

(2022) 07 DEL CK 0100

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 2657 Of 2019, Criminal
Miscellaneous Application No. 2677 Of 2020

Bhagwan Das Vasudeva & Ors.

APPELLANT

Vs

State (Nct Of Delhi)

RESPONDENT

Date of Decision : 22-07-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 95, 323, 341, 448

Code Of Criminal Procedure, 1973 — Section 228, 239, 240, 397, 482

Citation : (2022) 07 DEL CK 0100

Hon'ble Judges : Sudhir Kumar Jain, J

Bench : Single Bench

Advocate : Kailash Vasdev, Umrao Singh Rawat, Nayantara, Manya Jha, Ashok Kumar Garg

Final Decision : Dismissed

Judgement

Sudhir Kumar Jain, J

1. The present petition is filed under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") for quashing of FIR bearing no.194/2015 registered under sections 341/323/34 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") at P.S. Vikas Puri, New Delhi with all consequential proceedings including impugned judgment dated 24.09.2018 passed by the Court of Ms. Smita Garg, Additional Sessions Judge, West, Fast Track Court, Tis Hazari Courts, Delhi in Criminal Revision no.485/2017 titled as Bhagwan Dass Vasudeva & Ors. V. State (NCT of Delhi).

2. The respondent no 2 was ordered to be impleaded vide order dated 17.05.2017. The respondent no.2 stated to be expired and this Court vide order dated 18.02.2020 directed the concerned Investigating Officer to submit the names of the Legal Representatives of the respondent no 2 and in pursuance of the order dated 18.02.2020, Raghu Nath Singh Rathor, father and Renu Singh Rathor, Wife of the complainant appeared before this Court on 11.03.2022.

3. FIR bearing no. 194/2015 dated 23.02.2015 was got registered under sections 341/323/34 IPC at P.S. Vikas Puri, Delhi on the basis of the complaint made by the respondent no 2 pertaining to incident happened on 22.02.2015 wherein the petitioners were implicated. The charge sheet in pursuance of FIR bearing no 194/2015 was filed after completion of the investigation and the court of Metropolitan Magistrate M-05 (West), Delhi (hereinafter referred to as "the trial court") vide order dated 17.05.2017 ordered for framing of the charges for offences punishable under sections 323/341/34 IPC against the petitioners. The petitioners being aggrieved by the order dated 17.05.2017 preferred Criminal Revision Petition bearing no.485/2017 titled as Bhagwan Dass Vasudev & Ors. V. The State (NCT of Delhi) which was dismissed vide order dated 24.09.2018 (hereinafter referred to as "the impugned order") passed by the Court of Ms. Smita Garg, ASJ/FTC (e-Court), West, Tis Hazari Courts, Delhi (hereinafter referred to as "the revisional court").

4. A cross FIR bearing no. 193/2015 dated 23.02.2015 was also registered under sections 341/323 IPC at P.S. Vikas Puri on the basis of complaint made by the petitioner no.1 wherein the respondent no.2 (since deceased) was implicated.

5. The respondent no 2 in FIR bearing no 194/2015 alleged that the petitioner no1 on 22.02.2015 has put up a ramp in front of the gate of his house and at about 10:30 pm the respondent no 2 was abused and slept by the petitioner no1 when he was talking with the petitioner no.1 and when he was going back to his house then the petitioner nos.2 and 3 who are the son and nephew of the petitioner no1, stopped and picked up a quarrel with him. The petitioner no.2 also pushed Renu Singh wife of the respondent when she came at the spot and as a result of which she fell down and got injured. The respondent no 2 also stated these persons obstructed him as well as Renu Singh and caused injuries to both of them. The respondent no 2 and Renu Singh were medically examined vide ME No 2744/15 and MLC No1530/15 at Deen Dayal Upadhyay Hospital respectively and their medical examination reflected that they received simple blunt injury and blunt injury respectively. Thereafter on the basis of medical report, FIR bearing no194/2015 under sections 341/323/34 IPC was registered at P.S. Vikas Puri, New Delhi.

