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NEUTRAL CITATION NO: 2022/DHC/004115

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

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **CRL.M.C. 5598/2014**

Between:-

RAJENDER SINGH
S/O LATE SH. CHANDGI RAM
R/O DWARKA, SECTOR-3, FLAT NO.306
NEW DELHI-75 **.....PETITIONER**

(Through: Shri Sameer Chandra, Advocate)

AND

SH. DHARMENDER SHARMA
(HEAD CONSTABLE)
(NO.2656/SW)
SPECIAL STAFF, SECTOR-9
DWARKA, NEW DELHI **..... RESPONDENT**

(Through : Shri Sanjeev Bhandari (ASC) (Criminal) with Mr. Kunal Mittal, Advocate along with respondent in-person)

% Pronounced on : 07.10.2022

J U D G M E N T

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C) is directed against order dated 09.10.2014 passed by learned Additional Sessions Judge-04, South-West Dwarka, New Delhi in Crl. Revision No. 16/2014, whereby, the revision

petition preferred by the respondent against the order of issuance
summon dated 31.05.2013 had been allowed.

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2. The facts of the case show that on 28.06.2007, a raid was conducted regarding theft of electricity at the house near Pole No. SNFXP-0095, Anand Vihar, Main Road, Najafgarh, New Delhi and a complaint case bearing No. 686/08 came to be registered against one Rajender and two others. During the pendency of the complaint, accused Rajender was declared as proclaimed offender without having his parentage and residential address. On 06.08.2010, the petitioner was arrested by the respondent. After the petitioner was produced before the concerned court, he was enlarged on bail. After completion of the prosecution evidence, the concerned court vide judgment dated 12.09.2011 acquitted the petitioner from all the offences alleged against him. The two other accused persons, namely, Pappu S/o Pratap Singh and Niranjana Dhiman were also acquitted.

3. On 26.03.2012, the petitioner filed a complaint case against the respondent and two other persons, namely, C.S. Sakkarwal (Divisional Chief) and A.P. Ram (DGM Business) for offences punishable under Section 200 C.r.P.C. read with Sections 500/323/341/506/34 IPC. It is alleged that the respondent defamed the petitioner in front of the people of the locality. An allegation of taking away a sum of Rs. 15,000/- forcibly was also made. After recording the pre-summing evidence, vide order dated 31.05.2013, the learned trial court directed for issuance of summons to all the three accused for facing trial for the offence of defamation (under Section 500 IPC).

4. Being aggrieved by the said order of issuance of summons, the respondent preferred revision before the court of Additional Sessions Judge, which was registered as CrI. Revision No. 16/2014 and vide

impugned order dated 09.10.2014, the Revisional Court set aside

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summoning order dated 31.05.2013 mainly on the ground that sanction under Section 140 of the Delhi Police Act, 1978 (the DP Act) was not obtained. The petitioner being aggrieved by the said order preferred the instant proceedings under Section 482 of the Cr.P.C.

5. The learned counsel appearing on behalf of the the petitioner submits that the Revisional Court has erred in exercising its powers under Section 397 of the Cr.P.C. in setting aside the order of summoning on the ground of lack of sanction under Section 140 of the DP Act. According to him, the offence alleged does not fall within the scope and ambit of discharge of “official duty” and therefore, the Revisional Court ought not to have exercised its power under Section 397 of the Cr.P.C. to quash the summoning order. He further submits that if the allegations in the complaint and the evidence produced by the complainant is perused, the same would clearly demonstrate that the petitioner was not named in the complaint, pursuant to which, he was subjected to arrest and secondly, without there being any verification of the correct address, the petitioner was arrested. It has also been stated that respondent misbehaved, man-handled and also abused the petitioners by using filthy language in the presence of many persons of the locality. While taking this court to paragraph No. 6 of the complaint, it has been stated that the respondent has uttered the word “*chor*” in the presence of many persons and had extended threat for dire consequences. While referring the statement of the petitioner, recorded at pre-summoning stage, it is stated that the petitioner clearly stated before the concerned court that he was abused in a filthy language with the words “*ek to chori karta hai, uper se seena jori karta hai*”. He also stated that he was repeatedly called as “*chor*” in the presence of the persons of the society and taken to police



station forcibly on his motorcycle. He, therefore, stated that by stretch of imagination, the act of the respondent, of abusing the petitioner with filthy language, can be said to be an act in discharge of 'official duty', and, therefore, sanction under Section 140 of the DP Act has no application. He has placed reliance on the decisions of the Hon'ble Supreme Court in the matters of:

