

Krishan Kathuria Vs. State and anr

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Court : Delhi

Decided On : Apr-10-2013

Judge : S. P. Garg

Appellant : Krishan Kathuria

Respondent : State and anr

Judgement :

\$-31 * IN THE HIGH COURT OF DELHI AT NEW DELHI DECIDED ON :

10. h APRIL, 2013 + CRL.M.C. 549/2012 & CRL.M.A.1922/2012 (Stay) KRISHAN KATHURIA Through : Petitioner Mr.Jayant Kr.Sud with Mr.Vishal Dabas, Advocates. versus STATE & ANR Through : Respondents Mr.M.N.Dudeja, APP for the State. Complainant present in person. CORAM: HONBLE MR. JUSTICE S.P.GARG S.P.Garg, J.

(Open Court) 1. Petitioner- Krishan Kathuria has filed the present petition under Section 482 Cr.P.C. for quashing Complaint Case No.790/2010 filed by respondent No.2 in which he was summoned to appear for committing offences punishable under Sections 341/323/506/34 IPC.

2. I have heard the learned counsel for the petitioner and the respondent No.2/ complainant in person. Counsel urged that the respondent No.2 filed the false complaint case against the petitioner to wriggle out of the compromise/ settlement agreed to before this Court in civil proceedings. Respondent No.2/ complainant

made false allegations that on 29.01.2010, he was beaten by the petitioner and others. There was no material before the Trial Court to proceed against the petitioner for committing any offence. Action taken report/ status report was called from the Police Station Tilak Marg in which it was specifically mentioned that no such incident took place and the allegations were false. Neither did the complainant inform PCR nor medically examined himself. The complaint did not disclose commission of any cognizable offence. No independent public witness was examined in the pre-summoning evidence. The complainant made vital improvements in his deposition before the Trial Court. He is already involved in number of other litigations. The respondent controverted the submissions and stated that the petitioners intention is to grab his property. He had lodged twenty complaints against him. Police did not take any action on his complaints due to the pressure of the petitioner.

3. The complainant/ respondent No.2 lodged report dated 29.01.2010 to Station House Officer, Tilak Marg alleging that at about 11.00 A.M. when he came out of Court No.7, Krishan Kathuria and Madan Mohan caught hold of him from the collar and pushed him violently. They were joined by 2-3 other persons and they started abusing and threatening him. He was manhandled and slapped. His brother threatened him of dire consequences and even hinted to eliminate him. They threatened him to withdraw the case or to consequences. However, no action was taken by the police. The respondent sent representation dated 19.05.2010 to Assistant Commissioner of Police to direct SHO, Tilak Marg to take necessary action. He did not receive any response. He filed complaint case on 10.06.2010. Action taken report was submitted by the concerned Police Station was contested by the complainant. The learned Metropolitan Magistrate after perusing the record and on the basis of the material took cognizance and directed the complainant to lead presuming evidence. Vide order dated 28.09.2011, considering the deposition of the complainant, the Trial Court was of the prima facie view that there was sufficient material to proceed against the petitioner and Mr.Madan Mohan @ Madan Lal @ Maddi for the aforesaid offences. The petitioner appeared before the Trial Court and vide order dated 04.01.2012 he was admitted to bail. The complainant did not object to grant of bail if condition was imposed that he would not threaten him. The Trial Court accordingly directed the petitioner not to

temper with the evidence and not threaten the witnesses or otherwise.

4. The Metropolitan Magistrate under Section 202 Cr.P.C. may disagree with the report of investigation and take cognizance. 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. In arriving at his judgment, he is not fettered in any way except by judicial considerations; he is not bound to accept what the enquiry officer says, provided always there are satisfactory and reliable materials on which he can base his judgment as to whether there is sufficient ground for proceeding on the complaint or not. If the police had taken an attitude not acceptable to the complainant, his right to examine himself and/ or his witness cannot be taken away in view of the said report of the investigating officer. Under Section 202 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 as against the accused persons named in the complaint or some of them. The criteria for summoning of the accused is whether the un-rebutted evidence makes out a prima facie offence against the accused or not. The scope of enquiry is extremely limited only to the ascertainment of truth or falsehood of the allegations made in the complaint. The Magistrate is not expected to embark upon detailed discussion of the merits/ demerits of the case. Again, there is no invariable rule that independent public witnesses are to be examined to establish a case as there is no reason to disbelieve the evidence of the complainant at the stage of issuing process on a private complaint. The case is to be judged solely on the allegations made in the complaint and the evidence led by the complainant and it is not within the scope or authority of the Magistrate to make a meticulous or detailed examination of the evidence.

5. In the instant case, the complainant lodged complaint with the police soon after the alleged incident on 29.01.2010. When the police did not take any action, he made representation to the senior officers to direct the SHO concerned to investigate the complaint. It appears that no enquiry was conducted by the concerned Police Station. In action taken report/ status report called in the complaint case, the police informed that no such incident had taken place. Valuable time was lost by the concerned Police Station to make enquiries on the

complaint of the complainant soon after it was lodged. The Trial Court did not agree with the report and opted to examine the complainant in pre-summoning evidence. The complainant on oath proved the allegations in the complainant and specifically deposed as to how and under what circumstances, the incident took place in which he was beaten and threatened. The averments in the complaint on oath cannot be brushed-aside at this stage. The arguments put forth by the counsel are on merits of the case which the Trial Court would consider during trial. I find no illegality or irregularity in the impugned order to interfere with.

6. The petition lacks merits and is dismissed. Pending application also stands disposed of being infructuous. (S.P.GARG) JUDGE APRIL 10 2013 tr

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