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

Date of decision: 29.01.2020

+ CRL.M.C. 4008/2010 and CRL.M.A. 19006/2010

SUSHIL KUMAR

..... Petitioner

Through: Dr. L.S. Chaudhary, Mr. Ajay Chaudhary, Mr. Viresh Chaudhary, Mr. R. Tomar, Mr. Anurag Tomar and Mr. Paramvir Singh, Advs.

versus

STATE & ORS.

..... Respondents

Through: Mr. Amit Chadha, APP for State with Insp. Ranjit Singh, 1st Battalion, Insp. Ashok Kumar, PS – I.P. Estate, ASI Ravinder Pal, 5th Battallion, ASI Rajender Singh (Retired) and HC Zafar Khan (Security)

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

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

1. By the instant petition, the petitioner seeks directions thereby to set aside and quash the impugned order dated 08.12.2010 passed by the learned Additional Sessions Judge, Dwarka Courts, New Delhi in C.R. No. 147/2010, titled as '*Sh. Rajinder Singh vs. The State & Another*' and in the result, the order dated 07.10.2010 passed by the learned Metropolitan

Magistrate directing registration of FIR be restored and the SHO, Police Station – Dabri be directed to register the FIR against respondent Nos. 2 to 6 and to investigate in the same.

2. Facts of the case are that on 09.02.2009 at about 6.30 p.m., the petitioner received a call from one Ajay Kumar @ Pawan regarding some property business, who asked the petitioner to reach at Sagarpur Bus Stand. Accordingly, the petitioner reached there at about 7.00 p.m., where respondents No.2 to 5 were present and they boarded the petitioner and Ajay Kumar @ Pawan in an Indica Car and brought them to police station Dhaula Kuan, where they tied the legs and hands of the petitioner and laid him down on the floor. They also put a pipe between the legs of the petitioner and gave merciless beatings to him by kicks and sticks. After sometime, respondent no.6 came and asked whether the petitioner has disclosed something or not? On their refusal, the respondent No.6 also twisted the hands, legs and ears of the petitioner and also gave beatings with stick. He threatened the petitioner that either he should get arrested 10 persons or get 20 vehicles recovered otherwise he will implicate the petitioner in false drug (brown sugar) case. At about 11.00 p.m. at night, they brought a packet of brown sugar and forcibly obtained the signatures of the petitioner on certain papers.

3. On the next day i.e. 10.02.2009, the respondents No.2 to 5 took the petitioner and Ajay Kumar to Police Stations of Najafgarh, Dwarka, Uttam Nagar and Bindapur. At Bindapur police station, there were about 50-60 persons gathered. The respondents No.2 & 4 were surrounded by the public. They had to apologize before the public and release said Ajay Kumar @ Pawan. This all has happened in presence of the incharge of Police Station - Bindapur and the entire episode was recorded by a press reporter. During this period, petitioner was kept confined in said Indica Car by respondents No.3 & 5. The respondent No.2 telephonically instructed them to remove the vehicle and park it some other place. Accordingly, the vehicle was removed and after sometime they brought the petitioner to police station Dhaula Kuan, where they threatened him that either he should give them Rs.50,000/- or they will implicate him in a false brown sugar case. After negotiations, the amount was settled at Rs.30,000/-, out of which the petitioner arranged Rs.20,000/- through his family members and gave them to the respondent No.3 and said that the balance amount will be paid after his release. The respondent No. 3 threatened the petitioner that in case the balance amount is not paid or any action is taken by them against the Respondents then they will implicate him in brown sugar case and he will

have to remain inside the jail atleast for 10 years. On 11.02.2009, the petitioner was produced before the Court of concerned MM, falsely implicating him in FIR No.405/08, under Section 379 IPC, P.S. Rajouri Garden, Delhi and sent to judicial custody. On 19.02.2009, the petitioner was released on bail by the concerned Metropolitan Magistrate.

4. The petitioner visited the senior officers and sought action against respondents No.2 to 6, but no action was taken; hence, he made representations dated 27.02.2009 in writing to the concerned DCP and Commissioner of Police. When no action was taken, the petitioner again made a representation dated 20.03.2009 to the Commissioner of Police, National Human Rights Commission and other senior officers.

5. Having failed to get any response from any authority, the petitioner filed a Complaint Case No.67/2009 on 13.04.2009 before the Court of concerned Metropolitan Magistrate before Dwarka Courts, New Delhi. Alongwith the complaint case, the petitioner also moved an application under Section 156(3) Cr.P.C. seeking a direction to the S.H.O. P.S. Dabri to register a case against the respondents No.2 to 6. Accordingly, learned Metropolitan Magistrate sought a report from the police. The ACP filed the report subsequently.

