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

% *Date of decision: 3rd September, 2024*

+ CRL.M.C. 1913/2024 & CRL.M.A.7329/2024 & 17529/2024

AJIT KUMAR GOLAPetitioner

Through: Petitioner in person.

versus

STATE (GNCTD) AND ANRRespondents

Through: Ms. Richa Dhawan, APP for State
with SI Mohan Lal, P.S.Alipur.

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+ CRL.M.C. 1918/2024 & CRL.M.A.7344/2024 & 17791/2024

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CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The aforesaid two Petitions have been filed under Section 482 Cr.P.C against the common Order dated 19.01.2023 under Section 200 Cr.P.C. passed by learned ASJ, Delhi, wherein the Order dated 23.04.2019 passed by the learned CMM, Delhi summoning the respondents under S. 323/341/392/427/120-B IPC , has been partly modified.



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2. **Briefly stated**, in *Crl. M.C. No.1913 of 2024* filed by Shri Ajit Kumar Gola/ Complainant, the petitioner is aggrieved by the discharge of Inspector Khushal Singh/Accused No. 1 *vide* the Impugned Order dated 19.01.2023. In *Crl. M.C. No.1918/2024* the petitioner is aggrieved by the part of the Impugned Order whereby the matter has been remanded back to the Trial Court to re-appreciate the pre-summoning evidence and re-hear arguments on the point of summoning qua the other co-accused persons except Accused No. 1.

3. The Petitioner/ Complainant has submitted that the Ld. CMM after appreciation of pre-charge evidence and due application of mind in his Complaint under S.200 Cr.P.C. had taken cognizance and had passed a speaking summoning Order dated 23.04.2019 explaining the sufficient grounds which make out the *prima facie* case against the respondents and summoned them under 323/341/392/427/120-B IPC. The respondent had been rightly summoned by the learned CMM under Section 204 Cr.P.C. as there were sufficient grounds for proceeding against them. It is submitted that no accused persons especially the police officials, can be granted any protection from the serious offences allegedly committed by them against the petitioner. It is asserted that at the stage of summoning, the veracity of the allegations is not to be looked into and the contents of the complaint had to be taken as truth. The defense of the accused cannot be considered.

4. The learned Revisional Court not only re-appreciated the alleged defense of respondent No.2/ Inspector Khushal Singh, but also relied upon his defense without the same being proved during regular trial, and has wrongly discharged him and remanded back the matter against all other respondents, to be reconsidered by the Ld. CMM.



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5. The basic **grounds** of challenge are that the learned ASJ has overstepped his Revisional Jurisdiction and has re-appreciated the facts to modify the original Summoning Order dated 23.04.2019. It is claimed that he has conducted a mini trial to establish certain facts which is not permissible in exercise of the jurisdiction under Section 397 Cr.P.C. and thus, the impugned Order suffers from patent illegality and has caused grave miscarriage of justice. The respondent No. 2 herein had failed to show any incorrectness, illegality or impropriety in any of the findings of impugned Order of summoning dated 23.04.2019 passed by the learned CMM.

6. The petitioner has placed reliance upon Anjani Kumar vs. State of Bihar and Anr. 2008 (2) RCR (Criminal) 849; Bholu Ram vs. State of Punjab and Anr. 2008 Supp AIR (SC) 550; Hari Prakash Gulia vs. State and Anr. Crl. M.C716/2014 decided on 25.11.2014; and Station House Officer, CBI/ACB/Bangalore vs. B.A. Srinivasan and Anr. MANU/SC/1676/2019.

7. Moreover, the findings of the learned Revisional Court are totally contradictory and it fell into a grave error by returning a finding that the allegations of assault were merely verbal and not supported by any MLC and no Doctor had been examined to prove the medical records. The petitioner had relied upon *Vigilance Inquiry Report dated 29.03.2010* recording that the incident and allegation of snatching of camera, mobile, Rs.10,000/- etc. of the complainant by the police officials was found false, and its findings are taken as true without any trial. This finding amounts to mini trial, which is again perverse and patently illegal for which reason the impugned Order of Ld. ASJ, is liable to be set aside.



