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

% *Reserved on: September 13, 2023*
Date of Decision: December 19, 2023

+ **CRL.M.C. 3054/2019 & CRL.M.A. 12277/2019**

OM PRAKASH Petitioner

Through: **Mr. Vikas Arora, Ms.
Radhika Arora and Mr.
Abhay, Advocates**

V

STATE & ANOTHERRespondents

Through: **Ms. Manjeet Arya, APP for
State/Respondent no1
Mr. F.S. Chauhan and Ms.
UshaKashyap, Advocates for
Respondent no 2**

+ **CRL.M.C. 3092/2019 & CRL.M.A. 12466/2019**

PRASHANT KUMAR NEMA Petitioner

Through: **Mr. Vikas Arora, Ms.
Radhika Arora and Mr.
Abhay, Advocates**

V

STATE & ANOTHERRespondents

Through: **Ms. Manjeet Arya, APP for
State/Respondent no1
Mr. F.S. Chauhan and Ms.
UshaKashyap, Advocates for
Respondent no 2**



**CORAM
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN**

JUDGMENT

1. The petition bearing no 3054/2019 and 3092/2019 are filed under section 482 of the Code of Criminal Procedure (hereinafter referred to as **“the code”**) to impugn the order dated 04.10.2023 passed by the court of Ms. Deepti Devesh, MM-04, Shahdara, Karkardooma Courts, Delhi and order dated 07.05.2019 passed by Sh. Gurdeep Singh, Additional Sessions Judge-01, Special Judge (POCSO), Karkardooma Courts; and order dated 04.10.2023 passed by the court of Ms. Deepti Devesh, MM-04, Shahdara, Karkardooma Courts, Delhi respectively.
2. The factual background of the case is that Jaiveer (hereinafter referred to as **“the respondent no. 2”**) filed an application under section 156(3) of the Code titled as **Jaiveer V State & others** bearing no 11633/2016 wherein implicated Inspector Prashant Kumar, SHO of PS Welcome Colony (petitioner in petition bearing no 3092/2019); ASI Om Prakash, PS Welcome Colony (petitioner in petition bearing no 3054/2019) and another Sub Inspector for having committed offences punishable under sections 166, 166A, 167, 195A, 217, 220, 323, 327, 342 & 506 IPC read with 34 IPC against the respondent no 2



and Sunder on 19.01.2016 at about 5 pm-10:30 pm in the Police Station Welcome. The respondent no 2 alleged that petitioners voluntarily caused hurt to the respondent no 2 for extorting valuable data from his mobile phone and his signatures on blank papers for constraining the applicant to appear before concerned court on 20.01.2016 in an application filed in FIR bearing no 0159/2013 under sections 323, 341, 506, 34 IPC registered at PS Welcome. The respondent no 2 and Sunder were released from the wrongful confinement by the petitioners in the intervening night of 19th and 20th January, 2016. The respondent no 2 and Sunder came to the court on 20.01.2016 where the petitioner SI Om Prakash was present and confronted him. The respondent no 2 on 20.01.2016 submitted complaint to DCP (North-East) with copies to Hon'ble Lieutenant Governor of Delhi, Commissioner of Police and DCP (Vigilance). The respondent no 2 also annexed his photograph showing injury on his face caused by the petitioners. The allegations made in complaint dated 20.01.2016 disclosed the commission of offences by the petitioners on 19.01.2016 inside PS Welcome punishable under sections 166, 166A, 167, 195A, 217, 220, 323, 327, 342 & 506 read



with section 34 IPC but no action was taken against them and no FIR was registered against them. It was prayed as under:-

