
(2012) 01 DEL CK 0199
In the Delhi High Court
Case No : Criminal M.C. 3549 of 2007

Mukesh Kumar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 03-01-2012

Acts Referred:

Citation : (2012) 2 ILR Delhi 490 : (2012) 1 JCC 457

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : J.P. Sengh, with Mr. Sumit Batra and Mr. Amit Bhardwaj, for the Appellant; Ritu Gauba, APP with SI Rajeshwar, Police Station Connaught Place, New Delhi in Person, for the Respondent

Final Decision : Allowed

Judgement

Suresh Kait, J.—The instant petition is being filed to assail the impugned order dated 26.06.2007 whereby Id. MM has summoned the petitioner for the offences u/s 167/201/218/420 read with Section 511/120B Indian Penal Code, 1860.

2. I note, vide order dated 02.05.2008 the proceedings before the Trial Court were stayed.

3. The petitioner in the instant petition has raised legal issues amongst other that prosecution has failed to obtain sanction as required u/s 197 Cr. P.C. and u/s 140 of the Delhi Police Act, 1978, therefore, the court has no power or jurisdiction to proceed with the trial of the case.

4. Facts in brief giving rise to registration of the present FIR are that on 05.03.2001 at 1.55 PM on the Outer Circle, Opposite Statesman Building, Connaught Place, New Delhi, a car bearing no. DL4C-G-9122 met with an accident. Pursuant to that FIR No.99/2001 was registered at Police Station - Connaught Place, New Delhi. During the course of investigation injured Ravinder Gupta and Lalit Roy were examined. Injured Ravinder Gupta submitted that car was being driven by Rajesh Gupta whereas injured Lalit Roy had stated that car

was being driven by Ravinder Gupta. Thereafter, chargesheet u/s 279/337 Indian Penal Code, 1860 was filed against accused Rajesh Gupta.

5. Thereafter, injured Lalit Roy filed a claim for compensation before Motor Accident Claim Tribunal vide case no.140/2001 wherein Oriental Insurance Company was also made a respondent. In the said case, injured Lalit Roy submitted that Car bearing no. DL4C-G-9122 was being driven by accused Ravinder Gupta. In the said case, Oriental Insurance Company filed its Written Statement, wherein they submitted that out of the present FIR one more Suit no. 198/2001 was filed, wherein it was submitted that accused Rajesh Gupta was driving the vehicle. Injured Lalit Roy on coming to know that other injured Ravinder Gupta in connivance with accused Rajesh Gupta was submitting false facts and were trying to obtain compensation through Motor Accident Claim Tribunal, injured Lalit Roy in Suit no. 98/2001 filed an application u/s 156 (3) Cr.P.C. before the Court on 10.10.2002 and vide order dated 23.09.2003, Id. Trial Court directed SHO, PS-Connaught Place, New Delhi to register an FIR and investigate the matter.

6. In the said application u/s 156(3) Cr.P.C, it was alleged by injured Lalit Roy that injured Ravinder Gupta, car Owner Ms. Sunita Gupta and accused Rajesh Gupta in connivance with IO / SI Mukesh Kumar / Petitioner was trying to obtain compensation from Motor Accident Claim Tribunal in suit no. 98/2001 by submitting false evidence. It was also alleged by the injured Lalit Roy that on day of incident i.e. 05.03.2001, the vehicle in question i.e. Car no. DL4C-G-9122 was being driven by injured Ravinder Gupta and two persons i.e. Lalit Roy and Ravinder Gupta were travelling in the said car. IO / SI Mukesh Kumar / Petitioner in connivance with injured Ravinder Gupta and Rajesh Gupta filed a false suit and wrongly made Rajesh Gupta as an accused in FIR no. 99/2001, PS-Connaught Place, New Delhi.

7. It is not in dispute that FIR no. 631/2003, PS-Connaught Place, New Delhi was registered, and after investigation chargesheet has been filed by another I.O. against accused Rajesh Gupta, Ravinder Gupta & Ms.Sunita Gupta for the offences u/s 193/196/200/201/ 209/120B Indian Penal Code, 1860

8. It is also not in dispute that chargesheet FIR 631/1003, there is no complaint of court concerned u/s 195 Cr.P.C. with regard to the offences u/s 193/196/200/209 Indian Penal Code, 1860. Therefore as per Section 195 (b) Cr.P.C. the cognizance of offences under the above-mentioned provision cannot be taken in the light of there being no complaint made by court concerned with regard to these offences.

