



2024:DHC:6304



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

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Reserved on: July 11, 2024

Pronounced on: August 20, 2024

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W.P.(CRL) 2774/2023

ANIL KUMAR GARG

S/o Sh. Atma Ram Garg

R/o S-8, Suraj Nagar, Azadpur,

New Delhi-110033.

..... Petitioner

Through: Petitioner in person.

versus

1. **THE STATE OF NCT OF DELHI**

Through Commissioner of Police

New Police Head Quarter,

Jai Singh Road, New Delhi-110001.

2. **NEO RAM SHARMA**

S/o Late Sh. Nand Ram

R/o S-4, Suraj Nagar, Azadpur,

Delhi-110033.

3. **NATHU RAM NAGAR**

S/o Late Sh. Shree Ram Nagar,

R/o G-3/81, Model Town-III

Delhi-110009.

..... Respondents

Through: Mr. Amol Sinha, ASC (Crl.) for the State with Mr. Kshitiz Garg, Mr. Ashvini Kumar, Ms. Chavi Lazarus and Mr. Arjun Singh Kadian, Advocates with SI Rahul Kumar, PS Adarsh Nagar.

Mr. Avinash Lakhanpal, Mr. Rahul Kumar Singh and Mr. Shailendra Kumar Singh, Advocates for R-2 and R-3

Signature Not Verified

Digitally Signed By: ANIL SHARMA

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CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. A Criminal Writ Petition under Article 226 of Constitution of India read with Section 482 of Cr.P.C. has been filed on behalf of the petitioner Anil Kumar Garg to set aside Order dated 05.11.2022 of the learned Metropolitan Magistrate dismissing the Application under Section 156 (3) Cr.P.C. of the petitioner, which has been upheld by learned ASJ vide Order dated 07.03.2023.
2. *Briefly stated*, the petitioner is a lawyer, while respondent No.2 and 3 are the General Secretary and President respectively of Shri Durga Mandir Trust, Suraj Nagar, Azadpur, Delhi. The respondent No.2 is also a practising Advocate of Supreme Court of India. The parties have ongoing litigation and there is a Criminal Case registered *vide FIR No.171/2014 titled State vs. Akshil Gupta & Ors., P.S. Adarsh Nagar under Sections 354/354-B/325/506/34 IPC* wherein the respondent No.2 is one of the accused and petitioner is a witness. The respondent No.2 has been persistently pressuring the petitioner to enter into a compromise to which he was not agreeable.
3. On 07.03.2021 at about 09:00 P.M respondent No.2 Neo Ram Sharma came outside his house and without any provocation started abusing and making derogatory remarks about the wife of the Petitioner. He then moved to the main gate of Shri Durga Mandir Dharamshala, while the petitioner came out of his house and a confrontation ensued between them.



4. On 07.03.2021 at about 09:50 P.M respondent No.3 upon instigation and in collusion with respondent No.2 and some unknown persons trespassed into his house and threatened him to kill in the next two days. The respondent No.2 was present outside the house along with the mob of around 10-15 unknown persons to assist them to assault and intimidate the petitioner.

5. A PCR call was immediately made by the petitioner and a written complaint was also filed, but no action was taken. Thereafter, the petitioner came to know on 10.03.2023 that he has been implicated in a false criminal case vide *FIR No.123/2021 under Section 325/341/506 IPC P.S. Adarsh Nagar* on the false allegation that he had attacked respondent No.2 with a lathi from behind causing fracture in his left hand. Although, the truth is that the petitioner had come out of his house bare handed and had never attacked respondent No.2 with lathi or otherwise.

6. The Chargesheet in FIR No.123/2021 registered on the complaint of respondent No.2 has already been filed and the testimony of respondent No.2 has been recorded, wherein he has retracted from his complaint made in the said FIR. He has deposed that the petitioner had pushed him with hands due to which he fell and suffered a fracture in his hand. PW3 Phool Chaudhary also has failed to support the case of the prosecution.

