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

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Reserved on: 16.01.2024
Pronounced on: 24.01.2024

+ **W.P. (CRL.) 600/2023**

PRIYA

..... Petitioner

Through: Mr. Abhishek Paruthi & Mr.
Harshit Thareja, Advocates

versus

STATE OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Amol Sinha, ASC for the
State with S.I. Kunal Kumar,
P.S. Sector 23 Dwarka.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. Ms. Priya i.e. the petitioner is a victim and informant of FIR No. 210/2021, registered at Police Station Sector 23, Dwarka, Delhi under Sections 506/509 of Indian Penal Code, 1860 ('IPC'), whereas respondent no. 2 Monu is the accused in the said FIR.

2. By way of instant petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973('Cr.P.C'), the petitioner seeks following prayers:

“A. Issue an Order for further investigation directing the prosecution agency to entrust the further investigation to a competent superior officer in FIR no. 210/2021 PS. Dwarka, Delhi, registered under Section 506/509 IPC for a fair trial to



the Victim;

OR

In the alternative direct the Ld. Trial Court to issue an Order for further investigation directing the prosecution agency to entrust the further investigation to a competent superior officer in FIR no. 210/2021 PS. Dwarka, Delhi, registered under Section 506/509 IPC for a fair trial to the Victim;

B. Setting aside the Order dated 08.12.2022 passed by the Ld.Trial Court in Criminal Case no. 1328/2022;

C. Set aside the consequential proceedings inter-alia including Order dated 23.03.2022 passed by the Ld. Trial Court to secure the ends of justice and pass appropriate directions for further proceedings;”

3. Facts of the case, necessary for adjudication of present petition are that on 26.05.2021, Ms. Priya i.e. the petitioner herein had handed over a complaint at P.S. Dwarka wherein she had narrated that while she was at her parental home, alongwith her mother and sister-in-law in Dwarka on 25.05.2021, at about 9:20 PM, they had heard loud noise of firecrackers and bike horns from the street, outside their house. This had caused fear among them, which had prompted them to look out of the window, and they had seen that a boy named Monu was creating disturbances with his bike. She had alleged that previously also, Monu had harassed ‘P’, the complainant's younger sister, and had obstructed her path, leading to filing of a previous complaint with the police which was later withdrawn due to a compromise arrived at between the party and in light of an apology tendered by the father of Monu. It was further alleged that on the night of incident, during the PCR call, when the complainant had gone downstairs in an attempt to note down the bike's registration number, Monu had confronted her, and verbally abused her and



attempted to touch her. Monu's family members engaged in a quarrel with the complainant's family. It was also alleged that Monu, in an inebriated state, had used indecent language and issued threats, including threatening to kill her and her family members. The complainant had expressed her concern in the complaint that if a resolution was not reached, her younger sister might be compelled to commit suicide. On these allegations, the present FIR was registered on 28.05.2021, under Sections 506/509 of IPC.

4. As per chargesheet and status report placed on record, during the course of investigation, the apology letter dated 02.09.2020 signed by the accused's father, for previous instances of misbehaviour of accused with complainant's sister, was collected by the police. The accused/respondent no. 2 was interrogated and arrested on 17.06.2021 and released on bail on the same day since the offences were bailable in nature. The bike of the accused was also seized and deposited in *malkhana* by the I.O. The statement of 'P' i.e. younger sister of complainant was recorded under Section 164 of Cr.P.C. by the learned Magistrate on 12.10.2021. After completion of investigation, chargesheet was filed against the accused under Sections 506 and 509 of IPC.

5. *Vide* order dated 23.03.2022, the learned Additional Chief Metropolitan Magistrate, South-West, Dwarka Courts had framed charge under Sections 506/509 of IPC against the accused.

6. The case of petitioner is that she was never informed about the filing of chargesheet nor was she called upon by the police for recording her statements or for any other purpose during the course



of investigation as well as at the time of framing of charge, and the I.O. concerned had defeated the rights of victim herein in order to shield the accused by carrying out selective and biased investigation and filing an incomplete and perfunctory chargesheet against the accused, while completely ignoring the mandate of Cr.P.C. and the procedure for investigation. It is her case that it was only somewhere in first week of May, 2022, that the petitioner had received a notice/summons from the learned Trial Court to appear before it and it was only thereafter that she had learnt that chargesheet had already been filed in the present case and the charges had been framed in absence of the petitioner herein. It is stated that despite specific allegations of committing offence under Section 354 and 354D of IPC levelled by 'P' in her statement recorded under Section 164 of Cr.P.C., the said sections were not invoked in the chargesheet by the police, and accordingly, charges could not also be framed by the learned Trial Court for these offences, and only Sections 506/509 of IPC were invoked on the basis of complaint submitted by the petitioner herein.