9. Id. Metropolitan Magistrate has recorded in its impugned order dated 26.06.2007 from the charge-sheet filed in this case, that there was sufficient material on record to show pursuant to the criminal conspiracy between Ravinder, Santosh, Rajesh and IO/SI Mukesh Kumar / petitioner, incorrect record was framed in FIR no. 99/2001, PS-Connaught Place. As per the statement of

injured Lalit Roy on the day of incident i.e. 05.03.2001, the vehicle was being driven by Ravinder Gupta. Injured Lalit Roy categorically stated that apart from him and Ravinder Gupta there was none else in the car. His statement was corroborated by witness namely Ajay Kumar Mehta and Pritam Kumar. Apart from the statement of witnesses the fact that accused Rajesh Gupta had sustained no injury in a very serious accident on 05.03.2001 also goes to show that accused Rajesh Gupta was not in the car.

10. The trial court did not believe that the person who driving the car will not get any injury when other two occupants of the car were badly injured in a serious accident. The other fact which shows that accused Rajesh Gupta was not travelling with injured Ravinder Gupta, otherwise Rajesh Gupta being the brother of injured Ravinder, would not have left the injured brother on the spot without taking him to the hospital, just to make a phone call to his house. The primary concern of every brother is to first provide the medical aid to his injured brother. However, in FIR no. 99/2001, it was done so, therefore, the trial court safely opined that accused Rajesh Gupta was not travelling the car on the date of accident i.e. 05.03.2001.

11. Ld. Metropolitan Magistrate was of the opinion that there was a conspiracy hatched between the accused persons and IO/SI Mukesh Kumar / petitioner as was stated in the statement of injured Lalit Roy recorded by the petitioner on 05.04.2001. In the said statement injured Lalit Roy had categorically stated that Car no. DL4C G 9122 was being driven by injured Ravinder Gupta. Despite recording statement of injured Lalit Roy, IO/SI Mukesh Kumar / Petitioner had made no efforts to visit Gauran Place Restaurant and examine the Manager / Owner of the said Restaurant to find out whether the statement given by injured Lalit Roy was correct or false. However, no such efforts were made by IO/SI Mukesh Kumar / Petitioner which shows that he was a part of criminal conspiracy to show accused Rajesh Gupta as a person, who was driving the Car no. DL-4CG-9122. In the case diary of FIR no. 99/2001, IO/SI Mukesh Kumar/ petitioner had mentioned that injured Lalit Roy could not produce any bill of Gauran Place Restaurant which remained unpaid by injured Ravinder Gupta.

12. In the light of surrounding circumstances i.e. injury suffered by Lalit Roy and Ravinder Gupta, condition of the Car, Inspection Report regarding the car, IO/SI Mukesh Kumar / Petitioner the trial Judge did disbelieve the version of Lalit Roy merely because he could not produce the unpaid bill.

13. Ld. Metropolitan Magistrate has also perused the entire chargesheet of FIR no. 99/2001 and found no reasons as to why he did not believe the version of injured Lalit Roy. On the contrary the version of Ravinder Gupta, created lot of doubts regarding accused Rajesh Gupta, driving the car no. DL4C G 9122 on 05.03.2001. Accused Rajesh Gupta did not suffer any injury in a serious accident. Further both injured Ravinder Gupta and accused Rajesh Gupta had stated in FIR no.99/2001 that they were coming from Liberty Cinema, Karol Bagh after seeing a movie and on the way gave lift to injured Lalit Roy and when they

reached Connaught Place outer circle, the car hit a Railing while taking left turn to Barakhamba Road. IO/SI Mukesh Kumar / Petitioner had not asked Ravinder Gupta and accused Rajesh Gupta regarding the tickets of the movie, which they went to see at Liberty Cinema. Even the name of the movie was not enquired by IO/SI Mukesh Kumar / Petitioner from them. In spite of that the Petitioner still believed their version which shows to be a part of criminal conspiracy to show the driver of the car as Rajesh Gupta.

14. Ld. Metropolitan Magistrate has also recorded in its impugned Order that the fact which shows that IO/SI Mukesh Kumar/petitioner was a part of Criminal Conspiracy, is the Site Plan and the Motor Vehicle Inspection Report dated 06.03.2001. As per the Site Plan dated 05.03.2001, which was prepared by IO/SI Mukesh Kumar / Petitioner himself, the car which hit the Railing in front of Statesman Building, Outer Circle N-Block. As per the motor vehicle inspection report all the damages in Car no. DL4C G 9122 were on the front side of the Car.

