

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

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Reserved on: 19th January, 2023

Pronounced on: 31st January, 2023

+ CRL.A. 308/2021

SANSER PAL SINGH

..... Appellant

Through: Mr. Manoj Sharma, Advocate
with appellant in person

versus

THE STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Ritesh Kumar Bahri, APP for
the State with SI Sadhna, PS
Ranjit Nagar

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

1. This appeal has been preferred *inter alia* for setting aside the impugned judgment and order dated 13th September, 2021 passed by the Ld. ASJ, Tis Hazari Courts and seeking further direction to hold a preliminary enquiry in *State v. Raj Kumar* (SC/114/2020) for having committed offences punishable under section 195(1)(b) Cr.P.C. including other offences under sections 177/182/193/195/211 IPC.

2. The background facts of the appeal are that the appellant is the counsel for the accused viz. Raj Kumar in SC 114/2020 pursuant to FIR No. 211/2019 PS Ranjit Nagar under sections 354, 506 IPC and section 8 POCSO Act pending before the Ld. ASJ, Tis Hazari Courts. On 25th February, 2020 the bail application of the accused was listed before the Ld. ASJ. During hearing of the said bail application, SI Gaurav was

present in the Court on behalf of IO/SI Pooja where the Ld. APP in the light of information given to her by SI Gaurav, informed the Court that *“during investigation, it has been transpired that the accused is habitual in indulging in such activities, as per enquiries from the neighbours”*. It is noted in order dated 25th February, 2020 that there were grave allegations against the accused who was neighbour of the victim and the trial was at initial stage and charges were yet to be framed. It was further noted by the Ld. ASJ that it was informed by the Ld. APP that during investigation this information has been received by the IO from enquires from the neighbours, that the accused was habitual in indulging in such activities and if released on bail, may intimidate the victim. Accordingly, the Ld. ASJ dismissed the bail application *‘considering the gravity of the offence, there is no ground for releasing the accused on bail’*.

3. Thereafter, the appellant visited the colony of the said accused and met with the neighbours and was informed by them that no FIR was lodged and no complaint had been made against the accused except FIR No. 211/2019. Accordingly, the neighbours of the accused wrote a complaint to the Police Commissioner against SI Gaurav and SI Pooja. Further as per RTI enquiry, it was disclosed by the PIO, Office of DCP, Central District, Darya Ganj, Delhi that no FIR had been lodged against Raj Kumar apart from FIR No. 211/2019 in PS Ranjit Nagar. Pursuant to further complaints filed by the appellant, an application under section 340 Cr.P.C. was filed before the Ld. ASJ on 24th August, 2021 against respondent No. 2 and 3 viz. SI Gaurav and SI Pooja, PS Ranjit Nagar.

4. As per the impugned order, the Ld. ASJ has noted the contentions of the appellant as well as the respondent police personnels. In particular, it was noted that the respondents had never submitted before

the Court that there was any case registered against the accused and the fact that the accused was habitual in committing such acts, as alleged in the FIR, was not made part of the charge sheet as no cogent evidence could be collected in that regard. Since the appellant had alleged that the respondents were guilty of committing offences under sections 177/182/193/195/211 IPC, the Ld. ASJ held that it fell within the ambit of section 195(1) (b) Cr.P.C. It was further held that trial in the matter was at initial stage and the information given by the respondents was not tendered as exhibit in the Court nor was the matter finally decided on the basis of the said information. The Court had also not framed charges or proceeded with the trial against the accused on the basis of the information. It was further noted that the respondents had not given wrong information intentionally, knowing that it was incorrect information. It was just that the respondents might have collected some information during investigation and that was mentioned in the court. There was no personal motive of the respondents for getting the bail of the accused declined. Also, the bail application was not dismissed solely on the basis of the information given by the IO, but rather, because there were grave allegations against the accused. Thus, by the impugned order the Ld. ASJ dismissed the bail application of the accused noting that no *mala fide* was reflected on part of the respondents.

