



2024:DHC:5697



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI**Reserved on: 07th May, 2024****Pronounced on: 02nd August, 2024**

+

CRL.M.C. 4252/2014 & CRL.M.A. 14711/2014 (Stay)**SUNIL KUMAR****..... Petitioner**

Through: Dr. Alok, Mr. Siddharth Narang, Mr. Amritpal Singh, Ms. Aanchal Budhraj, Mr. Mayank Deswal, Mr. Shivam, Ms. Sangeeta and Ms. Smriti Walia, Advocates.

versus

STATE & ANR**..... Respondents**

Through: Mr. Hemant Mehla, APP for the State. SI Dharmveer, PS Chhawla. Mr. Surender Soni, Advocate for R-2 (through VC).

CORAM:**HON'BLE MR. JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") seeks the following prayers:

“(i) quash/set aside order dated 23.05.2013 passed by Ms. Manika, Ld. MM, Dwarka in CC no. 224/2/12 thereby directing registration of FIR against the petitioners in case titled as 'Ganga Saran vs. Indu Yadav & Ors.' and order dated 04.08.2014 passed by Shri Ashutosh

Signature Not Verified

Digitally Signed By: BHASKAR
SINGH RAWAT
Signing Date: 02.08.2024
19:19:21

CRL.M.C. 4252/2014*Page 1 of 22*



Kumar, Ld. ASJ in CR no. 64/2013 thereby refusing to set aside the said order in the exercise of its revisional jurisdiction; and
(ii) for the aforesaid purpose call for the records of the aforesaid case; and
(iii) till the disposal of the present petition stay the order dated 23.05.2013 and order dated 04.08.2014 and, trial and other proceedings in the matter as also grant stay of arrest of the petitioners; and/or
(iv) pass such further or other order which this Hon'ble Court may deem fit in the facts and circumstances of the case and in the interests of justice.”

BRIEF FACTS:

2. The brief facts leading to the present petition are as follows:
- i) On 22.06.2012, *vide* DD No. 35A (**Annexure P-3**), an information was received at PS Chhawla regarding an accident through Respondent no. 2 (hereinafter referred to as “the complainant”) by a speeding Maruti Car, bearing no. DL5CD9372. The investigation of the same thereof was entrusted to the petitioner.
 - ii) Thereafter, the petitioner accompanied by another PSI Yashveer left for the place of occurrence, i.e., at Pandwala More, Main Shikarpur, Jhatikara Road, New Delhi (which falls under the territorial jurisdiction of PS Chhawla) and upon reaching there, the petitioner found out that the PCR Van had already taken the complainant to RTRM Hospital and thereafter, left for the same. Upon reaching the hospital, it was found out that Sh. Aryan (minor son of the complainant) had succumbed to injuries and was brought dead and his body was sent for post mortem.
 - iii) That on 23.06.2012, pursuant to the certificate received from the doctor *vis-à-vis* fitness of the complainant, petitioner recorded his



2024:DHC:5697



statement and a case FIR, bearing no. 319/2012 under Sections 279/304A/337 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) was registered at PS Chhawla against unknown person(s) on the same date.

- iv) Incidentally, on the same date, i.e., 23.06.2012, the petitioner recorded the statements under Section 161 of the Cr.P.C. of the persons injured during such accident, namely, Smt. Hemlata (wife of the complainant), Ganga Ram (brother of the complainant), Sh. Pradeep (an independent witness). Additionally, mechanical inspection of the offending vehicle was also carried out and statement to that effect was also recorded. The body of the deceased, i.e., Sh. Aryan (minor son of the complainant) was handed over to Sh. Narendra Sharma (uncle of the deceased). It is pertinent to note, that statement of Rama Devi (mother of complainant) could not be recorded on the same date along with the other witnesses/survivours, as she was declared unfit for statement by the doctor of RTRM Hospital.
- v) Furthermore, on 27.06.2012, notice under Section 133 of the Motor Vehicles Act, 1989 (hereinafter referred to as “M.V. Act”) was issued by the petitioner to one Smt. Indu Yadav (the owner of the offending vehicle) and thereafter, in pursuance of the information received, the petitioner apprehended one Sh. Naveen Kumar (the driver of the offending vehicle/brother-in-law (“jeth”) of the owner/ subsequently arrayed as accused in case FIR no. 139/2012). Additionally, the petitioner moved an application before the concerned Court for carrying out TIP proceedings and pursuant to which, the accused was produced before the Court; however, the latter refused to join the same.



