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

+ **CRL.M.C. 5038/2019 & CRL.M.A. 37454/2019**

ANAND KUMAR MISRA & ORS

.....Petitioners

Through: Mr. Tanmaya Mehta, Mr. Sanjay
Abbot, Ms. Rashmi Gogoi, Advocates

versus

STATE

.....Respondent

Through: Mr. Sanjeev Bhandari, ASC for the
State with Mr. Arjit Sharma, Ms.
Sakshi Jha, Advocates along with SI
Ashish Panwar, PS Ghazipur

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

02.09.2025

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1. Petitioners Nos. 1 and 2 are serving officers of the Delhi Police, while Petitioner No. 3 has since superannuated. By the present petition under Section 482 of the Code of Criminal Procedure, 1973¹ they assail the judgment dated 29th August, 2019, passed by ASJ (SFTC), Karkardooma Courts, Delhi in Sessions Case No. 431/2018, insofar as it directs registration of an FIR against them on the basis of findings that they had intentionally manipulated the investigation, tampered with official records, and fabricated evidence. These directions were issued while adjudicating FIR No. 256/2017.

2. The FIR No. 256/2017 was registered at P.S. Gazipur, Delhi, under

¹ "CrPC"



Sections 354 and 376 of the Indian Penal Code, 1860². By judgment dated 29th August, 2019, the Sessions Court convicted the accused therein for the offence under Section 354 IPC but acquitted them of the offence under Section 376 IPC. In the course of rendering this verdict, the Sessions Court recorded adverse findings against the present Petitioners, holding them responsible for manipulation of investigation and fabrication of records, and consequently directed registration of an FIR against them.

3. The impugned directions of the Sessions Court read as follows:

“139. Before parting with the matter, I reiterate the findings rendered by me vis-a-vis the various commissions and omissions in the investigation of case, which in my view appear to be a deliberate attempt to derail and waylay the investigation. The charge sheet filed in this Court has been signed by SI Rampal Singh; Inspector Amar Singh, SHO PS Gazipur and A.K. Mishra, ACP Sub-Division/Madhu Vihar, Delhi. Apparently, SI Rampal Singh, being spearheading the investigation and the incumbent SHO had been in supervision of the investigation has deliberately and intentionally manipulated the investigation, tampered with the records, created false documents etc. and the complicity of some other police officers can also not be ruled out. Ostensibly, the ACP concerned also did not act with a vigil which had been expected of him. It would be a dis-service to the nation and the society at large if such offences by the police officials, who have been entrusted with vital functions which have a direct bearing on the system of dispensation of justice, are not brought to the book. Thus, as a logical corollary, an FIR is liable to be registered against them and the law has to take its course.

140. Therefore, a copy of this judgment be sent to the Commissioner of Delhi Police, for necessary action in accordance with law. It is hoped that such action, in the right earnest, would go a long way in bringing the desired improvement in the quality of investigation and rendering justice to the public at large. An action taken report be sent to this Court within three weeks from the date of receipt of a copy of this judgment.

141. Accused would be heard on the point of sentence.”

4. These directions were founded on certain specific findings recorded

² “IPC”



by the Sessions Court, *inter alia*:

“110. The explanation of PW13 appears to be false if both the charge sheets, the one which is filed in the court and Mark X-1 (Collectively) are compared by keeping them side by side. In the charge sheet Mark X-1 (Collectively) there are signatures of IO and SHO, wherein SHO’s signatures are dated 20.09.2017 and there are no signatures of ACP on the 5th page and on that page it has been written/typed that the accused has been kept in column no. 11. The last page of charge sheet Mark X-1 (Collectively) is exact copy of the page no. 9 of the charge sheet filed in the Court. The charge sheet filed in Court has been signed in ink by SI Rampal Singh; Inspector Amar Singh, SHO PS Gazipur has also signed in ink with date 19.12.2017 and A. K. Mishra, ACP Sub-Division/Madhu Vihar has also signed in ink appending date as 20.12.2017. Page no. 8 of the charge sheet filed in the Court has only two lines typed and does not bear any signatures of any of the police officials, whereas the similar page/photocopy in Mark X-1 (Collectively) has signatures of IO and SHO. It goes to show that there is some forgery or manipulation or tempering done by the police officials concerned for the reasons best known to them. The SHO, who has supervised the investigation and the ACP who has considered and forwarded the charge sheet are ostensibly deep in the acts and omissions and liable accordingly.

