



2025:DHC:16



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on : 07.01.2025

+ **CRL.M.C. 5556/2024 & CRL.M.A. 21182/2024**

BABBAN GIRI

..... Petitioner

versus

STATE NCT OF DELHI AND ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Biswajit Kumar Patra, Advocate.

For the Respondents : Mr. Sunil Kumar Gautam, APP for the
State.
SI Narender (P.S. Vikaspuri).

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed, *inter alia* , praying as under :
 - a) *Set aside the Order dated 22.08.2023 in CR/456/2022 titled as Babban Giri Vs State and Anr., as passed by Ld.Additional Session Judge, South-West District, Dwarka Courts, New Delhi; and*
 - b) *Set aside the Order dated 21.12.2021 passed by the Ld. M.M., South West District, in case titled as Babban Giri Vs. DL-4C-A-6387; and/or*



c) Pass any other order/direction that this Hon'ble Court may deem fit and necessary in the present circumstances of this case in the interest of justice.

2. Briefly stated, the petitioner alleged that on 02.02.2016, he was assaulted, threatened, and robbed of ₹40,000 while driving to deposit money at an ATM. He contends that the accused, identified as the driver of a car bearing registration number DL-4CA-6387, not only caused damage to his vehicle but also attempted to kill him with a screwdriver.

3. Despite multiple calls to the PCR and filing a formal complaint dated 04.02.2016, the petitioner alleges that the police failed to register an FIR promptly.

4. Subsequently, the application filed by the petitioner under Section 156(3) of the CrPC was dismissed by the learned Metropolitan Magistrate ('MM'), Dwarka Courts, Delhi by order dated 26.04.2017 and the petitioner was called upon to lead pre-summoning evidence. The learned MM, while dismissing the said application, observed as under :

"There is no fact / evidence which is to be collected by the police and as such there is no requirement for investigation. No doubt, Section 156 (3) CrPC empower the Magistrates to send the matters for investigation but each case has to be judged on its own merits and discretion given to the Court is to be exercised in a judicial manner and not in a mechanical manner.

The complainant is having control over the evidence as the same is available with him. In these circumstances, this Court is not inclined to give the direction to the SHO for registration of the FIR. Hence, the application u/s 156 (3) CrPC is dismissed."



5. By the order dated 21.12.2021 passed by the learned MM, the complaint case instituted by the petitioner was dismissed citing that the petitioner had not provided the name of any accused. Consequently, the court held that it was not possible to summon anyone to stand trial in the absence of identifiable accused persons.

6. Consequently, the petitioner challenged the order dated 21.12.2021 passed by the learned MM before the Additional Sessions Judge ('ASJ'), Dwarka Courts, Delhi. However, the same was dismissed by the impugned order dated 22.08.2023 on the grounds that the petitioner had failed to file an application seeking condonation of delay in filing the revision petition. Furthermore, the learned ASJ observed that the petitioner had not disclosed the identity or any particulars of the accused in the complaint, making it difficult to proceed with the case or summon any individual to face trial. The learned ASJ observed as under :

“10. Revision petition has been preferred by the revision on 09.12.2022 against the impugned order dated 21.12.2021, which is clearly barred by limitation period. Revisionist did not seek the condonation of delay in filing of the present revision petition. Thus, petition is liable to be rejected on this ground alone.

11. Be it may, neither in the complaint nor in his deposition, the revisionist has not mentioned the name of driver of offending vehicle. In his deposition, complainant has merely mentioned that the driver was tall in height and was having beard with sturdy appearance but revisionist did not reveal the identity of the offender.

12. Although in the Action Taken Report submitted by Investigating Agency, name of one Gaurav Nagpal is appearing, however, it is not clear whether Gaurav Nagpal was driving the offending vehicle or he gave beatings to revisionist or robbed Rs.40,000/- from him. In absence of any



*identity or name of offender, Ld. Trial Court could not have given direction to summon any person. In these facts, no error can be found in the orders passed by Ld. Trial Court. **Revision petition lacks merits and stands dismissed.***

7. The learned counsel for the petitioner submitted that the police failed in their statutory duty to register an FIR under Section 154 of the CrPC despite the petitioner providing sufficient material and information regarding the commission of cognizable offences, including allegations of assault, criminal intimidation, and robbery.