- vi) On 4.07.2012, the complainant addressed a complaint to SHO, PS Chhawla, against the petitioner alleging impropriety in the manner of investigation alleging that his statements were never recorded by the petitioner, who had only obtained his signatures on a paper. Thereafter, the complainant made an undated representation to the Commissioner of Police, MSO Building, ITO, New Delhi by attributing biasness against the petitioner and his failure to charge the accused(s) under Sections 307/304(Part II) of the IPC in the case FIR no. 139/2012. On 09.07.2012, the petitioner went to the residence of Smt. Rama Devi (mother of the complainant) and finally recorded her statement under Section 161 of the Cr.P.C.
- vii) On 13.07.2012, the present FIR being in the category of a fatal accident, was transferred to the MACT Cell/SW District, New Delhi and thereafter, the petitioner ceased to investigate the present FIR. Reportedly, further investigation thereof was transferred to one IO Lakh Ram, Accident Cell/SW District, New Delhi.
- viii) On 24.07.2012, Insp. Rajesh Malik, PS Chhawla submitted an Enquiry Report regarding the aforementioned representations of the complainant made before the SHO, PS Chhawla as well as the Commissioner of Police and found the allegations to be unsubstantiated. The Enquiry Report was duly forwarded by the then SHO, PS Chhawla and dispatched to the ACP, Najafgarh. Thereafter, on 02.08.2012, the petitioner was transferred from PS Chhawla to PS Civil Lines.
- ix) On 17.08.2012, the complainant filed a complaint under Section 156(3) of the Cr.P.C. arraying Ms. Indu Yadav (registered owner of the



2024:DHC:5697



offending vehicle), Naveen Kumar (driver of the offending vehicle/subsequently arrayed as accused), the present petitioner and SHO, PS Chhawla as proposed accused(s) and seeking registration of FIR under Sections 304(Part II)/ 307/ 279/ 338/ 167/ 201/ 218/ 116/ 120B of the IPC, in pursuance of which, in CC No. 224/2/12, Action Taken-Report dated 07.09.2012 prepared by the petitioner, Status Report dated 11.04.2013 prepared by IO Lakh Ram of MACT Accident Cell, and Enquiry Report dated 14.05.2013 prepared by Addl. Commissioner of Police, South-West district, New Delhi; were respectively filed before the Learned MM, Dwarka Courts, Delhi. It is pertinent to note that Enquiry Report dated 14.05.2013 prepared by Addl. Commissioner of Police found the allegations levelled against the petitioner to be unsubstantiated.

- x) That *vide* order dated 23.05.2013, the Learned MM ordered for registration of FIR against the petitioner in the case titled as '*Ganga Saran vs. Indu Yadav & Ors.*'. Being aggrieved, the petitioner preferred a Criminal Revision Petition No. 64/2013, which was dismissed by the Learned ASJ *vide* order dated 04.08.2014.

Hence, the petitioner has filed the present petition. It is pertinent to note that the present writ petition is only pursued by petitioner, i.e., SI Sunil Kumar and no petition till date challenging the impugned orders has been filed by Insp. Sandeep Gupta, the then SHO, PS Chhawla, although he had been arrayed as an accused in the complaint under Section 156(3) of the Cr.P.C.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

Signature Not Verified

Digitally Signed By BHASKAR
SINGH RAWAT
Signing Date: 06.08.2024
19:19:21

CRL.M.C. 4252/2014



2024:DHC:5697



3. Following submissions were made by the learned counsel appearing on behalf of the petitioner:

3.1 The learned counsel for the petitioner submits that the order dated 23.05.2013 passed by Learned MM and subsequently, the order dated 04.08.2014 passed by Learned ASJ, were passed in a mechanical manner without appreciation of facts and law and are therefore, unsustainable and bad in law. It was submitted that the Learned Trial Court failed to appreciate that the maliciously motivated aspersions in the complaint constitute no offence, let alone an offence for power exercisable under Section 156 of the Cr.P.C. It is submitted that the fact that the FIR no. 139/2012 was registered on 23.06.2012 and the complaint alleging impropriety in the manner of investigation against the petitioner was first filed by the complainant on 04.07.2012, speaks volumes about such ill-intentions, as pertinently, the complainant and his brother namely, Sh. Ganga Ram had sought *superdardinama* of their vehicles during that period but raised no grievance alleging impropriety, whatsoever.