6. The petitioner no.1 in cross FIR bearing no193/2015 alleged that he made a ramp outside his flat and the respondent no 2 on 22.02.2015 at about 10:30 pm came to his flat and picked up a quarrel abused the petitioner no.1 and when the petitioner no1 was returning to his house, the respondent no 2 obstructed and slept him several times. The statement of the petitioner no1 was recorded by the police and was sent for medical examination in DDU Hospital which reflected that the petitioner no 1 received simple blunt injury. Thereafter, FIR bearing no.193/2015 dated 23.02.2015 was got registered under sections 341/323 IPC at P.S. Vikas Puri.

7. The petitioners after completion of investigation in pursuance of FIR bearing no 194/2015 were put to the trial and trial court vide order dated 17.05.2017

observed that a prima facie case was made out against the petitioners and accordingly the charges for the offences punishable under sections 323/341/34 IPC were to be framed against the petitioners to which they pleaded not guilty and claimed trial. The order dated 17.05.2022 is reproduced as under:-

" Case file has been perused and a prima facie case is made out against the accused persons. Charge for offences punishable u/s 323/341/34 IPC has been framed against accused persons to which they pleaded not guilty and claimed trial.

Be put up for PE on 16.10.17. Let complainant Mr. Harsh Wardhan be summoned for NDOH."

8. The petitioners being aggrieved filed the Revision Petition bearing no. 485/2017 titled as Bhagwan Dass Vasudev & Ors. V. The State (NCT of Delhi) to challenge the order dated 17.05.2017 passed by the trial court. The petitioners beside narrating the factual position challenged the order dated 17.05.2017 on the grounds that the impugned order was passed by the trial court on the basis of conjectures and surmises and without appreciating the relevant material available on record. The trial Court has not appreciated that the entire story was cooked up by the respondent no 2 just to register FIR. The Investigating Officer did not investigate the case properly and charged the petitioners under sections 323/341/34 IPC although the petitioner no. 2 and 3 were not present at the spot at time of incident. The order dated 17.05.2017 passed by the Trial Court is cryptic, unreasoned and has been passed in a mechanical manner without applying judicial mind. The trial court did not appreciate that framing of charge under section 228 of the Code is not an empty formality. The petitioner no1 is aged more than 80 years and is unable to fight the case due to physical weakness. The alleged offences are petty in nature and only a slight harm was stated to be caused to the respondent no 2 and as such no offence is made out against the petitioners as per the provision of section 95 of IPC.

9. The revisional court vide impugned order has dismissed the Criminal Revision Petition preferred by the petitioners. The revisional court in the impugned order has considered grounds as mentioned in the revision petition as well as arguments advanced by the learned Senior Counsel for the petitioners. The revisional court has observed that a Magistrate is required to record the reasons for discharging an accused as per section 239 of the Code but such legal obligation is not cast on the Magistrate by section 240 of the Code for framing charge. The Magistrate at the time of framing the charge is only required to be satisfied that upon considering the police report as well as the documents annexed with it and after hearing the parties that there is a ground for presuming that the accused had committed an offence. The revisional court has observed that the Magistrate in order dated 17.05.2017 has duly recorded his satisfaction and also relied on Kanti Bhadra Shah & Anr V. State of Bengal (2000) 1SCC 722.

10. The Revisional Court also did not accept the arguments advanced by learned Senior Counsel for the petitioners that the present FIR bearing no 194/2015 is counterblast to the FIR bearing no 193/2015 which was registered at the instance of the petitioner no.1 and further arguments that the petitioner no.1 is not able to contest the case due to physical weakness as aged more than 80 years.