- I. To direct the respondent No. 1 to register the information/complaint of the applicant dated 20.01.2016 disclosing the commission of the offences, interalia, punishable u/s 166, 166A, 167, 195A, 217, 220, 323, 327, 342 & 506 read with 34 IPC at Police Station Welcome Colony.**
- II. To provide a copy of the information as recorded to the applicant, free of cost**
- III To direct the investigation thereof, in accordance with law**
- IV To call for the reports from the respondent No. 2 and 3 as to what action, if any, they have taken to ensure the Rule of Law and compliance of the above quoted observations of the Hon'ble Supreme Court in case of Lalita Kumari v/s Govt of U.P. & others (Supra) in the facts of the present case**
- V. To pass any other order or direction as deemed appropriate in the facts and circumstances of the case and in the interests of justice.**

3. SI Munish Chaudhary PS Welcome Colony submitted Status Report dated 16.07.2016 wherein it was stated that FIR bearing no 159/13 under sections 323/341/506/34 IPC was registered at PS Welcome on the statement of the respondent no 2 and investigation of was assigned to ASI Om Prakash/petitioner. Vikas and Ajay Kumar were apprehended as accused and were released on personal bond after interrogation. The doctor opined nature of injuries stated to be



received by the respondent no 2 as Simple. The charge sheet has already been filed after conclusion of investigation. The respondent no 2 along with another person namely Sunder during investigation of FIR bearing no 159/13 on 19.01.16 came to PS and informed that Sunder is eye witness of the incident which occurred on 24.04.13. The respondent no 2 produced eye-witness on 19.01.16 i.e. after a period of 2years and 9 months. Sunder was examined and after examination it was found that he was not present at spot at time of incident and was produced by the respondent as an eye-witness and due to reason his statement under section 161 of the Code was not recorded. The respondent no 2 made false and vague allegations against Investigating Officer and left police station voluntarily. The respondent no2 and Sunder were not detained in police station and were not assaulted.

4. The court of Ms. Deepti Devesh, Metropolitan Magistrate-04, Shahdara, Karkardooma Courts (hereinafter referred to as “**the trial court**”) vide order dated 04.10.2018 directed SHO, PS Welcome to register FIR under appropriate sections of law. The order dated 04.10.2018 reflects that the respondent no 2 was a witness in FIR



bearing no 198/11 registered at PS Jyoti Nagar under section 302 IPC and accused therein namely Ajay and Vikas threatened and assaulted the respondent no 2 with a sharp weapon on 24.04.2013 and accordingly FIR no 159/13 PS was registered at PS Welcome but investigation was not carried in said FIR till filing of application by the respondent no 2 in 2015 before concerned court. The trial court observed as under:-

Bare perusal of the allegations made in the present application show that allegations are serious and that they are substantiated with documents. There is status report dated 01.10.2015 by ASI Om Prakash on record stating that despite efforts, accused persons could not be traced in FIR No. 159/13 PS Welcome. When trial of FIR 198/11 PS Jyoti Nagar was already pending and accused persons are the same in both the FIRs, then it is not understandable as to how the same accused persons were not traced, when trial against them was pending in different FIR before court. In the written arguments furnished by counsel for complainant, it is also stated that the charge sheet of FIR No.159/13 PS Welcome had already been forwarded by concerned ACP on 10.12.2015. Therefore, the report dated 01.10.2015 by ASI Om Prakash stating that investigation is still on going in case FIR No. 159/13 PS Welcome is a false report. Hence, there appears to be something fishy going on in the abovesaid FIR, which leads to prima facie case of illegal protection being given to the accused persons in FIR No. 198/11 PS Jyoti Nagar and FIR no. 159/13 PS Welcome.

Furthermore, the allegations reveal that the alleged offences had taken place inside the premises of PS Welcome. In the ATR it has been questioned that complainant has not made any 100 number call on the day of the alleged incident. It is



preposterous to expect complainant to call on 100 number, while being beaten by police officials only inside the premises of police station only. The accused persons in the instant case are police officials and in fact high ranking, police officials. Therefore, it would not be within the reach of the complainant to collect evidence against them or to ensure presence of witnesses for their testimony. Due to the high rank of police officials involved, it is also possible that witnesses may be unduly influenced or coerced. Facts and circumstances disclosed on record along with documents placed, show commission of cognizable offence, hence SHO, PS Welcome is directed to register an FIR under appropriate sections of law in the present case