6. Further case of the petitioner is that respondent no. 4 met the petitioner and threatened him that he is making complaints against the respondents, now he will be implicated in a serious case so that he remain inside the jail for 10 years. The petitioner immediately made a call to ICQ number. A number of persons gathered there and respondent No.4 was apprehended at the spot. The police personnel from Police Station - Dabri came and respondent No.4 was taken to the police station, but later-on he was let-off without any action. The petitioner made a representation dated 29.04.2009 to the concerned S.H.O. with copy to the higher police officers.

7. Learned Metropolitan Magistrate, vide order dated 07.10.2010, allowed the application under Section 156(3) Cr.P.C. filed by the petitioner and directed the S.H.O., Police Station - Dabri to register a case against the respondents No.2 to 6 named in the complaint case and investigate the same.

8. Being aggrieved, the respondent No.5 challenged the aforesaid order dated 07.10.2010 passed by the learned Metropolitan Magistrate directing registration of FIR before the learned Additional Sessions Judge by way of Criminal Revision No. 147/2010. However, the said Court vide ex-parte order dated 11.10.2010, stayed the operation of the order dated 07.10.2010 passed by learned Metropolitan Magistrate and thereafter, vide order dated

08.12.2010, allowed the criminal revision preferred by the respondent No.5 and set aside the order dated 07.10.2010 passed by the Ld. MM and directed the learned Metropolitan Magistrate to proceed under Chapter XV of Code of Criminal Procedure by taking cognizance of complaint and recording evidence of complainant.

9. Learned APP has opposed the present petition and submits that the petitioner did not approach the concerned Police Station if anything had happened with the petitioner. However, he directly approached the DCP concerned and since nothing was there in the case, no action was taken by the concerned Police Station. Moreover, the learned Sessions Judge vide order dated 08.12.2010, while setting aside the order dated 07.10.2010 passed by the learned Metropolitan Magistrate, directed the learned Metropolitan Magistrate to proceed under Chapter XV of Code of Criminal Procedure by recording evidence of complainant.

10. He further submits that the petitioner is accused in case FIR No. 405/2008 registered at Police Station – Rajouri Garden instituted for the offence punishable under Section 379 IPC. If the present petition is allowed, then, however, the accused will be encouraged to level allegations against the police officials. In that situation, it will be difficult for police officials to

book any culprit in a criminal case.

11. Fact remains that the petitioner has not sat idle at home, though he has not approached the Police Station in writing, however, as stated in the present petition, he approached the Police Station since no action was taken, therefore, he made representation to the concerned Deputy Commission of Police. Thereafter, since no action was taken, that he filed a petition under Section 200 Cr.P.C. and application under Section 156(3) Cr.P.C. Said application was considered by the learned Metropolitan Magistrate and vide order dated 07.10.2010 directed the Police Station – Dabri to register case against respondent Nos. 2 to 6.

12. Learned Additional Sessions Judge has failed to appreciate that there are serious allegations against the accused persons who are police officials. The investigation for the purpose for collecting evidence is must. Learned Additional Sessions Judge also failed to appreciate that there have been severe physical torture, extortion and demand and acceptance of bribe by the respondent nos.2 to 6. Moreover, learned Metropolitan Magistrate has only directed to register FIR and investigate the matter. It is subject matter of the investigation whether some case is made out against respondent nos.2 to 6 or not.

13. Since the case is of the year 2009 and we have entered in 2020, lot of water has flown. If this Court directs the petitioner to lead evidence under Section 200 Cr.P.C., it will be injustice on the part of the petitioner.

14. On the other hand, if this Court directs the concerned Police Station to register FIR, in that eventuality the respondent Nos. 2 to 6, who are Police Officers, they may be arrested, which will affect their service carrier. Therefore, justice would be met if, I hereby direct the SHO, Dabri to comply directions dated 07.10.2010 passed by learned Metropolitan Magistrate, and thereafter, to investigate the case and file report before the concerned Court as per the law. Accordingly, above mentioned SHO is directed to register the FIR and case be transferred to Crime Branch, Delhi to investigate the case and file a report accordingly.

15. It is made clear that no coercive steps shall be taken against the respondent Nos. 2 to 6.

16. In view of the above directions, the petition is disposed of.

17. It is hereby made clear that the present matter shall be investigated by an officer not below the rank of an Assistant Commissioner of Police.

18. The present petition stands disposed of accordingly. Pending application also stands disposed of.

Order *dasti* under signatures of the Court Master.

(SURESH KUMAR KAIT)
JUDGE

JANUARY 16, 2020

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