

\$~

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

%

Reserved on: 03.11.2022
Pronounced on: 04.11.2022

+ CRL.M.C. No. 801/2020

RAMNISH GEER & ANR. Petitioners

Through: Mr. Mohit Mathur, Senior
Advocate with Mr. Nawab
Singh Jaglan, Advocates

versus

CBI & ANR. Respondents

Through: Mr. Mridul Jain, SPP for CBI
alongwith Ms. Vedika Rattan
and Ms. Neha Goel, Advocates
Mr. Rakesh K. Khanna, Senior
Advocate with Mr. Ashutosh
Dubey, Mr. Dhiraj, Mr.
Abhishek Chauhan and Mr.
Amit Kumar, Advocates for
Respondent no. 2

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C.') has been filed by the petitioners seeking quashing of Complaint Case no. 17929/2016 (earlier

numbered as no. 329/2001) titled '*Ashok Kumar Aggarwal v. V.K. Pandey & Anr.*', Police Station Paschim Vihar as well as the orders dated 16.09.2019 and 17.09.2019 passed by learned Metropolitan Magistrate, West District, Tis Hazari Courts, Delhi.

FACTUAL MATRIX

2. The brief facts of the case are that on 19.10.2000 at about 5.00 AM, the petitioners alongwith other officers of the CBI, supported by subordinate staff, had reached the premises of respondent no. 2 at B-1/134, Paschim Vihar, New Delhi, in relation to investigation of a CBI case number RC S19/1999/E0006. The private guard at the gate was asked to open the door and the CBI officers entered the premises. After entering the compound, attempts were made by the petitioners to get the house opened by ringing the doorbell and making phone calls but no one opened the door of the house. In the meantime, through one of the windows on the ground floor, it was observed that respondent no. 2 and his brother Vijay Kumar Aggarwal were moving on the ground floor of the house with certain files and papers in their hands. Despite hearing the doorbell, they did not open the front door and went into the kitchen, lit the gas stove and destroyed papers. At about 5.30 AM, petitioners forcibly entered the premises of respondent no. 2 in order to discharge their official duties. Respondent no. 2, who was not co-operating with the investigation in case FIR bearing No. RC S19 1999 E0006 and had not responded to notices issued by the petitioners under Section 160 Cr.P.C., was arrested on 19.10.2000. Respondent no. 2 was in CBI custody from 19.10.2000 to 23.10.2000 and was in judicial

custody from 23.10.2000 to 27.11.2000. Respondent no. 2 was released on bail on 27.11.2000.

3. That during pre-summoning evidence recorded before the learned Trial Court, respondent no. 2 had examined three witnesses including himself. On 11.01.2005, learned Trial Court had taken cognizance against the petitioners under Sections 323/427/448 of Indian Penal Code, 1860 ("IPC") and notice under Section 251 Cr.P.C. was framed on 31.08.2017.

4. That the respondent no. 2 had filed a Civil Contempt Petition No. 336 of 2001 dated 30.07.2001 before this Court wherein it was alleged that the guidelines laid down by this Court in case *D.K. Basu v. State of West Bengal (1997) 1 SCC 416* had not been complied with at the time of arrest of respondent no. 2 and proceedings should be initiated against the petitioners by this Court. However, vide order dated 28.08.2003, this Court had dismissed the Civil Contempt Petition No. 336 of 2001 by a detailed judgment. Thereafter, respondent no. 2 had preferred SLP (Civil) No. 19591 of 2003 before the Hon'ble Supreme Court which was dismissed vide order dated 16.04.2004 and the judgment and order dated 28.08.2003 passed by this Court was upheld. Moreover, respondent no. 2 had filed the present complaint case No. 329 of 2001 dated 17.10.2001 under Sections 166/427/323/120B IPC before the learned Chief Metropolitan Magistrate, West District, Tis Hazari Court, Delhi during the pendency of the Civil Contempt Petition No. 336 of 2001.

