

(2017) 01 DEL CK 0277

In the Delhi High Court

Case No : 1780 of 2016

MOHAN LAL

APPELLANT

Vs

STATE OF NCT OF DELHI & ANR

RESPONDENT

Date of Decision : 11-01-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 161](#), [Section 173\(8\)](#), [Section 156\(3\)](#), [Section 207](#) - Saving of inherent power

Citation : (2017) 01 DEL CK 0277

Hon'ble Judges : Mukta Gupta

Bench : SINGLE BENCH

Advocate : Meenakshi Chauhan, Subhash Chandra, Pankaj K. Rajan

Judgement

1. This is the third round of litigation before this Court by the petitioner after registration of FIR No.302/2008 under Sections 354/323/506 IPC at PS Mukherjee Nagar registered on the complaint of respondent No.2 pursuant to directions under Section 156(3) Cr.P.C.

2. The petitioner filed CRI.M.C.2472/2011 seeking quashing of abovenoted FIR on merits. The said petition was disposed of by this Court vide order 10th December, 2013 granting liberty to the petitioner to urge the pleas taken in the petition before the Trial Court at the stage of hearing on the point of charge and directions were issued to the learned Trial Court to deal

with the pleas raised by the petitioner by passing a speaking and reasoned order. The petitioner was also exempted from personal appearance before the Trial Court till the arguments on the point of framing of charge are heard, provided he was duly represented by a counsel who did not seek an adjournment and in case the proceedings were got delayed before the Trial Court, the benefit of exemption from personal appearance was to be withdrawn.

3. Petitioner filed a second petition before this Court under Section 482 Cr.P.C.

being CrI.M.C. 3812/2014 seeking quashing of the charge-sheet dated 16th March, 2010 filed in FIR No.302/2008 at PS Mukherjee Nagar. Noting the earlier order, this Court held that though arguments on charge were heard at length, however reasoned and speaking order was not passed by the learned Trial Court dealing with the contentions of the petitioner. Thus the petition filed by the petitioner being CrI.M.C. 3812/2014 was allowed and the order directing framing charge for offences punishable under Section 323/354/506 IPC was set aside on 29th January, 2015.

4. In the present petition the prayer of the petitioner is dismissal of the private complaint dated 10th December, 2007 filed by the respondent No.2, quashing of the orders dated 9th March, 2015 and 17th March, 2015 passed by the learned Metropolitan Magistrate, order dated 4 th March, 2016 passed by the learned Additional Sessions Judge, Rohini and quashing of FIR No. 302/2008 registered at PS Mukherjee Nagar and the charge-sheet filed pursuant thereto.

5. Vide order dated 9th March, 2015 a composite application of the petitioner, inter alia, praying for further investigation under Section 173(8) Cr.P.C. directions for production of the shirt of the appellant which was torn by the complainant on earlier dates of hearing was disposed off. The learned Metropolitan Magistrate vide order dated 9th March, 2015 held that the petitioner had been appearing in the Court since 4th June, 2010 and the application for further investigation was filed on 24th December, 2014. No cogent reason has been given for the delay in filing the application. The alleged incident was dated 18th November, 2007 and charge-sheet was filed on 16th March, 2010. The Court was of the view that no fruitful purpose would be served by directing further investigation. However, liberty was granted to the petitioner to lead defence evidence. Vide order dated 17th March, 2015 the learned Metropolitan Magistrate passed an order after hearing the parties at length directing framing of charge against Mohan Lal for offences punishable under Section 354/323/506(I) IPC. Vide order dated 4th March, 2016 the revision petition being Criminal Revision No. 13/15 filed by Mohan Lal challenging the dismissal of the application of Mohan Lal for further investigation under Section 173(8) Cr.P.C. was dismissed and the order directing framing of charge was upheld.