1. *B.S. Sambhu v. T.S. Krishnaswamy*¹
2. *Inspector of Police & Anr. v. Battenapatla Venkata Ratnam & Anr.*²
3. *Raj Kishore Roy v. Kamleshwar Pandey & Anr.*³
4. *K. Kalimuthu v. State*⁴
5. *Choudhary Praveen Sultana v. State of West Bengal & Another*⁵

He has also placed reliance on various decisions of this court and the decisions of other High Courts which are as under:

1. Decision of High Court of Delhi in the matters of:

- (i) *Insp. Bal Krishan v. State of Delhi*⁶
- (ii) *Prem Chand Goel v. Krishan Kumar & Ors.*⁷
- (iii) *Kulwant Singh v. Omi Kabaria & Ors.*⁸

2. Decision of Calcutta High Court in the matter of *Murari Mohan Koley v. State and Anr.*⁹

3. Decision of Himachal Pradesh High Court in the matter of *S.M. Katwal v. Shri Vir Bhadra & Another*¹⁰

¹ (1983) 1 SCC 11

² (2016) 1 SCC (CrL.) 164

³ (2002) SCC (CrL.) 1423; (2002) SCC OnLine SC 705

⁴ (2005) SCC OnLine SC 630

⁵ (2009) 3 SCC 398

⁶ (2000) SCC OnLine Del 41

⁷ (2004) SCC OnLine Del 254

⁸ 2007 (4) JCC 2663

⁹ 2005 (1) RCR (CrL.) 939

¹⁰ (2014) SCC OnLine HP 1305

4. Decision of Punjab & Haryana High Court in the matters of

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(i) *Naresh Sachdeva v. Balraj Singh*¹¹

(ii) *K.C. Narwal, SDO (Operation) HHBVN v. Jagdish Chander, Proprietor, Friend Poultry Farms, VPO Barwala, Distt. Panchkula*¹², 2009 (2) RCR (Crl.).

6. The learned counsel appearing on behalf of the respondent submits that the impugned order is strictly in accordance with law and there is no illegality in setting aside the summoning order. The role of the respondent was to act in pursuance to order dated 29.07.2010 passed by learned Additional Sessions Judge, Special Courts (Electricity), South-West, Dwarka, New Delhi. The respondent arrested the petitioner on 06.08.2010 in accordance with law. He was produced before the Special Judge (Electricity) on the same day and he was granted bail immediately on his production. The petitioner did not make any allegation against the respondent nor against his alleged wrongful arrest. The role of the respondent was only to arrest the petitioner and to produce him before the court as he was declared as Proclaimed Offender. According to him, the respondent has acted in discharge of his official duties and was rewarded with a sum of Rs. 5,000/- by the Commissioner of Police for arresting two proclaimed offenders in the electricity theft case. The petitioner has also filed a Civil Suit bearing No. 75/2014 claiming damages and compensation against the respondent, which was dismissed on 01.03.2016 and no appeal was preferred against the order of dismissal of the aforesaid suit. The petitioner never raised any grievance against the illegal arrest and allegations with respect of uttering the words 'chor' etc. and the same is an afterthought. According to him, the complaint could have been filed within one year from the date of offence as is mandated by

¹¹ (1997) SCC OnLine P&H 236

¹² (2009) SCC OnLine P&H 696

provisions of Section 140(1) of the DP Act and it is, therefor
submitted that the petitioner is not entitled for any relief.