3.2 It is further submitted that the Learned MM failed to appreciate that even though the allegation of impropriety in investigation circumvented around the fact of failure of the petitioner to take documents on record, yet there are no specifications as to which documents were refused by the petitioner to be taken on record or else destroyed, as alleged by the complainant. Furthermore, the Learned MM failed to cull out any *prima facie* material against the petitioner inasmuch as nothing was stated as to which cognizable offence(s) were committed by the petitioner for which direction for registration of FIR was given. Reliance is placed in **Brahm Singh**



2024:DHC:5697



Tanwar vs. State (NCT of Delhi) and Others, Delhi High Court in Crl. Rev. P No. 819/2006 dated 20.11.2006.

3.3 Furthermore, it is stated that the Learned MM, while passing the order dated 23.05.2013 had completely disregarded the concurrent findings/opinions rendered by various enquiry officers, i.e., Status Report dated 11.04.2013 authored by IO Lakh Ram, Accident Cell, S/W Distt., Delhi and Enquiry Report dated 14.05.2013 by the Addl. Commissioner of Police, South West District, New Delhi, including the Action Taken-Report dated 07.09.2012 submitted by the petitioner himself before the Court of Learned MM; all of which unsubstantiated the allegations levelled against the petitioner.

3.4 The learned counsel for the petitioner has placed on record various judgments to substantiate that when a Judicial Magistrate exercising jurisdiction under Section 156(3) of the Cr.P.C. directs for registration of an FIR, it should be after thorough application of judicial mind and not mechanically.

- a) Maksud Saiyed vs. State of Gujarat and Others 2008 (5) SCC 668 (paras. 13 and 14)**
- b) Pepsi Foods Ltd. and Another vs. Special Judicial Magistrate (1998) 5 SCC 749**
- c) Zandu Pharmaceuticals Works Ltd. and Others vs. Mohd. Sharaful Haque and Another (2005) 1 SCC 122**
- d) Dr. Zubair Ul Abidin vs. State (NCT of Delhi), Hon'ble Delhi High Court in Crl. MC. No. 233/2014, dated 14.02.2014 (paras. 9, 10, 11 and 12)**



e) Subhash Manchanda vs. State and Another, Hon'ble Delhi High Court in Crl. MC. No. 3593/2010, dated 04.02.2013 (paras. 9 and 10)

4.1 Learned counsel for the petitioner submits that the direction for registration of a second FIR on the same incident is bad in law as the complainant's complaint before the Learned MM under Section 156(3) of the Cr.P.C. was with respect to the same incident dated 22.06.2012, for which an FIR bearing no. 139/2012 under Sections 279/304A/337 of the IPC was already registered in PS Chhawla and thus, the complaint of the complainant was liable to be dismissed in view of the law laid down in **T.T. Antony vs. State of Kerala and Others (2001) 6 SCC 181; Babubhai vs. State of Gujarat and Others(2010) 12 SCC 254; Surender Kaushik and Others vs. State of Uttar Pradesh and Others (2013) 5 SCC 148.**

4.2 Furthermore, it is submitted that the Learned MM should have dismissed the complaint under Section 156(3) Cr.P.C. as she herself in the impugned order dated 23.05.2013, had not only directed recording of supplementary statement of the complainant but also recorded in the order that the aforesaid offence was already registered *vide* FIR no. 139/2012 and the remedy left to the complainant was of filing a protest petition.

5. Learned counsel for the petitioner submits that the Learned MM had failed to treat the complaint and allegations as a composite whole, as in the impugned order, after declining registration of a second FIR *vis-à-vis* the incident dated 22.06.2012, in a procedure unknown to criminal law, bifurcated the complaint and allegations into two distinct parts without any force of law and directed registration of FIR against the petitioner on only one part of the complaint. It is further submitted that the offences alleged in the



complaint against the petitioner are stated to have been committed in collusion with the registered owner, namely, Smt. Indu Yadav and the driver of the offending vehicle/brother-in-law (*jeth*) of Ms. Yadav, namely, Sh. Naveen Kumar (arrayed as accused) in Criminal Case No. 428633/2016 in case FIR no. 139/2012 under Sections 279/337/338/304A of the IPC, registered at PS Chhawla.

