



NEUTRAL CITATION NO: 2022/DHC/004113

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **CRL.M.C. 4692/2022 & CRL.M.As. 18992-18993/2022**

Date of Decision: 19.09.2022

IN THE MATTER OF:

KULDEEP SINGH HOODA
S/O KARAN SINGH HOODA
R/O KHASRA NO. 356,
HUDDA NURSERY, NEAR CRPF CAMP,
VASANT KUNJ,
NEW DELHI

..... Petitioner

Through: Mr. Vishal Gosain & Mr. Pravir
Singh, Advocates

Versus

STATE NCT OF DELHI

MS. XYZ

..... Respondents

Through: Mr. Amit Ahlawat, APP for State
with SI Rishi

CORAM:**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV****J U D G M E N T****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) on behalf of the petitioner assailing the order dated 15.09.2020, whereby the revision preferred by



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the petitioner against the order dated 13.09.2019 passed by the trial court has been rejected .

2. The facts of the present case reveal that on account of an incident, which is stated to have occurred on 22.08.2008, the present petitioner alongwith three other accused persons are facing trial for the offence punishable under Sections 354/506/34 of IPC and under Sections 27/54/59 of the Arms Act. The Police after registration of the FIR and on completion of the investigation filed the final Report. The charges against the petitioner are yet to be framed. Before framing of charge, the petitioner has filed an application under Section 173 (8) read with Section 91 of the Cr.P.C. to direct the police to seize the CCTV footage of the incident in question.

3. According to learned counsel appearing on behalf of the petitioner, the petitioner-*Kuldeep Hooda*, is in possession of the CCTV footage of the incident. The said CCTV cameras were installed at his residence. According to him, if the CCTV footage captured in those cameras are viewed, the same would demonstrate that it was the complainant and his family members who were the aggressors in the incident in question. He also submits that it is the complainant party, who had trespassed into the property of the accused party and physically assaulted them. The further averments made in the application are that the entire incident had taken place in the presence of the police officials. Yet those facts are deliberately suppressed by the police in the charge sheet. It is also stated that the CCTV footage were shown to the Investigating Officer but the same were not seized by him. In paragraph No.6 of the application, it has also been stated that the accused, *Kuldeep Hooda* had been in possession



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of the said CCTV footage since the date of incident and there was no tampering with said video footage. In nutshell, the submissions made by the learned counsel for the petitioner in the aforesaid application is to the effect that the CCTV footage would completely absolve the petitioner and would demonstrate that they have been falsely implicated in the instant case.

4. The learned trial court vide order dated 13.09.2019 after hearing the learned counsel for the accused persons and the prosecution declined to accept the prayer and has rejected the same. The revisionist filed the revision petition before the Revisional Court under Section 397 of the Cr.P.C., the same has also been rejected by the impugned order. The petitioner, therefore, approached this Court in the instant petition under Section 482 of the Cr.P.C.

5. Learned counsel appearing on behalf of the petitioner submits that the courts below have gravely erred in rejecting his application under Section 91 of the Cr.P.C., inasmuch as, the basic purpose of the investigation in the trial is to punish the culprit of an offence. If the trial court is satisfied at the stage of framing of charge on the basis of material collected by the Investigating Officer or on the basis of material even if produced by the accused that the crime in question has not at all been committed, there is no reason to proceed against the accused. The same would be a complete abuse of the process of the law and according to him, if the CCTV footage are allowed to be taken into consideration, the same would clearly demonstrate that the present accused have not committed any crime. He, therefore, submits that the Hon'ble Supreme



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Court in the cases of *Tomaso Bruno & Anr. v. State of UP*¹ & *Nitya Dharmananda @ K. Lenin & Anr. v. Goptal Sheelum Reddy*² has clearly held that it is the duty of the prosecution to see that there should be no prosecution against an innocent person and in those two cases, the Hon'ble Supreme Court has laid down the law to the effect that notwithstanding the fact that the burden lies upon the accused to establish the defence plea of *alibi* the prosecution if in possession of the best evidence such as CCTV footage etc. should produce the same before the court concerned for its consideration. While placing reliance on the aforesaid two judgments, learned counsel appearing on behalf of the petitioner reiterates his submissions as made in the application and submits that the application in question has been filed with *bona fide* reasons to assist the prosecution and to establish their innocence and there is no reason as to why the same should not be accepted at this stage itself.

6. Learned APP for the State, on the other hand, has opposed the prayer made in the petition. He submits that under the facts of the present case the application in question has rightly been rejected by the trial court and the order of rejection has rightly been affirmed by the Revisional Court. He submits that the incident in question has occurred in the year 2008. The application in question has been filed in the year 2015 and even after passing of the order by the trial court and the Revisional Court, the petitioner has approached this court after a delay of around two years. According to learned APP for the State, the entire endeavour made by the petitioner is to delay the process of law and in all

¹ (2015) 7 SCC 178

² (2018) 2 SCC 93



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fairness had he been in possession of such CCTV footage, there was no reason, not to produce it alongwith his application under Section 91 of the Cr.P.C. He further submits that factum of the incident being recorded in the CCTV footage and its possession can always be taken into consideration by the court concerned at the time of defence evidence. The petitioner is well within his right to produce such evidence when he is called for during the course of defence evidence. In addition to the aforesaid submissions he further submits that the veracity of the said CCTV footage has become doubtful as the incident is of the year 2008 and no efforts were made by the petitioner either to point out to the Investigating Officer, regarding the possession of the CCTV footage or before the court concerned when the matter is pending for years together. He, therefore, submits that such an application is an abuse of the process of the law and the same should not be accepted at this stage.

