

(1992) 07 DEL CK 0034
In the Delhi High Court
Case No : Criminal M (M) 2410/91

Jitender Mohan Gupta

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 24-07-1992

Acts Referred:

Citation : (1992) CriLJ 4016 : (1992) 3 Crimes 269 : (1992) 48 DLT 251 :
(1992) 23 DRJ 509 : (1993) ILR Delhi 359 : (1992) 2 RCR(Criminal) 580

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Mr. K.K. Sud, for the Appellant; Mr. B.D. Batra, for the Respondent

Judgement

Usha Mehra, J.—Jitendra Mohan Gupta by this petition wants that first information report bearing No. 256/91 lodged with the Police Station Seema Puri u/s 304-A, IPC be quashed.

2. In nutshell the case of the prosecution is that the petitioner is the President of "Aggarwal Sanghathan Dilshad Garden". The said Association organized a "Haryali Teej Mela" at C Block Central Park, Dilshad Garden, Delhi on 11th and 12th August, 1991. The said park belongs to the Municipal Corporation of Delhi and the petitioner took it on hire from the MCD. Information of organising the said Teej Mela was also given to the police in advance. It is further the case of the prosecution that a girl aged about 3 years named Shruti Malhotra drowned in the underground water-tank of Fire Brigade at about 9.45 P.M. on 12th August, 1991 on account of the negligence of the petitioner. The petitioner had not covered the manhole as a result of which this incident took place. Hence, the case against him.

3. Petitioner in this petition has assailed the action of the police for registering the case, inter alia, on the ground that the underground water tank of Fire brigade was a separate enclosure and beyond the site of the Mela. The petitioner had nothing to do with the manhole the lid of which was missing. Nor the

petitioner could be made liable for the omission and commission of the MCD and DDA who are the owners of the park and underground water tank respectively. Moreover, this incident never took place in the park which was hired by the petitioner for organising the said Mela. Hence the said FIR is liable to be quashed.

4. I have heard Mr. K. K. Sud for the petitioner, Mr. B. D. Batra for the State and have also perused the police file.

5. The perusal of the police file shows that the area of the park was 47"x 87". On one side is the gate. Within that park an area of 15"x 60" is used for underground water tank. That area of 15"x 60" was not allotted to the petitioner for organising the said Mela. Therefore, so far as the factual position is concerned, it is not disputed that underground water tank of the Fire Brigade having a manhole the cover of which was missing did not form part of the park given to the petitioner. It is also an admitted case of the prosecution that the said underground water tank has a separate enclosure surrounded by wall and iron grill. The wall is of 2 ft. in height running around the said water tank, over and above the wall there is a grill. It is also a fact on record that the responsibility to maintain the said water tank was that of the DDA. It is also not disputed that the said child Km. Shruti Malhotra fell into the manhole of the water tank on which there was no lid. Prima facie, no case of negligence causing the death of the said child can be attributed to the petitioner, because neither the petitioner was to maintain that manhole nor the water tank area formed part of the park allotted to the organisation on hire for organising the said Mela. I would have quashed the FIR qua the petitioner on these facts. But during the course of arguments Mr. Batra has brought to my notice that challan has been filed on 7th April, 1992, Therefore, according to him since the challan has been filed this Court has no jurisdiction to quash the FIR.

6. It is no doubt true that after the filing of challan this Court ought not to have continued with the decision of this petition. But the facts of each case have to be looked into before permitting the ouster of Courts jurisdiction. In the facts and circumstances of the present case the prosecution cannot be permitted to over reach the jurisdiction of this Court nor the prosecution can be permitted to make a capital out of the fact that the challan has been filed even though the petition was pending. The present petition was filed by the petitioner on 20th September, 1991 and was taken up by the Court on 26th November, 1991 when the notice was issued to the State for 7th January, 1991. On 7th January, 1991 Mr. A. K. Manchanda, Advocate appeared for the State and sought an adjournment Therefore, the matter was adjourned to 25th February, 1992 on which date the case was again adjourned to 27th February, 1992. On 27th February, 1992 Mr. S. C. Jain, advocate appeared for the State. The Predecessor of this Court had heard the counsel for the parties on the petition and admitted the same with direction that the matter should be posted for final disposal before this Court on 10th April, 1992 subject to overnight part heard. On 7th July, 1992 arguments were heard in part and adjourned to 10th July, 1992 when Mr. Batra pointed out