5. The petitioner Om Prakash in Crl. M.C. no 3054/2019 filed criminal revision bearing no 268/18 titled as **Om Prakash V State & another** which was dismissed vide order dated 07.05.2019 passed by the court of Sh. Gurdeep Singh, Additional Sessions Judge-01, Shahdara, Karkardooma Courts (hereinafter referred as “**the revisional court**”). The revisional court also referred factual background in order dated 07.05.2019. The factual position as reflecting from order dated 07.05.2019 is that FIR bearing no 159/13 was registered under section 323/341/506/34 IPC at PS Welcome against the accused Ajay and Vikas for committing murderous assault on the respondent no 2 with a sharp edged weapon on 24.4.2013 against whom FIR bearing no 198/2011 under section 302 IPC was already registered for



committing murder of the brother of the respondent no 2 on 14.05.2011. The police did not proceed with the investigation until 22.9.2015 when application is filed for status report before concerned court. The Investigating Officer of FIR bearing no 159/2013 in connivance with accused was not recording statement of eye witness and ASI Om Prakash on 11.12.2015 in the court of Sh. Muneesh Garg, Metropolitan Magistrate agreed to record the statement of Sunder on 19.01.2016 at 5.00 pm. The respondent no 2 along with witness reached at PS Welcome. The Investigating Officer took them to his room and sent the respondent no 2 to buy a pen from the market and examined the witness Sunder in his absence who is illiterate. ASI Om Parkash after the respondent no 2 came back with the pen again started asking the question to the witness and recording of the statement. The respondent no 2 due to early threats of false implication switched on the voice recorder of his mobilephone. SHO and another SI also came there. ASI Om Prakash after being pointed that his voice was under recording then ASI Om Prakash snatched mobile and tore off the statement of the witness already recorded by him and also started beating the respondent no 2 and abused the witness also. SHO and



another SI also started to beat the respondent no 2 by slapping on the face of the respondent no 2. The respondent no 2 and witness Sunder were also detained and many documents were prepared for false implication of the respondent no 2. The respondent no 2 and witness Sunder were released at about 10.30 pm with condition that he and the witness would not appear on 20.1.2016 in the court of Sh. Muneesh Garg, Metropolitan Magistrate. The revisional court also referred status report dated 29.08.2018 filed by ACP/Seelampur, North-East before the trial court wherein it was stated that eye-witness was produced by complainant i.e. the respondent no 2 after 2 years and 9 months for recording of his statement who during inquiry has failed to reply few cross questions and was appeared to be a planted witness and was not present at the place of occurrence and accordingly his statement was not recorded. The respondent no 2 levelled false and vague allegations against the Investigating Officer and the respondent no 2 and witness Sunder left the police station voluntarily. They were neither detained nor were physically assaulted.

5.1 The petitioner argued before the revisionist court that requisite sanction under section 140 of Delhi Police Act, 1978 was also not



obtained and relied upon various decisions. The respondent no 2 argued that no sanction either under section 197 of the Code or under section 140 of Delhi Police Act, 1978 is required and cited various decisions. The revisional court while dealing with issue of sanction under section 197 of the Code and under section 140 of the Delhi Police Act, 1978 referred **Paul George V State of NCT of Delhi, 2008 (3) SCALE 614** wherein it was observed that if the act does not fall within the colour of duty then it will not be covered under section 140 of Delhi Police Act, 1978 and hence sanction is not required. The revisional court observed as under:-

The revisionist in the present case admittedly does not require sanction of government for removal from office and therefore sanction under S. 197 Cr.PC has no application in this case. As regards S. 140 of D. P. Act, the question arises whether the revisionist was acting in colour of duty? As per complaint, while complainant/ respondent was making recording in his mobile phone, revisionist alongwith other police officials snatched his mobile, started beating him and abusing witness. Complainant was given so many slaps on his face, he got injury which is visible in the photographs. Therefore the complainant was given beatings inside the police station which resulted in injury which by no stretch of imagination can be called acting in 'colour of duty'. Therefore sanction under S. 140 D. P. Act and 197 Cr.P.C. Act is not required.