15. Both injured Ravinder Gupta and accused Rajesh Kumar in FIR no.99/2001, PS-Connaught Place, New Delhi had stated to IO/SI Mukesh Kumar/Petitioner that while taking a left turn to Barakhamba Road from outer circle, the car hit from the left side due to which the injuries had been sustained to Ravinder Gupta sitting on the front left side and Lalit Roy was sitting behind injured Ravinder Gupta. The said place of accident is near M-Block and contrary to the place of accident shown by IO/SI Mukesh Kumar / Petitioner in site plan. From the site plan, motor vehicle inspection report, IO/SI Mukesh Kumar / Petitioner could have easily made out that the version put forward by Rajesh Gupta and injured Ravinder Gupta was not correct and believable as no damages were there on the Car bearing no. DL4C G 9122 on the left side and even the place of accident narrated by Ravinder Gupta and Rajesh Gupta was incorrect and contrary to site plan prepared by him. Therefore, the version of accused Rajesh Gupta and injured Ravinder Gupta was apparently found false by Ld. Metropolitan Magistrate and IO by believing it showed that he was a part of criminal conspiracy to show that accused Rajesh Gupta was driving the aforesaid vehicle on the said date of accident.

16. Ld. Trial Court has recorded another fact which shows that IO was a part of the criminal conspiracy is non-receipt of injuries by accused Rajesh Gupta. IO had visited the spot of accident on 05.03.2001 by seeing the condition of the car. IO/SI Mukesh Kumar / petitioner could have easily made out that driver of the mother could not have escaped unhurt.

17. Ld. Trial Judge further not believed that accused Rajesh Gupta, who happens to be the brother of the injured Ravinder Gupta will not accompany to the hospital and will rather go to make a phone call.

18. Ld. Metropolitan Magistrate has also recorded that bar of Section 197 Cr.P.C. does not apply to the acts of IO/SI Mukesh Kumar/Petitioner as it was not in the part of his official duty to give any false information to save the offender or to

frame incorrect record to save the offender and to help the accused in making an attempt of cheating.

19. Mr. J.P. Singh, Ld. Sr. Counsel has submitted on behalf of the petitioner that the accident took place on 05.03.2001. Statement of Lalit Roy / Complainant was recorded on 05.04.2001. On 21.05.2001, the case FIR no.99/2001 was transferred from the petitioner. Thereafter on 12.06.2001, the case was assigned to another IO. The said IO investigated the case further and finally filed a chargesheet on 04.08.2001 and the Petitioner was shown as a witness in the chargesheet.

20. he further submitted that on 24.09.2002, after a gap of 11/2 years complaint case was filed and thereafter on 23.09.2003, the complaint case was withdrawn qua the petitioner on moving application dated 01.07.2003. In the said order, Ld. Metropolitan Magistrate had recorded the statement of Complainant as he did not want to proceed against him, thereafter the name of the petitioner was deleted and against the other three accused, SHO, PS-Connaught Place, New Delhi was directed to investigate the matter u/s 156 (3) Cr.P.c. in accordance with law and was further directed to submit report.

21. It is submitted that Complaint Case was filed on the statement of the wife of the brother of complainant against the petitioner.

22. Ld. Sr. Counsel further submitted that on withdrawing the complaint filed by the complainant from the Court of Ld. Metropolitan Magistrate, and the petitioner discharged cannot be summoned again in the same case on the same charge.

23. He further submitted that the previous sanction as was required u/s 197 Cr.P.C. being the petitioner Govt. Servant was not taken by the prosecution.

24. It is argued that on 01.04.2005, SHO, PS-Connaught Place, New Delhi filed charge-sheet in FIR no.361/2003 and in Column No.4, name of accused persons (without arrest) shown as under:-

1. Ravinder Gupta, S/o Sh. Om Prakash Gupta, R/o 61, Shiv Puri, Shahdara, Delhi
2. Rajesh Gupta, S/o Sh. Om Prakash Gupta, R/o 60, Shiv Puri, Shahdara, Delhi
3. Ms. Sunita Gupa, W/o Ravinder Kumar, R/o 61, Shiv Puri, Shahdara, Delhi

He submitted that the name of the petitioner was indicated in the list of witnesses at Serial No. 6, which is at Page 62 of the Paper Book.

