**Umed Singh Vs. State**

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**SooperKanoon Citation** : sooperkanoon.com/958019

**Court** : Delhi

**Decided On :** Apr-10-2013

**Judge** : G.P. Mittal

**Appellant** : Umed Singh

**Respondent** : State

**Advocate for Pet/Ap.** : Mr. Rahul Raj Malik, Mr. Rahul Raj Malik, Mr. Rahul Raj Malik, Mr. Rahul Raj Malik

**Judgement** :
* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

3. d April, 2013 Pronounced on:

10. h April, 2013 + CRL.A. 78/2012 DALIP SINGH Through: ..... Appellant Mr.V.K.Malik, Advocate with Mr. Rahul Raj Malik, Advocate Versus STATE OF (GOVT OF NCT OF DELHI) ..... Respondent Through: Ms.Rajdipa Behura, APP for the State + CRL.A. 239/2012 BIJENDER SINGH Through: ..... Appellant Mr.V.K.Malik, Advocate with Mr. Rahul Raj Malik, Advocate Versus STATE Through: + ..... Respondent Ms.Rajdipa Behura, APP for the State CRL.A. 240/2012 UMED SINGH Through: ..... Appellant Mr.V.K.Malik, Advocate with Mr. Rahul Raj Malik, Advocate Versus STATE Through: + ..... Respondent Ms.Rajdipa Behura, APP for the State CRL.A. 241/2012 RAJINDER SINGH Crl.A. 78/2012 Etc ..... Appellant Page 1 of 12 Through: Mr.V.K.Malik, Advocate with Mr. Rahul Raj

Malik, Advocate versus STATE OF DELHI Through: + ..... Respondent Ms.Rajdipa Behura, APP for the State CRL.A. 242/2012 SAJJAN SINGH Through: ..... Appellant Mr.V.K.Malik, Advocate with Mr. Rahul Raj Malik, Advocate Versus STATE Through: ..... Respondent Ms.Rajdipa Behura, APP for the State CORAM: HON'BLE MR. JUSTICE G.P.MITTAL JUDGMENT G. P. MITTAL, J.

1. These five Appeals arise out of an order dated 26.11.2010 passed by the learned Additional Sessions Judge (ASJ) whereby the learned ASJ held that it was expedient in the interest of justice to hold an inquiry into an offence referred to in Section 195 Cr.PC. against the Appellants and one Inspector S.B. Yadav who was officer in-charge of the Police Station (PS) Jahangirpuri at the relevant time.

2. Before adverting to the facts of the instant Appeals, I may give insight into facts leading to the passing of the impugned order by the learned ASJ.

3. Dalip, Deepak, Ravinder and Vikas were prosecuted in the Court of learned ASJ for offences punishable under Sections 392/397/411/34 of the Indian Penal Code (IPC) on the basis of the FIR No.10/2010 registered in PS Jahangirpuri. As per the prosecution version on 9.01.2010 HC Dalip Singh, Constable Rajinder Singh, Constable Sajjan and Constable Vijender (the Appellants herein) who were posted in PS Jahangirpuri were on patrol duty. At about 5:15 A.M. when they reached Mangal Bazar chowk, Jahangirpuri, four boys were found running towards them who were being followed by one Nitin. He was shouting pakro-pakro. On this the four Appellants apprehended the four accused persons. According to the case set up in the earlier said FIR Nitin informed the four police officials that the aforesaid boys had robbed him of a mobile phone, certain cash and a purse at knife point. The four accused persons were therefore apprehended and were taken to the PS. The earlier said FIR No.10/2010 was registered. Since the allegations were very serious including the offence under Section 397 IPC which is punishable with imprisonment of not less than seven years, Deepak one of the accused persons was not granted bail for considerable time till he was acquitted.