6. Learned counsel for the petitioner further submits that the petitioner was a public servant and had only acted in discharge of his official duties without committing any offence/covert/overt act. Therefore, in virtue of being a public servant, he comes under the protectionary garb of Section 197 of the Cr.P.C. and Section 140 of the Delhi Police Act, 1940 (hereinafter referred to as “D.P. Act”), which bars any Court from taking cognizance and subsequent filing of suit and prosecution respectively, except with previous sanction from the Competent Authority.

Reliance has been placed on the following judgments to illustrate the same:

- a) **State of Madhya Pradesh vs. Sheetla Sahai and Others (2009) 8 SCC 617 (paras. 55 and 56)**
- b) **Anil Kumar and Others vs. M.K. Aiyappa and Another (2013) 10 SCC 705 (paras. 9,10, 11, 12, 13, 14 and 22)**
- c) **State of Uttar Pradesh vs. Paras Nath Singh (2009) 8 SCC 372 (para 6)**
- d) **Pukhraj vs. State of Rajasthan and Another (1973) 2 SCC 701 (para 2)**
- e) **Ashish Kumar Aggarwal vs. Vakil Ahmed and Others, 2018:DHC:5578 (para 6)**



2024:DHC:5697



- f) **Deepak Kumar @ Deepak Kumar Saha vs. Ombir Singh and Others, 2018:DHC:4960 (para 9)**
- g) **Ravinder Lal Airi vs. S. Shalu Construction Pvt. Ltd. and Others, 2023:DHC:609**
- h) **B. Saha vs. M.S. Kochar 1979 (4) SCC 177**
- i) **Maksud Saiyed vs. State of Gujarat and Others 2008 (5) SCC 668**
- j) **General Officer, Commanding Rashtriya Rifles vs. Central Bureau of Investigation and Another (2012) 6 SCC 228**
- k) **Z.U. Siddiqui vs. Bal Kishan Kapoor and Others 2005 SCC OnLine Del 584**
- l) **Mukesh Kumar vs. State, 2012:DHC:31**

Thus, the learned MM before passing the impugned order, should have taken prior sanction before taking cognizance and direction for registration of FIR against the petitioner.

7. Learned Counsel for the petitioner further submits that since the complaint against the petitioner is completely false, frivolous and an abuse of the process of law, the continuation of proceedings would be a travesty of justice and therefore, the direction for registration of FIR and subsequent proceedings are all liable to be set aside/quashed, as the present case is a fit one for quashing. Reliance is placed on the following judgments:

- a) **Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi and Others (1976) 3 SCC 736**
- b) **Ashok Chaturvedi and Others vs. Shitul H. Chanchani and Another (1998) 7 SCC 698**



SUBMISSIONS ON BEHALF OF RESPONDENT

NO.2/COMPLAINANT:

8. Learned counsel for respondent no. 2/the complainant submits that despite the tragic death of his minor son and horrific accident of her mother (who is now bed ridden), the petitioner on 23.06.2012 called the complainant to the police station and did not record his statement even after repeated requests and finally, got an FIR registered on his own whim after getting signatures of the complainant on blank papers, when he was referred to AIIMS Trauma Centre.

9. It is submitted that the petitioner and the then SHO, PS Chhawla, namely, Sh. Sandeep Gupta were well-aware of the driver of the offending vehicle, namely, Naveen Kumar (arrayed as accused in case FIR no. 139/2012) as the vehicle was parked right outside the police station when the complainant was present there. Furthermore, the petitioner and the aforementioned SHO had compelled and threatened the complainant to compromise the matter with the accused and when the latter declined to do so, neither any copy of FIR was provided nor any legal action was taken in the case. Besides, the petitioner and the aforementioned SHO had deliberately thrown out the number plate of the offending vehicle with ill-intention and had produced false, fabricated report to provide a safe haven to the accused(s), who despite being present in the police station were not arrested even after 5 days of registration of the FIR.

10. It is further submitted that after being left bereft of any other way, the complainant took the remedy for complaint under Section 156(3) of the Cr.P.C. before the Learned MM, who directed for registration of FIR *vide*



order dated 23.05.2013, which has not been registered till date by the local police.