SUBMISSIONS BY LEARNED COUNSELS

5. Learned senior counsel for the petitioners submit that the averments of the complaint, pre-summoning evidence, post notice evidence, even if taken at their face value do not constitute commission of any offence against the petitioners. It is stated that the cognizance and issuance of process as well as framing of notice has been done in a mechanical and casual manner and since there is no sufficient ground for proceeding against the petitioners, the orders passed by the learned Trial Court are bad in law. It is also argued that the learned Metropolitan Magistrate failed to appreciate that respondent no. 2 had manipulated the facts by filing incomplete documents as well as partial PE registration report and Search List. It is also stated that the learned Metropolitan Magistrate was misled by respondent no. 2 that it was petitioner no. 1 who had directed enquiry in PE by petitioner no. 2. It is stated that the fact remains that petitioner no.1 and 2 were in different branches and petitioner no. 1 was not controlling nor was supervisory officer of petitioner no. 2. It is stated that he had not submitted even copy of FIR in RC S19 1999 E0006, which could have shown that the allegations in this FIR were more elaborate and different then the averments in PE. It is stated that it is clear from copy of FIR in this RC that investigation of this case by the petitioner no.2 was never ordered by petitioner no. 1 as alleged by respondent no. 2 in his complaint. It is stated that respondent no.2 had suppressed the information recorded in the Search Memo, wherein presence of respondent no. 2 had been shown during the search, whereas respondent no. 2 had falsely alleged that he alongwith his brother was frisked away immediately after arrest and before start of search.

6. It is further argued by learned senior counsel that respondent no. 2 in his complaint had alleged malafide intention on part of the petitioners and, therefore, prosecution sanction under Section 197 Cr.P.C. was not sought. It is further argued that while framing notice, the learned Metropolitan Magistrate was required to ascertain on the basis of pre-summoning evidence as to whether prosecution sanction under Section 197 Cr.P.C. or Section 140 of the Delhi Police Act, 1978 was required or not. The petitioners feel aggrieved that the notice was framed by the learned Metropolitan Magistrate in mechanical manner without appreciating that respondent no. 2, who is the complainant therein had not produced any evidence that the petitioners were not acting in their official capacity.

7. Learned senior counsel for the petitioners has drawn attention of this Court to the order dated 23.10.2017 passed by the Hon'ble Supreme Court in SLP Criminal No. 5693/2017 titled as 'CBI v. Ashok Kumar Aggarwal & Ors.' where the SLP filed by the petitioners challenging the order dated 29.03.2016 passed by this Court in CRL.M.C.No.2223/2011 was withdrawn and the order dated 29.03.2016 remained undisturbed and unchallenged. It is also argued that the Hon'ble Supreme Court in the said order had granted liberty to raise all such points available in law at any stage while disposing of the aforesaid SLP. It is argued that the observations of the Hon'ble High Court and the learned Trial Court are meant only for the purpose of justifying the summoning order and are restricted for the said purpose. It is stated that the aforesaid Hon'ble Supreme Court's order dated 27.10.2017 has been passed arising out of the impugned order and

judgment dated 29.03.2016 in Criminal M.C. No.2223/2011 passed by this Court wherein the challenge was on absence of sanction. It is argued that the Hon'ble High Court had passed the order before framing of notice under Section 251 of Cr.P.C.

8. Learned senior counsel for the petitioners has further drawn attention of this Court to the fact that the respondent no. 2 had filed a Civil Contempt Petition on similar allegations as contained in the complaint in question, and the Civil Contempt Petition no. 336/2001 was dismissed by this Court *vide* order dated 28.08.2003 with the following observations:

“21. The fact that the Petitioner has not even averred in the Contempt Petition that such a request was made makes it unnecessary to consider other averments of the Petitioner on this ground. The argument that an infraction of the Ninth element adumbrated in D.K. Basu's case (supra) which has taken place is nakedly specious. The syntax of the phrase Illaqa Magistrate, in the circumstances in which it was used, encompasses a Special Judge or Duty Magistrate, or any other person, exercising judicial functions. The Intendment Is that no person should be detained or arrested without his whereabouts being known. The argument Is only to be stated for It to be rejected forthwith.

22. Thus In the facts and circumstances enumerated above and, on the averments, made In the Contempt Petition and the plea advanced by the parties, the violation of directions of D.K. Basu's case (supra) have not been substantiated. Accordingly, the Contempt Petition is dismissed.”