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8. The learned Revisional Court had observed that the complainant had been earlier arrested in FIR No.166/2006 under Section 186/332/352 IPC P.S. I.P. Estate and FIR No.358/2009 dated 09.11.2009 under Section 186/332/353 IPC, which was registered against the complainant as he had attacked the Revisionist while on the official duty. It is claimed that the complainant had got the FIR registered merely as a counter-blast to protect himself from legal ramifications. He is habitual of filing such cases.

9. The Revisional Court also fell in error when it referred to Section 140 D.P. Act and Section 197 Cr.P.C. stating that prior sanction was required for summoning the Revisionist who were Traffic Police officials. Merely because they were police officials, does not permit them to commit heinous offences under Section 392/120 B IPC as alleged by the petitioner herein, for which any sanction is required.

10. The offences allegedly committed by the respondents, were not in any manner associated with performance of their official duty. Reliance has been placed on Mahavir Singh vs. State decided on 03.12.2018 by this Court. Reference has also been made to State of NCT of Delhi vs. Samunder Singh decided by this Court on 31.02.2014.

11. **Learned APP for the State as well as the respondents** have argued that in order to assess whether there is any perversity or illegality in the Order of the Ld. Trial Court, learned ASJ/Revisional Court is well within his jurisdiction to examine the facts in order to ascertain if the impugned Order suffers from any patent illegality. There is no infirmity in the Order of the learned Revisional Court and the present petition is without any merit.

12. **Submissions heard and record perused.**

13. The case of Shri Ajit Kumar Gola/ petitioner is that he was working



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as a Reporter with Newspaper 'Pol Khol News' and he exposes the practices of government employees by conducting sting operations. In July, 2009 he sent one complaint to DCP, Traffic with regard to the alleged corrupt practices of the Traffic Police Officers due to which the Police officials of Traffic Circle, Narela were suspended, while warning was extended to Inspector Khushal Singh. Since then, the officials of Traffic Circle, Narela are having grudges against him.

14. On 09.11.2009 at about 11:30 A.M, he reached GTK Road in his car bearing No. DL3CT 2055 which he parked at a distance of about 150 meters from where the traffic officials at Narela Circle were challaning some vehicles, while they were letting the other vehicles go, allegedly after taking a bribe. He recorded their acts in his video camera. After sometime accused No. 7/Const. Pradeep Malik came alone towards his car and on seeing him recording, he called other accused persons telephonically.

15. The other accused No. 2 to 6 in the Complaint Case came with other unknown officials. He informed Inspector Kushal Singh, accused no. 1, about the incident and briefed him about his previous complaints. On the asking of Inspector Kushal Singh, the complainant was taken to a lonely place by the other accused persons and was assaulted. These persons even snatched his mobile phone Nokia, RC of the Car, Rs.10,000/- cash and his wrist watch. Due to his raising cries, many people collected there, but they were also threatened by the Police officials. Thereafter, the accused persons started searching for the video camera; they broke the window glass of his car and took away the camera along with the battery, memory card, etc. One Gypsy came and the complainant/ petitioner was taken to P.S. Alipur, where Inspector Kushal Singh was already present. He threatened the petitioner of



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false implication and falsely registered FIR No.358 of 2009 P.S. Alipur alleging that he had assaulted the Traffic Police officials concerning some challan of four Dumpers, even though he had no concern with those vehicles. SHO P.S. Alipur and ACP were informed about the incident, but no action was taken on his complaints.

16. The complainant/petitioner then filed a Complaint under Section 200 Cr.P.C. on these allegations in which he examined himself as **CW1** and deposed about the entire incident. He also deposed that no action was taken by accused No.8/Surender Sand SHO, P.S. Alipur, on his complaint. **CW2** HC Manoj Kumar proved the relevant DD entry No.13A, 15A, 19A, 28A, 47B and 50B which were the calls made by him. **CW3** an official from Traffic Head Quarters, proved the Suspension Order Ex.CW3/A.

