



2025:DHC:1136



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 17th January, 2025

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CRL.M.C. 2775/2021, CRL.M.A. 17550/2024,
CRL.M.A. 17551/2024

1. **SMT. UPASNA KAPOOR**
W/o Sh. Anil Babbar
D/o Lt. Sh. Kashmiri Lal Kapoor
R/o 11/240, Geeta Colony,
Delhi-110031.
2. **DEEPAK KAPOOR**
S/o Lt. Sh. Kashmiri Lal Kapoor,
R/o 11/240, Geeta Colony,
Delhi-110031.

.....Petitioners

Through: Mr. Deepak Singh Thakur, Ms.
Komal Verma and Ms. Bhavna
Sharma, Advocate with Petitioner in
person.

Versus

ANIL BABBAR
S/o Sh. Kewal Krishan Babbar
R/o 5-50, Vijay Vihar,
Uttam Nagar, New Delhi-110059.

.....Respondent

Through: Mr. Vinayak Bhandari, Ms. Teesta
Mishra, Ms. Jaisal Singh, Advocates
with Respondent in person.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA
J U D G M E N T (oral)



1. A Petition under Section 482 of the *Code of Criminal Procedure, 1973* ('Cr.P.C' *hereinafter*) has been filed for quashing of the Order dated 06.02.2020 of learned ASJ, wherein in a Complaint under Section 200 Cr.P.C., cognizance against the Petitioners has been taken under Section 211 of the *Indian Penal Code, 1860* ('IPC' *hereinafter*).
2. The *main ground of challenge* by the Revisionist is that Section 195 Cr.P.C. mandates a written Complaint by the concerned Public Officer for taking cognizance of the offence under Section 182/211 IPC. Since there is no Complaint by the concerned Police official that there was any false information given to him, no cognizance under Section 182 to 211 IPC could have been directed *vide* impugned Order dated 06.02.2020, by the learned ASJ.
3. Reliance has been placed on the case of Saloni Arora vs. State of NCT of Delhi, (2017) 3 SCC 286.
4. *Learned counsel on behalf of the Respondent* has vehemently contended that while there may be a requirement of a Complaint by the concerned Public Officer for the offence under Section 182 Cr.P.C, but Section 195(1)(b) clearly provides that the Complaint must be by the concerned Officer of the Court or his subordinate. Therefore, the bar of Section 195 Cr.P.C of a Complaint being made by a concerned Office is not applicable for the offence under Section 211 I.P.C and the impugned Order does not merit any interference.
5. Reliance has been placed on the case of State of Maharashtra vs. S.K. Bannu and Shankar (1980) 4 SCC 286 and Shri M.K. Sethi vs. Shri R.P. Kapur and Another AIR 1967 SC 528 to argue that there is no infirmity in



the impugned Order of learned ASJ.

6. Submissions heard and record perused.

7. The present controversy has its genesis in the matrimonial dispute between Petitioner No.1 Upasana and her husband/Respondent Anil Babbar. There are multiple litigations *inter-se* the parties.

8. The Respondent/Husband had filed a Complaint under Section 200 Cr.P.C. along with Application under Section 156(3) Cr.P.C. wherein he had alleged that his wife Upasana had made a false Complaint at the instance of her brother Petitioner No.2 Sh. Deepak Kapoor from Mobile No.9717170871 to PCR at No.100 at 19:25:07 stating that “*Or Msgs Karke Lady Ko Dhamki De Raha Hai*”. It was explained that this Mobile was being used by Shri Deepak Kapoor which was given to Petitioner No.1 Upasana Kapoor for making the calls to the PCR, despite the fact that she has her own two personal mobile phones which were not used by her. It was claimed that after receiving the call, the Police machinery acted upon the same presuming the Complaint to be genuine. SI Rana, P.S Geeta Colony made a call on 24.08.2017 at about 08:39 P.M to the Respondent Anil Babbar while he was present in his house. He told him that he has received a call from a lady that the Respondent is extending threats to her. The mobile number had been recorded in PCR form. On enquiry by SI Rana, by calling on the given number, the person gave the name of the lady as Upasana and that she was residing at 11/240, Geeta Colony-31.

9. The Respondent was in Patiala House Court on that day till 05:30 P.M and he suffered mentally because of this false, fabricated and concocted Complaint made by Smt. Upasana at the behest of her brother Deepak



Kapoor.

10. The Respondent asserted in his Complaint that he did not make any kind of threatening call to his wife, who in collusion with her brother had made a false Complaint to the Police. He claimed his wife Upasana was trying to implicate him in false cases and she had already filed a false Complaint Case in CAW Cell. He had an apprehension of being implicated in false cases and sought registration of FIR against the Petitioners.

11. The Respondent-Anil Babbar thereafter gave written Complaint against the Petitioners to SHO, P.S. Bindapur which was recorded *vide* DD No.95-A dated 25.08.2017. He also made a Complaint to SHO, P.S Geeta Colony *vide* DD No.25-B dated 26.08.2017. Aggrieved by non-action and non-registration of FIR by the Police officials, he was left with no option but to approach the Court for directions for registration of FIR.

12. The Respondent asserted that by the action of the Police officials in making calls to him to enquire into the false Complaints made by the Petitioners to the Police, he suffered body and mental injury and also damage to his reputation. False charge of threat on telephone had been made against him with an intention to cause harm and injury to his body and mind and reputation in the Police Station and amongst the neighbourhood. He also asserted that his reputation in fact, has been lowered amongst his neighbours.

