



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

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Reserved on: 22nd August, 2024

Pronounced on: 12th September, 2024

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W.P.(CRL) 2047/2013, CRL.M.A. 18661/2013

DEVENDRA KUMAR

S/o Sh. Mangat Singh
R/o H-22, Sector-22, Noida,
Distt. G.B. Nagar, U.P.
Presently working as
SHO, Delhi Police
PS Nand Nagri, Delhi

.....Petitioner

Through: Mr. S.C. Sagar, Advocate.

versus

1. THE STATE (NCT OF DELHI)

2. RAVI DUTT SHARMA

R/o B-95, Vill. Gokulpuri Delhi.
Presently working as
Process Server C/o Nazrat Branch
Karkardooma Court Complex
Shahdara, Delhi

.....Respondents

Through: Mr. Yasir Rauf Ansari, Ld. ASC for
State.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Writ Petition under Article 226 of the Constitution of India read with
Section 482 of the Code Criminal Procedure, 1973 (*hereinafter* "Cr. P.C.,



1973”) has been filed by the *Petitioner/ Sh. Devender Kumar*, seeking setting-aside of the *Impugned Order dated 03.12.2013* of Ld. ASJ-1/Spl. Judge upholding the *Impugned Order dated 28.11.2013* of the Ld. CMM directing registration of FIR u/s. 156 (3) of Cr.P.C. 1973 against the Petitioner in *C.C. No. 179/2013*, the complaint of Respondent No.2/Sh. Ravi Dutt Sharma.

2. Succinctly stated, the Respondent No.2/Complainant posted as the Process Server, Nazarat Branch, in discharge of his duties to serve warrants assigned to him, had gone to P.S. Nand Nagri on 03.10.2013, where the police officials including the Petitioner misbehaved with him when he insisted on receipt of the summons by the authorized person of V-B branch. Despite his repeated requests to let him go, he was detained till 4:30 p.m. when the Head Constable arrived and accepted the processes.

3. Aggrieved by the misconduct and misbehaviour of the Petitioner/SHO, a Complaint was submitted by the *Respondent No. 2/Mr. Ravi Dutt Sharma* to the Learned District & Sessions Judge of Shahdara, Delhi who made an endorsement dated 14.10.2013 and assigned the complaint to the Learned Administrative Civil Judge who made a *complaint u/s 195 of the Cr.P.C.* to the Learned Chief Metropolitan Magistrate, Karkardooma Courts, Delhi, enclosing the original Complaint submitted by the Process Server.

4. The Ld. CMM *vide* Order dated 28.11.2013 directed the registration of FIR under Sections 186 and 341 of the IPC, 1860. This Order has been upheld by the Ld. ASJ *vide* Order dated 03.12.2013 by observing that there is no impropriety in the *Impugned Order of Ld. CMM* as the allegations in the Complaint are *prima facie* supported by documents, photocopies of



summons as well as warrants and even the Enquiry report of the ACP established the guilt of the Petitioner/SHO.

5. Thus, aggrieved by the Impugned Order dated 03.12.2013, the Petitioner has preferred the present Petition essentially on the **grounds** that *firstly*, that the impugned order dated 28.11.2013, directing registration of an FIR, is bad in law because the necessary prior sanction before direction of registration of an FIR against a public servant, has not been obtained.

6. *Secondly*, the Ld. CMM could not have directed that the investigation to be supervised by the particular rank of senior officers such as the ACP in the present case.

7. *Thirdly*, the Ld. ASJ failed to discuss the Report dated 25.11.2013 of ACP wherein the inquiry *prima facie* discloses the fact that the alleged incident happened only due to ego-hurt of the Respondent No.2 which provoked the Petitioner who only used harsh word and the other averments made by the Respondent No.2 about his endorsement dated 03.10.2013 made on the warrant and summon, were not found true.

8. *Fourthly*, a Preliminary Enquiry should have been conducted before directing registration of an FIR against a government servant.