17. The learned CMM, *vide* Summoning Order dated 23.04.2019, after referring to the statement of complaint on Oath supported by the DD entries and the record, observed that there was sufficient material to reflect that accused No.1, Inspector Kushal Singh had hatched the conspiracy with other accused No. 2 to 6 to assault the complainant in order to take revenge qua the complaints lodged against them, by him. Finding sufficient material on record, the respondent No.1 in *Crl. MC No.1913 of 2024* and Respondent No. 2-7 in *Crl. MC No.1918 of 2024* were summoned for offences under Section 323/341/392/427/120B IPC. However, in respect of accused No.8/Surender Sand SHO P.S. Alipur, it was noted that the only allegation against him is non-action on the complaints lodged by the petitioner against the accused persons. Such inaction cannot be termed as part of a conspiracy to assault the petitioner and was therefore, not summoned.

18. Aggrieved by the summoning, the respondents filed their Revision



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Petition bearing No. 121/2019, before the learned ASJ.

19. The learned ASJ, *vide* Impugned Common Order dated 19.01.2023, observed that even though allegations of assault have been made which took place on a road in broad day light by the Traffic officials, there is neither any CCTV footage nor any public person who has been examined by the petitioner. Pertinently, no CDR or any application for summoning of Nodal Officer by the complainant during the pre-summoning evidence, was made. It was observed that it is a dangerous proposition that simply by naming Senior Government official who was not admittedly even present at the spot, relying purely on the oral testimony of the complainant, the respondents have been summoned. The complainant has an FIR No.358/2009 under Section 186/332/352 IPC already registered. The allegations of assault were merely verbal in nature which were not corroborated by MLC or any testimony of the Doctor or the medical records.

20. Furthermore, *Vigilance Enquiry* had been conducted against the accused persons and the Enquiry Report dated 29.03.2010 was prepared wherein the allegations of the petitioner, of snatching of camera, mobile, Rs.10,000/-, etc. were found to be false. It was also revealed that the complainant/ petitioner had been arrested earlier in case FIR No.166/2006 under Section 186/332/352 IPC P.S. I.P Estate and another FIR bearing No.358/2009 dated 09.11.2009 (*which is the cross FIR of the same incident*) had also been registered against him.

21. The petitioner/complainant has explained that as a counter-blast to his complaint in regard to incident dated 09.11.2009, FIR No.358/2009 under Section 186/332/353 IPC was registered against him by the accused persons, alleging that he had attacked them while they were on official duty. It is



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claimed that the FIR registered against him by the accused persons, was only in order to protect themselves from legal action.

22. The learned ASJ also referred to Section 140 of Delhi Police Act read with Section 197 Cr.P.C, wherein prior sanction is required for summoning of the police officials. It was observed that even if the alleged incident was assumed to have happened, whether it was done beyond the duty of the police officials or in exercise of their power to maintain law and order or may be to save themselves while on duty, required some cogent and impeachable evidence before waiving the mandatory sanction under Section 197 Cr.P.C.

23. It was thus, concluded that all these material aspects have been claimed to have been overlooked by the learned M.M to hold that no Sanction under Section 197 Cr.P.C. read with Section 140 DP Act, was required. The learned ASJ thus, set aside the summoning of Inspector Kushal Singh by observing that he was not even present at the spot and discharged him. However, in regard to the other accused who are respondent No. 2 to 7, the case was remanded back to the Trial Court for re-appreciation of the pre-summoning evidence and to decide the summoning of the respondents afresh.

24. Aggrieved by the said discharge of Inspector Khushal Singh, and remanding back the matter to the learned C. M.M. for fresh consideration of the summoning of the respondents, the present petitions under Section 482 Cr.P.C. has been filed.

