



2024:DHC:8672



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 9th October, 2024***+ **CRL.M.C. 8012/2024**

SATISH SHARMA

.....Petitioner

Through: Mr. Viresh B. Saharya,
Mr. Akshat Agarwal and
Mr. Rishabh Mathur,
Advs.

versus

STATE(GNCTD) AND ORS.

.....Respondents

Through: Mr.Naresh Kumar Chahar,
APP for the State with SI
Manju Bala and SI Deepak
Sahu, PS Pul Prahladpur.**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J.**

1. The present petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), *inter alia*, challenging the judgment dated 01.04.2024, in Crl. Revision No. 365/2023, whereby the learned Additional Sessions Judge (ASJ), Saket Courts, Delhi dismissed the revision petition filed by the petitioner against the impugned order dated 01.03.2023 passed by the learned Metropolitan Magistrate, Saket Courts, Delhi.
2. The learned Metropolitan Magistrate, by the impugned order dated 01.03.2023, had dismissed the complaint filed by the



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petitioner under Section 200 of the Code of Criminal Procedure, 1973 (**CrPC**) against the respondents/proposed accused for the commission of offences punishable under Sections 166/167/347/350/362/385 read with Section 120B of the Indian Penal Code, 1860 (**IPC**).

3. Briefly stated, the complaint was filed at the behest of the complainant/petitioner wherein he levelled allegations of illegal detention by the proposed accused nos. 1-4 who are the police officials working with the Delhi Police. It is alleged that on 04.06.2014, the complainant was illegally picked up from his office situated at Nehru Place at gun point by some persons including police officials. Thereafter, he was taken to some unknown place where he was illegally detained till 11:00PM and later he was taken to the Police Station Pul Prahlad Pur. He further alleged that the police officials tried to extort huge amount of money from him and proposed accused no.1 had got his signature on certain blank papers on gun point.

4. The learned Magistrate took cognizance of the said allegations and proceeded to examine the complaint under Section 200 of the CrPC and ordered inquiry under Section 202 of the CrPC and by the impugned order dated 01.03.2023, dismissed the complaint filed by the petitioner. The relevant portion of the same is reproduced hereunder:

"It was observed by this court vide order dated 05.02.2022 as "perusal of the material on record shows that the complainant has leveled serious allegations against the serving police officials of different ranks. The allegations, if true, will amount to violation of several directions passed by

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the Hon'ble Supreme Court and also amount to violation of constitutional provisions" and "considering the gravity of the allegations involved, I deem it apposite to direct the DCP, SE to conduct an independent enquiry u/s 202 Cr.PC over the allegations made by the complainant qua his apprehension and subsequent detention on 04.06.2014 by the proposed accused no.1 to 4. The said enquiry must be conducted by an official not below the rank of ACP who is not directly or indirectly related to the present case. The said official must not have been posted at PS Pul Prahlad Pur at the relevant time. The enquiry be conducted under the overall supervision of DCP, SE."

Report was filed by DCP South East as per which the matter was got enquired into through ACP Sarita Vihar and during the course of enquiry, complainant Satish Kumar, SI Manju Bala, SI Kishore Kumar, HC Bhikember Sharma, HC Sarvan and Inspector Dharam Dey [the then SHO PS Pul Prahlad Pur] were examined. CCTV footages were also examined in the presence of complainant Satish Kumar. It got revealed that case FIR No. 125/2014 u/s. 498A/406/354/376 IPC, PS Pul Prahlad Pur, was registered against the complainant Satish Sharma who was arrested on 04.06.2014 by 10 W/SI Manju Bala as his application for anticipatory bail was rejected by the Hon'ble Court. That the complainant was well aware about these facts and as per the details enquiry report of Sh. Vinay Malik, ACP Santa Vihar, the allegations levelled by the complainant were not found to be true.

Objections to the aforesaid report were filed by the complainant which were taken on record and some doubts has been raised and it was submitted that the enquiry report was false and fabricated as no opinion was given on certain material aspects as to how the time of arrest is different, how certain unknown persons were accompanying the police officials at the time of apprehension of the complainant, how Ct. Lakhvinder and accused no.5 were witnesses to the arrest memo and further as to what vehicle were used by the police officials for the arrest of the complainant.