11. The revisional court also observed that the trial court at the stage of framing of the charges is not expected to go into the probative value of the material and only require to consider whether there is a ground for presuming that the offences has been committed or not. The revisional court also observed that the respondent no 2 in the statement dated 23.02.2015 specifically alleged that he was abused and slept by the petitioner no.1 and also petitioner nos. 2 and 3 obstructed his way and quarreled with him. The petitioner no 2 and 3 also caused injuries him and his wife who as per medical opinion received simple injuries. The revisional court also observed that the trial court has rightly framed the opinion that the prima facie case was made out to frame the charges for offences punishable under sections 341/323/34 IPC.

12. The revisional court has also considered submissions of the learned Senior Counsel of the petitioners that the alleged offences are petty and only a slight harm has been caused to the respondent no2 and as such no offences is made out in view of section 95 of IPC. The revisional court has observed that section 95 IPC is not applicable under the given facts and circumstances of the case and the slight harm as defined in section 95 cannot be judged solely by the measure of physical and other injuries. The revisional court further observed that a quarrel took place on 22.02.2015 between the respondent no 2 and the petitioner no.1 is pursuing the trial in pursuance of FIR bearing no193/2015 wherein the charges for the offences punishable under sections 323/341 IPC have already been framed against the respondent no 2 vide order dated 17.05.2017 and the harm or injury caused to the respondent no 2 and his wife could be ascertained conclusively only after during the course of the trial.

13. The petitioners sought the quashing of FIR bearing no.194/2015 with all consequential proceedings including the order dated 24.09.2018 passed by the Court of Ms. Smita Garg, ASJ/FTC West, Tis Hazari Court, Delhi on the grounds that the revisional court has failed to exercise the jurisdiction as per mandate of section 397 of the Code and erroneously determined that the order dated 17.05.2017 passed by the trial court was free from any legal infirmity and the trial court was correct in framing the charges against the petitioners. The findings of the revisional court were contrary to the record and the contentions of the petitioners were not appreciated in the right perspective as the petitioner no.1 and his wife are elderly person. The revisional has failed to appreciate that FIR bearing no 194/2015 was registered as a counterblast to the FIR bearing no 193/2015 registered at the behest of the petitioner no.1 and to prevent the respondent no 2 from facing penal consequences. The revisional court has failed

to exercise the jurisdiction in accordance of well settled principles of law. The trial court while passing the order dated 17.05.2017 has failed to give any cogent reason for framing the charges under sections 323/341/34 IPC and has incorrectly proceeded to frame the charges against the petitioners. There was no evidence against the petitioners to put them on the trial. The respondent no 2 was having objection over the ramp allegedly constructed by the petitioner no1 and the petitioner no.1 allegedly pick up a quarrel with the respondent no 2 and when the respondent no 2 was returning to his house then the petitioner no 2 and 3 restrained and assaulted him as well as his wife Renu Singh. These facts are manifestly incorrect rather the respondent no 2 came to the house of the petitioner no 1 and had a quarrel with him. The impugned order is liable to be set aside. It is prayed that the FIR bearing no. 194/2015 dated 23.02.2015 registered under sections 341/323/34 IPC at P.S. Vikas Puri, Delhi along with consequential proceedings be quashed.

14. The written arguments are submitted on behalf of the petitioners and the learned Senior Counsel for the petitioner also advanced oral arguments stating that the trial Court has framed the charges against the petitioners in a cryptic, mechanical manner, without application of judicial mind and without assigning any reason which amount to the denial of the justice. The learned Senior Counsel also argued that framing of charges is not an empty formality and relied upon *Ajay Malik V State*, 1996 JCC 312. The Trial Court has failed to appreciate that FIR bearing no 194/2015 is a counterblast to FIR bearing no 193/2015 dated 23.02.2015 registered under sections 341/323/34 IPC at P.S. Vikas Puri, Delhi at the instance of the petitioner no.1 pertaining to the incident happened on 22.02.2015 wherein the respondent no 2 was implicated. The petitioner no.1 is aged more than 80 years and such he is unable to contest the case due to his physical weakness and the petitioner no 2 and 3 were not present at the spot as such they should be discharged. The learned Senior Counsel for the petitioners further argued that the offences as alleged in FIR 194/2015 are petty in nature and only a slight harm was caused to the respondent no 2 and his wife as such no offence is made out against the petitioners in view of the section 95 of IPC. The dispute between the petitioners and respondent no 2 is of a petty nature arising out of a quarrel and a private dispute has a different footing for the purpose of quashing. The impugned order is liable to be set aside. The learned Senior Counsel for the petitioners referred *Neelam Mahajan Singh V Commissioner of Police & others*, 53 (1994) DLT 389 (FB) passed by Full Bench of this Court and *State of Haryana & Others V Ch.Bhajanlal & Others*, AIR 1992 SC 604.