4. The complainant Nitin who was examined as PW-2 in that case initially supported the prosecution version except on the point of identification of the accused. When his further statement was recorded under Section 311 of the Code

of Criminal Procedure, 1973 (the Code), he gave them a clean chit stating that in fact the four accused persons had been implicated falsely at the behest of one Kuldeep. The learned ASJ referred the matter to the Commissioner of Police as false implication in grave offences was a very serious matter. Two reports dated 02.11.2010 and 26.11.2010 were submitted by the Crime Branch of Delhi police whereby it transpired that not only FIR No.10/2010 was falsely registered on the complaint of Nitin but FIR Nos.580/2009, 91/2010, 612/2009, 637/2009 in PS Jahangirpuri appeared to be filed by the same group of people. The learned ASJ therefore, while acquitting the four accused persons and awarding compensation to them opined that it was expedient in the interest of justice to hold an inquiry for commission of the offence as referred in Section 195 of the Code and therefore, proceeded to make a complaint dated 26.11.2010 under Section 195 of the Code to the learned Additional Chief Metropolitan Magistrate against the Appellants and Inspector S.B. Yadav for commission of the offences punishable under Sections 193/199/209 IPC. It would be relevant to extract the observations of the learned ASJ hereunder:.Serious constitutional and human right violations have been observed by this court in the present case. None of the accused before this court who all come from very poor families, have any previous criminal record. They have suffered detention and trial for an offence they have never committed. In the words of the Hon'ble Supreme Court if civilization is not to perish in this country as it has perished in some others to well known to suffer mention, it is necessary to educate ourselves into accepting that respect for rights of individuals is a true bastion of democracy and therefore, it is necessary for the State to repair the damage done by its officers to the rights of its citizens (Ref: Rudul Sah Vs. State of Bihar, reported in AIR 198.SC 1086). Ld. Additional Public Prosecutor has submitted that the senior officer of the police had been called and suitably advised and submits that such a serious lapse would not be repeated in future. I have duly considered his submissions. The senior officers of the Police having come to know of the false registration of FIRs it was only appropriate that the said cases should have been recommended to the competent authority for reappraisal and withdrawal, which has not been done till date. In so far as this court is concerned, it can only consider the cases so pending before it, but in so far as the cases pending trial before various other courts are concerned, the ends of justice require

that such serious Constitutional, Statutory and Human Rights violations are brought to the notice of the Hon'ble Delhi High Court on the administrative side. A complaint under Section 195 Code of Criminal Procedure is also being lodged in the court of concerned ACMM under appropriate provisions of law for the commission of offence of instituting or causing to be instituted any criminal proceedings against the accused Dalip Kumar @ Sonu, Deepak, Ravinder @ Ravi and Vikas @ Vicky and who were falsely charged of having committed an offence punishable not less than seven years, knowing that there was no just or lawful ground for such proceedings or charge against the accused persons Dalip Kumar @ Sonu, Deepak, Ravinder @ Ravi and Vikas @ Vicky and for commission of offence of perjury and giving/ fabricating false evidence with the intent to procure conviction of offence punishable with imprisonment for term not less than seven years and also for making false statement despite being legally bound by oath to state the truth. The hon'ble Apex Court in the case of Pritish Vs. State of Maharastra reported in 2001 (IX) AD (SC) 501 has observed that there was no statutory requirement to offer an opportunity of hearing to the person against whom the court might file a complaint before the Magistrate for initiating prosecution proceedings. The court is under no obligation to offer an opportunity (to the person against whom a complaint would be made) to be heard prior to making a complainant and the principles of natural justice would not be hampered by not hearing the person concerned at the stage of deciding whether such a person should be proceeded against or not. Accordingly there is no need to issue any show cause notice either to Nitin, Kuldeep Soni, Deepak Soni. Vishwajeet or police officials Ct. Sajjan Singh, HC Dalip, ASI Umed Singh, Inspector S.B. Yadav or any other person or officer connected with the commission of the aforesaid offences, before sending a complaint to the court of Ld. ACMM or to hear them.