ANALYSIS

11. Heard learned counsels for the parties and perused the record.
12. Respondent no. 2 had filed a complaint under Section 156(3) of the Cr.P.C. with the following prayer:

“It is, therefore, most respectfully prayed that S.H.O. P.S. Chhawla, Delhi may be directed to register the FIR against all the accused persons for the commission of offences u/s. 304(II)/307/279/338/167/201/218/116/120-B of Indian Penal Code, in the interest of justice.

Any other order or direction which this Hon'ble Court may deem fit and proper also be passed in favour of the complainant.”

13. While disposing of the aforesaid complaint, the Learned Metropolitan Magistrate *vide* order dated 23.05.2013 recorded and held as under:

“The grievance of the complainant is two-fold. The first limb of the grievance is that the police has failed to register FIR against accused no. 1 and 2 under the appropriate provisions i.e. Sections 307/304 Part-II IPC despite the fact that the mother of the complainant was dragged by the accused no. 2 under his car having been stated by the complainant to the IO. In this regard, the complainant has alleged that his statement has not been recorded by the IO till date. **While the complainant has prayed for registration of a FIR in respect of his allegations qua offence punishable under Section 307/304 Part -II IPC, it is well-settled that where a FIR in respect in an incident already stands registered, registration of a second FIR in respect of the same incident cannot be directed.** The decision in *Ashok Kumar Tiwari & others v. State of UP and another*, 2008 Gri L.J. 4668 (Allahabad High Court), relied upon by the complainant, is not applicable to the facts in the instant case. **The complainant shall have a remedy at the appropriate stage, for instance in the form of filing a protest petition, in case he is not satisfied with the police report as and when the same is filed. However, since it is alleged by the complainant that the investigation has not been**



fair as his statement has till date not been recorded by the IO, IO is directed to record supplementary statement of the complainant and consider the same as per law before filing the police report in FIR No. 139/12, PS Chhawla u/s 279/337/338/304A IPC.

The second limb of the grievance of the complainant is that the accused no. 3 and 4 have failed to take material documents on record, have assisted the accused no. 1 and 2 and have destroyed evidence. In this regard, the complaint discloses commission of cognizable offence(s), which require Investigation. The SHO concerned is accordingly directed to register a FIR under the relevant provisions of law within two weeks of the date of this order and to investigate into the allegations in the complaint as per law.”

(emphasis supplied)

14. The aforesaid order was challenged by the present petitioner before the Learned ASJ and *vide* order dated 04.08.2014 passed in CR No. 64/2013, the Learned ASJ held as under:

“6. From the material on record, it is clear that there are specific allegations in the application u/s 156 (3) CrPC for commission of various cognizable offences against both the revisionists to the effect that despite repeated requests and aforesaid facts being brought to their notice, they deliberately did not record the original case FIR No. 139/12 of PS Chhawla under appropriate sections of law and diluted the same by registering the case u/s 279/337/304A IPC and thus had helped the original accused of the said case and were also involved in destroying of evidence. Clearly the allegations made are very serious against the two police officials, who were supposed to act as per law and who should have recorded the original FIR as per the version of the respondent no. 2 (original complainant). Also the allegations require detailed field investigation by the police to collect evidence regarding the alleged mode and manner of commission of various offences by these two revisionists in connivance and conspiracy alongwith original accused. The alleged conspiracy may have been hatched behind the back of respondent no. 2 and he is not aware as to how the same was done and the same require field investigation by police for collection of evidence as the respondent no. 2 cannot produce the same on his own. The



said evidence is not entirely under the domain and control of the respondent no. 2 (original complainant). Hence the aforesaid initial two judgments relied upon by the Id. counsel for revisionists, does not help the case of the revisionists and rather the Id. Trial Court had acted as per the ratio of the aforesaid two cases.

7. Further as regards the bar of Section 197 CrPC, the alleged purported acts of the two revisionists, from any stretch of imagination does not make their acts to be in discharge of official duties as it was none of part of their duty to connive and assist the original accused and not to register the FIR as per the version of the respondent no. 2 and to dilute the case FIR. Further Section 197 CrPC operates at the stage of cognizance and not at the stage of registration of FIR, which is a prior stage. Further Section 197 CrPC operates at the stage of cognizance and not at the stage of registration of FIR, which is a prior stage.