15. The learned Senior Counsel for petitioners in arguments primarily took shelter of section 95 of IPC by arguing that only slight harm was allegedly caused to the respondent no 2 and his wife which is not an offence.

16. Section 95 of IPC deals with act causing harm and discards the conviction of the accused in trivial matters which are petty in nature and no man of prudence

and ordinary nature would seek to complain against such acts before the court of law. Whether an act is trivial or trifle and comes within section 95 depends upon the facts and circumstances of the case and cannot be measured solely on the basis of physical and other injuries caused to the victim by the act. It reads as under:-

Act causing slight harm.—Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

17. The Supreme Court in *Veeda Menezes V Yusuf Khan & another*, AIR 1966 SC 1773 observed that section 95 is intended to prevent penalisation of negligible wrongs or of offences of trivial character and expression 'harm' is wide enough to include physical injury as also injurious mental reaction. It was observed as under:-

Whether an act which amounts to an offence is trivial would undoubtedly depend upon the nature of the injury, the position of the parties, the knowledge or intention with which the offending act is done, and other related circumstances. There can be no absolute standard or degree of harm which may be regarded as so slight that a person of ordinary sense and temper would not complain of the harm. It cannot be judged solely by the measure of physical or other injury the act causes.

The Supreme Court in *Rupan Deol Bajaj & another V Kanwar Pal Singh Gill & another*, 1995 SCC (6) 194 again reiterated above legal proposition pertaining to section 95 of IPC.

18. The Full Bench of this court in *Neelam Mahajan Singh V Commissioner of Police & others*, 53 (1994) DLT 389 (FB) cited by the learned Counsel for the petitioners quashed FIR registered under section 448 of the IPC after applying provisions of law as contained in section 95 of the Code. In this case, the counsel for the respondent/complainant argued that defense of triviality can be set up by the petitioner/accused only before the Magistrate and in law it cannot be a ground for quashing the First Information Report and also that 'triviality' has not been pleaded in the petition as a ground seeking quashing of First Information Report. The Full Bench did not accept said argument and observed that if on admitted facts, it is shown that the offence is trivial and covered under section 95 of the IPC, the accused has still to be left to face the ordeal of the full-fledged trial and court has no jurisdiction to quash the FIR even after reaching a conclusion, on admitted facts, that harm is so slight that no person of ordinary sense and temper would complain of such harm. It was observed as under:-

The pleadings cannot be construed in the strict and hyper technical manner. The question whether the harm is so slight that no person of ordinary sense and temper would complain of such harm is required to be judged and inferred from the facts pleaded.

32. Before parting with aspect of triviality, we may notice that our conclusion that the incident was trivial should not be understood to me that we are putting a seal of approval on the conduct of Ms. Singh. Assuming Ms. Singh had any grievance, she should not have gone to the flat of Gupta and further assuming, in her discretion she thought it appropriate to go the flat of Gupta, she as is expected of a decent and civilized person have no right to. Hurl abuses on anyone. We would leave the matter at that and say no more on this aspect.