5. Ld. APP in response has contended that the appeal is not maintainable since the offences are under the purview of section 195 Cr.P.C. where public servant is the complainant. Moreover, in the present case the appellant was counsel of the accused wherein the status report was filed during proceedings and accused never filed any application under Section 340 Cr.P.C. or any appeal before this Court. The present appellant had no *locus standi* to file application under

section 340 Cr.P.C. Further, the provisions of section 195 (1) (b) Cr.P.C. would be attracted only when offences had been committed with respect to a document after it has been produced or given in court. Reliance has been placed on ***Sachida Nand Singh v. State of Bihar***, AIR 1998 SCC 121, where it is stated as under:

“11. The scope of the preliminary enquiry envisaged in Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in court or given in evidence in a proceeding in that Court. In other words, the offence should have been committed during the time when the document was in custodia legis.

23. The sequitur of the above discussion is that the bar contained in Section 195(1)(b)(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a court. Accordingly we dismiss this appeal.”

Reliance is also placed on ***Santokh Singh v. Izhar Hussain***, AIR 1973 SC 2190, where it has been held that:

“11. ...Every incorrect or false statement does not make it incumbent on the court to order prosecution. The Court has to exercise judicial discretion in the light of all the relevant circumstances when it determines the question of expediency. The court orders prosecution in the larger interest of the administration of justice and not to gratify feelings of personal revenge or vindictiveness or to serve the ends of a private party. Too frequent prosecutions for such offences tend to defeat its very object...”

6. Further, the Hon’ble Supreme Court has held in ***Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr.***, (2005) CrL L.J. 2161 that the opinion in *Sachida Nand Singh* (supra) was correctly decided and that section 195 (1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated in the said provision had been committed with

respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e., during the time when the document was in *custodia legis*.

7. This Court has perused the order dated 25th February, 2020 which was genesis of this appeal and it is alleged that the Ld. ASJ noted that the information given by the Ld. APP which was restricted merely to the fact that during investigation some information was received that the accused was “*habitual in indulging in such activities*”. No statement was made that there were previous involvements or cases against the accused, but in a *bona fide* manner, Ld. APP on the instructions of the IO, stated that during inquiries some neighbours have stated that the accused was habitual in indulging in such activities. Considering the offences involved under POCSO, it could have been the general reflection on conduct and behaviour of the accused without there having been a formal complaint or a registered case. It was merely a societal based input which was given and not a formal statement that was made nor any document in that regard was submitted. The information was given on a *bona fide* input which must have been received by the IO during investigation. It must be noted that the bail was not rejected on this basis, but was declined on the basis of gravity of the offence and possibly on the basis that the accused was the neighbour of the victim and as noted by the Trial Court, there were “*grave allegations against the accused*”.

8. It was further noted in the impugned order that in the reply to the application of the petitioner, the IO had annexed copies of the statements of neighbours who had given the said information who were Smt. Laxmi and Sh. Bhaiya Lal. Infact, as per the original complaint of the

prosecutrix according to which accused had touched her inappropriately, neighbour Laxmi was also present in the vicinity. Therefore, these facts give further credence to the nature of information supplied by the IO and does not even remotely make it a false or fabricated information.

9. Further in relation to the nature of offences which have been alleged by the appellant had been dealt with by the impugned order. This Court is of the opinion that none of the said offences under sections 177/182/193/195/211 IPC are made out considering that there did not seem to be any intent to cause any harm or fabricate evidence or to cause any injury to any person or that he/she had a reason to believe it to be false. Even section 211 IPC would not be made out since this information was not made part of the charge sheet and charges were not framed on that basis. Otherwise, as per record it is amply clear that even as per the appellant that there were no further registered cases against the accused as on that date, nor any such statement was made by the IO to the Ld. APP.

10. It would be an abuse of process of this Court for the appellant to continue to prosecute this complaint, considering the facts and circumstances, which are evident from a perusal of complaint, the impugned order and as has been adverted before this Court. Accordingly, the appeal is dismissed.

11. Pending applications (if any) are disposed of as infructuous.

12. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

JANUARY 31, 2023/sm