9. *Fifthly*, the Ld. CMM has specifically directed registration of FIR u/s 186/341/342 IPC, 1860, is in teeth of Shariff Ahmed & Ors. vs. State (GNCT of Delhi), 2009(2) LRC 481 (SC) wherein it is held that direction of Magistrate to add particular offence would amount to unwarranted interference with investigation of the case by inhibiting exercise of statutory power by Investigating Agency.

10. *Sixthly*, the Ld. CMM has no jurisdiction to direct registration of FIR in non-cognizable offences u/s 186 IPC, 1860 as the same is in clear



violation of the procedure prescribed u/s 195, Cr. P.C. 1973, the compliance of which is mandatory. In the absence of any complaint, the Court cannot assume cognizance and such a trial or conviction would be void-ab-initio.

11. *Lastly*, there is an unexplained delay of 12 days in filing of the Complaint dated 15.10.2013 though the alleged incident has occurred on 03.10.2013.

12. Therefore, the Petitioner has sought the *setting aside of the impugned Order dated 03.12.2013 passed by Ld. ASJ against the Petitioner, upholding the Order of Ld. CMM directing registration of FIR.*

13. **The Respondent No. 2/Complainant** Ravi Dutt Sharma in his **Reply** has reiterated the sequence of events as stated above. It is further asserted that the petitioner/ SHO had misbehaved with him by endorsing the conduct of Constable Sanjay, Reader and Duty Officer as correct and that he would teach him how to do service. He also made ill-remarks that the respondent no. 2 is below a constable being a Class four employee and was nobody to teach them how to work. The petitioner also asked his staff to bring DD register and remarked that respondent no.2 should be confined (Band karo) and also claimed that the Petitioner/SHO would see as to what the Judge of respondent no.2 would do and that respondent no. 2 should make the petitioner talk on phone with the judge. Thus, the Petitioner/SHO has obstructed the discharge of official duties of the Respondent no. 2/Complainant and is guilty for the offence of s. 186/341/342 IPC.

14. **On merits**, it is asserted that since the acts of the petitioner were not in discharge of his official duty, no sanction was required for the registration of the FIR. The petitioner/SHO was found to have misused his official



position as a Police Officer acting beyond the colour of his uniform in the Enquiry held by the Asstt. Commissioner of Police, Seema Puri, Delhi.

15. It is contended that Learned M.M has given the directions to register the FIR after due consideration of the complaint, by observing that the allegations against the petitioner established a case under Section 186/341/342 IPC 1860.

16. It is further contended that Section 195 Cr.P.C. 1973 is not applicable as its bar would not be attracted for the offence committed by the accused in his personal capacity and not in colour of his official duty.

17. Additionally, the complainant/Respondent no. 2 has lodged the Complaint on 05.10.2013 and there was no delay of 12 days.

18. Thus, the *Impugned Orders* warrant no interference and the Petition is liable to be dismissed.

19. The **Rejoinder** to the Counter Affidavit is essentially on the same lines as the Petition filed by the Petitioner/SHO.

20. In the **Brief Synopsis filed by the Plaintiff** the Ld. Counsel has placed reliance upon Anil Kumar &Ors. vs. M.K. Aiyoppa, 2013 X AD (SC) 386, Lakshmi Norayon vs. Krishan Kumar &Anr., 2014(1) Crimes 211 DHC, R.V. Ahirwal vs. K.K. Sachan, 2014(3) JCC 2091 HC, Satish Chand Guptg vs. State &Ors., WP(Crl.) No.464/13 decided on 18.11.2013, Lalita Kumari vs. State of U.P. decided on 27.11.2013, Shariff Ahmed &Ors. vs. State (GNCT of Delhi), 2009(2) LRC 481 (SC), State vs. Mukesh, 2009 VII AD (Delhi) 482 HC in support of the contentions made therein.