9. It is also argued that the order of this court passed in Civil Contempt Petitionno. 336/2001 was challenged unsuccessfully by

respondent no. 2 and the same was dismissed by the Hon'ble Supreme Court *vide* order dated 16.04.2004.

10. It is stated by learned senior counsel for petitioners that while passing the impugned order dated 17.09.2019 relating to secondary evidence, the learned trial Court ignored that the original documents were not produced at the time of filing of complaint, recording of pre-summoning evidence or recording of post notice evidence, in light of which the learned Trial Court could not have allowed the respondents to put an exhibit of them. It is also stated that no application was filed by respondent no.2 before the learned Trial Court for leading secondary evidence in view of Section 65B of Indian Evidence Act, 1872. It is argued that petitioners have taken objection with respect to the original documents having not been filed and being exhibited by the learned Trial Court on 16.09.2019 at the time of recording post notice evidence. The learned Trial Court failed to decide the admissibility of the documents before making endorsement on it. It is further argued that the complainant/respondent no. 2 could not even disclose to the learned Trial Court as to in whose possession the documents on which exhibits were allowed to be put were. The learned Trial Court therefore, committed fundamental error which goes to the root of jurisdiction of the case.

11. It is, therefore, prayed that the complaint case bearing No. 17929/2016 pending before the learned Magistrate alongwith with all the proceedings emanating therefrom be quashed.

12. Controverting the contentions raised on behalf of the petitioners, learned senior counsel for respondent no. 2 argued that the present

petition is an abuse of process of law and has been filed by the petitioners to delay the trial. It is stated that the sole aim to delay the trial is that their appeals against the summoning order dated 11.01.2005 were dismissed by this Court vide judgment dated 29.03.2016 in CRL.M.C. 2223/2011 and by the Hon'ble Supreme Court vide order dated 23.10.2017 in SLP (Criminal) 5693/2017. It is stated that similar prayers were raised by the petitioners in Criminal M.C. No.2223/2011 and this Court did not find merit in the said prayer and had dismissed their petition vide judgment dated 29.03.2016. The appeal filed against the said judgment of this Court was also dismissed by the Hon'ble Supreme Court vide order dated 23.10.2017 which proves that the petitioners are trying to delay the trial and are raising similar pleas which have already been dismissed by this Court and the Hon'ble Supreme Court.

13. Learned senior counsel for respondent no. 2 also argued that petitioners have willfully and deliberately suppressed filing and dismissal of criminal M.C. No.2223/2011 with similar title and similar prayer for quashing of the complaint case bearing No.329/2001 (now numbered as 17929 of 2016) titled as 'Ashok Aggarwal Vs. V.K. Pandey & Ors.', PS Paschim Vihar, in absence of sanction contemplated under Section 140 of Delhi Police Act, 1978 and Section 197 of Cr.P.C., 1973. It is stated by learned senior counsel that petitioners are habitual of committing perjury and making misleading statements before the Court to delay the trial as is evident from the fact that after dismissal of their petition i.e. CRL M.C. No.2223/2011 by this Court on 29.03.2016, they filed another petition i.e. CRL M.C. No.

3657/2017 on 05.09.2017 challenging the order dated 07.07.2007 passed by learned ASJ, Rohini in Criminal Revision No. 27/2007 which had been filed by the respondent no. 2 praying for adding of more sections of the Indian Penal Code in summoning order dated 11.01.2005. It is argued that the said fact of Criminal Revision No. 27/2007 and the order dated 07.07.2007 passed in it by the learned ASJ has already been raised by the petitioners in their earlier CRL. M.C. No.2223/2011 and duly considered by this Court in its judgment dated 29.03.2016. Learned senior counsel for respondent no. 2 further states that petitioners have also raised objection regarding grant of sanction in this case, however, the same was already examined by this Court on 29.03.2016 in CRL. M.C. 2223/2011.

14. It is averred by learned senior counsel for respondent no. 2 that in the second petition i.e., CRL. M.C. No.3567 of 2017, the petitioners played fraud upon this Court and obtained ex-parte stay order vide order dated 08.09.2017 on framing of notice under Section 251 Cr.P.C. by learned Metropolitan Magistrate. However, after perusing the entire record, produced by respondent no.2, this Court vide order dated 12.01.2018 dismissed the said petition of the petitioners being abuse of process of law and imposed a cost of Rs.25,000/- on the petitioners.