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7. The learned counsel appearing on behalf of the respondent has placed reliance on the decision of this court in the matters of ***Omveer Singh v. State & Ors.***¹³ and ***B.K. Parchure v. State & Ors.***¹⁴

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

9. Paragraph-6 of the complaint filed by the petitioner indicates that on 06.08.2010, he was arrested by the respondent in pursuance to order dated 29.07.2010 passed by the Competent Court. The petitioner stated that he had made repeated requests to the respondent to verify the fact that the petitioner is not, Rajender, the one against whom the order of Proclaimed Offender was issued. According to the petitioner, he does not have any relation with the accused, namely, Rajender Singh, who was declared as Proclaimed Offender but no heed was paid by the respondent to the submissions and requests made by the petitioner and it is alleged that the petitioner was misbehaved, man-handled and abused by the respondent in a very filthy language in the presence of many people of the locality and was called as ‘chor’. According to the petitioner, he was enjoying a very good reputation in the society and was respected in his social circle. The threat given to him and his arrest has destroyed his social image without any reason and finally vide judgment dated 12.09.2011, the Competent Court acquitted the petitioner along with other accused persons therein. The petitioner in his evidence, recorded before the learned Magistrate, reiterates the statement made in the complaint and it is stated that he was abused by the respondent by saying that “*ek to chori karta hai,*

¹³ (2014) SCC OnLine Delhi 714

¹⁴ (2022) SCC OnLine Delhi 2492.

uper se seena jori karta hai". The submissions made by

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respondent have been corroborated by other witnesses in the pre-summoning evidence.

10. A perusal of the complaint, filed by BSES Rajdhani Power Ltd. as case No. CC 741/10/2008 shows that the memo of accused made therein reads as under:

Versus

1. Rajinder(user)
2. Pappu S/o Sh. Pratap Singh (user)
3. Niranjan Dhiman (user)
All at: House Near Pole No. SNFXP-0095,
Anand Vihar, Main Road,
Najafgarh, New Delhi.

11. It is thus seen that no address, whatsoever, was mentioned with respect to the petitioner in the said complaint case in which the respondent has effected the arrest of the petitioner. Paragraph-12 of the order of acquittal dated 12.09.2011 also indicates that the reports produced by the complainant therein, i.e. BSES Rajdhani Power Ltd. created a doubt over the allegations as to who was the user of the inspected premises. In the said paragraph, it is also seen that one Rajender was present at the spot. It has been found by the court that the name of the petitioner Rajender was not known to the members of the Inspecting Team and there was no consistency how they had come to know about the name of the petitioner Rajender.

12. The learned Magistrate vide order dated 31.05.2013, after considering the pre-summoning evidence, found that the petitioner was defamed and was called a '*chor*' in the presence of local people. It has been recorded therein that there was adequate material for summoning of the petitioner and other accused persons for facing trial

for offence of defamation. The order dated 31.05.2013 is b
reproduced as under:

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“CC no. 29/1

31.05.2013

Present: Counsel for the complainant.

The present complaint has been filed by the complainant alleging that BSES Rajdhani had raided the premise near Pole no. SNFXP-0095, Anand Vihar, Main Road, Najafgarh, New Delhi. A complaint was filed alleged theft of electricity and the accused person in the said complaint for electricity theft was also name Rajender, however, his parentage was not mentioned. The said accused absconded and a proclamation under Section 82 Cr.P.C. was published against the said accused. It is alleged in the complaint that the accused no. 1 in the present complaint intentionally arrested the complainant without verifying whether the complainant in the present complaint case and the accused Rajender in the said theft were one and the same. The accused no.1 also defamed the complainant by calling him ‘chor’ and humiliated him at the time of arrest. The complainant has further alleged that accused no. 2 and 3 who were employees of the BSES gave false evidence in the court identifying the complainant as accused in that case and thereby defamed him during court proceedings.

The complainant led pre summoning evidence and was examined on oath. He exhibited the certified copy of the judgment of acquittal as well as documents of his arrest and evidence given by accused no.2 and 3 in the court against the complainant.

CW2 and CW3 deposed that the complainant was defamed and called a ‘chor’ in their presence. There is adequate material for summoning the accused no,1,2 and 3 for facing trial for the offence of defamation. Accordingly, accused persons be summoned for 26.07.2013.