Whole record has been perused.

It may be noted that in the present case, application of the complainant u/s 156(3) Cr.PC was got dismissed by this court which was challenged by the complainant before Ld. Sessions Court and Hon'ble Delhi High Court and the same was dismissed by this court which was challenged by the complainant and the same was dismissed by the superior court also. It has come on record wherein complainant has admitted that he was apprehended from his office and at that

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time his family members were also there. It has further been admitted by the complainant that he was taken into hospital by the police for his medical examination and that he was on bike wherein he was got seated between the driver and the pillion rider. In all of the above mentioned circumstances, the accused or his family members had the opportunity to raise an alarm or to make a call to the police. However, it is not understandable as to why no such alarm was ever raised. Further, since the allegations were raised against the police officials, the ATR in the present case was called from DCP and even an order u/s 202 Cr.PC was made wherein enquiry was ordered to be made by the DCP to ensure the involvement of senior police officials and to detect any foul play on the part of the police. However, neither in the ATR nor in the enquiry u/s.202 Cr.PC any foul play or complicity of police officials to illegally detain the complainant was found.”

5. The petitioner challenged the order dated 01.03.2023 before the learned ASJ by invoking the revisional jurisdiction. The learned ASJ, by order dated 01.04.2024, upheld the impugned order dated 01.03.2023, thereby noting as under :

“14. Be that as it may, the CCTV Footage dated 04.06.2014 pertaining to the place of apprehension of the complainant, which is heavily relied upon by the complainant to canvass his allegations regarding kidnapping, does not reflect anything out of the ordinary. In fact, the CCTV Footage reflects that the complainant was being escorted downstairs by two police officials. The CCTV Footage does not reflect that at that time the complainant was being led downstairs on gun point.

15. Rest of the allegations regarding the detention of complainant at a place other than PS Pul Prahlad Pur for about 3-4 hours after his apprehension is not corroborated by any independent material or witness. Similarly, the allegations regarding demand of Rs 50 lakhs for settling the matter with the opposite party in FIR no. 125/14 PS Pul Prahlad Pur also remain uncorroborated. The allegations regarding obtaining of signatures of complainant on blank papers by respondent WSI Manju Bala also remain uncorroborated. When considered in the background of the caustic remarks passed by the Court of Sessions on 04.06.2014 at the time of dismissal of anticipatory bail



application of the complainant moved in FIR no. 125/14 PS Pul Prahlad Pur and the unexplained absence of all the said allegations in Ex. CW1/D, the allegations of complaint seem bald and motivated. The complaint seems like a spiteful endeavour of the complainant to exact retribution from the police officials who were involved in his apprehension and arrest in FIR no. 125/14 PS Pul Prahlad Pur. For the foregoing reasons, this Court does not wish to interfere with the impugned order passed by the Ld. Magistrate. The impugned order dated 01.03.2023 is hereby affirmed. Consequently, the present revision petition stands dismissed.”

6. The learned counsel for the petitioner submits that the impugned order has been passed without application of judicial mind.

7. He submits that neither the learned MM nor the learned ASJ took into consideration the documents/material placed on record which conclusively establishes the commission of the alleged offences of abduction and illegal arrest. He submits that the Courts below have erred in dismissing the complaint at the threshold, even though there was contemporaneous material available before it.

ANALYSIS

8. The first issue that falls for the consideration of this Court is whether the petitioner having already availed the remedy of revision can take recourse to Section 482 of the CrPC as a substitute for initiating a second revisional challenge which is clearly barred under Section 397(3) of the CrPC which reads as follows:

“(3) If an application under this section has been made by any person either to the High court or to the Sessions Judge,



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no further application by the same person shall be entertained by the either of them.”

9. At the outset, it is relevant to note that while it is settled law that a second revision cannot be filed in terms of the bar under Section 397 of the CrPC, the inherent power of this Court under Section 482 of the CrPC has a wide ambit and can be exercised in the interest of justice. It is settled law that the power under Section 482 of the CrPC is to be exercised cautiously and sparingly, especially when Sessions Judge has already exercised revisional power under Section 397 of the CrPC.