33. We may also say a few words about ground of mala fides. From the decisions of Supreme Court in the case of P.P.Sharma and in the case of State of Haryana & Ors. Vs. Ch.Bhajan Lal & Ors, it seems to be well settled proposition of law that the malafides of the complainant are to be seen while considering the prayer for quashing on the ground of malafides and not the illegality or irregularity which may have crept up during the course of investigation. If the dominant purpose of the complainant in filing the complaint is malafide the court would be justified in quashing the First Information Report. In the present case, admittedly, Gupta did not even know Ms.Singh. There was no previous animosity between the two. The fact that Gupta and his wife had initially ignored the incident as trivial and did not pursue it with the police shows the bona fides of Gupta rather than to show his malafides. Gupta had no option but to lodge the complaint after learning that Ms.Singh was not treating the matter as closed. A reasonable person is likely to think that remaining quiet and not placing on record his version may at a later stage be interpreted to his detriment or prejudice. Under these circumstances the filing of the complaint by Gupta cannot be said to be counterblast with a view to wreck vengeance. Though it does seem to us that Mr.Farooqui, respondent No. 2 did show over zealousness in making the unusual order, on the facts of the present case, directing the arrest of Ms.Singh and calling her to the Police Station on the pretext that he will get the matter settled. For the reasons best known Mr.Farooqui has not filed any affidavit in reply to the writ petition. In view of our conclusion that there does not appear to be any malafides on the part of Gupta the effect of over zealousness exhibited by Mr.Farooqui is not necessary to be examined in any further detail, more so, when in our view the incident was trivial.

19. The respondent no 2 in FIR no 194/2015 mentioned that the petitioner no1 on 22.02.2015 at about 10:30 pm abused and slept him and when the respondent no 2 was going back to his house then the petitioners no 2 and 3 stopped and picked up a quarrel with him. The petitioner no.2 also pushed Renu Singh wife of the respondent and as a result of which she fell down and got injured. The respondent no 2 and his wife were obstructed by them. The respondent no 2 and Renu Singh also received simple blunt injuries as reflected from ME No 2744/15 and MLC No1530/15. The respondent no 2 as made necessary allegations in FIR no 194/2015 enough to initiate legal proceedings against the petitioners for offences as complained of.

20. The revisional court rightly observed that a quarrel took place on 22.02.2015

between the petitioner no 1 and the respondent no 2. A cross FIR bearing no 193/15 U/s 341/323 IPC was got registered against the respondent no 2 at instance of the petitioner no 1 and trial of which is being pursued by the petitioner no 1 wherein the charge for the offence under Section 323/341 IPC have already been framed. The nature of harm or injury caused to the respondent no 2 and his wife can only be determined conclusively on during the course of trial. In the facts and circumstances of the case at this stage it cannot be said that the acts alleged against the petitioners are trivial in nature against which the complainant cannot complain. The nature of injuries and the harm caused to the respondent no 2 and his wife can only be ascertained after the conclusion of the trial and after appreciating evidence to be led by the prosecution and at this stage the premature evaluation of the evidence likely to be led by the prosecution cannot be done. The protection of section 95 of the IPC is not available to the petitioners under given facts and circumstances of the case. The reasoning given by the revisional court is based on sound legal principles and the impugned order is passed after considering all relevant facts. The impugned order is without any legal informality. The judgment titled as Neelam Mahajan Singh V Commissioner of Police & others, 53 (1994) DLT 389 (FB) cited by learned Senior Counsel is not providing any help to the petitioners.

21. The grounds pleaded in present petition to challenge impugned order and arguments advanced by the learned Senior Counsel for the petitioners are considered in right perspective and are without any legal basis. There is no force in arguments that the petitioner no 1 being old person cannot defend trial arising out of FIR no 194/2015 due to physical weakness particularly when the petitioner no 1 himself is pursuing trial arising out of cross FIR bearing no 193/2015 and disputes subject matter of FIR no. 194/2015 is of private nature. The plea of the petitioners that the petitioners no 2 & 3 were not present at spot is a matter of trial and at this their absence cannot be presumed. The trial court has rightly framed the charges as also observed by the revisional court. There is no merit in the present petition and FIR bearing no 194/2015 under sections 341/323/34 IPC registered at P.S. Vikas Puri, New Delhi including impugned order cannot be quashed. Hence the present petition along with pending applications, if any, is dismissed.