Sd/-

(Harjot Singh Bhalla)

MM:Dwarka Courts:31.05.2013”

13. The Revisional Court vide impugned order dated 09.10.2014 in paragraph 16 has noted that if the alleged act is done within colour of duty, then the sanction is required within one year of the alleged offence. The learned Revisional Court while placing reliance on the decision in the case of **Omveer Singh (supra)** has considered that public servant may not be unnecessarily harassed on a complaint of an unscrupulous person and it is obligatory on the part of the executive

authority to protect such public servant. Paragraphs 16 and 17 of
impugned order are being reproduced as under:

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“16. From the bare perusal of Section 140 Delhi Police Act, it becomes clear that if the alleged act is done within color of duty or in excess of it then the sanction to prosecute is required that too within one year of the alleged offence. The judgment of Omveer Singh Vs. State & Ors (Supra) further lays down the emphasis that a public servant may not be unnecessarily harassed on a complaint of an unscrupulous person and it is obligatory on the part of the executive authority to protect him.

17. Thus, in facts of the case, I find that the act of the revisionist to arrest the respondent no.2 was an act within ambit of his official duty and the Ld. Trial Court committed a material irregularity while summoning the revisionist to face the trial for the offence of defamation without sanction under section 140 Delhi Police Act. Hence, the impugned order dated 31.05.2013 is set-aside qua the summoning of the revisionist.”

14. Section 140 of the Delhi Police Act, 1978 reads as under:

“140. Bar to suits and prosecutions. (1) In any case of alleged offence by a police officer or other person, or of a wrong alleged to have been done by such police officer or other person, by any act done under colour of duty or authority or in excess of any such duty or authority, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained and if entertained shall be dismissed if it is instituted, more than three months after the date of the act complained of:

Provided that any such prosecution against a Police Officer or other person may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence.”

15. In the present case, the allegation against the respondent was with respect to the arrest of the petitioner without verification of the fact as to whether the complaint relates to the petitioner or not. The petitioner stated that he is not Rajender, the one, who was accused in the complaint case filed by the BSES Rajdhani Power Ltd. Nevertheless, the allegations have been set up that at the time of arrest, the petitioner was man-handled and abused in the presence of



witnesses, that apart, he was called as a ‘*chor*’. The petitioner is a
serviceman from Delhi Fire Services. An offence under Section 500 of
the Indian Penal Code (in short ‘IPC’) requires three essentials, which
are as follows:

- (i) *Making or publishing any imputation concerning any person;*
- (ii) *Such imputation must have been made by*
 - (a) *words, either spoken or intended to be read; or*
 - (b) *signs; or*
 - (c) *visible representations.*
- (iii) *Such imputation must have been made with the intention of harming or with knowledge of reason to believe that it will harm the reputation of the person concerning whom it is made.*

16. To bring home an offence under Section 500 of the IPC, the prosecution is to prove (a) that an imputation was made consisting of words spoken or written or intended to be read or made by signs or by visible representations; that (b) the imputation concerned the complainant i.e. the person defamed and the person who has come forward qua complainant alleging that the defamation concerned him, are identical persons; (c) that the accused made or published the incrimination imputation (d) that intention behind the making or publishing the imputation was causing harm to the reputation of such person.

17. It is, thus, seen that neither the description in the complaint against the petitioner clarifies the address on which the petitioner was residing nor the particulars would indicate that one Rajender, against whom the complaint was filed, was the petitioner. The petitioner has explained that he repeatedly requested the respondent to verify the fact as to who is the actual Rajender arrayed as respondent and declared as



Proclaimed Offender. The petitioner was abused and man-handled

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the allegations made therein. The act of the petitioner *prima facie*, at this stage, cannot be said to have been done under the colour of duty or authority or in exercise of duty or authority. The police officer cannot claim himself to be immune to an act of arresting a person other than the accused and to abuse and man-handle him. It is, thus, seen that the impugned judgment passed by the learned Additional Sessions Judge on the pretext that the public servant should not be unnecessarily harassed, is not sustainable in the eyes of law.