15. It is argued by learned senior counsel for respondent no. 2 that the State has not been made a party intentionally by the petitioners and instead of State, CBI has been made a party deliberately and thereafter, an ex-parte order of stay of proceedings in the learned trial Court has been obtained on 14.02.2020. This shows that the petitioners and CBI are in hand in glove.

16. Learned senior counsel for respondent no. 2 further stated that petitioners have also challenged order dated 17.09.2019 in which exhibit marks were allowed to be placed on the documents/ representations which were produced by respondent no. 2 before the learned Trial Court. It is stated that the representations had been relied upon by the respondent no. 2 in various other litigation between him and CBI and the petitioners had never questioned the authenticity of these representations. It is also stated that the original documents or certified copies of the representations were also obtained by respondent no. 2 and have been filed before the learned Trial court after order of 17.09.2019 was passed. It is also stated that the issue raised as to whether a party can rely upon the secondary evidence where the original document cannot be produced is also not maintainable and is liable to be rejected.

17. With respect to reference on behalf of petitioners to the order dated 28.08.2003 passed by this Court in Civil Contempt Petition no. 336/2001, it is stated on behalf of respondent no. 2 that it was specifically mentioned in para no. 16 of the said order that the complex and contested facts in the present case can only be considered during the trial.

ANALYSIS AND FINDINGS

18. I have heard the arguments and have gone through the case file. Before deciding the present case, it will be useful to refer to the impugned order dated 17.09.2019, wherein the learned Trial Court had observed that because exhibit marks have been put on some of the

documents filed by the respondent no. 2 which are photocopies, same would not mean that the said documents have been proved by respondent no. 2. The relevant portion of the said order is as under:

“Ld. Counsel for the accused persons has objected to putting exhibit marks on the documents produced by the complainant during his testimony. He submits that the said document ought to be marked and not exhibited as the same are not original documents. He has also objected to the exhibit marks placed on the documents which were produced by the complainant yesterday. He has requested for the de-exhibiting such original documents.

Admittedly, some of the documents produced by the witness/complainant are photocopies of the original, however, the above stated objections of the counsel for accused stands declined in view of the law laid down by Hon'ble Delhi High Court in “Sudhir Engineering Company vs. Nitco Roadways Ltd., 1995, RLR 286” wherein it has been laid that mere putting the exhibit mark on a document will not mean that the said document has been proved by the witness. Endorsement of an exhibit number on a document has no relation with its proof. Neither the marking of an exhibit mark can be postponed till the document has been held proved nor the document can be held to have been proved merely because it has been marked as an exhibit.”

19. It has been observed by the Hon'ble Supreme Court in **Sait Tarajee Khimchand v. Yelamarti Satyam, (1972) 4 SCC 562** as well as in **Narbada Devi Gupta v. Birendra Kumar Jaiswal and Anr. (2003) 8 SCC 745**, that mere marking of a document as exhibit by the court cannot be held to be due proof of its contents.

20. The Hon'ble Supreme Court in **Bipin Shantilal Panchal v. State of Gujarat (2001) 3 SCC 1**, has made the following observations:

“13. It is an archaic practice that during the evidence collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fall out of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or revisional court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or re-moulded to give way for better substitutes which would help acceleration of trial proceedings.

14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment....”

21. In ***Kaliya v. State of Madhya Pradesh (2013)10 SCC 758***, it was held by the Hon’ble Apex Court as under:

“13. ...Further, mere admission of a document in evidence does not amount to its proof. Nor, mere marking of exhibit on a document does not dispense with its proof, which is otherwise required to be done in accordance with law...”

22. In *Sudhir Engineering Company v. Nitco Roadways Ltd. 1995 (34) DRJ 86*, this Court observed that:

“15. The marking of a document as an exhibit, be it in any manner whatsoever either by use of alphabets or by use of numbers, is only for the purpose of identification. While reading the record the parties and the Court should be able to know which was the document before the witness when it was deposing. Absence of putting an endorsement for the purpose of identification no sooner a document is placed before a witness would cause serious confusion as one would be left simply guessing or wondering while was the document to which the witness was referring to which deposing. Endorsement of an exhibit number on a document has no relation with its proof. Neither the marking of an exhibit number can be postponed till the document has been held proved; nor the document can be held to have been proved merely because it has been marked as an exhibit.”