9. Further the registration of FIR as per direction of the Id. Trial Court would be mere initiation of the criminal process and only after thorough investigation, the investigating agency can say as to whether the revisionists had any role in the commission of offences as alleged by the respondent no. 2 or they are innocent. Also it is well settled from the catena of judgments by Hon'ble Supreme Court that power of arrest is different from justification for the arrest and hence the investigating agency would certainly apply its mind as per law, before resorting to the said power. Also the revisionists would get ample opportunity during investigation to show their innocence to the investigating agency by bringing sufficient material in this regard. Hence the direction of registration of FIR under the relevant provision of law within two weeks, against the revisionists by the Ld. Trial Court, cannot be said to be improper, illegal or perverse.”

(emphasis supplied)

15. Perusal of the aforesaid extracted relevant portions of the orders impugned herein, demonstrates that prayer in the complaint under Section 156(3) of the Cr.P.C. of respondent no. 2 with respect to registration of FIR under Sections 307/304(Part II) of the IPC was declined in view of the fact



2024:DHC:5697



that the FIR bearing No. 139/2012, under Sections 279/337/338/304A of the IPC was already registered at P.S. Chhawla. It is pertinent to note that the aforesaid finding/decision of the Learned Metropolitan Magistrate was not challenged by respondent no. 2 by way of any proceedings. As pointed out hereinabove, Learned ASJ while disposing of the revision petition filed by the present petitioner also did not interfere with the said finding of the Learned Metropolitan Magistrate but upheld the order of registration of the FIR under relevant provisions of the law with respect to the other allegations *qua* the present petitioner for assisting the accused(s) in the aforesaid FIR No. 139/2012, by not taking material evidence on record and further destroying the evidence. It may be noted that both the aforesaid orders passed by the Learned Metropolitan Magistrate and Learned ASJ are completely silent with respect to which cognizable offences are made out from the said alleged acts of respondent no. 2. During the course of the arguments, learned counsel appearing on behalf of the petitioner pointed out that the trial in case FIR No. 139/2012 has since been concluded and the accused Naveen Kumar therein has been convicted under Sections 279/337/338/304A of the IPC *vide* judgment dated 04.12.2023 passed by Ms. Medha Arya, Learned Metropolitan Magistrate-07, South-West District, Dwarka Courts, New Delhi. It is further pointed out that respondent no. 2 at no point of time challenged the order of framing of charge in the aforesaid sections or filed a protest petition at the time of filing of the chargesheet with respect to not filing of chargesheet under offences punishable under Sections 307/304(Part II) of the IPC.

16. Even though the impugned orders are silent as to which cognizable offence(s) are made out; however, as pointed out hereinabove, a prayer was



2024:DHC:5697



made with respect to Sections 304(Part II)/307/279/338/167/201/218/116/120-B of the IPC.

So far as the offences under Sections 304(Part II)/307/279/338 of the IPC are concerned, this Court, in view of the above discussion, need not dwell into the same any further.

With respect to the other Sections, they read as under:

“167. Public servant framing an incorrect document with intent to cause injury.—Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

201. Causing disappearance of evidence of offence, or giving false information to screen offender.—Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,
if a capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;
if punishable with imprisonment for life.—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;
if punishable with less than ten years' imprisonment.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.



218. *Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.*—Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

116. *Abetment of offence punishable with imprisonment—if offence be not committed.*—Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for that offence, or with both;

if abettor or person abetted be a public servant whose duty it is to prevent offence.—and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both

120B. *Punishment of criminal conspiracy.*—(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid



2024:DHC:5697



shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”

17. The gravamen of the allegations made by respondent no. 2 *qua* the petitioner is that despite repeated requests, the true facts as narrated by respondent no. 2 were deliberately not recorded in the original FIR and that the same was not registered under appropriate Sections of law, i.e., Sections 307/304(Part II) of the IPC. Both the Learned Metropolitan Magistrate as well as the Learned Additional Sessions Judge in their respective orders, have noted that the said allegations are serious as the petitioner, who was supposed to act as per law, should have recorded the FIR as per the version of respondent no. 2. It is also been observed that the petitioner failed to take material documents on record and assisted the accused(s) in the said FIR by destroying evidence. It is pertinent to note that so far as the first set of allegations of not recording the FIR under the appropriate Sections of law is concerned, the Learned Metropolitan Magistrate in the order dated 23.05.2013 observes that the Investigating Officer should record supplementary statement of respondent no. 2 and shall consider the same as per law before filing of the chargesheet in the said FIR. As pointed out hereinabove, the trial in the aforesaid FIR stands complete and the accused therein has already been convicted for offences as mentioned hereinabove. As far as the second set of allegations with respect to not taking material on record and destruction of evidence is concerned, nothing has been brought on record to demonstrate as to which evidence was destroyed and what material(s) have not been placed on record. As noted, hereinabove, the accused already stands convicted on the basis of material/evidence by the Learned Trial Court. It is also an admitted case that the present petitioner had initially registered the FIR and thereafter



2024:DHC:5697



the investigation has been transferred to a different Investigating Officer, i.e., one SI Lakh Ram.