5.2The revisional court also discussed issues whether sanction is required before initiation of proceedings under section 156 of the



Code and different scope of proceedings under section 200 of the Code and 156(3) of the Code. The revisional court preferred to dismiss the revision petition and upheld order dated 04.10. 2018 passed by the trial court.

6. The petitioner Om Prakash in Crl. M.C. no 3054/2019 being aggrieved by order dated 04.10.2018 passed by the trial court and order dated 07.05.2019 passed by the revisional court preferred petition bearing no 3054/2019. The petitioner Prashant Kumar Nema in Crl. M.C. no 3092/2019 being aggrieved by order dated 04.10.2018 passed by the trial court preferred petition bearing no 3092/2019.

6.1 The petitioner Om Prakash challenged order dated 04.10.2018 and order dated 07.05.2019 and the petitioner Prashant Kumar Nema in Crl. M.C. no 3092/2019 challenged order dated 04.10.2018 primarily on grounds that orders were passed without application of mind and are illegal, perverse and against the settled principles of law. The revisional court erred while observing that the petitioner is not public servant to be removed by sanction of government as such sanction under section 197 of the Code is not required. The allegations as stated in the complaint do not disclosed any cognizable offence. The



petitioner did not commit any disobedience of law or any direction under law as the chargesheet in FIR 159/13 has already been filed. The respondent no 2 and witness Sunder as per allegations were in room of the petitioner and were not in confinement and there is no allegation of any extortion of any property or valuable security from the respondent no 2 by the petitioner. The petitioner being the investigating officer in FIR bearing no 159/13 after inquiry did not find witness Sunder trustworthy and independent and accordingly refused to cite him as a witness in the case and due to this, the respondent no 2 levelled false allegations. The courts below completely ignored Status Report. The allegations against the petitioner do not constitute any offence and courts below have failed to consider that police investigation was not required. The petitioner arrested the accused on 26.10.2015 and chargesheet was prepared on 10.12.2015 after conclusion of investigation. The order dated 04.10.2018 passed by the trial court and order dated 07.05.2019 passed by the revisional court are liable to be set aside.

6.2The respondent no 2 filed counter affidavit in both petitions and denied contents of petitions being misconceived.



7. The counsel for the petitioners primarily argued on basis of grounds as mentioned in petition. The counsel for the petitioners argued that the orders dated 04.10.2018 and 07.05.2019 are liable to be set aside as passed without applying the judicial mind and the courts below have failed to appreciate the fact that no cognizable offence is made out. The charge sheet has already been filed in FIR bearing no 159/2013. The allegations regarding beating of the respondent no 2 and Sunder against the petitioners are false and absolutely vague. The trial court passed order dated 04.10.2019 without specifying any particular offence but passed general order which is against law. The order dated 04.10.2018 passed by the trial court and order dated 07.05.2019 are bad in law for want of sanction under section 140 of the Delhi Police Act, 1978 and section 197 of the Code. The counsel for the petitioners in petitions relied upon **Braham Singh V State**, CrI. Rev. P. bearing no 819 of 2006 decided on 02.11.2006; **Rakesh Kumar V State (NCT of Delhi)**, CrI. M.C. No. 2881/2007; **Anil Kumar & others V M. K. Aiyappa&anothe**, Criminal Appeal Nos.1590-1591 of 2013 (Special Leave Petition'(Criminal) Nos.6652-



6653 of 2013) and **D. T. Virupakshappa V C. Subhash**, Criminal Appeal No.722 of 2015.

8. The counsel for the respondent no 2 advanced oral arguments and also submitted oral arguments. The counsel for the respondent no 2 besides narrating facts argued that as FIR under section 154(1) of the Code was not recorded as such he filed an application under section 156(3) of the Code and trial court vide order dated 04.10.2018 has directed for registration of FIR in accordance with law which was affirmed by the revisional court vide order dated 07. 05.2019. The petitions under section 482 of the Code are not maintainable and are liable to be dismissed. The counsel for the respondents also advanced other arguments as detailed in written submissions.