13. The Respondent examined himself as CW1, his father Kewal Krishan Babbar as CW2; HC Dinesh Kumar as CW3; HC Lalit Kumar as CW4; HC Basooki, P.S. Bindapur as CW5; ASI Rinku Singh P.S. Geeta Colony as CW6 and CW7 Shri Chander Shekhar, Nodal Officer, Bharti Airtel Ltd. as



his witnesses.

14. The learned M.M dismissed the Complaint *vide* Order dated 18.09.2019 by observing that the Complaint was meritless and did not warrant summoning of the Petitioners under 204 Cr.P.C. Learned M.M *vide* Order dated 15.01.2019 found no merit in the Complaint and dismissed the same.

15. Aggrieved by the dismissal of Complaint by the ld. MM, Criminal Revision was filed before the learned ASJ, who partially allowed the same *vide* Order dated 17.08.2019 and remanded it back for fresh consideration.

16. The learned M.M. again did not find any merit and dismissed the Complaint on 18.09.2019.

17. Again, against this Order a fresh Revision No.52/2019 was filed before the learned ASJ, who observed that from the evidence of the Respondent/Complainant, it was established that there were no documents to show that she had made any call on the alleged number of the Petitioner on the relevant date. Consequently, it was observed that the false Complaints were made by the Petitioners herein against the Respondent/Husband whereby the Police machinery was set into motion as ASI/SI Rana who made an inquiry from him. The learned ASJ thus, observed that *prima facie* offences under Section 211/182 IPC were made out and directed the summoning of the Petitioners under the said offences and referred the matter to the learned Trial Court for trial.

18. *Notice under Section 251 Cr.P.C.* was accordingly framed against the Petitioners for offence under Section 182/211 IPC to which they pleaded not guilty.



19. Even though the initial Order of the learned ASJ summoning the Petitioners had not been challenged, but the basic contention of the Petitioners is that when there is patent inherent illegality in not complying with the Section 195 Cr.P.C., the entire trial stands vitiated. Section 182 Cr.P.C. deals with false information with intent to cause public servant to use his power to the injury of another person. Pertinently, in the present case there is only an allegation that the alleged Complaint made to the PCR by the Petitioners about threats being extended by Respondent were false. Though, the call was recorded in the PCR forms, but there is no finding by any Investigating Agency that the calls made were false. The Complainant/Respondent may have tendered his evidence to say that he did not make any calls, but that in itself would be self serving and no sufficient unless there was any independent cogent evidence adduced to establish that the alleged call made was false. Pertinently, this mobile phone number was in the name of one Rajni Sharma and it was claimed that the same was being used by Petitioner No.2 -Deepak Kapoor who had given it to Petitioner No.1 his sister for making that alleged Complaint to the PCR.

20. The *second offence* alleged is under Section 211 IPC for making false charge of offence made with an intent to injure.

21. The procedure for taking cognizance of these offences has been laid down in Section 195 Cr.P.C., wherein it is required that the Complaint must be made by the concerned public servant. It is evident that these offences from 172 to 188 IPC feature in Chapter 10 which deal with “*contempt of the lawful authority of public servants*”. It is evident that these Sections are essentially intended to redress the situation where the Police Agencies or the



Public Servants have made to make inquiry in the Complaint which are ultimately found to be false. Section 195(1)(a) (i) Cr.P.C reads as under :

- “(1) No Court shall take cognizance –
- (a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or
- (ii) ...
- (iii) ...

except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.”

22. It is evident that there is an absolute bar from taking cognizance for any offence under Section 182 IPC unless there is a Complaint made by the concerned Public Servant. Admittedly, no Complaint has been made by the Public Servant. Therefore, no cognizance of the offence under Section 182/211 Cr.P.C could have been taken.

23. *Learned counsel on behalf of the Respondent* has vehemently conceded that there is an absolute bar from taking cognizance under Section 182 IPC, but Section 211 I.P.C does not contain any such bar. The Complaint is required only when the offence is committed in the Court proceeding when a Complaint from the concerned Court is mandated. However, this is a completely fallacious argument for it is evident that only when the offence under Section 211 IPC is committed that the Complaint from the Court is required. However, if the offence under Section 211 IPC



is allege to have been committed outside an independent of the Court, then the absolute bar contained under Section 195(1)(a) would become applicable. Therefore, the absolute bar of Section 195(1)(a) operates in respect of both Section 182 and 211 IPC. The cognizance of these offences could not have been taken in the absence of the Complaint from the concerned Police official. In this regard reference be made to the case of Daulat Ram vs. State of Punjab 1962 SCC OnLine SC 342, wherein it was observed that for taking of cognizance of the offences punishable under Section 172 to 188, the Complaint has to be made in writing by the public servant concerned and no Court can take cognizance except on such Complaint. Section 195 which uses the words “no Court shall take cognizance” has been interpreted as an absolute bar against the Courts taking cognizance of the case except in the manner provided in the Section. This judgment of Daulat Ram (supra) has been followed by the Apex Court in the case of Saloni Arora (supra), wherein it has been observed that in the absence of any Complaint under Section 195 Cr.P.C the offence under 182 IPC is rendered *void ab initio*.

24. In the present case there is admittedly no Complaint made by the Police official which would prima facie make out an offence under Section 182/211 IPC. *Sans* this Complaint, the cognizance for these offences is bad in law. Therefore, the proceedings before the learned M.M emanating from this case are hereby quashed and the Petitioners are hereby discharged.

25. The Petition stands disposed of along with the pending Application(s).

(NEENA BANSAL KRISHNA)



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JUDGE

JANUARY 17, 2025

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Signature Not Verified

Digitally Signed
By: VIKAS AKORA
Signing Date: 22.02.2025
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