives of respondent no.5 (the husband of her *Massi* and his friends) were already present and they collected the amount of ₹40 lacs and left in their car. The petitioner claims that thereafter, he was released at about 02:00 a.m. on 13.03.2018.

9. In the meanwhile, the petitioner's wife had made a complaint by sending an email regarding the petitioner being entrapped and being subjected to extortion.

10. The petitioner also claimed that on 14.03.2018, SI Amit Mann and HC Vikas had summoned one Lavneesh Dang (who was the petitioner's friend and had been assisting the petitioner) to come to Select City Mall for

paying the balance amount of ₹10 lacs and something extra. It is stated that CCTV footage at Select City Mall captures the presence of SI Amit Mann and establishes the petitioner's allegation in this regard.

11. The petitioner stated that on 21.03.2018, a vigilance enquiry was initiated on the complaint filed by Lavneesh Dang. A copy of the vigilance enquiry report has been placed on record which indicates that the inquiry officer found that the complaint made by the petitioner was substantiated.

12. Subsequently, an FIR being FIR no. 281/2018 was registered on the basis of the complaint filed at the instance of the petitioner.

13. The status report has been filed which indicates that there are certain infirmities in the vigilance enquiry report inasmuch as, the prosecutrix (respondent no.5) was not examined and emails of the petitioner were accepted without any inquiry.

14. Undeniably, the complaint requires proper investigation. *Prima facie*, this Court finds it difficult to understand the role of the police officials of Police Station Defence Colony. Although a complaint was stated to have been made by respondent no. 5 on 10.03.2018, an FIR was not registered. It is stated that this was so, because the complainant (respondent no.5) had stated that she did not want any action to be taken. If the police officials had accepted that no action was to be taken by them, there would be no need for them to pick up the petitioner. It does appear that the officials of PS Defence Colony were in touch with the petitioner and his friends. *Prima facie*, this is established by the presence of SI Amit Mann at the Select City Mall.

15. *Prima facie*, a plain reading of the sequence of events clearly indicates that the role of the officials of Police Station Defence Colony has not been above board. Mr Lao, learned ASC for State states that on 13.03.2018, both respondent no.5 and the petitioner had furnished separate letters stating that they have settled the matter and no action be taken pursuant to the complaint. In the circumstances, SI Mann would have no reason to meet with the petitioner's friend at select city mall.

16. The vigilance inquiry report *prima facie* indicates that the complaint made by the petitioner/on his behalf, are substantiated.

17. Thereafter, on 20.11.2018, that is, after the vigilance enquiry report had been submitted, respondent no.5 preferred an application under Section 156(3) of the Cr.P.C. for registration of an FIR complaining that an FIR has not been registered pursuant to a complaint. Pursuant to the said application, the learned MM had issued directions on 24.11.2018 for registration of an FIR which has now been registered on 28.11.2018 (FIR No. 162/2018 with Police Station Defence Colony under Sections 376/506 of the IPC).

18. The petitioner claims that the said FIR is *mala fide* and the complainant was activated only after the vigilance inquiry report had been submitted on the complaint filed by the petitioner. In this context, the petitioner prays that the said FIR be quashed.

19. Mr Lao, learned ASC submits that the petitioner has left this country and has not joined the investigation in respect of any of the FIRs.

20. Clearly, the petitioner cannot refrain from joining the investigations in

this case. The allegations made against the petitioner are also serious and this Court is unable to accept that the said FIR is required to be rejected at the threshold without proper investigation.

21. The petitioner is also required to join the investigation proceedings. However, given the allegations made against the police officials in this case and in view of the vigilance enquiry report accepting that the petitioner's allegation is being substantiated, this Court considers it apposite to direct that further investigation in respect of these two FIRs and further proceedings be conducted by the Central Bureau of Investigation (CBI).

22. Mr Sud, learned counsel appearing for respondent no.5 states that the allegations made by the petitioner have been investigated by the Crime Branch and the same have not been substantiated. He states the persons from whom the petitioner claimed to have collected the funds have been unable to establish the same. He states that inquiries have revealed that they did not have the relevant cash on their books of accounts. This contention is not persuasive, the fact that the said persons may not show the cash books or books of accounts is not determinative of the issue. It is common knowledge that several persons hold assets which are not recorded in the books of accounts.

23. This Court is of the view that the allegations made by the petitioner require to be thoroughly investigated by CBI. CBI shall do so uninfluenced by any other investigation by the police officials. If the investigation reveals involvement of any police officials, the CBI may file FIRs on the basis of information collected.

24. The petitioner has also filed an application (CRL.MA 139/2020), *inter alia*, praying that the order dated 18.11.2019 passed by the learned MM in FIR No. 162/2018 be set aside. By the said order dated 18.11.2019, learned MM had rejected the petitioner's application for recalling of the proclamation under Section 82 of the Cr.P.C. on the ground that the petitioner had not appeared before the learned MM.

25. This Court finds no reason to interfere with the said order. Plainly, the proceedings under Section 82 of the Cr.P.C. cannot be cancelled without the petitioner appearing before the concerned Magistrate. However, it is clarified that this order would not preclude the petitioner from seeking recall of the said proceedings initiated against him after the petitioner has appeared before the concerned Magistrate.

26. This Court is also not persuaded to set aside the Look Out Circular issued against the petitioner as the petitioner has not joined the investigations. However, the petitioner is at liberty to apply for the same after finalising his travel plans to India.

27. The petition is disposed of with the aforesaid directions. The pending applications are also disposed of.

VIBHU BAKHRU, J

JANUARY 09, 2020
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