23. Thus, it is a settled law that admission or exhibiting of documents in evidence and proving the same before the court are two different processes. Contents of the document cannot be proved by mere filing the document in a court. Under the law of evidence, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. Mere marking a document as an ‘exhibit’ will not absolve the duty to prove the documents in accordance with the provisions of law.

24. Therefore, as far as the impugned order dated 17.09.2019 is concerned, it is clear from the legal propositions discussed above that merely exhibiting the document does not amount to proof of document, but is only for the purpose of identification. Thus, the impugned order dated 17.09.2019 does not suffer from any infirmity or illegality.

25. It is also the case of respondent no. 2 that certified copies of the documents in dispute i.e., representations which were written by respondent no. 2 to the Revenue Secretary had been obtained from the officer of Revenue Secretary/CBDT through RTI, and the same were filed before the learned Trial court after the order dated 17.09.2019 was passed. Thus, since the said documents have been now filed by the respondent no. 2, the trial should now proceed in accordance with law.

26. Coming to the issue of quashing of complaint case no. 17929/2016 (earlier numbered as no. 329/2001), it is the principal argument of the petitioners that in absence of sanction as contemplated under Section 140 of Delhi Police Act 1978 and under Section 197 of the Code of Criminal Procedure, 1973, the entire trial is void-ab-initio, non-est and nullity in the eyes of law. However, in this regard, it will be pertinent to mention that the petitioners herein had filed a petition i.e., CRL. M.C. No.2223/2011 seeking quashing of summoning order in the complaint case in question on similar grounds, which was dismissed by this Court *vide* order dated 29.03.2016 being devoid of merits. On the question of absence of sanction in the present case, the Co-ordinate bench of this Court had observed as under:

38. It cannot be disputed that as per Section 46(2) Cr.P.C, if any person, who is to be arrested, forcibly resists the endeavour to arrest him or attempts to evade the arrest, the arresting officer may use all means necessary to effect the arrest. But, it is also settled law that the arrest and force used therein should not be intentional and mala fide. If the said part is missing, then certainly, the petitioners are entitled for the benefit of the Sections 197 of the Cr.P.C. and Section 140 of the Delhi Police Act. It is also settled position of law that police may use excess force during arrest and if during investigation and arrest, if

something happened, then for taking action against said officers, the sanction as mentioned above, is required. In such situation, the Magistrate has no power to take cognizance without sanction from the competent authority on record.

*40. The purpose of sanction is that no one rope officers in a false case, if they have done anything while performing their duty. **But, that protection is up to the extent only if there was no intentional or malafide in arrest or any action taken by them.***

*56. From the above discussion and the orders passed by the Courts, as noted above, against the petitioners it is established that the petitioners with malafide intentions opened preliminary inquiry and not recorded correct facts which culminated into RC No. S-19/1999-E0006 against respondent No.2. The said respondent appeared about 20 times before CBI and joined investigation. If respondent No.2 could not appear on 18.10.2000 due to high fever, that was not the ground to arrest him on 19.10.2000. **I have no hesitation to say that the arrest in question was to frustrate the order dated 28.09.2000 passed by the Tribunal whereby the Tribunal directed the Controlling Authority of respondent No.2 to review the suspension. The petitioners instead of giving comments on the case to said authority malafidely conducted search and arrested respondent No.2 on 19.10.2000 at 05.30AM early morning from his residence. Therefore, abovementioned acts of the petitioner were malafide.***

*57. It is important to note that the case FIR No.RC-S-19/1999-E0006 wherein respondent No.2 was arrested has been quashed while passing the adverse remarks against petitioners as noted above. **The medical report dated 19.10.2000 established injuries upon respondent No.2. If in such a situation, the petitioners had been summoned by the learned Trial Court vide impugned order dated 11.01.2005 in the absence of sanction under Section 197 Cr.P.C, learned Trial Court committed no wrong. The petitioners are not entitled to protection under Section 140 of the Delhi Police Act in such***

circumstances. Therefore, I affirm the impugned order dated 11.01.2005.”