9. It is reflecting that FIR bearing no 198/2011 was registered under section 302 IPC at PS Jyoti Nagar wherein Vikas and Ajay were implicated as accused. Thereafter FIR bearing no 159/13 was registered under sections 323/341/506/34 IPC at PS Welcome against the accused Ajay and Vikas for allegedly assaulting the respondent no 2 with a sharp edged weapon on 24.4.2013. The police allegedly did not proceed with the investigation till 22.9.2015 when the respondent



no 2 filed an application before concerned court of Metropolitan Magistrate for calling Status Report regarding investigation in FIR 159/13. The petitioner Om Prakash being the Investigating Officer in FIR bearing no 159/2013 has agreed to record statement of eye witness Sunder on 19.01.2016 at 5.00 pm. The respondent no 2 along with witness Sunder visited at PS Welcome. The respondent no 2 produced eye-witness on 19.01.16 i.e. after a period of 2 years and 9 months. The petitioner Om Prakash being investigating Officer took the respondent no 2 and witness Sunder to his room. The respondent no 2 started to record statement of Sunder in voice recorder of mobile phone. The petitioner Om Prakash preliminary examined Sunder and after examination noticed that he was not present at spot at time of incident and was introduced by the respondent no 2 as an eye-witness. The petitioner Om Prakash preferred not to record statement of Sunder under section 161 of the Code. The respondent no 2 was allegedly beaten by the petitioners and another Sub Inspector (SI) in police station. The respondent no 2 made a written complaint dated 20.01.2016 to DCP, District North-East. The charge sheet after conclusion of investigation in FIR bearing no 159/13 has already been



filed. The respondent no 2 filed an application under section 156(3) of the Code for initiating criminal proceedings against the petitioners and another Sub-Inspector for offences punishable under sections 166, 166A, 167, 195A, 217, 220, 323, 327, 342 & 506 IPC read with section 34 IPC.

9.1 The trial court dated 04.10.2018 directed SHO PS Welcome to register FIR under appropriate sections of law by observing that allegations referred in complaint are serious and substantiated with documents and illegal protection is given to the accused named in FIR bearing no FIR bearing no 159/13 registered at PS Welcome. The trial court also observed that alleged offences took place inside PS Welcome and as such the respondent no 2 cannot collect evidence against police officials. The revisional court in order dated 07.05.2019 while dealing with issue of sanction under section 197 of the Code and under section 140 of the Delhi Police Act, 1978 referred **Paul George V State of NCT of Delhi**, 2008 (3) SCALE 614 and observed that the respondent no 2 was given beatings inside the police station which resulted in injury and as such said act can be called acting in 'colour of



duty' and therefore sanction under section 140 Delhi Police Act, 1978 and 197 of the Code Act is not required.

10. Issue which needs judicial consideration is that whether sanction under section 140 of the Delhi Police Act, 1978 is required to prosecute the petitioners who are police officials under given facts and circumstances of case as alleged by the respondent no 2. 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 an 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.

(2) In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall give to the alleged wrongdoer not less than one month' s notice of the intended suit with sufficient description of the wrong complained of, and if no such notice has been given before the institution of the suit, it shall be dismissed.