8. It was contended that the petitioner had produced *prima facie* evidence, such as photographs of the damaged vehicle, medical reports, bills, and the details of multiple PCR calls made at the time of the incident. These materials, it was argued, were sufficient to disclose the commission of cognizable offences warranting registration of an FIR and in the absence thereof, proceeding with the complaint case.

9. The learned counsel argued that both the learned MM and the learned ASJ erred in dismissing the petitioner's case on technical grounds, thereby denying the petitioner the opportunity to seek justice. The learned MM's reliance on the non-identification of the accused as the basis for dismissal was characterized as erroneous, particularly since the petitioner had explicitly mentioned the registration number of the vehicle involved in the incident.

Analysis

10. It is settled law that at the stage of issuance of process, the learned Trial Court is supposed to apply its mind to the facts and



evidence at hand, as well as the relevant law. After examination of the allegations and material on record, the learned Trial Court is required to record its satisfaction that sufficient grounds exist for proceeding against the accused. The Hon'ble Apex Court, in the case of ***Pepsi Foods Ltd. v. Special Judicial Magistrate : (1998) 5 SCC 749***, had 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.”

(emphasis supplied)

11. Another aspect which cannot be lost sight of is that the petitioner has invoked the jurisdiction of this Court under Section 482 of the CrPC and has challenged the concurrent finding of two Courts below. 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.

12. 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)

13. It is pertinent to note that the learned MM dismissed the complaint case by order dated 21.12.2021, since the petitioner failed to provide any concrete identification of the accused. While the registration number of a vehicle (DL-4CA-6387) was mentioned in the complaint, no further details, such as the name or other identifying information of the driver, were provided. In the absence of identifiable accused, the learned MM found it impossible to summon anyone to face trial.



14. However, the dismissal of the complaint case solely on the ground of the petitioner's inability to identify the accused may not be entirely justified. It is well-established in criminal jurisprudence that it is the duty and responsibility of the police officials to investigate the matter thoroughly once a complaint alleging a cognizable offence is received. The role of the police under Section 154 and 156 of the CrPC is to promptly register a FIR when a cognizable offence is disclosed and to investigate the matter further, including identifying the accused persons and collecting evidence necessary for prosecution. The failure of the complainant to identify the accused personally does not absolve the police of their statutory duty to investigate and ascertain the identity of the alleged offenders through available evidence.

15. Nevertheless, this Court has also perused the Action Taken Report (ATR) submitted in the present case which provides clarity on the sequence of events. The ATR revealed that the incident was a minor quarrel between the petitioner and a person named Gaurav Nagpal, which arose from a dispute over giving sides to their vehicles. It was further noted that both parties were under the influence of alcohol at the time of the altercation and accused each other of physical assault. However, both individuals were medically examined under MLC Nos. 1165 and 1166, where the medical officer opined that no fresh external injuries were present on either party, contradicting the allegations of physical assault or any significant harm.



16. Additionally, the ATR highlights that the initial call made by the petitioner did not include any allegations of snatching or robbery. The second call, made by the petitioner's wife, also did not mention any allegations of snatching, further weakening the claims presented at a later stage. The absence of injuries in the MLC reports and the consistent statements in the ATR indicating a minor altercation with no physical harm or snatching suggest that no cognizable offence was made out during the preliminary inquiry.

17. In light of these findings, the Courts below correctly concluded that no *prima facie* evidence existed to warrant the registration of an FIR or the summoning of any accused for trial. Therefore, the dismissal of the complaint was justified, not due to the lack of identification but due to the absence of any actionable evidence of a serious offence.

18. It is also relevant to note that the complaint was filed way back in the year 2016. The dispute raised, in the opinion of this Court, even otherwise, at this stage, is stale and ought not to be revived while exercising power under Section 482 of the CrPC.

19. Keeping in perspective the aforesaid observations, this Court has carefully perused and examined the records of the case including the order impugned before this Court. From the facts as noted above, I am of the opinion that no irregularity has been committed by the Courts below in dismissing the complaint filed by the petitioner.



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20. This court is of the opinion that no exceptional circumstances have been presented to warrant the exercise of its extraordinary jurisdiction under Section 482 of the CrPC.

21. In view of the above, I find no infirmity in the impugned order, and the same cannot be faulted with.

22. The petition, is, therefore, dismissed.

AMIT MAHAJAN, J

JANUARY 7, 2025