18. The Enquiry Report dated 14.05.2013 prepared by Addl. Commissioner of Police, South West District, New Delhi; with respect to the aforesaid allegations made by respondent no. 2 also records as under:

“It is intimated that the matter has been enquired which revealed that the incident took place in the intervening night of 22/23-6-12. The case FIR No. 139 dated 23-6-12 u/s 279/337/304A IPC was registered on the statement of Sh. Ganga Saran S/o Devi Singh, who is the father of the deceased child. In his statement, he has stated that the driver of the car DL-5 CD-9372 ran away from the spot after leaving his car. On 27-6-12, the registered owner, Smt. Indu Yadav owner of vehicle DL-5 CD-9372 was given notice u/s 133 M.V Act who replied that on 22-6-12, the vehicle was being driven by her brother-in-law Naveen Kumar. The accused Naveen Kumar was arrested in this case on 27-6-12 at 10.40 AM and was released on bail. On the same day i.e. 27-6-12 the accused was produced in the court of Sh. Akash Jain, MM, Dwarka Court for T.I.P proceedings. The accused Naveen Kumar refused to join the T.I.P proceeding stating that he had already been seen by victim at the place of accident.

During enquiry statement of eye witness Sh. Pradeep S/o Sh Ishwar Singh was recorded who has clearly stated that the driver of the car ran away from the spot after leaving the car at the spot. The witness has not stated that the Mother of the complainant was dragged by the accused.

As the accused had ran away from the spot, the Police (I.O) acted lawfully in giving notice u/s 133 M.V Act and after that arresting the accused. The R/C and insurance of the offending vehicle were taken into police possession, on 27/06/2012 at the time of arrest of accused. The complainant in his statement dated 23/06/2012 and the eye witness in his statement dated 23/06/2012 recorded during investigation has not stated that the Mother of the complainant was dragged by the accused.

From the enquiry conducted so far, it is revealed that investigation of the case has been conducted in a fair manner and no favour has been shown towards accused.



2024:DHC:5697



The PM report has been received, MLC result has been obtained and the chargesheet of this case is being finalised u/s 279/338/337/304A IPC. The I.O has been directed to send the charge sheet before the trial Court at the earliest. The allegation made in the complainant could not be substantiated.

The undersigned is ready to abide by any directions/order which the Hon'ble Court deems fit to pass in this matter.”

It is also pertinent to note that SI Lakh Ram in his Report filed before the Learned MM also stated that despite several attempts, respondent no. 2/the complainant did not come forward to give his supplementary statement.

19. The Hon'ble Supreme Court in *State of Haryana and Others vs. Bhajan Lal and Others* 1992 SCC (Cri) 426, observed and held as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.



- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

The Court is of the considered opinion that the present case falls in the first and third category of the cases enumerated in the aforesaid judgment.

20. In the considered opinion of this Court, in view of the aforesaid facts and circumstances, respondent no. 2 has not been able to *prima facie* show, in any manner, that petitioner has been responsible for causing disappearance of evidence of offence or giving false information to screen offenders punishable under Section 201 of the IPC and also for framing incorrect record or writing with intent to save a person from punishment punishable under Sections 167 and 218 of the IPC.

21. In view of the above, the present petition is allowed. The orders dated 23.05.2013 and 04.08.2014 are set aside and quashed.



2024:DHC:5697



22. Pending application(s), if any, also stands disposed of.
23. Judgment be uploaded on the website of this Court *forthwith*.

AMIT SHARMA
JUDGE

AUGUST 02, 2024/sn/bsr

Signature Not Verified

Digitally Signed By: BHASKAR
SINGH RAWAT
Signing Date: 02.08.2024
19:19:21

CRL.M.C. 4252/2014