(emphasis supplied)

27. A perusal of aforesaid order passed by this Court reveals that the issue regarding absence of sanction, being raised in the present petition for the purposes of quashing of complaint case, had already been agitated before this Court and the same was appropriately dealt with in CRL. M.C. No.2223/2011.

28. However, the argument of the petitioners herein is that the aforesaid observations of the Hon’ble High Court were meant for the purpose of justifying the summoning order and are restricted for the said purpose only as held by the Hon’ble Apex Court in the order dated 23.10.2017 passed in SLP (CRL.) 5693/2017 wherein the order dated 29.03.2016 was challenged. The relevant portion of the order dated 23.10.2017 is as under:

“...The Special Leave Petition is, accordingly, dismissed as withdrawn with liberty to raise all such points as may be available in law at any stage, as may be advised. The observations of the High Court and the Trial Court are obviously meant only for the purposes of justifying the summoning order and are restricted to the said purpose.”

In view of the aforesaid observations of the Hon’ble Apex Court, it was argued before this Court that the notice against the petitioners was framed by learned Trial Court *vide* order dated 31.08.2017 and thus, the petitioners are not barred to raise all such contentions now before this Court, since the facts and circumstances as well as the stage of case has now changed.

29. Now the contentions raised by the petitioners are that at the time of framing of notice, the learned Trial Court was required to ascertain on the basis of pre-summoning evidence as to whether prosecution sanction under section 197 Cr.P.C. or Section 140 of the Delhi Police Act, 1978 was required or not. The petitioners feel aggrieved that the notice was framed by the learned Trial Court in a mechanical manner without appreciating that respondent no. 2 had not produced any evidence that the petitioners were not acting in their official power. It will be appropriate to first refer to the relevant portions of the order dated 31.08.2017 by virtue of which notice has been framed against the petitioners, which are as under:

“6. On the point of statutory sanction required u/s 197 Cr.P.C. it has been observed by the Hon'ble Supreme Court of India in Pukhraj vs. State of Rajasthan, 1973 (2) SCC 701 that even if in discharge of official duties some excesses had been committed by concerned officer, the case for sanction is made out. Section 197 is not confined to cases of anything purported to be done in good faith by person who acts in execution of his duties, although he may have dishonest intention. The test is that offence is capable of being committed by public servant and not by anybody else but that is committed by in an act done or purported to be in execution of his duties, what is necessary is that offence must be in respect of an act done or purported to be done in discharge of official duties. Section 197 is not confined to such acts as are done by public servant directly in pursuance of his public office, though in excess of his duties or under a mistaken belief as to existence of such a duty

7. In the case at the hand, the question of sanction from competent authority for prosecuting accused persons namely V. K. Pandey and Ramnath, who were CBI officials at the time of the alleged incident, has already been dealt with in detail by

Hon'ble High Court of Delhi vide its order dated 09.03.2016 wherein Hon'ble High Court of Delhi had observed that:

"...It is important to note that the case FIR No.RC-S-19/1999-E0006 wherein respondent No.2 was arrested has been quashed while passing the adverse remarks against petitioners as noted above. The medical report dated 19.10.2000 established injuries upon respondent No.2. If in such a situation, the petitioners had been summoned by the learned Trial Court vide impugned order dated 11.01.2005 in the absence of sanction under Section 197 Cr.P.C, learned Trial Court committed no wrong. The petitioners are not entitled to protection under Section 140 of the Delhi Police Act in such circumstances. Therefore, I affirm the impugned order dated 11.01.2005..."

12. In the case at hand CW-1 has specifically deposed in pre-summoning evidence that at 5.00 am on 19.10.2000, accused no. 1 and 2 has forcibly and voluntarily dragged him and had manhandled him after breaking open the sliding door of drawing room on the ground floor after having entered in his house B-1/134, Paschim Vihar without any lawful justification. CW-2 and CW-3 have also supported the complainant's case in their pre-summoning evidence.