21. In the **Written Submissions on behalf the Respondent No.2/Ravi Dutt**, reliance is placed upon S.B. Saha Vs. Ms Kochar AIR 1979 SC 184 Director of Inspector & Audit and Ors Vs. CL Subramaniam 1994 (3) RCR



(CRL) 503 and Shambhoo Nath Misra Vs. UP & Ors. 1997 (2) RCR (CrI) 539 to buttress the argument advanced that if the act done by the official is not within the ambit of discharge of his official duty, then there is no requirement of sanction to prosecute him.

22. Submissions of the Ld. Counsels of the parties heard and record as well as judgments relied upon perused.

23. Briefly stated, on 03.10.2013, the Respondent No.2/Complainant, posted as Process Server, Nazarat Branch, had gone to PS Nand Nagri, Delhi for serving warrants in CC No.3213/13, case titled "*B.K. Financial vs. Ram Prasad*" and Summons in MACP No.160/13, case titled "*Somwati & Ors. vs. Rakesh & Ors.*" at P.S. Nand Nagri, Delhi. However, when he reached P.S. Nand Nagri, at about 12:30 p.m., one Const. Sanjay Kumar Sharma was present in the Room of 5-B who received the processes but did not sign the acceptance/receipt in his own name, rather signed them as HC Brahmjeet. On objection of the Respondent No.2/Complainant, Const. Sanjay Kumar Sharma cut the incorrect signatures made by him and took the processes to the Reader of SHO Devender Sharma/Petitioner, who also refused to receive them.

24. The Respondent No.2/Complainant tried approaching the Duty Officer as well however he also refused to accept the processes. The Respondent No.2/Complainant then went to the SHO Insp. Devender Kumar/Petitioner who kept the processes and abused the Process Server and even made him to stand by raising his hands for about ½ hour as punishment. He was further subjected to ill-treatment and was made to sit on the floor for 3-4 hours. The pleas and repeated requests of the complainant to let him go and allow him to execute the Court assigned duties to serve



other processes, went unheeded by the SHO/Petitioner who did not allow him to leave. At 4:30 p.m. one Head Constable came who accepted the processes and receipt was signed, after which he was permitted to go.

25. Aggrieved by the conduct of the SHO/Petitioner, a Complaint dated 10.10.2013 was given to Ld. Distt. & Session Judge, Karkardooma, Delhi against the Petitioner/SHO and other police officials which was treated as Complaint U/s 195 Cr.P.C. 1973 and enclosing the original Complaint made by the Process Server, was forwarded to Ld. CMM, Karkardooma Courts.

26. The Ld. CMM issued Notice on 17.10.2013 and called for the *Action Taken Report* from DCP.

27. On 25.11.2013, the ACP conducted the enquiry into the allegations *qua* the alleged incident of 03.10.2013 with the Respondent No.2/Complainant and the Report dated 25.11.2013 was forwarded to the Addl. DCP who issued a *Show Cause Notice* to the Petitioner, in response to which the Petitioner submitted his reply dated 06.12.2013.

28. The Enquiry Report concluded that in essence, the incident of 03.10.2013 was a consequence of ego hurt of Ravi Dutt/Process Server and some harsh words used by SHO/Petitioner. Though the allegations of making the Process server stand against the wall with raised hands or making him sit on the floor for 3-4 hours were not substantiated, however, the SHO/Petitioner realized that the incident should not have happened and felt sorry.

29. In the interim, the Ld. CMM *vide* the *Impugned Order* dated 28.11.2013 observed that from the allegations in the Complaint of the Respondent No. 2/ Process server, offences under Section 186/341/342 IPC, 1860 are clearly made out. Thus, it was ordered u/s. 156 (3) Cr.P.C. that FIR



be registered against SHO P.S. Nand Nagri/Petitioner at PS Nand Nagri and further directed that Investigation be conducted by officer of the rank of ACP and under direct supervision of Addl. CP.