(3) The plaint shall set forth that a notice as aforesaid has been served on the defendant and the date of such



service and shall state what tender of amends, if any, has been made by the defendant and a copy of the said notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof,

10.1 The Supreme Court in **Satyavir Singh Rathi V State through CBI**, Criminal Appeal No. 2231 of 2009 decided on 02nd May, 2011 observed that the date of cognizance taken by a magistrate would be the date for the institution of the criminal proceedings and section 140 of the Delhi Police Act, 1978 would be available qua all penal statutes. The Supreme Court in **Satyavir Singh Rathi V State through CBI** also discussed the expression ‘colour of duty’ and referred **State of Andhra Pradesh vs. N.Venugopal**, AIR 1964 SC 33 wherein it was held as under:-

It is easy to see that if the act complained of is wholly justified by law, it would not amount to an offence at all in view of the provisions of S.79 of the Indian Penal Code. Many cases may however arise wherein acting under the provisions of the Police Act or other law conferring powers on the police the police officer or some other person may go beyond what is strictly justified in law. Though Sec.79 of the Indian Penal Code will have no application to such cases, Sec.53 of the Police Act will apply. But Sec.53 applies to only a limited class of persons. So, it becomes the task of the Court, whenever any question whether this section applies or not arises to bestow particular care on its decision. In doing this it has to ascertain first what act is complained of and then to examine if there is any provision of the Police Act or other law conferring powers on the police under



which it may be said to have been done or intended to be done. The Court has to remember in this connection that an act is not “under” a provision of law merely because the point of time at which it is done coincides with the point of time when some act is done in the exercise of the powers granted by the provision or in performance of the duty imposed by it. To be able to say that an act is done “under” a provision of law, one must discover the existence of a reasonable relationship between the provisions and the act. In the absence of such a relation the act cannot be said to be done “under” the particular provision of law.”

10.2 The Supreme Court in **State of Maharashtra V Narhar Rao**, AIR 1966 SC 1783 while dealing with the question as to whether the acceptance of a bribe by a police official with the object of weakening the prosecution case could be said under to be under ‘colour of duty’ or in excess of his duty observed as under:

But unless there is a reasonable connection between the act complained of and the powers and duties of the office, it cannot be said that the act was done by the accused officer under the colour of his office. Applying this test to the present case, we are of the opinion that the alleged acceptance of bribe by the respondent was not an act which could be said to have been done under the colour of his office or done in excess of his duty or authority within the meaning of S.161(1) of the Bombay Police Act. It follows, therefore, that the High Court was in error in holding that the prosecution of the respondent was barred because of the period of limitation prescribed under Sec.161(1) of the Bombay Police Act. The view that we have expressed is borne out by the decision of this Court in State of Andhra Pradesh vs. N.Venugopal, AIR 1964 SC 33, in which the



Court had construed the language of a similar provision of S.53 of the Madras District Police Act (Act 24 of 1859). It was pointed out in that case that the effect of S.53 of that Act was that all prosecutions whether against a police officer or a person other than a police officer (i.e. a member of the Madras Fire Service, above the rank of a fireman acting under S.42 of the Act) must be commenced within three months after the act complained of, if the act is one which has been done or intended to be done under any of the provisions of the Police Act. In that case, the accused police officers were charged under Ss.348 and 331 of the Indian Penal Code for wrongly confining a suspect ArigeRamanua in the course of investigation and causing him injuries. The accused were convicted by the Sessions Judge under Ss.348 and 331 of the Indian Penal Code but in appeal the Andhra Pradesh High Court held that the bar under S.53 of the Police Act applied and the accused were entitled to an acquittal. It was, however, held by this Court that the prosecution was not barred under S.53 of the Police Act, for it cannot be said that the acts of beating a person suspected of a crime or confining him or sending him away in an injured condition by the police at a time when they were engaged in investigation are acts done or intended to be done under the provisions of the Madras District Police Act or Criminal Procedure Code or any other law conferring powers on the police. The appeal was accordingly allowed by this Court and the acquittal of the respondent set aside.