6. The case of the petitioner is that a false and fabricated case was foisted on him. The daughter of the petitioner Mohan Lal was married to the son of respondent No.2 and since relations between the two were not cordial he had gone to meet his counsel on 18th November, 2007 when without provocation the respondent No.2 tore the shirt of the petitioner and abused him badly. Later the above-noted FIR was registered. It is alleged that no incident took place in the house of respondent No.2 and in the scuffle shirt of Mohan Lal was torn by the respondent No.2. Despite having seized the shirt, the same has not been produced. Even copies of the statements recorded under Section 161 Cr.P.C. were not given to the petitioner. Further statement of one Mohd. Khalid who was an independent witness working in front of the house of complainant was

recorded during the enquiry conducted prior to registration of FIR who did not fortify the claim of respondent No.2, however his statement was not taken on record and he was not cited as witness.

7. The complainant in the FIR has alleged that on 18th November, 2007 at about 1.00 PM Mohan Lal came at her residence when she was alone and started abusing and beating her. He brought her down to the ground floor by pulling her. While beating the complainant Mohan Lal also threatened her that either the complainant should bring his daughter to the matrimonial home otherwise he would kill the complainant and her entire family and ruin them. After listening her hue and cry neighbours gathered at the place and saved her. Thus a call was made at 100 number. It was further alleged that Mohan Lal showed her a pamphlet with an advertisement of condom printed thereon, put his hand in the blouse of the complainant and caught the complainant's breast. Thus Mohan Lal tried to molest and humiliate the complainant and defame her reputation in the society. The complainant further stated that when she tried to escape from the clutches of Mohan Lal the pocket of shirt of Mohan Lal came in her hand and got torn.

8. Though Mohan Lal has a different version of the incident stating that he never went inside the house of the complainant and was on the road going to his Advocate who was living in the vicinity of the complainant when on the road, son of the complainant met her and wanted to invite him for a talk, thereafter verbal abuse took place and the complainant and other persons tore his shirt and beat him. However, no FIR was registered on the complaint of Mohan Lal. This may be the defence of Mohan Lal which cannot be looked into at this stage. He would be at liberty to cross-examine the witnesses in this regard or lead defence evidence if need be. The version of the complainant is supported by few witnesses, however statement of Naresh Kumar Sharma R/o 1st floor shows that a quarrel was going between the two of them but he does not speak about a physical abuse inter-se Mohan Lal and the complainant in the house on the stairs. However, the veracity of the allegations of the complainant cannot be decided at this stage.

9. The legal position with regard to scope of interference under Section 173(8) Cr.P.C. is well-settled. It is trite law that further investigation can neither be conducted at the instance of the accused or the complainant. However, if the Police wishes to investigate further it is always free to do so. Undoubtedly, Mohd. Khalid is an independent witness and was present opposite the house where the incident took place and having recorded his statement prior to registration of FIR there was no reason why he should not have been cited as a witness after recording his statement under Section 161 Cr.P.C. Thus, not on the application of the petitioner but in exercise of its inherent jurisdiction under Section 482 Cr.P.C. this Court directs the State to further investigate the matter and file a supplementary charge-sheet after recording the statement of Mohd. Khalid within a period of two months.

10. Mohan Lal has one more grievance. Despite the fact that one Naresh Kumar Sharma R/o 1st floor of the house where respondent No.2 was residing was examined under Section 161 Cr.P.C., however copy of his statement has not been given to the petitioner. This fact is fortified from the notings on the record. Thus there is non-compliance of provision of Section 207 Cr.P.C. The State is directed to give copy of the statement of Mr. Naresh Kumar Sharma recorded under Section 161 Cr.P.C. to the petitioner in person within one week.

11. Consequently, without setting aside or amending the order framing of charge, the present petition is disposed of directing the State to supply a copy of the statement of Naresh Kumar Sharma recorded under Section 161 Cr.P.C. to Mohan Lal and file a supplementary charge-sheet under Section 173(8) Cr.P.C. after recording the statement of Mohd. Khalid within a period of two months.

12. Petition is disposed of.