7. Learned counsel for the petitioner argues that the chargesheet filed in this case was not a proper charge sheet and for the reasons best known to the investigating officer, even the statement of petitioner/complainant was not recorded under Section 164 of Cr.P.C. before the learned Magistrate, which is against the mandate of Section 164(5A) of Cr.P.C. It is also submitted that the chargesheet did not contain any statement of witnesses including the complainant herein under Section 161 of Cr.P.C. It is also pointed out that even no



site plan of the place of incident has been prepared and filed along with the chargesheet which would eventually lead to failure of prosecution in proving the place of occurrence of crime and it will be fatal for the case of petitioner/victim herein. It is argued that it is shocking that only the statement of complainant's younger sister was recorded under Section 164 of Cr.P.C., however, the sections invoked in the chargesheet were on the basis of complaint of the petitioner only and her statement under Section 164 of Cr.P.C. was never recorded in this case. It is submitted by the learned counsel for petitioner that an application was moved on behalf of the petitioner herein before the learned Trial Court seeking addition of charges i.e. charge under Section 354/354D of IPC against the accused on the basis of statement of petitioner's younger sister recorded under Section 164 of Cr.P.C., however, the Trial Court had held that the prosecution had only relied upon the complaint given by the petitioner herein regarding incident which had taken place on 25.05.2021 and the prosecution had not considered the allegations levelled by petitioner's younger sister qua a past incident which had been compromised among the families, and thus, charges only under Section 509/506 of IPC could be framed. It is submitted that the petitioner had also moved an application before the learned Trial Court for ordering further investigation in the present case since the investigation conducted by the I.O. was improper and incomplete, but the learned Trial Court had dismissed the application on the ground that in view of judgment of Hon'ble Apex Court in case of ***Vinubhai Haribhai Malaviya v. State of Gujarat*** (2019) 17 SCC 1, the Trial



Court could not have ordered further investigation after charges had been framed. In this regard, learned counsel for the petitioner submits that though the Trial Court cannot order for the investigation, the powers of constitutional Courts are wide in addressing the rights of the victim and for ordering further investigation in case where the investigation conducted by the I.O. is inherently incomplete and where the chargesheet lacks even basic the fundamental requirements of law. It is further stated that after the present FIR was registered on the basis of complaint lodged by petitioner, the wife of the accused had also falsely implicated the family of the petitioner herein in a frivolous case i.e. FIR bearing no. 210/2021, registered at Police Station Sector 23, Dwarka, Delhi, under Sections 354/354B/509/323/34 of IPC and in the said case, the I.O. had conducted proper investigation including recording of statements of witnesses under Section 161 and 164 of Cr.P.C. as well as preparation of site plan, and all these documents were filed along with the chargesheet before the Court. Therefore, in these circumstances, it is prayed on behalf of petitioner that this Court orders the investigating agency to conduct further investigation in this case, considering the aforesaid lapses on part of the I.O.

8. Learned ASC for the State, at the outset, fairly submits that it appears from the records of the case that the investigation in this case was not conducted properly by the I.O. concerned. It is submitted that if this Court deems it fit, it may direct the police to conduct further investigation on points such as recording of statement of petitioner herein under Section 164 of Cr.P.C. who was the original



complainant in the present FIR since the offence made out from the allegations made by her falls under Section 509 of IPC, on point of preparation of site plan in the present case, and on the issue as to whether Section 354 and 354D of IPC are made out or not and whether are to be invoked or not in the present FIR.

9. This Court has heard arguments addressed on behalf of petitioner as well as State, and has carefully perused the material placed on record by both the parties.

10. In the present case, the petitioner has contended at the outset that she was never informed about completion of investigation, filing of chargesheet as well as about framing of charge against the accused in the present case, even though she was the complainant/informant in the present case. In this regard, this Court notes that as per Section 173(2) of Cr.P.C., it is the duty of the investigating officer concerned to inform the complainant/informant about the completion of investigation. This Bench in case of *P v. State Crl.M.C. 528/2023* had also taken note of a similar situation where the complainant had not been informed about the filing of chargesheet and she had remained absent from the Court at the time of framing of charge and could get to know about the faulty investigation conducted by the investigating officer only at a later stage when she was summoned by the Trial Court, and while taking note of the same, this Bench had held as under with regard to Section 173(2) of Cr.P.C.:

“11. This Court notes that Section 173(2)(ii) mandates the officer in charge of the police station that upon completion of the investigation, he shall:

i. Forward the report to the Magistrate empowered to take



cognizance of the offence on a police report, and;

ii. Communicate the action taken by him to the first informant.

