

Jaspreet Kaur Vs State

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Court : Delhi

Decided On : Aug-12-2010

Judge : Mr. Shiv Narayan Dhingra, J.

Appeal No. : Criminal M.C. No.74 of 2010 & C.M. Appl. No.271 of 2010

Appellant : Jaspreet Kaur

Respondent : State

Advocate for Def. : Mr. O.P. Saxena, Adv.

Advocate for Pet/Ap. : Mr. Ritesh Bahri , Mr. Vinay Gupta, Adv.

Judgement :

1. Whether reporters of local papers may be allowed to see the judgment? Yes.

2. To be referred to the reporter or not? Yes.

3. Whether judgment should be reported in Digest? Yes.

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing proceedings initiated against the petitioner under Section 182 IPC by the police on the ground that provisions under Section 195 (1) (a) Cr.P.C. were not complied with.

2. The petitioner had made a complaint to SHO on 5th May, 2004 that her husband Sh. Parmeet Singh Narula on that day had destroyed her passport. On

investigation this complaint was found to be false as on the basis of same passport which she claimed to have been destroyed, she applied for visa to Australian Embassy and also applied for her permanent residence in Australia in the year 2005-2006. After finding the complaint made by the petitioner to be a false complaint, Sub-Inspector Ishwar Singh sent a report under Section 182 IPC to the court of concerned Metropolitan Magistrate for initiating action against the petitioner and also requested that his report should be treated as a complaint under Section 195 Cr.P.C.

3. The contention of the petitioner is that this report/complaint sent to learned Metropolitan Magistrate was liable to be quashed since it was sent in violation of provisions of Section 195 Cr.P.C. Section 195 Cr.P.C. requires that the court shall take cognizance of an offence under Sections 172 to 188 only if a complaint is made in writing by the public servant concerned or some other public servant to whom he is administratively sub-ordinate. It is submitted that the complaint was made by Smt. Jaspreet Kaur to SHO and as per Section 195 Cr.P.C., only SHO or an officer to whom SHO was sub-ordinate could have filed a complaint before the learned Metropolitan Magistrate and not by an officer junior to SHO.

4. I am in agreement with the contention raised by counsel for the petitioner. Recently, the Supreme Court in P.D. Lakhani & Anr. vs. State of Punjab & Anr.; (2008) 5 SCC 150 had observed that when a complaint is not made by the appropriate public servant, the court will have no jurisdiction to entertain the complaint. Since in this case the appropriate public servant who could have made the complaint was either SHO or an officer to whom SHO was sub-ordinate, but the complaint was made by Sub-Inspector, I consider that taking cognizance of this complaint by Metropolitan Magistrate was barred under Section 195 Cr.P.C.

5. The petition is, therefore, allowed and complaint before Metropolitan Magistrate is quashed because of bar of Section 195 Cr.P.C.