10.3The Supreme Court in **State of Maharashtra V Atma Ram**, AIR 1966 SC 1786 where the question was as to whether the action of a police officer in beating and confining a person suspected of having stolen goods in his possession could be said to be under colour of duty



has referred **State of Andhra Pradesh V N.Venugopal** and **State of Maharashtra V Narhar Rao** and held as under:-

The provisions of Ss.161 and 163 of the Criminal Procedure Code emphasize the fact that a police officer is prohibited from beating or confining persons with a view to induce them to make statements. In view of the statutory prohibition it cannot, possibly, be said that the acts, complained of, in this case, are acts done by the respondents under the colour of their duty or authority. In our opinion, there is no connection, in this case between the acts complained of and the office of the respondents and the duties and obligations imposed on them by law. On the other hand, the alleged acts fall completely outside the scope of the duties of the respondents and they are not entitled, therefore, to the mantle of protection conferred by S. 161 (1) of the Bombay Police Act.

10.4The Supreme Court in **Bhanuprasad Hariprasad Dave & another V The State of Gujarat**, AIR 1968 SC 1323 wherein the allegation against the police officer was of taking advantage of his position and attempting to coerce a person to give him a bribe. The plea of colour of duty was negative by this Court. It was observed as under:-

All that can be said in the present case is that the first appellant a police officer, taking advantage of his position as a police officer and availing himself of the opportunity afforded by the letter Madhukanta handed over to him, coerced Ramanlal to pay illegal gratification to him. This cannot be said to have been done under colour of duty.



10.5 In Prof. Sumer Chand V Union of India & others, 1994 (1)

SCC 64 Professor Sumer Chand and several others were brought to trial initiated on a first information report but were acquitted by the trial court. Professor Sumer Chand thereupon filed a suit against the Investigating officer and other police officials for malicious prosecution claiming Rs.3 Lacs as damages. The Supreme Court held that the prosecution had been initiated on the basis of a First Information Report and it was the duty of a Police Officer to investigate the matter and to file a charge-sheet, if necessary, and that there was a discernible connection between the act complained of by the appellant and the powers and duties of the Police Officer. The Supreme Court endorsed the opinion of the High Court that the act of the Police Officer complained of fell within the description of ‘colour of duty’.

10.6The Supreme Court in **Satyavir Singh Rathi V State through CBI** referred and discussed above mentioned decisions of the Supreme Court and held that it cannot, by any stretch of imagination, be claimed by anybody that a case of murder would fall within the expression ‘colour of duty’. There is absolutely no connection



between the act of the appellants and the allegations against them. Section 140 of the Delhi Police Act would, therefore, have absolutely no relevance in this case.

10.7 The revisional court in dated 07.05.2019 referred **Paul George V State of NCT of Delhi**, 2008 (3) SCALE 614 and **Satyavir Singh Rathi V State through CBI**. In **Paul George V State of NCT of Delhi** as observed by the revisional court, the appellant was working as Head Constable with Delhi Police and was directed to go to Police Head Quarter for urgent work and was driving a police truck. The vehicle on way went over a road divider and hit a scooter driven by deceased and pillion rider. The appellant was tried under sections 279/304 A IPC. The appellant was convicted and sentenced was confirmed by the first appellate court and by the High Court in revision. The appellant in SLP before the Supreme Court pleaded that the prosecution was bad *abinitio* as being beyond limitation prescribed under section 140 of Delhi Police Act, 1978 and sanction as the appellant had been acting under the colour of duty and case was remitted to the High Court. The case considered by the Supreme Court pertaining to issue of sanction under section 140 of the Delhi Police



Act, 1978. The Supreme Court observed that section 140 is applicable only where act is under colour of duty and held that appellant was undoubtedly entrusted with the duty but by jumping road divider and coming face on the incoming traffic was the factor which had caused the accident and was clearly not a matter within the 'colour of duty' and act will not be covered under section 140 of the Delhi Police Act, 1978 and hence sanction was not required.

