

Hashmat Ali Vs. Amar Singh and Ors.

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Court : Delhi

Decided On : Dec-19-2014

Judge : V.P.Vaish

Appellant : Hashmat Ali

Respondent : Amar Singh and Ors.

Advocate for Def. : Mr. Navin Sharma

Advocate for Pet/Ap. : Mr. Kedar Yadav, Mr. Markandey Gupta

Judgement :

\$~7 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

19. h December, 2014 + CRL.M.C. 5001/2014 HASHMAT ALI Through: Petitioner Mr. Kedar Yadav with Mr. Markandey Gupta, Advocates. versus AMAR SINGH & ORS. Through: Respondents Mr. Navin Sharma, APP for the State. CORAM: HON'BLE MR. JUSTICE V.P.VAISH VED PRAKASH VAISH, J.

(ORAL) 1. By this petition filed under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.), the petitioner has assailed order dated 13.08.2014 whereby criminal revision filed by the petitioner was dismissed.

2. Shorn off unnecessary details, the facts giving rise to the present petition are that the petitioner filed a complaint under Section 200 of Cr.P.C. read with Section

156(3) of Cr.P.C. seeking directions to the concerned SHO for registration of FIR. The concerned Metropolitan Magistrate called action taken report (ATR) from SHO, P.S. Tughlaq Road, New Delhi. The complainant adduced pre-summoning evidence and examined himself as CW-1 and his father Haji Shaukat Ali as CW-2. The trial court in order to verify the allegations made by the complainant ordered for an investigation to the SHO, P.S. Tughlaq Road, New Delhi. The investigation report was filed by SI Bishambhar Dayal, who stated that the allegations made by the petitioner/ complainant are unbelievable because the evidence is not corroborated by any witness including the Paanwala. After considering the said report filed by Inspector Sunil Kumar, the prayer under Section 156(3) of Cr.P.C. was declined by learned Metropolitan Magistrate, New Delhi. The petitioner filed Criminal Revision No.44/2014, which was dismissed by learned Additional Sessions Judge-03, New Delhi vide impugned order dated 13.08.2014. Feeling aggrieved by the said order, the petitioner has filed the present petition.

3. I have heard learned counsel for the petitioner and also perused the matter on record.

4. The copy of the status report has been provided by learned counsel for the petitioner today and the same is taken on record.

5. As per the status report, exhaustive enquiry was conducted. On enquiry, Mr. Hari Karan Dubey (Paanwala) stated that he neither saw Hashmat Ali/petitioner in the morning of 25.09.2008 nor did he saw any incident of forcibly putting the petitioner in a car. As per him when he opened his shop at 10:00 a.m., a car bearing No.DL-5C-C-7218 of the petitioner was sent to Inter State Cell, Crime Branch by SHO Tughlaq Road, New Delhi through constable Anil Kumar. The petitioner checked his car and found everything intact except his mobile phone. It is also stated that one HC and two constables of 12th battalion RAC (A Coy) who were deployed near the Pan Shop at the entry gate of Khan Market round the clock were also enquired. HC Sudhir, Constable Devi Singh and Constable Sher Khan have told that no incident of forcibly putting in Hashmat Ali in a car and taking away at 8:00 a.m. on 25.09.2008 happened. They further stated that their duty is round the clock at the same spot where the incident was alleged to have

happened with the petitioner. During enquiry on the complaint of Tarun Goel, no cognizable offence was made out.

6. Learned counsel for the petitioner urges that the petitioner has examined himself as CW-1 and his father Haji Shaukat Ali as CW-2. He also submits that at the time of issuing process, the complainant is not bound to examine all the witnesses mentioned in the complaint.

7. Relying upon judgment in *Krishan Kathuria vs. State & Anr.*, 2013 (2) JCC1083 learned counsel for petitioner submitted the scope of enquiry is extremely limited only to the ascertainment of truth or falsehood of the allegation made in the complaint. The Magistrate is not expected to embark upon detailed discussion of the merits/ demerits of the case.