10. The Hon’ble Apex Court, in the case of ***Krishnan v. Krishnaveni*** : (1997) 4 SCC 241, had observed as under:

“8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order.”

(emphasis supplied)

11. The petitioner is aggrieved that the complaint filed by the petitioner was dismissed and the accused persons were not summoned.



12. It is trite law that summoning of an accused in a criminal case is a serious matter and the criminal law cannot be set into motion as a matter of course. The learned Trial Court is required to examine the nature of allegations and the evidence in support thereof in order to examine if an offence is *prima facie* committed by the accused. The Hon'ble Apex Court in the case of ***Pepsi Foods Ltd. v. Special Judicial Magistrate : (1998) 5 SCC 749***, observed as under:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

13. In the present case, cognizance was taken by the learned Magistrate and the petitioner / complainant was also examined. The Magistrate also ordered enquiry under Section 202 of the CrPC, pursuant to which a report was filed by the DCP which stated that the matter was enquired into through the ACP and during the course of enquiry, the petitioner / complainant and the Police Officials were examined. The CCTV footages were also



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examined in the presence of the petitioner. The report also indicated that an FIR No. 125/2014 under Sections 498A/406/354/376 of the IPC was registered against the petitioner, who was arrested on 04.06.2014 after his application for pre-arrest bail was rejected by the Court. The allegations were not found to be true.

14. The learned MM perused the evidence on record and the report filed by the DCP and noted that though the allegations were made that the petitioner / complainant was illegally picked up by the Police, however, no alarm was raised despite the fact that admittedly his family members were also present.

15. It was also noted that pursuant to dismissal of the application seeking pre-arrest bail, the Investigating Officer of the case was threatened outside the Court by the family members of the petitioner. The audacity of the family members of the petitioner was taken note of by the Court while dismissing the application seeking pre-arrest bail. The complaint was consequently dismissed by the order dated 01.03.2023.

16. The challenge to the order passed by the learned MM was rejected by the judgment dated 01.04.2024. The learned ASJ noted the background of the case that the FIR was registered against the petitioner / complainant under Sections 498A/406/354/376 of the IPC and the application seeking pre-arrest bail was dismissed by the Court of Sessions. It was also noted that the case was investigated by Respondent No. 2 (SI Manju Bala).



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17. The learned ASJ noted that even though the alleged incident of illegal detention happened on 04.06.2014, however, the first representation about the said incident was given on 19.07.2014. It did not reflect any allegation regarding his kidnapping at gun-point or his detention at a place other than Police Station Pul Prahaladpur or a demand of ₹50 Lakhs. It was only a subsequent representation to the authorities where the allegations, as made in the complaint, surfaced.

18. The CCTV footage was also analysed and it was noted that nothing out of ordinary reflects in it. The CCTV footage in fact showed that the complainant was escorted downstairs by two Police Officials and no gun was pointed towards him at that time.

19. Other allegations were also found to be uncorroborated.

20. The learned ASJ also noted about the remarks made by the concerned ASJ, while dismissing the application seeking pre-arrest bail, about the family of the petitioner and rightly observed that the complaint seems like spiteful endeavour to exact retribution from the Police Officials.

21. In the opinion of this Court, the learned Courts below, have rightly appreciated the facts of the case. From the facts as noted above, it is apparent that the allegations were bald and were not corroborated with any independent material or witness. The CCTV footage also showed that the complaint was not genuine.

22. This Court cannot lose sight of the fact that the present petition is filed under Section 528 of the BNSS (*erstwhile*



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Section 482 of the CrPC) challenging the concurrent findings of two Courts below.

23. The orders passed by the learned Courts below are well-reasoned orders and no gross miscarriage of justice can be said to have occurred so as to warrant interference by the High Court exercising power under Section 528 of the BNSS.

24. In view of the above, I find no infirmity in the impugned orders.

25. The petition, is, therefore, dismissed.

AMIT MAHAJAN, J

OCTOBER 9, 2024