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114. The moot question is whether the prosecutrix would have got made a ‘seating plan’ which is diametrically opposite to her complaint. The Investigation Officer has made no statement as to why he did not obtain the signatures of the prosecutrix on the site plan if it was made on the pointing out and on the instructions of the prosecutrix. The prosecutrix has substantially remained consistent in her complaint, statement under section 164 and her deposition in the Court. Going by the same she would not have acquiesced in the said ‘seating plan’ as shown in Ex. PW13/B. Thus, it creates a room for the inference that the site plan Ex. PW13/B has not been prepared at the instance of the prosecutrix. Else what had prevented the Investigation Officer to have get it authenticated from the prosecutrix and got her signatures on the same. He (PW13) himself had not been present at the time of incident in question, thus he cannot own or vouch for the correctness of the seating plan of the accused, prosecutrix, her mother-in-law and her husband as shown in the site plan. His evidence on this aspect could only be hearsay.

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118. Apparently, the accused has been arrested in this case, which has been proved from the statement of PW11 as Ex. PW11/DA where the



detailed particulars as to the arrest of accused and information of arrest conveyed to his son Dishant over his mobile no. 7838930641 has been specifically recorded by her which has been penned down by none other than the IO SI Rampal Singh himself. There is no material to suggest that the witness PW11 has gathered these facts out of air or have created these facts on her own. These were crystallized in her statement Ex. PW11/DA at the very inception. Second glaring act been pointed out by the accused regarding the charge sheet Mark X-1 (Collectively) where the accused has been shown in column no. 11 in contradistinction to the charge sheet filed in the Court where he has been shown in column no. 12. The third aspect is the Site Plan Ex. PW13/B which has been signed by the IO and not signed by anyone else and which is contrary to the version of the prosecutrix. The accused has claimed benefit of doubt to him in view of these glaring contradictions.

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120. The settled legal position is that it is not always that the benefit of every flaw in investigation should invariably accrue to the accused. It should and ought to accrue to him only when the said flaw in investigation has caused or has apprehension of causing prejudice to the accused. On the aspect of arrest, the accused has already availed the benefit of liberty due to the acts of IO in initially arresting him and then ostensibly manipulating the records to show him as not arrested. Resolving the said fact in his favour would amount to reward him again when he has already been unjustly benefitted. He cannot eat the cake and have it too. By the act of police officials in charge sheet Mark X-1 (Collectively) the benefit has also accrued to him as the status of column no. 12 is relatively better than the status of column no. 11. Thus, he cannot doubly enrich himself now. As regards the site plan Ex. PW13/B the same is on the face of it a manipulated and false document prepared by the Investigation Officer and/or other police officials apparently with a motive to favour the accused, for the reasons best known to them. By resolving the said act of omission or commission, in favour of the accused would amount to taking the side of the wrong and extending a reward to the accused. It would also tantamount to penalizing the prosecutrix and the State for no fault on their part and it would be an antithesis to the rule of law."

5. The Sessions Court's concern over investigative lapses is understandable. Indeed, the Courts must notice such defects and, where warranted, to set the law in motion. At the stage of issuing directions under



Sections 195/340 of CrPC, the Court is not to finally decide whether an offence has been committed or by whom. Its remit is confined to forming an opinion, on the material then available, whether the matter requires inquiry by a competent criminal court and whether such inquiry is expedient in the interests of justice (see *Pritish v. State of Maharashtra*³; *Iqbal Singh Marwah v. Meenakshi Marwah*⁴). The formation of this opinion must, nonetheless, rest on cogent reasons. The impugned order, however, records no satisfaction on expediency; instead, it leaps straight to a direction for registration of an FIR against the investigating officers.