5. Forwarding a complaint under Section 195 of the Code to hold an inquiry for commission of the offence as mentioned in the section is challenged by the learned counsel for the Appellants on the following grounds:(i) There was procedural defect in holding the preliminary inquiry by the learned ASJ under Section 340 of the Code and, therefore, the complaint under Section 195 of the Code made by the learned ASJ is liable to the quashed. (ii) The impugned order as against Inspector S.B. Yadav, officer in charge of the PS Jahangirpuri was set

aside by a Coordinate Bench (Suresh Kait, J.) of this Court by a judgment dated 09.01.2012 and thus on the ground of parity the Appellants are entitled to get benefit of the earlier said order. Reliance is place on the report of the Supreme Court in Deepak Rajak v. State of West Bengal 2007 (3) Crimes 95 (SC), Madhu v. State of Kerala (2012) 2 SCC 399.and the judgment of the Karnataka High Court in Gopi v. State of Karnataka, Criminal Petition No.5079/2012 decided on 04.09.2012 and Haneef S. v. The State of Karnataka, Criminal Petition No.6948/2012, decided on 23.11.2012. PROCEDURAL DEFECT 6 Relying on S.B. Yadav v. State, Criminal Appeal no.666/2011 decided by a Coordinate Bench of this Court on 09.01.2012, the learned counsel for the Appellants argues that complainant Nitin having been examined by the Court under Section 165 of the Code, it was not permissible to examine him further under Section 311 of the Code. Since statement given by complainant Nitin was contrary in as much as he had initially supported the prosecution version (except on the identity of the accused) and later on he had falsified the entire prosecution case by stating that he simply went to the PS at the instance of one Kuldeep and had given one mobile phone which he purchased for `500/- from Vishwajeet and that no such incident as alleged by the prosecution had taken place with him. It is urged that since this witness was totally unreliable, the learned ASJ ought not to have proceeded to make a complaint under Section 195 of the Code against the Appellants. It is stated that Section 340 of the Code nowhere envisages an inquiry to be conducted by the police before making a complaint under Section 195 of the Code and that was the reason the learned Single Judge set aside the impugned order in respect of Inspector S.B. Yadav.

7. On the other hand, relying on a judgment of Kerela High Court in Johnson v. State of Kerala 1996 Crl LJ 2338.the learned APP for the State urges that as per the procedure whatsoever for holding a preliminary inquiry as provided under Section 340 of the Code it is not even mandatory to hold an inquiry before making a complaint under Section 195 of the Code. The learned APP contends that since from Nitins statement it transpired that there might be wider implications and involvement of other persons, the matter was referred to the police for making a report to the Court which in fact made a revelation in as much as it was found that an organized racket was going on in PS Jahangirpuri for false implication of the

citizens in serious offences.

8. To appreciate the contention, it would be appropriate to extract the provision of Section 340 of the Code hereunder:340. Procedure in cases mentioned in section 195 (1) When upon an application made to it in this behalf or otherwise any court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that court, such court may, after such preliminary inquiry, if any, as it thinks necessary,(a) ; (b) ; (c) ; (d) ; (e) .

9. In Johnson (supra) relied upon by learned APP for the State it was laid down that Section 340 Cr.P.C. simply provides for making such preliminary inquiry as may be necessary. It was laid down that the preliminary inquiry is not mandatory.

10. There is a three Judge Bench decision of the Supreme Court in Pritish v. State of Maharashtra (2002) 1 SCC 253.In this case the Supreme Court laid down that it was not essential to hold preliminary inquiry or even to hear the person against whom a complaint is being lodged for an offence as provided under Section 195 of the Code. Para 9 of the report is extracted hereunder:9. Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This subsection has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be

probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

11. The Constitution Bench of the Supreme Court in Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 37.had the occasion to examine the aspect of holding a preliminary inquiry in relation to Section 340 of the Code and laid emphasis that the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interest of justice that the enquiry should be made into any of the offences referred to Section 195 (1) (b) of the Code. It was observed that the expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery etc. but having regard to the effect or impact, such commission of offence has upon administration of justice.

