



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

%

Date of Decision: 20.03.2024

+

CRL.M.C. 518/2023

VIRENDER GIRI

..... Petitioner

Through: Mr. Amit Kumar, Advocate
alongwith petitioner in person.

versus

THE STATE GOVT. OF NCT OF DELHI & ANR..... Respondents

Through: Mr. Sanjeev Sabharwal, APP for
State.

Mr. Swetab Kumar, Advocate for
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. seeking setting aside of order dated 15.11.2022 passed by the learned Principal District & Sessions Judge in Crl.Rev. No.152/2022, vide which the order passed by the learned M.M. thereby dismissing petitioner's application under Section 156(3) Cr.P.C. seeking registration of FIR under Sections 166/392/394/397/427/506/323/341/34 IPC came to be upheld.
2. Pithily put, the facts are that the petitioner, who was the complainant before the learned M.M., preferred an application under Section 156(3) Cr.P.C. accompanied by a complaint under Section 200 Cr.P.C. In his application, the petitioner alleged that on 07.08.2019 at about 12 am in the



night, while he was going with his brother *Surender Giri* to deposit Rs.4,000/- in ATM situated at Nehru Place towards EMI for his mobile phone, *ASI Jitender*/respondent No.2 signalled him to stop his motorcycle. It is alleged that after checking the documents of the motorcycle, respondent No.2 demanded a sum of Rs.1000/- and when the petitioner resisted, he was manhandled and resultantly suffered injuries. The other police official present at the spot alongwith respondent No.2 did not object to the same and thus, supported the respondent. Even a threat was extended to the petitioner by one of them. It is further stated that respondent No.2 forcibly took out Rs.4,000/- from right-side pocket of petitioner's nicker and also challaned him, after taking away their helmets and breaking/damaging the indicator of the bike. Petitioner was treated in AIIMS Trauma Centre where his MLC was prepared. He also made a call at 100 number at about 12:40 am from his mobile and also lodged a complaint vide DD No.3A with SHO, P.S. Kalkaji. Since no action was taken on his complaint, he was constrained to file the application under Section 156(3) Cr.P.C.

3. Learned counsel for the petitioner has contended that in the present case, the offences are serious in nature inasmuch as Sections 392/394/397 have been invoked by the complainant, which would require investigation by the police. It is further submitted that the identity of other accused persons are also required to be verified.

4. Learned APP for the State, who is assisted by the counsel for respondent No.2, has resisted the petition. It is stated that in the application under Section 156(3) Cr.P.C. as well as in the petition, only respondent No.2 has been arrayed as an accused. On petitioner's said application, an Action Taken Report (ATR) was summoned. As per the said ATR, in the



intervening night of 7th and 8th August, 2019, the petitioner was stopped by the police officials present near Kalkaji Temple, as he alongwith his brother was driving the motorcycle without helmet. The petitioner was asked for the documents, however, he abused the police officials. On the directions of his superior, respondent No.2 issued a challan and as per practice, also clicked a photograph. In the PCR call made by the petitioner at 12:40 am on 08.08.2019, the petitioner himself had claimed that he was stopped/intercepted despite having all valid documents and was also challaned. He, however, has not alleged that beatings of any kind were given to him. The petition is accompanied by the MLC, which was conducted at AIIMS Trauma Centre on 08.08.2019.

On the complaint filed by the petitioner, a vigilance inquiry was conducted in which the petitioner as well as his brother was examined. Respondent No. 2 as well as the other police officials were also examined during the said inquiry. Upon completion of the said inquiry, it was concluded that it was the petitioner who had created a ruckus, when he was stopped for driving the motorcycle without helmet. Although in the complaint, the petitioner had complained that casteist remarks were made against him, however, the inquiry report concluded that the said allegation was baseless as he did not belong to any reserved category.

A Status Report has also been handed over in Court, as per which, the petitioner is previously involved in two criminal cases being FIR No.47/2000 registered under Sections 147/149/420/427 IPC at P.S. Okhla and FIR No.489/2020 registered under Sections 323/354/451/506/509/34 IPC at P.S. Kalkaji as per the SCRB report. It is further stated that the petitioner is a habitual complainant and as per e-Court record having filed



more than 20 complaints against different individuals including the police officers. A copy of e-Court record has also been placed on the record.

5. At this stage, it is deemed apposite to refer to the decision of this Court in Shri Subhkaran Luharuka & Anr. v. State & Anr.¹, wherein it has been observed:-

“xxx

52...

(iv) Of course, it is open to the Magistrate to proceed under Chapter XII of the code when an application under Section 156(3) of the Code is also filed along with a Complaint under Section 200 of the Code if the Magistrate decides not to take cognizance of the Complaint. However, in that case, the Magistrate, before passing any order to proceed under Chapter XII, should not only satisfy himself about the pre-requisites as aforesaid, but, additionally, he should also be satisfied that it is necessary to direct Police investigation in the matter for collection of evidence which is neither in the possession of the complainant nor can be produced by the witnesses on being summoned by the Court at the instance of complainant, and the matter is such which calls for investigation by a State agency. The Magistrate must pass an order giving cogent reasons as to why he intends to proceed under Chapter XII instead of Chapter XV of the Code.

xxx”

6. Both the Courts below have observed that the entire material in support of his case is in possession of the petitioner. The mode and manner of the offence is clear and the identity of the accused persons is already known to the complainant. Besides this, petitioner is also in the possession of the MLC and nothing more is required to be investigated into or prove

¹ 2010 SCC OnLine Del 2324



any offence.

7. From the above conspectus, it is discernible that the incident had occurred on the intervening night of 7th and 8th August, 2019. While the complainant/petitioner has alleged manhandling at the behest of respondent No.2 resulting in injuries, the respondents have blamed the petitioner for filing a false complaint, on being challaned by the respondent No.2. Veracity of the counter-allegations would be tested in the proceedings pending before the learned Magistrate.

8. The only issue that arises for consideration before this Court is whether any investigation is required to be undertaken in the said incident. Though, the petitioner has claimed fracture in his leg, however, a reading of the MLC shows only a soft tissue injury, which has been opined to be simple. Reference has also been made to the CCTV footage of the police station relating to the time when the petitioner had reached there to lodge his complaint, which showed him walking in a normal manner. Petitioner has also filed all the DDs relating to the incident as well as the vehicle checking register and the general patrolling list dated 07.08.2019. Admittedly, there is no recovery to be effected. The petitioner is having the entire record relating to his complaint alongwith the relevant evidence.

9. Keeping in view the facts narrated above, this Court finds no ground to interfere with the concurrent findings passed by the two courts below. Consequently, the petition is dismissed.

MANOJ KUMAR OHRI
(JUDGE)

MARCH 20, 2024/ga