6. Moreover, the impugned remarks are sweeping and near-definitive: “*deliberately and intentionally manipulated the investigation, tampered with the records, created false documents etc. and the complicity of some other police officers can also not be ruled out*”. Such stigmatic findings against non-parties, particularly public officials, who were neither arrayed as accused nor before the court, demand judicial restraint. Even though an opportunity of hearing to the proposed accused is not mandated before the reference court forms a *prima facie* view during the preliminary enquiry to initiate action under Section 340 of CrPC, nonetheless, such adverse remarks must be (i) necessary for deciding the case at hand; (ii) based on clear material; and (iii) calibrated, avoiding conclusive attribution of *mens rea*.

7. Coming to the three planks relied upon by the Sessions Court, this Court is of the view that even taken cumulatively, they do not constitute a sustainable foundation for directing the prosecution of the Petitioners. First,

³ (2002) 1 SCC 253.

⁴ (2005) 4 SCC 370.



as regards the alleged existence of two charge-sheets, it is apparent from the record that the charge-sheet placed before the Sessions Court was duly scrutinised by the Prosecution Branch and bore the signatures of the IO, SHO and ACP. What appears to have been inadvertently supplied to the accused under Section 207 CrPC was a draft version which had not completed the chain of approval. Such an administrative lapse, while not to be condoned, cannot, without more, be equated with deliberate fabrication or creation of false evidence. To infer *mens rea* from what may be a clerical irregularity, without any corroborating material, is not justified.

8. Secondly, in relation to the site plan (Ex. PW13/B), the Sessions Court's reasoning is premised heavily on the absence of the Prosecutrix's signature. It is, however, well established that a site plan prepared by the IO is in the nature of a statement under Section 161 CrPC, intended to aid the investigation. There is no statutory requirement that such a plan must be authenticated by the witness at whose instance it is prepared. The failure to obtain a signature may, at best, be an irregularity affecting evidentiary weight, but it cannot, in itself, form the basis of imputing falsification or *mala fide* to the investigating officer.

9. Thirdly, as to the discrepancy between PW-11's initial statement under Section 161 CrPC and the official record concerning whether the accused was "arrested" or "produced without arrest", it is pertinent to note that PW-11 subsequently deposed in Court consistently with the latter version. Such inconsistency is not uncommon when a witnesses recounts events after a lapse of time. To infer this variance as intentional manipulation by the Investigating Officer is an unwarranted conclusion. At best, it reflects either a misunderstanding or an error of recollection, not a



demonstrable act of fabrication.

10. In the totality of circumstances, therefore, the material relied upon by the Sessions Court points to investigative lapses or irregularities, which may bear on the appreciation of evidence against the accused, but falls short of establishing any clear or deliberate attempt by the Petitioners to create false evidence or to tamper with evidence. To draw such a conclusion without cogent proof, and to direct the registration of an FIR on that basis, amounts to an overreach of jurisdiction.

11. While it is true that the Courts have consistently underscored the need to take action against police officers found guilty of dereliction of duty or misconduct in the discharge of investigative functions, and the Supreme Court has also held that the State is bound to initiate disciplinary or corrective proceedings where such misconduct is duly established. However, the line between a defective investigation and a *mala fide* manipulation must be carefully maintained. Not every irregularity or lapse in investigation, however grave, cannot by itself be equated with intentional fabrication of evidence or deliberate misconduct. Applying these settled principles, the deficiencies highlighted by the Sessions Court, whether in relation to the draft charge-sheet, the absence of signatures on the site plan, or the variance in the witness's recollection of arrest, may, at best, disclose carelessness or error in the manner of investigation, but they do not *prima facie* establish deliberate manipulation of records or the creation of false evidence by the Petitioners.

12. To direct registration of a fresh FIR against serving or retired police officials on such tenuous material would not only be legally unsustainable but would also set a troubling precedent of exposing officers to criminal



prosecution for every investigative lapse, however inadvertent. Accordingly, the directions contained in paragraph 139 of the impugned judgment, in so far as they mandate registration of an FIR against the Petitioners, are unsustainable and are set aside.

13. Disposed of along with any pending application(s).

SANJEEV NARULA, J

SEPTEMBER 2, 2025/ab