that the challan has already been filed. Mr. Batra tried to explain that challan in this case was prepared on 4th February, 1992 and was sent to the Presentation Branch for checking. The said Branch returned the challan on 10th March, 1992 with objections. On 25th March, 1992 again the challan was submitted to the said branch for checking. It is only when the said Branch cleared the challan on 25th March, 1992 that it was presented in the Court on 7th April, 1992. These facts which Mr. Batra has pointed out clearly show that the prosecution did not bother to appraise this Court about filing of challan when Mr. A. K. Manchanda, Advocate for the State neither appeared before the Court nor these facts were brought before the Court on 27th February, 1992 when the order was passed to hear this petition for final disposal on 10th April, 1992. If the challan had been prepared on 24th February, 1992 then this fact ought to have been brought to the notice of the Court. Even when the case was ordered to be heard for final disposal on 10th April, 1992, the counsel for the prosecution never intimated that Challan is going to be filed as it is already prepared. This conduct of the prosecution clearly establishes that by filing the present challan it has tried to over reach the jurisdiction of this Court. In fact the case was admitted before the challan was filed and this was in the knowledge of the prosecution. Therefore, to my mind, this is not a fit case where the Court should ouster its jurisdiction merely because the prosecution has filed the challan. Mr. Batra has placed reliance on the decision of the Supreme Court in the case of State of Bihar Vs. Raj Narain Singh, where their Lordships observed that the High Court had no justification to interfere with the prosecution at the preliminary stage. So far as the proposition of law is concerned, there is no quarrel with the same. But as already pointed out above, the facts of each case have to be weighed on its own merits. In that case after the investigation the charge sheet was submitted and the cognizance was taken by the Court. Thereafter, the respondent tried to assail that order by filing revision before the Additional Sessions Judge. That having been rejected, the respondent moved the High Court u/s 482 of the Code of Criminal procedure for quashing of the criminal action. It is in this background that Supreme Court observed that High Court prejudged the question without affording reasonable opportunity to the prosecution to substantiate the allegations. But that is not the case in hand. Here the petitioner had come to this Court even when the case was under investigation and the challan charge sheet had yet not been filed nor the cognizance had been taken by the Magistrate. As already pointed out above, the prosecution had been appearing in this case and never once informed that the challan has been prepared. Moreover, in this case the petitioner is not assailing the investigation or F.I.R. on account of any discrepancy in the evidence collected by the State. His case throughout had been that he has been falsely implicated. There is in fact not an iota of evidence available against the petitioner which fact counsel for the respondent fairly contended. Hence, the decision in the case of State of Bihar v. Raj Narain Singh (supra) is not applicable to the facts of this case. Moreover, from the facts which have been narrated above and which have come from the police record, it is clear that no negligence can be attributed to the petitioner for the missing of the lid on

the manhole in the water tank nor could he be held responsible for the maintenance of water tank. It also cannot be said that on account of act of omission or commission on the part of the petitioner that Km. Shruti Malhotra fell into the manhole.

7. Once this Court comes to the conclusion from the record made available that no case is made out against the petitioner then there cannot be any ban on the exercise of inherent power where this Court feels that there is an abuse of the process of the Court or other extraordinary situation excites the Court's jurisdiction. I am supported in arriving at this conclusion from the observation of the Supreme Court in the case of R.P. Kapur Vs. The State of Punjab, where the Supreme Court held (at page 1241 (of Cri LJ) -

"The inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Some of the categories of cases where the inherent jurisdiction to quash proceedings can and should be exercised are :

"Where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged : in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not."

8. In view of the above observation of the Supreme Court I think it is a case where extraordinary situation exists and Therefore, the inherent power has to be invoked particularly when from the bare reading of the First Information Report or the complaint on its face value does not constitute an offence against the petitioner. It is under these circumstances that this court is exercising its power u/s 482 even though the challan has been filed.

9. In the facts and circumstances of the above, it is ordered that the First Information Report No. 256\\91 dated 13-8-91 registered at Seema Puri Police Station against the petitioner be quashed and proceedings against the petitioner be dropped.

10. Petition allowed.