12. Thus, Section 173(2)(ii) casts a duty upon the officer in-charge of the police station to communicate to the complainant about the action taken by him i.e. filing of the final report before the concerned Magistrate.

19. It is observed that in Section 173(2)(ii), the legislature has used the word ‘shall’ in respect of duty of the officer in-charge of police station to communicate about the action taken by him, which clearly conveys the intent of legislature that it is utmost essential on the part of investigating agency to intimate the complainant about the completion of investigation.”

11. In the case at hand, nothing has been placed on record by the State to show that the investigating officer had informed the petitioner herein about the completion of investigation and filing of chargesheet.

12. Be that as it may, at this stage, this Court has taken note of the lapses on part of investigating officer and the deficiencies in the chargesheet, as pointed out by the learned counsel for petitioner.

13. A bare perusal of the chargesheet reveals that though it has been mentioned therein that the ASI concerned had visited the site i.e. the place of incident and had prepared a site plan, no such site plan was filed along with the chargesheet in the present case nor was there any mention of site plan in the index of documents filed alongwith the chargesheet. Even during the course of arguments, it was fairly submitted by learned ASC for the State, on instructions from current I.O., that no site plan was prepared in the present case.

14. This Court further notes that the investigation in this case was conducted clearly against the mandate of Section 164(5A) of Cr.P.C.



which mandates that in cases where the alleged offence falls under Section 509 of IPC, it shall be the duty of investigating officer to produce the complainant/victim before the Magistrate for the purpose of recording her statement under Section 164 of Cr.P.C. However, strangely in the present case, the complainant herein was not produced before the Magistrate for the purpose of recording of her statement under Section 164 of Cr.P.C. nor was her statement recorded under Section 161 of Cr.P.C. by the I.O.

15. Interestingly, in this case, the investigating officer had got the statement of sister of the complainant recorded under Section 164 of Cr.P.C. wherein allegations pertaining to offences under Section 354/354D of IPC were levelled by her against the accused in respect of some prior incidents, however, this statement and allegations levelled by her were not considered by the I.O. while filing the chargesheet, nor were any reasons assigned for not considering her statement for making out any offence in the present case, and the chargesheet in this case was filed only under Sections 506/509 of IPC, solely on the basis of complaint lodged by the petitioner, without there being any statement of petitioner recorded under Section 164 of Cr.P.C.

16. Learned ASC for the State had also submitted during the course of arguments that considering these aspects and lapses in conducting the investigation, this Court may direct the investigating agency to conduct further investigation for the purpose of recording statement under Section 164 of Cr.P.C. of the complainant/petitioner, for the purpose of preparation of site plan of the incident, and for the



purpose of ascertaining as to whether the statement of petitioner's younger sister is to be considered in the present case or not and as to whether offence under Sections 354/354D of IPC would be made out against the accused or not.

17. Therefore, considering the aforesaid facts and circumstances of the case, and the fact that the powers of Constitutional Courts are not limited in ordering any further investigation even if charges have been framed and if glaring deficiencies on part of investigating agency are pointed out, this Court is of the opinion that the petitioner who is the complainant in the present FIR cannot be made to suffer due to lapses on part of prosecution. In view thereof, this Court deems it appropriate as well as utmost necessary to direct further investigation to be conducted by the investigating officer on three points, as taken note of in the preceding paragraph and as submitted by learned ASC for the State.

18. In the present case, a prayer had also been made for setting aside order dated 23.03.2022 *vide* which charges were framed against the accused only for offence under Section 506/509 of IPC. However, in this regard, this Court is of the opinion that since further investigation has been directed by this Court and a supplementary chargesheet would be filed by the investigating officer, on which cognizance will be taken as per law, the learned Trial Court will be required as per law to alter the charge or frame additional charge in the present case on the basis of further investigation conducted by the investigating officer, if the material so requires. Thus, this Court is not inclined to set aside order dated 23.03.2022 passed by the learned



ACMM.

19. However, it is directed that the further investigation shall be completed by the I.O. in this case within a period of one month and supplementary report shall be filed as per law, under intimation to the petitioner herein.

20. With these directions, the present petition stands disposed of.

21. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 24, 2024/at