12. Thus, in view of law laid down in Pritish, the contention raised on behalf of the Appellants that the inquiry was defective or that the procedure adopted by the learned ASJ is not inconsonance with Section 340 of the Code cannot be accepted. Since there is no procedure for holding a preliminary enquiry, it is only the satisfaction of the Court concerned. It could be by examining any witness or it could be by obtaining any report from any authority (which in the instant case was the Crime Branch of Delhi Police) that a complaint under Section 195 of the Code should be made for enquiry into the offence in relation to administration of justice. Thus, the factum of examination of Nitin under Section 311 of the Code after his cross-examination by the APP and the defence or calling for a police report cannot vitiate a complaint under Section 195 of the Code by the learned ASJ.

In fact from the inquiry reports dated 02.11.2010 and 26.11.2010 the learned ASJ was armed with supportive evidence which he obtained by examination of Nitin

under Section 311 of the Code about false implication of the four accused persons.

13. Thus, with due humiliation, I may submit that in view of the report of the Supreme Court in Pritish and Iqbal Singh Marwah it would be difficult to accept the observations made by the Coordinate Bench while hearing the Appeal filed by Inspector S. B. Yadav.

14. In my view, the impugned order cannot be faulted on the ground that statement of the complainant Nitin in the main case was wrongly recorded under Section 311 of the Code or that police report was also obtained by the learned ASJ.

EXTENDING BENEFIT TO THE CO-ACCUSED 15 The learned counsel for the Appellants urges that the impugned judgment which relates to Inspector S.B. Yadav was set aside by a Coordinate Bench of this Court by an order dated 09.01.2012 and thus, the benefit of that judgment must be extended to the Appellants.

16. In Deepak Rajak relied upon by the learned counsel for the Appellants it was laid down that in case of acquittal of similarly placed accused on the same set of facts and on similar accusation the benefit can be extended to another co-accused after he surrenders. Relying on Deepak Rajak similar view was taken by Karnataka High Court in Gopi and Haneef S..

17. In Madhu v. State of Kerala relying on Pawan Kumar v. State of Haryana (2003) 11 SCC 24.the Supreme Court held that it can exercise its power under Section 142 of the Constitution for doing complete justice between the parties and that power under Section 136 of the Constitution can be exercised in favour of the party even suo moto when the Court is satisfied that compelling grounds exists for its exercise. It was observed that when the Court finds that a conclusion against Appealing accused and a nonAppealing accused was unwarranted it can set aside the judgment against the accused who has filed the Appeal as also against the accused who has not Appealed.

18. Turning to the facts of the instant case, one of the grounds for accepting the Appeal filed by Inspector S.B. Yadav was that he was not a member of the raiding party and that as officer in charge of the PS he was under obligation to forward the case to the Court of concerned Metropolitan Magistrate when the challan was prepared by the IO. In the instant case, the four Appellants were the members of the raiding party who had allegedly apprehended the four accused persons which has been found to be false by the learned ASJ.

19. As far as defect of procedure is concerned, I have already held above that in view of the three judge bench decision of the Supreme Court in Pritish it was not even essential to hold a preliminary inquiry. I have also observed that calling for the report was infact a piece of corroborative evidence to the view taken by the learned ASJ.

Thus, the Appellants cannot claim setting aside of the impugned order on the ground of parity.

20. In view of the foregoing discussion, the Appeals have to fail; the same are accordingly dismissed. CRL. MA.3936/2013 in Crl.A. 78/2012 21. By order dated 20.01.2012 proceedings before the Trial Court in respect of complaint filed under Section 195 of the Code were only stayed. The order of learned ASJ regarding payment of compensation to the accused in the main case was not stayed. In any case, on dismissal of these Appeals the stay granted by order dated 20.01.2012 stands vacated. The compensation amount shall be released to the persons who are entitled to receive the same.

22. The Application stands disposed of.

23. Pending Applications also stand disposed of. (G.P. MITTAL) JUDGE APRIL 10 2013 vk