8. Before advertng to the facts of the present case, it would be appropriate to consider the scope of interference in a petition under Section 482 Cr.P.C. The Honble Supreme Court in *Amit Kapoor vs. Ramesh Chander & Anr.*, (2012) 9 SCC460 while dealing with the issue of interference at the stage of charge in a petition under Section 482 Cr.P.C. observed as under:

20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression prevent abuse of process of any court or otherwise to secure the ends of justice, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused.

9. Further the Honble Supreme Court of India in *Dhanalakshmi v. R. Prasanna Kumar*, (1990) Supp. SCC686 observed as under:

Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/ offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. The High Court without proper application of the principles that have been laid down by this Court in *Sharda Prasad Sinha v. State of Bihar*, *S. Trilok Singh v. Satya Deo Tripathi* and *Municipal Corpn. of Delhi v. Purshotam Dass Jhunjunwala* proceeded to analyse the case of the complainant in the light of all the probabilities in order to determine whether a conviction would be sustainable and on such premises arrived at a conclusion that the proceedings are to be quashed against all the respondents. The High Court was clearly in error in assessing the material before it and concluding that the complaint cannot be proceeded with. We find that there are specific allegations in the complaint disclosing the ingredients of the offence taken cognizance of. It is for the complainant to substantiate the allegations by evidence at a later stage. In the absence of circumstances to hold prima facie that the complaint is frivolous when the complaint does disclose the commission of an offence there is no justification for the High Court to interfere.

10. Further, in *State of Bihar vs. Murad Ali Khan & Ors.*, (1988) 4 SCC655 Honble Supreme Court had held as under:

15. It is trite that jurisdiction under Section 482 Cr.P.C, which saves the inherent power of the High Court, to make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the trial Magistrate when the evidence comes before him. Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet, do not in law constitute or spell out any offence and that resort to criminal proceedings would, in the circumstances, amount to an abuse of the process of the court or not.

11. In view of the aforesaid dictum of the Honble Supreme Court, it is evident that unless this Court feels that the inherent jurisdiction is to be exercised in a particular case to correct the mistake committed by the revisional court while acting under Section 482 of Cr.P.C. and that too after learned Additional Sessions Judge had declined to interfere in the matter, this court cannot enter the arena of appreciation of evidence.

12. The law regarding summoning is that at the stage of summoning, the Metropolitan Magistrate has to scrutinize carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an unnecessary or frivolous complaint and also to find out whether there is some material in support of the allegations made in the complaint. Under Section 202 of Cr.P.C. an enquiry is held in order to enable the Court to come to a conclusion as to whether any prima facie case has been made out against the accused persons named in the complaint. This section does not compel the Magistrate to accept the result of the enquiry or investigation. The Magistrate may apply his judicial mind to the materials on which he has to form his judgment. Before issuing the summons to the accused, the Magistrate should be

satisfied that there is sufficient ground for proceeding with the complaint.

13. In the instant case, after filing of the complaint an action taken report was called. Inspector Sunil Kumar, Crime Branch, Chanakya Puri, New Delhi submitted a report stating that exhaustive enquiry was conducted and during enquiry the allegations made in the complaint were not found substantiated and, therefore, no FIR was registered.

14. Thereafter, the Magistrate passed an order for conducting an enquiry under Section 202 of Cr.P.C. in order to verify the allegations made by the complainant. The investigation report was filed by SI Bishambhar Dayal, P.S. Tughlaq Road, New Delhi stating that the allegations made by the complainant are unbelievable because they are not corroborated by any independent witness including the cigarette shop vendor. During enquiry, it was also reported that on 24.09.2008, the petitioner himself went to the house of respondent No.1 in order to extort money/ strike a monetary deal and when the police and media had been called to expose his blackmail, he has changed a stand and claimed that he had been kidnapped/ abducted.

15. Moreover, learned trial court after consideration of oral and documentary evidence adduced by the petitioner came to the conclusion that there is no sufficient ground to summon the respondent. The petitioner has not examined any independent witness in support of his allegations. There is no ground to interfere in the concurrent findings of learned Additional Sessions Judge and learned Metropolitan Magistrate, New Delhi.

16. In view of the aforesaid discussion, the petition is devoid of any merit, the same deserves to be dismissed and is hereby dismissed. (VED PRAKASH VAISH) JUDGE DECEMBER 19 2014 hs

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