7. Learned counsel for the petitioner, in rejoinder arguments submits that the argument made by the learned APP for the State is completely misconceived. Had there been any tampering with the CCTV footage, there was no reason for the petitioner himself to request for the trial court for their seizure. Even otherwise, he submits that the petitioner is ready for any FSL examination etc., so as to examine whether the CCTV footage in question are tampered with or not.

8. I have heard learned counsel appearing on behalf of the petitioner and perused the record.

9. Vide order dated 13.09.2019, the learned MM has decided the application of the petitioner. The learned MM has noted that admittedly the said CCTV is of the house of the accused, i.e. of the petitioner and is



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within his possession. It has, therefore, been observed that the accused can produce the said CCTV footage in his own defence. It was, therefore, held that there was no requirement to seize the CCTV footage at this stage. The learned MM has also noted that there was a cross case between the parties which was also pending relating to FIR No.414/2008 and in the said case the accused persons and the complainant, were within their rights to get the said CCTV footage seized in the said FIR.

10. The Revisional Court by impugned order has clearly recorded that the application in question does not mention about the date of incident and the date of arrest of accused. It has also not been mentioned as to why no efforts were made by the accused to ensure that the CCTV footage of the incident in question are seized by the Police. Neither there was any written representation to the investigating agency nor there was any application before the trial court. The case in question relates to the year 2008. The cross case between the same parties is pending with respect to same incident. The cognizance has already been taken in the year 2011. The application in question has been filed in the year 2015.

11. Taking into consideration the aforesaid aspects, the learned Revisional Court did not find any substance in the submissions made by the petitioner-accused.

12. If the aforesaid dates are further analyzed, the same would indicate that the present FIR is registered against the petitioner-accused on 22.08.2008, thereupon FIR No.412/2008 has been registered. On 22.09.2009, the charge sheet was filed against the petitioner and the other accused persons. On 18.08.2015, the present application has been filed before the learned MM. On 13.09.2019 the learned MM has dismissed



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the application. On 22.11.2019, the petitioner filed revision before the Revisional Court. On 15.09.2020, the Revisional Court dismissed the revision. It is after two years, the petitioner approached this court in this petition.

13. It is thus seen that it is not only delay at the stage of filing of the application itself but even after dismissal of the revision also there is delay of around two years in approaching this court. The powers under Section 482 of the Cr.P.C. are inherent powers of the High Courts. The same can be used to prevent abuse of the process of any court or otherwise to secure the ends of justice. There is inbuilt restraint in inherent power under Section 482 of the Cr.P.C. to exercise the same very sparingly or to promote misuse of the process of law. In the instant case the narration of the facts would indicate that if the CCTV footage is not directed to be seized at this stage, the same would not result in any abuse of the process of law. The petitioner admittedly is in possession of the CCTV footage; therefore, there is no possibility of the evidence being disappeared. The petitioner has not used those CCTV footage for years together and, therefore, this court refrains itself from exercising power under Section 482 of the Cr.P.C. under the facts of the present case.

14. So far as the decision relied upon by learned counsel appearing on behalf of the petitioner in the case of *Tomaso Bruno & Anr. (supra)* is concerned, the principle laid down therein is not disputed. In that case the Hon'ble Supreme Court was considering appeal against the judgment passed by the High Court conferring the conviction and sentence of the appellant under Section 302 read with Section 34 of the IPC. The Hon'ble Supreme Court, therefore, considered that non-production of



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CCTV footage, non-collection of call record and SIM details of Mobile Phones seized from the accused cannot said to be mere instances of faulty investigation but amount to withholding of best evidence. In that case the CCTV footage was to be collected from hotel. In the instant case the facts are different. The CCTV footage is well within possession of the petitioner-accused and who chose not to produce them for years altogether. Even the petitioner did not produce those CCTV footage alongwith his application to show his *bona fide*. Whether the said CCTV footage were to be accepted or not would still have been decided by the trial court but nothing prevented the petitioner to annex CD of the CCTV footage alongwith his application.

15. As far as, the case of ***Nitya Dharmananda @ K. Lenin & Anr.*** (*supra*) is concerned, paragraph No.8 of the said decision states that the court if satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the court is not debarred from summoning or relying upon the same even if such document is not a part of the charge sheet. It has also been held therein that the same does not mean that the defence has a right to invoke Section 91 of the Cr.P.C. *de hors* the satisfaction of the court, at the stage of charge.

16. It is already stated in preceding paragraphs that the facts of the present case are different. It is not an evidence which is to be collected by the Investigating Agency from other sources but in the instant case, the petitioner has not given any explanation as to for what reasons he kept mum for years altogether when the petitioner accused was aware that the CCTV footage in question is a material of sterling quality which would absolve him from the prosecution in the instant case.



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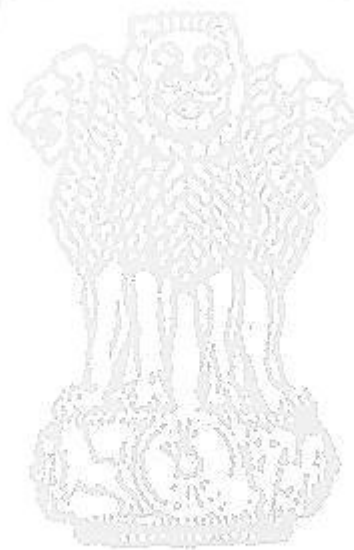
17. For the aforesaid reasons, this court does not find any substance in the submissions made by learned counsel for the petitioner, the petition is accordingly dismissed alongwith pending applications.

18. Needless to state that the petitioner shall be at liberty to place all relevant material including the CCTV footage in question in its defence before the trial court, which shall be considered on its own merits.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 19, 2022

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