25. From the aforesaid narration of the facts and also that an FIR No.358/2009 had been registered against the petitioner for the same incident, there can be no denying that an incident had taken place. While the



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Police at its own version of petitioner having interfered in their discharge of duty and had obstructed and assaulted them, but it does reflect that some incident did happen on 09.11.2009.

26. There are two aspects of the impugned Order which are under consideration. The *first aspect* is in regard to discharge of Inspector Kaushal Singh i.e. the accused no. 1, while the *second aspect* is the remanding back of the entire case for re-arguments in regard to the summoning of the respondents.

27. *In so far as the first aspect* is concerned with respect to Inspector Khaushal Singh, the basic allegations of the complainant are that he had conspired with the other accused persons and he himself left the spot, and pursuant to the conspiracy between him and the other accused persons the Complainant was assaulted and his articles including his video camera with which he was trying to record the alleged acts of bribery of the accused/respondents, and his money, etc. was stolen by breaking the glass of his car.

28. The case of the petitioner is that after calling the accused persons, Inspector Khushal had left and the remaining police officials/ the respondents had assaulted and given him beatings. The learned ASJ has fallen into error in appreciation of the testimony of the petitioner and the other witnesses, to observe that from the testimony of the petitioner there was *prima facie* no evidence disclosed against Inspector Khushal Singh and has rightly discharged him and quashed the complaint viz-a-viz him. There was a jurisdictional error committed by the learned ASJ in discharging Inspector Khushal Singh despite there being affirmative statement by the Complainant that the acts of respondents no. 2 to 7 were pursuant to the



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conspiracy that they entered and pursuant thereto, the Complainant was assaulted. At this stage, no mini trial could have been done, though the Inspector may have left the scene but the testimony of the Complainant that the other accused had assaulted him on his asking, cannot be overlooked at the stage of summoning. That the Inspector Khushal Singh was on duty on the relevant day, is not disputed. The Order of Ld. ASJ dated 19.01.2023 setting aside the summoning Order against Inspector Khushal Singh suffers from patent illegality which should have been determined only by considering the *prima facie* evidence that was available with the Ld. ASJ.

CRL M.C No.1913/2024 is therefore, allowed.

29. *The other aspect for consideration* is whether learned ASJ was justified in directing the re-hearing on the summoning of the remaining respondents No. 2 to 7 in CRL M.C No.1918/2024.

30. There was categorical statement made by the petitioner against the respondents as CW-1. The learned ASJ has observed that neither was any CDR /MLC had been produced to support the allegations of assault or beatings nor was any public witness examined, but at this juncture it would be pertinent to observe that merely because the public witnesses were not examined, the same cannot be considered as a ground to dispute or doubt the testimony of the complainant. The MLC may not have been prepared, but it is not essential that in every case of assault the only way of proving assault is through medical records/MLC. Even a slap, kicks, beatings or bruises may qualify as injuries in terms of Section 323 IPC, for which a person may not approach a Doctor for treatment. Therefore, at this stage there was no basis for disbelieving the testimony of the petitioner who had examined himself on Oath in the Complaint under Section 200 Cr.P.C.



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31. There were specific averments made by him of not only assault but also of money and other things having been snatched from him. All the evidence was duly appreciated by learned M.M in Summoning Order dated 23.04.2019. There was no basis for the learned ASJ to remand the case back to re-hear arguments on the aspect of summoning.

32. Therefore, the impugned Order dated 19.01.2023 in so much as it has remanded back the case for re-consideration by learned C.M.M. suffers from jurisdictional error. ***Consequently, the Order of the Revisional Court is hereby set aside and the summoning of the respondents vide Order dated 23.04.2019, by the learned C.M.M., is hereby upheld.***

33. **The CRL. M.C.1918/2024 and CRL. M.C1913/2024 are hereby allowed.** The learned M.M is at liberty to proceed further with the trial in accordance with law.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 3, 2024

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