7. It is claimed that respondent No.2 and 3, General Secretary and the President of the Shri Durga Mandir Trust, Suraj Nagar respectively have called a meeting of the Executive Members on 05.04.2021, wherein they have passed a Resolution and forwarded a Complaint to SHO, P.S. Adarsh Nagar, DCP, Commissioner of Police and LG, wherein they have claimed that petitioner in collusion and in conspiracy with his wife Sunita Garg, has



been in a habit of falsely implicating the innocent persons in criminal cases of moral turpitude and also making false complaints against the innocent person and the police officials.

8. The petitioner has contended that the Complaint under Section 156(3) Cr.P.C. read with Section 200 Cr.P.C. was filed by him seeking registration of cross FIR against respondent No.2 and 3 which has been dismissed by learned M.M vide Order dated 05.11.2022 which has been upheld by learned ASJ in his Order dated 07.03.2023.

9. The grounds for challenging the impugned Orders are that respondent no.1 i.e. the State Machinery has failed to discharge their duty to protect the public witnesses from the illegal acts of respondent No.2 and 3; and that a false criminal case vide FIR No.123/2021 has been registered against the petitioner in order to pressurize him to compromise the earlier FIR registered against the respondents in which he is a witness.

10. It is claimed that the learned M.M has failed to take note of the fact that the respondents had trespassed inside his house with unknown members who are not known to the petitioner, as part of the unlawful assembly. The FIR is essential to establish the identity of such unknown members of the unlawful assembly. The petitioner has placed reliance on Upkar Singh vs. Ved Prakash & Ors. (2004) 13 SCC 292; P. Sreekumar vs. State of Kerala (2018) 4 SCC 579; Surender Kaushik & Ors. vs. State of U.P & Ors. (2013) 5 SCC 148; State of Haryana vs. Bhajan Lal (1992) Supp. SCC 335 in support of his assertions.

11. The **respondent No.2 and 3 in their detailed Reply** have claimed that the present petition is an abuse of process of the Court as the petitioner has not approached the Court with clean hands and has manipulated and



misinterpreted the facts with baseless, false, concocted allegations merely to pressurize respondent No.2 who has lodged FIR No.123/2021 against the petitioner. It is claimed that the endeavour of the petitioner is only to implicate them in false and malicious legal proceedings to cause immense insult, humiliation and to mount pressure on him to succumb to the illegal and unlawful acts of the petitioner.

12. It has been explained that petitioner's brother is also a member of the Shri Durga Mandir Trust registered, Suraj Nagar, New Delhi. However the petitioner being in a habit of picking fights on trivial issues, was not taken on the Board of Trustees for which the petitioner harbours a grudge against the Board of Trust. On several occasions the petitioner has indulged in mischievous activities causing harm to the Trust property.

13. On 09.05.2018 he entered into the Dharamshala and desecrated the name of the co-founder of the Trust written on the wall, by using a drill machine. This matter was reported to the Police vide DD No.51 dated 10.05.2018 P.S. Adarsh Nagar. Again on 18.08.2018, the petitioner had applied to be enrolled to be Trustee of the Trust, but looking at his deplorable conduct, it was declined, which has again made his grudge stronger towards the Trust members and he does not miss a chance to disturb the smooth functioning of the Trust.

14. It has been explained that on 07.03.2021, the petitioner broke the tap of the Water Dispenser installed by the Trust. When the respondent No.2 came to know about the aforesaid ill act of the petitioner, he went to inspect the damage and was attacked by the petitioner with hands and lathi, because of which he fell and suffered injury in his spine and fracture in his left hand. It is only after the intervention of the people that respondent No.2 could he



be saved from the petitioner. The respondent No.2 thereafter dialled 112 and got the FIR No.123/2021 registered against the petitioner.