18. In the matter of ***B.S. Sambhu (supra)***, the allegation was against the Additional Munsiff for defamation under Section 499 of the IPC and the question was considered by the Hon'ble Supreme Court as to whether the words used by him against a lawyer therein '*shame, sale, gunde, badmash*' would attract protection under Section 197 of the Cr.P.C. or not. The Hon'ble Supreme Court while placing reliance on a decision in the matters of ***Matajog Dobey v. H.C. Bhari***¹⁵ and ***Pukhraj v. State of Rajasthan & Anr.***¹⁶ has held that the act complained therein is not in connection with discharge of 'official duty' by the said officer. The decision in the case of ***B.S. Sambhu (supra)*** has been relied upon by this court in the case of ***Bal Krishan (supra)***. In the case of ***Bal Krishan (supra)***, the act in question was of pushing off the complainant therein from the roof of the house resulting in fracture in his leg and such an act was not considered to be within the scope of his 'official duty' as it was found that there was no reasonable nexus between the acts and duties attached to the officer concerned. The Hon'ble Supreme Court in the matter of ***Raj Kishore Roy (supra)*** has held that the allegation made by the complainant, therein of implicating the complainant and his brother in order to

¹⁵ 1955(2) SCR 925: AIR 1956 SC 44

¹⁶ (1973) 2 SCC 701



teach them a lesson for not paying anything to the accused, they v

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falsely implicated while showing illegal recovery of weapon and cartridge from the complainant therein. It has been held that the question as to whether such an act was in discharge of 'official duty' of the public servant, requires to be proved after giving opportunity to the prosecution to establish its case by way of evidence and after extending opportunity to the defense to establish that he had been acting in the official course of his duty. The protection under Section 197 of the Cr.P.C., at the stage of taking of cognizance, was not extended. In the matter of **Prem Chand Goel (supra)**, a Coordinate Bench of this court considered the question whether Section 140 of the D.P. Act bars the court from proceeding with the case would have to be decided against the police officer when the allegation are with respect to taking him into custody and subjecting him to beating and humiliation. It has been held that such barbaric act of total lawlessness would not be covered under Section 140 of the D.P. Act. Almost, a similar view has been taken by this court in the matter of **Kulwant Singh (supra)** and other decisions cited by the learned counsel appearing on behalf of the petitioner.

19. So far as the decision relied upon by the learned counsel appearing on behalf of the respondent in the case of **Omveer Singh & Ors. (supra)** is concerned, in that case, the allegation against the SHO was that he got irritated when the complainant asked for recovery of the weapon from the accused in a case and abused the complainant therein. In paragraph No. 2 of the said decision, it has been noted that the complainant therein was in the habit of filing false case against the police officers and, in paragraph No. 3, it is recorded that the respondent No. 2 therein, who was the complainant, did not contest the matter, and under the facts of that case, this court protected the

police officer in the absence of sanction under Section 197 of

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Cr.P.C. The court did not lay down any principle of law and has decided the case on the facts of that particular case.

20. So far as the decision of **B.K. Parchure (supra)**, relied upon by the learned counsel appearing on behalf of the respondent is concerned, in that case, it was found that the petitioner therein, while discharging his duty as Tehsildar, allegedly made correction in the map to show that the land of the complainant therein, to be described under encroachment. It was found therein that removal of the encroachment drive was being conducted as per directions of the Hon'ble High Court. The alignment was marked with the pencil during the discussion and no forgery or change in the original document was found. Earlier, the Magistrate declined to direct for any registration of the FIR under Section 156(3) of the Cr.P.C., however, later on, the cognizance was taken by the Magistrate and the application for discharge, filed by the respondent therein was dismissed. It was found that the order therein, taking cognizance was non-speaking and while discussing the facts in detail, the applicant was found to be entitled for protection under Section 197 of the Cr.P.C. The decision in the case of **B.K. Parchure (supra)** would not have any application in the present case.

21. In view of the aforesaid discussion, this court is satisfied that the Revisional Court has exceeded in its jurisdiction in setting aside the order of taking cognizance and, therefore, in order to secure the ends of justice, the impugned order, in the instant petition, deserves to be set aside. The same is, therefore, set aside and consequent thereto, the order passed by the learned Magistrate, taking cognizance against the respondent, stands revived. However, liberty is granted to the respondent to raise the question of sanction during the course of trial

and the concerned court is directed to consider such an issue, if raised on the basis of evidence and material available before it on its own merits and uninfluenced by the observations made in this order. Accordingly, the petition stands allowed.



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(PURUSHAINDRA KUMAR KAURAV)
JUDGE

OCTOBER 07, 2022/hk