13. Upon consideration of pre-summoning complainant evidence, documents on record and judicial pronouncements relied upon by this Court hereinabove, this Court is of the opinion that offences u/s 323/427/448 IPC read with Section 34 IPC is attracted against the accused persons namely V. K. Pandey and Ramnish."

30. A perusal of the aforesaid order reveals that the learned Trial court has passed the order on framing on notice after having dealt with all the contentions raised by the petitioners therein, and after considering the pre-summoning evidence, material on record and

judicial pronouncements. Thus, though the petitioners were given the liberty *vide* order dated 23.10.2017 by the Hon'ble Supreme Court to raise their contentions at any other stage, this Court after hearing the petitioners, is unable to accept the arguments and contentions raised on behalf of the petitioners in the present petition. There is no bar that if even after summoning the accused persons, the same allegations are still appearing on record and are coupled with *prima facie* evidence, the notice cannot be framed by the trial court. There is no force in the argument of the petitioner that same view has been taken by the learned Trial Court on issue of absence of sanction at the time of summoning as well as at the time of framing of notice.

31. It is settled law that only when there is a direct and reasonable nexus between the nature of duties cast upon public servant and the act constituting an offence that protection under Section 197 Cr.P.C. may be available and not otherwise, as also held in ***Urmila Devi v. Yudhvir Singh (2013) 15 SCC 624***. There is no dispute also on the position that benefit of Section 140 of Delhi Police Act can be extended only when the acts of the accused could be said to be under the 'colour of duty or authority', as held in ***Satyavir Singh Rathi v. State through CBI (2011) 6 SCC 1***. The argument regarding absence of sanction under Section 197 of Cr.P.C. and protection or benefit under Section 140 of Delhi Police Act cannot come to the rescue of the petitioners since there is a *prima facie* case of abuse of power and excess force being used by the petitioners against respondent no. 2 with malafide intentions, as also observed in order dated 29.03.2016. The medical report of respondent no. 2 dated 19.10.2000 also points out in the same

direction as he was found to be suffering from fever and having blunt injuries on body including abrasion over distal end of right forearm. No reasonable connection could be inferred between the official powers and duty cast upon the petitioners, and their actual act or conduct, especially in light of the peculiar facts of the present case. In view of these facts and circumstances, the learned Trial Court had rightly summoned the petitioners *de hors* the sanction being obtained from the relevant authority.

32. Learned senior counsel for respondent no. 2 had also argued that the petitioners were habitual of indulging into dirty tricks in order to delay the trial and had repeatedly committed acts of perjury and made misleading statements before the Courts. It was also argued that present petition, like several earlier rounds of litigation, was an attempt to delay the trial. However, the question as to whether the conduct of petitioners is malafide or not and whether petitioners are habitual of committing perjury and making misleading statements before the Court to delay the trial, is not to be decided by this Court in the present petition.

33. Furthermore, it is also the case of petitioners that the averments made in the complaint are totally false and highly improbable, and the complaint has been filed due to personal vendetta. In the present case, petitioners were summoned under sections 323/427/448 IPC on the complaint of respondent no. 2 *vide* order dated 11.01.2005, whereby it was held that there were sufficient grounds to proceed against the petitioners. The challenge to the summoning order was dismissed by this Court *vide* order dated 29.03.2016, with a view that all the facts were considered by the learned Trial Court while summoning the

petitioners. In this regard, it was observed in the order dated 29.03.2016 as under:

“45. ...The petitioners instead of sending any reply or comments to the Ministry of Finance and to ensure that respondent No.2 is not reinstated in the service on 19.10.2000 raided the house of respondent No.2 in the morning and entered the house forcibly. The search was conducted between 05:00 to 08.00 AM morning as per the Panchnama dated 19.10.2000 and the respondent No.2 was arrested at 05.30AM,thereafter, he was produced before the doctor for medical examination at 08.45AM. The medical report prepared by doctor, concerned at DDU Hospital, Delhi clearly shows that at that time, respondent No.2 was suffering from fever and having abrasion over distal end of right forearm. Moreover, there is no signature of respondent No.2 on Panchnama which establishes that search was in absence of respondent No.2. At what time search was concluded, the petitioners left that portion blank.