30. From a cumulative reading of the documents placed on record and appraisal of both the versions of the Petitioner and the Respondent, undeniably an incident did take place on 03.10.2013. Even the SHO has admitted that the Respondent No. 2 had approached him, which also lends credence to the version of the Respondent No. 2, about the alleged misbehaviour. Notably, the documents viz. *photocopies of the processes* which bear several cuttings and striking off of signatures, also corroborate the incident.

31. *Prima facie*, it is established that there was indeed an obstruction/delay caused by the Police Officials of P.S. Nand Nagri in execution of the court duties of the Complainant in the service of the summon/warrants.

32. The *first plea of the Petitioner* that the Ld. CMM could not have specifically directed registration of FIR u/s 186/341/342 IPC, 1860 is not tenable for the simple reason that the observations are that these offences are *prima facie* made out, but it does not curtail the investigations to be confined only to these offences. The I.O. is obligated to conduct investigations fairly and the submit the final report on the offences if any, are established on the basis of the investigations.

33. The *second ground* taken is that direct registration of FIR in non-cognizable offences u/s 186 IPC, 1860 in the absence of any complaint by the Court, is in contravention of S.195 Cr.P.C. This argument is totally fallacious for the simple reason that *firstly*, the complainant/Process Server



who is a public servant and as an employee of the court, is administratively subordinate to the Learned Administrative Civil Judge, who filed the complaint under Section 195 of the Cr.P.C. to the Ld. CMM who in turn forwarded it by endorsing the *prima facie* commission of the offences and directing the investigations. *Secondly*, the alleged misconduct of the Petitioner, by no stretch of imagination, can be termed as acts in discharge of his official duties. *Thirdly*, the Complaint under S.195 Cr.P.C. is required for taking cognizance on the charge sheet; the issue of obtaining sanction is premature at this stage. Thus, the Ld. ASJ has rightly observed that there is no illegality in the complaint and the need for sanction against the accused, a police officer, should be addressed when taking cognizance or filing the chargesheet.

34. The *Third challenge* is to the directions by the Ld. CMM for the investigations to be conducted by officers of Rank of ACP. Considering that the complainant has made allegations against the SHO of PS Nand Nagri, it has been rightly ordered that the investigation be carried out by an officer of the rank of ACP. Such directions cannot be held illegal, as only an investigation conducted by a higher-ranking officer can effectively serve the purpose of a proper inquiry or investigation.

35. *Fourth ground* to challenge the Impugned Order was that a Preliminary Enquiry should have been conducted before directing registration of an FIR against a government servant. However, the holding of an inquiry u/s. 340 Cr.P.C. does not arise in the present case as the Ld. CMM had filed a complaint u/s. 195 (1) (a)(i) Cr.P.C. along with the complaint of the respondent no. 2 for the offence under s. 186 IPC. The Ld. ASJ has rightly observed that the question of Preliminary enquiry under s.



340 Cr.P.C. would have arisen only when the offence referred falls within s. 195 (1)(b) Cr.P.C. and does not pertain to the offence under s.186 IPC.

36. The *Fifth contention* raised by the Petitioner that the Ld. ASJ has failed to discuss the *Enquiry Report dated 25.11.2013* of ACP, is completely misplaced as the Ld. ASJ has not only discussed and referred to the Inquiry report dated 25.11.2013 but has concluded that the same clearly establishes the fault of the Petitioner. The reliance of the Petitioner on this Report is self-destructive as the same clearly highlights the misconduct of the Petitioner who used harsh words against the process server on being provoked.

37. **In light of the foregoing discussion,** it is held that there is no infirmity in the Order dated 28.11.2018 of the Ld. CMM, directing registration of the FIR against the concerned police officials which is upheld by the Ld. ASJ *vide* the **Order dated 03.12.2013 and the same warrant no inference by this Court.**

38. The Petition, along with pending application(s) if any, are hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 12, 2024