15. The respondent No.3 on being informed about the aforesaid incident along with the other respectable members of the locality, went to the house of the petitioner in order to reason with him for his misbehaviour and for causing bodily harm to respondent No.2. However, the petitioner without any provocation further misbehaved with the gathering of the locality and even used abusive language. After the FIR No.123/2021 got registered, the petitioner started making complaints by levelling false allegations against respondent No.2 and 3. The Police collected CCTV footage and conducted the preliminary enquiry and the allegations made by the petitioner, were not found to be substantiated.

16. The petitioner in the interim, filed a Complaint Case No.1286/2021 under Section 156(3) Cr.P.C making false and baseless allegations against respondent No.2 and 3. The learned Trial Court dismissed the application vide its Order dated 05.11.2022 and the same did not find favour with the learned ASJ as well, who also dismissed the same vide Order dated 07.03.2023.

17. **On merits**, it is submitted that all the allegations made by the petitioner are false and baseless and are motivated on his not being inducted as a Trustee on the Board of the Mandir.

18. A **Status Report** has been submitted by the I.O who has stated that the CCTV footage and video recorded by the petitioner in his mobile phone, have been closely scrutinized wherein the altercation between the petitioner and respondent No.2 and 3 in the presence of other persons, has been recorded. It was concluded that the allegations made by the petitioner have



not been established and are rather indicative of a counter to the Criminal Case FIR No.123/2021 registered against him on the complaint of respondent No.2.

19. A **rejoinder** has also been filed reiterating his assertions as were made in the petition.

20. **Submissions heard.**

21. The petitioner has sought registration of FIR under Section 156(3) Cr.P.C for an incident which admittedly took place on 07.03.2021 at around 09:00 P.M. The respondent No.2 had asserted that while he had gone to inspect the damage caused to the faucet of the water dispenser, the petitioner had come out and had threatened him and even pushed him because of which he fell and suffered injury in his spine and fracture of the hand. The FIR No.123/2021 got registered against the petitioner in regard to this incident on the complaint of respondent No.2.

22. However, the narration of events further reveal that the incident did not stop there, but respondent No.2 and 3 along with the local people then came to the house of the petitioner *at around 09:50 P.M.*, wherein again an altercation and scuffle happened between the petitioner and respondent No2 and 3 who had come to his house along with other public persons.

23. The petitioner had filed his Application under Section 156 (3) Cr.P.C. for registration of FIR essentially for the purpose of identifying the persons who had accompanied respondent No.2 and 3 to the house of petitioner at about 09:50 P.M.

24. There is no dispute about the proposition of law that the cross FIRs can be registered in respect of one incident, but what is material and



significant is whether a case is made out for recording of cross FIR as asserted by the petitioner.

25. The incident of 09:50 P.M on the same day is corroborated by the CCTV footage and the mobile video recording that was prepared by the petitioner. It may be pointed out that while learned M.M has confined herself only to the incident which happened at 09:00 P.M leading to registration of FIR No.123/2021, the learned ASJ has referred to the subsequent event which happened at 09:50 P.M. and relied upon the CCTV footages in regard to the version which is projected by the petitioner. Be as it may the only ground on which the FIR was sought to be registered was to establish the identity of the other assailant, but as has been rightly observed by the learned ASJ, no FIR need to be registered for the process.

26. The application under Section 156(3) Cr.P.C has been rightly rejected by the learned M.M and upheld by learned ASJ. It may be pertinent to observe that merely because no registration of FIR under Section 156(3) Cr.P.C. has been directed, does not imply that the complaint of the petitioner does not have any merit. Rather, it has only stated that no police assistance is required and the petition can still prove its case by recording its evidence and if the circumstances justify, the registration of FIR may be ordered thereafter. It is also pertinent to observe that in case after or during the recording of the statement of the complainant and the witnesses, it is felt that the police assistance is required in any manner, the same can be sought under Section 202 Cr.P.C. There is only deferment of registration of FIR as the Petitioner still has the opportunity to lead evidence in his complaint under Section 200 Cr.P.C.



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27. There is no infirmity in the impugned Order and the writ petition is hereby dismissed with the pending applications, if any.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 20, 2024
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