48. The reason made out by petitioners to break open the house and arrest the respondent No.2 as stated in para No.12 of the counter affidavit filed by the petitioner No.2 in Civil Contempt Petition was that through one of the windows on the ground floor of the house, it was seen that respondent No.2 was moving with his younger brother with certain files and papers in their hands and despite hearing the door bell, they did not open the door and went into the kitchen to lit the stove, thus, they were in the act of destroying the papers. The said excuse taken by the petitioners to justify their illegal and unlawful act of breaking open the house and to arrest the respondent No.2 and his younger brother was nothing, but an afterthought. There is no corroborative material on record to support this contention of the petitioners. Moreover, after arresting the respondent No.2, petitioner carried out the search of the house and thereafter, prepared a search list at page Nos.72-74 and also list of seized documents/articles at page Nos.75-76. The list of seized documents/articles so prepared by the petitioners nowhere shows seizure of any file or any paper or burnt files or

of any unburnt paper or ashes of any burnt documents. Thus, it falsified the claims of the petitioners. Moreover, learned Trial Court which is seized with the matter has considered all these facts while summoning.”

34. Learned senior counsel for respondent no.2, while accepting the contention of petitioners that the civil contempt petition filed by respondent no. 2 on similar allegations was dismissed *vide* order dated 28.08.2003, had also made a reference to para no. 16 of the said order, which reads as under:

*”16. ...It is not beyond the realm of possibility that the said members of the Petitioner's family declined to sign the Memorandum. **Such complex and contested facts would be properly considered in a Trial.**”*

(emphasis supplied)

Attention of this Court was also drawn to para no. 27 and 28 of the order dated 29.03.2016 passed in CRL. M.C. No.2223/2011, to submit that the issue of dismissal of civil contempt petition was already dealt with by this Court, in the following manner:

“27. Mr. Khanna submitted that the relief sought in Civil Contempt Petition was entirely different from the relief sought in the private complaint. The question was raised in the civil contempt petition was that the guidelines of D.K Basu (supra) were not complied with by the petitioners while arresting Respondent No.2 whereas the relief sought in the private complaint is that the respondent No. 2 was tortured, manhandled, physically injured and his property was damaged by the petitioners. In his private complaint, the respondent no. 2 had also categorically stated the fact of filing of Civil Contempt petition mentioned above.

28.Mr. Khanna, learned senior counsel submitted that this Court while dismissing the Civil Contempt Petition specifically observed in para-No.6 of the judgment that such complex and

contested facts would be properly considered in a trial. The arrest of respondent No.2 was not warranted at all under the aforementioned DA case since he was fully cooperating with the investigating agencies right from the day one and he in fact was arrested by the petitioner only with malicious intention in order to ensure that respondent No.2 is not reinstated in the service pursuant to the order dated 28.09.2000 passed by the Central Administrative Tribunal. Moreover, respondent No.2 remained in the custody of CBI and judicial custody in RC No. S19 which is in question from 19.10.2000 to 27.11.2000. Respondent No.2 did not appear only on 18.10.2000. Therefore, there was no occasion before the petitioners to raid the house of respondent No.2 and arrest him. The said move of the petitioner was just to frustrate the order dated 28.09.2000 passed by the Tribunal."

35. This Court has perused the complaint as well as orders and judgments related to the present case placed before this Court. Considering the overall facts and circumstances of the case, this Court is of the opinion that there are specific allegations against the present petitioners by the complainant/respondent no. 2 regarding misuse of their position and manhandling of the complainant, on the basis of which summons were issued and notice has also been framed against the petitioners. The veracity and genuineness of these allegations, as well as the contentions of the petitioners that no offence under Sections 323/427/448 of IPC can be made out against petitioners due to absence of essential ingredients, can be tested only during the trial and not at this stage.

36. Considering that the absence of sanction in present case does not vitiate the proceedings and that *prima facie* case exists against the petitioners for the commission of alleged offences, no case is made out

for quashing the complaint case no. 17929/2016 and subsequent proceedings emanating therefrom.

37. Accordingly, the petition stands dismissed, without any order as to costs.

38. It is however clarified that observations made by this Court shall have no effect on the merits of the case during the trial.

SWARANA KANTA SHARMA, J

NOVEMBER 04, 2022/ns

