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Ram Phal vs.state & Anr.

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Court : Delhi

Decided On : Nov-03-2016

Appellant : Ram Phal

Respondent : State & Anr.

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI RAM PHAL STATE & ANR. Decided on:

3. d November, 2016 CRL.M.C. 2574/2016 Represented by: Mr. Ravinder Yadav with Ms. .....

... Petitioner
Arti Anupriya & Mr. Satpal Yadav, Advs. versus Represented by: Ms. Rajni Gupta, APP with SI ..... Respondent R.P. Yadav, PS Vasant Kunj South. Mr. Saurabh Kansal & Ms. Pallavi S.Kansal, Advs. for R-2. CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

(ORAL) 1. Aggrieved by the order dated 18th July, 2013 summoning the petitioner for offence punishable under Section 326/120B IPC along with co- accused Dilip Kumar Biswas, the petitioner prefers the present petition.

2. The petitioner had earlier also challenged the impugned order of summoning before this Court vide Crl.M.C. 38/2016 which was withdrawn urging that some new facts have emerged thus the learned counsel had instructions to withdraw the

petition with liberty to file fresh one. Liberty as prayed was granted by this Court vide order dated 1st April, 2016. Hence the present petition.

3. The main ground of challenge of the petitioner to the impugned order is that the complainant had initially lodged FIR No.105/2011 for the alleged Crl.M.C. 2574/2016 Page 1 of 6 incident dated 29th April, 2011 wherein Section 326 IPC was invoked. In the said FIR, the petitioner was not named as an accused and an untraced report was filed by the investigating agency. The untraced report was accepted vide order dated 26th March, 2012 when the learned Metropolitan Magistrate recorded the statement of the complainant wherein she stated that she was satisfied with the investigation. However, three months after the acceptance of the untraced report, the complainant filed an application for reopening of the proceedings before the learned Trial Court and in the application allegations were levelled against the petitioner and the co-accused Dilip Kumar Biswas. The said application of the complainant was treated as a complaint case. After examining the complainant on oath summons were issued to the petitioner and co-accused Dilip Kumar Biswas as noted above. Learned counsel for the petitioner thus urges that once the petitioner was not named in the FIR and nothing revealed qua him during investigation, on the basis of subsequent application, the process could not have been restarted after more than 1 year of the incident.

4. The facts leading to registration of FIR No.105/2011 are that on 29th April, 2011 a PCR information was received regarding throwing of acid by a boy riding a pulsor motorcycle which was recorded at PS Vasant Kunj South vide DD No.14A and entrusted to SI Raj Bir Singh who reached the bus terminal Vasant Kunj. He did not find the complainant at the spot. During inquiry, it was revealed that the injured lady had been shifted to Fortis Hospital, thus SI Raj Bir Singh reached Fortis Hospital where he collected the MLC of the complainant. It was revealed that the complainant was shifted to Safdarjung Hospital by her family members. At Safdarjung Hospital, the complainant was found to be admitted in ICU for treatment. Crl.M.C. 2574/2016 Page 2 of 6 After some time, the complainant was declared fit for statement when her statement was recorded wherein she stated that she was working as a governess in the house of Shri Biswas and used to leave his children Somit, Aushik and Sarswati to Heritage School, Vasant Kunj

along with driver Pramod and Gunman Ashok Pandey. On 29th April, 2011 at 7.30 am the children were dropped by car and thereafter she was going to the residence of Shri Rajender Singh at Village Kishangarh because his children were also studying in the same school. When she reached the bus terminal for catching the bus on 29th April, 2011 at 7.45 am one tall boy of shallow complexion was following her and immediately two boys came on a black pulsor motorcycle and threw some light green colour liquid like substance on her and she felt burning. When she turned her face back, she saw the boy who was following her running towards the road leading to Deep School. The motorcycle riders also ran in the same direction. She screamed for help and water was poured on her body. She informed the driver Pramod about the incident who took her to Fortis Hospital and thereafter got her admitted in Safdarjung Hospital. She stated that she had no grudge against anybody and did not know whether it was motorcycle riders or the boy who followed her who poured the liquid substance on her. However, she stated that she could identify those boys if they are brought before her.