10.8 In present petitions FIR bearing no 159/13 was registered under sections 323/341/506/34 IPC at PS Welcome against the accused Ajay and Vikas on complaint made by the respondent no 2 pertaining to incident stated to be happened on 24.4.2013. The petitioner Om Prakash was assigned investigation pertaining to FIR bearing no 159/13 and the petitioner Parshant Kumar Nema was SHO of PS Welcome at relevant time. The respondent no 2 on 19.01.2016 brought Sunder who was stated to be eye witness of incident happened on 24.04.2013 at PS Welcome for purpose of investigation. The petitioner Om Prakash after preliminary questioning from Sunder came to conclusion that Sunder was not an eye witness of incident happened on 24.04.2013 and was introduced by the respondent no 2 after about



3 years from date of incident. The petitioner preferred not to record statement of Sunder. If the petitioner did not prefer to record statement of Sunder after preliminary questioning, the petitioner Om Prakash was acting under colour of his duty. The respondent no 2 although was complainant in FIR bearing no 159/13 cannot compel the petitioner Om Prakash to record statement of Sunder during investigation. The petitioner Om Prakash was within authority and right being investigating officer not to record statement of Sunder. The investigation falls within jurisdiction of the investigating officer although the investigating officer is always under an obligation to conduct in fair and impartial manner and also collect relevant and appropriate evidences during evidences. The respondent no 2 cannot challenge authority of the petitioner Om Prakash regarding mode and manner of conduction of investigation pertaining to FIR no 159/13.

10.9 The respondent no 2 also alleged that he started recording of statement of Sunder in voice recorder of his mobile phone then the petitioner Prashant Kumar Nema who was SHO of PS Welcome along with another Sub-Inspector came there and pointed out to the petitioner Om Prakash regarding recording of statement of Sunder.



Thereafter the petitioner Om Prakash snatched mobile phone for deleting data and the respondent was beaten by the petitioners Om Prakash and Prashant Kumar Nema and was also detained there. The beatings allegedly given to the respondent no 2 and witness Sunder by the petitioners Om Prakash and Prashant Kumar Nema on 19.01.2016 cannot be act done in discharge of official duty and are not covered under protection as per mandate of section 140 of Delhi Police Act, 1978.

10.10 However there is no convincing material filed by the respondent no 2 along with application under section 156(3) of the Code regarding alleged beatings to him. The respondent no 2 made only general allegations regarding alleged beatings by the petitioners Om Prakash and Prashant Kumar Nema without any specification. The order dated 04.10.2018 is based on assumption and presumption and was passed in absence of any convincing material. The observations made by the trial court in order dated 04.10.2018 are not relevant for purpose of issuance of direction for registration of FIR. The trial court in order dated 04.10.2018 also observed that allegations are serious in nature and substantiated with documents but the respondent no 2 did



not place any document except one photograph as appeared from order dated 07.05.2019 passed by the revisional court which cannot be accepted as even *prima facie* convincing document to establish alleged beatings of the respondent no 2 on 19.01.2016 by the petitioners and another sub-inspector. The trial court only issued vague directions to concerned SHO for registration of FIR on application under section 156(3) filed by the respondent no 2. The revisional court though rightly observed that the petitioners are not entitled for protection either under section 140 of the Delhi Police Act, 1978 or section 197 of the Code but did not consider properly about allegations of the respondent no 2 in right perspective and directions to ascertain genuineness of the allegations of the respondent no 2. There is no substance in allegations of the respondent no 2 regarding his beatings on 19.01.2016 by the petitioners in PS Welcome. The issuance of direction for registration of FIR is serious judicial function and should be passed with due application of judicial mind and not in casual and cryptic manner. The trial court should not have issue directions for registration of FIR against the petitioners. The counsel for the petitioners has rightly argued that courts below passed orders dated



04.10.2018 and 07.05.2019 without application of judicial mind and after taking into considerations relevant facts. The arguments advanced by the counsel for the respondent no 2 are not convincing and cannot be accepted.

11. The respondent no 2 has not preferred complaint under section 200 of the Code as such no liberty can be given to the respondent no 2 lead evidence. The order dated 04.10.2018 passed by the trial court and order dated 07.05.2019 cannot be sustained in law and are liable to be set aside. Accordingly petitions bearing no 3092/2019 and 3054/19 are allowed.

DR. SUDHIR KUMAR JAIN

(JUDGE)

DECEMBER 19, 2023

abk