5. During investigation, despite efforts no accused could be arrested and thus an untrace report was filed and accepted by the learned Metropolitan Magistrate on 26th March, 2012 in the presence of the complainant. As noted above, in the application dated 26th June, 2012 the complainant sought reopening of the case pursuant where to her statement was recorded on 14th May, 2013 by the learned Metropolitan Magistrate. In her statement she Crl.M.C. 2574/2016 Page 3 of 6 stated, she was appointed as maid (aaya) in 2001 by Dilip Kumar Biswas retired IAS Officer, residing at A-2
DLF Phase-I, Gurgaon. His wife Kalpana Chaudhary left company of the said officer and married to one Muslim Man having one son. She was living separately from 2003-2004 from the said officer. He did not pay any salary dues. During 2009, he started telling her that he had four children and should treat those children as her own and he had also started illicit relationship with her. In 2010 complainant demanded the salary whereafter the officer settled her account and paid her 5 lakhs. One day he uttered that she should be ousted from her job as a maid. Said officer threatened her that in case she disclosed about the illicit relationship between them, he would kill her through his driver cum security officer namely Rampal. During 2010-11, quarrel between said officer and her was going

as on the one hand he did not pay any salary dues and on the other hand he threatened her that he would kill her through Rampal. On 29th April, 2011 at 7.45 am - 8.00 am as usual she went to drop the children at school, whereafter she reached at bus stop when two men came on motorcycle, the rider was Rampal who poured acid/tehzab on her face and vital parts of the body as a result she received serious injuries. Nearby people tried to help her by pouring water on her body and she with the help of nearby people rung the mobile of the said officer who told her that he had reached Fortis Hospital at Vasanj Kunj and while it takes more than 20-30 minutes to reach Fortis Hospital at Vasant Kunj from Gurgaon which shows the conspiracy of the said officer. The said officer told her not to disclose any name. She was discharged by force of the said officer whereas doctors did not opine for her discharge. He had forged her signatures on various papers. He used cheques of 50 lakhs for purchase of Crl.M.C. 2574/2016 Page 4 of 6 property. That on 4th June, 2012 at about 7.00 AM, she had reached at the residence of the said officer about for inquiring the forgery committed by said officer. He threatened her that he would get her killed by his security cum driver Rampal. He had conspired to pour acid on her through Rampal and on the other hand he had conspired for purchase of property by procuring false documents and by issuing false cheque. Her belongings were also lying in the house including golden chain, gold ring, gold earring, one gold idol of his son, one LIC papers, FDR of 5.5 lakhs, bank passbook, PAN Card, letter with addresses, photos, clothes, utensils, all medical documents. She rang 100 number to police who refused to entertain her complaint. The said officer ran away from the spot and she was refused entry into the house. That in this way, it was clear that the above offence had been committed in conspiracy by the said officer and his security-cum-driver Rampal and one other man.

6. Section 173 Cr.P.C. contemplates filing of final report by the investigating officer after completion of the investigation. The final report could either be an opinion of the investigating officer seeking trial of the accused based on the material placed on record which is commonly called a charge sheet or a cancellation report stating that on investigation the allegations of the complainant were not substantiated or an untraced report wherein no conclusive opinion is given by the investigating officer for the reason he could not get the clues or leads to investigate the FIR.

Though the words charge sheet, cancellation report and untraced report are not mentioned in the Cr.P.C. but in common parlance they relate to the three different forms of final report filed by the investigating officer. As noted above, in the present case neither the charge sheet for trial nor cancellation Crl.M.C. 2574/2016 Page 5 of 6 report was filed. The investigating officer filed an untraced report thereby indicating that he could not get the leads for investigation. In view of the nature of untraced report, the investigation thereon could be kept open and as and when material or leads for investigation were revealed, the investigating officer can at any time reopen the investigation. In the present case though no material was found by the investigating officer to seek reopening of the investigation however the complainant filed an application which was treated as a complaint and she was examined on oath. Satisfied thereon, the learned Trial Court issued summons to the petitioner. Thus, the order dated 18th July, 2013 summoning the petitioner for offence punishable under Section 326/120B IPC cannot be held to be illegal or unwarranted on the ground that having accepted the untraced report, the case could not have been reopened.

7. This Court has already considered the issue raised in the present petition in the case of co-accused Dilip Kumar Biswas in Crl.M.C. 1832/2014 wherein following the law laid down by the Supreme Court in State of Orissa Vs. Ujjal Kumar Burdhan (2012) 4 SCC547stating that inherent powers should be exercised only in exceptional cases, the petition was disposed of with liberty to urge the pleas at the stage of framing of charge.

8. Consequently, the present petition is dismissed with liberty to petitioner to raise the pleas on merits before the learned Trial Court at the time of arguments on charge. OCTOBER , 2016/v mittal (MUKTA GUPTA) JUDGE Crl.M.C. 2574/2016 Page 6 of 6

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