25. He has further submitted that the Petitioner did the preliminary enquiry as accident took place on 05.03.2001 and the case was transferred to another IO on 21.05.2001. Thereafter, the second IO filed the chargesheet and recorded the statement of the witnesses. During that time, the Complainant did not make any complaint against the petitioner and after that, reasons best known to him, on 24.09.2002, after 11/2 year of the alleged incident he made a complaint against the petitioner. 26. Ld. Sr. Counsel has also relied upon Section 197 Cr.P.C. which

is reproduced as under:-

(1) When any person who is or was a Judge or Magistrate or a Public Servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction -

(a) In the case of a person, who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) In the case of a person, who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government

27. Ld. Sr. Counsel further submits that as per Section 197 Cr.P.C., no court shall take cognizance of an offence alleged to have been committed while acting or purporting to act in discharge of official duty without previous sanction. Therefore, Section 197 Cr.P.C. has not been complied.

28. Ld. Sr. Counsel has also referred Section 140 of Delhi Police Act, 1978, which is reproduced as under:-

140. Bar to suits and prosecutions. -(1) In any case of alleged offence by a police officer or other person, or of a wrong alleged to have been done by such police officer or other person, by any act done under colour of duty or authority or in excess of an such duty or authority, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained and if entertained shall be dismissed if it is instituted, more than three months after the date of the act complained of;

Provided that any such prosecution against a Police Officer or other person may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence.

(2) In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall give to the alleged wrongdoer not less than one month" s notice of the intended suit with sufficient description of the wrong complained of, and if no such notice has been given before the institution of the suit, it shall be dismissed. (3) The plaint shall set forth that a notice as aforesaid has been served on the defendant and the date of such service and shall state what tender of amends, if any, has been made by the defendant and a copy of the said notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof.

29. Section 140 of Delhi Police Act bars firstly, the prior sanction is required. Secondly, the prosecution or suit shall not be entertained more than 3 months after the date of act complained of. In proviso of 140 (1), it is provided that even

in a case, if the previous sanction of the Administrator has been taken, in that case even the prosecution against such person may be entertained only within one year from the date of the offence.

30. Learned counsel has submitted, thus, in the present case provisions of Section 140 of the Delhi Police Act has not been complied with as no sanction has been taken before filing the complaint against the petitioner. Moreso, the complaint filed after one year which is not permissible u/s 140 of Delhi Police Act, 1978.

31. It is submitted, the Delhi Police Act, 1978 is a special law. The law on this issue is well settled in the case of Tata Motors Ltd. Vs. Pharmaceutical Products of India Ltd. and Another, wherein Apex Court has held that the special law shall prevail upon the general law.

32. Admittedly, at the time of committing the alleged offence, the petitioner was a Govt. Servant and he is still working as Inspector in Delhi Police.

33. Initially, as noted above, the petitioner was discharged from the complaint. Therefore, he has been summoned vide order dated 26.06.2007 for the offences referred above in Para no.1 of this judgement.

34. Ld. Sr. Advocate has relied upon the judgment titled as Radheyshyam Mishra v. State of UP 1986 ALL.L.J. 1341, wherein it is held that the applicability of Section 319 (1) Cr.P.C. is only to a person who is not an accused, but it appears from the evidence in the course of any inquiry or trial of an offence that he has committed any offence for which he could be tried together with the accused. It is clearly not applicable to a person who has been an accused in the case and has been discharged by the Court.

35. Ld. Sr. Advocate has also relied upon another judgment of Hon"ble Supreme Court in R. Balakrishna Pillai Vs. State of Kerala, whereby the Law Commission in its 41st Report in Paragraph 15.123 while dealing with Section 197 Cr.P.C, as it then stood, observed as under:-

It appears to us that protection under the section is needed as much after retirement of the public servant as before retirement. The protection afforded by the section would be rendered illusory if it were open to a private person harbouring a grievance to wait until the public servant ceased to hold his official position, and then to lodge a complaint. The ultimate justification for the protection conferred by S. 197 is the public interest in seeing that official acts do not lead to needless or vexatious prosecutions. It should be left to the Government to determine from that point of view that the question of the expediency of prosecuting any public servant.

36. In Para 8 of the judgment referred above, it is held that in so far as the requirement of sanction u/s 197 (1) of the Code is concerned in relation to the charge of criminal conspiracy that sanction u/s 197 (1) of the Code is sine-qua-non. Therefore, the sanction under this provision is mandatory.

37. In this regard, Hon"ble Apex Court has settled law in Prof.Sumer Chand v. UOI & Ors AIR 1993 SC 2579 wherein it has been held as under:-

8. Since the Act is a special law which prescribes a period of limitation different from the period prescribed in the Schedule to the Limitation Act for suits against persons governed by the Act in relation to matters covered by Section 140, by virtue of Section 29(2) of the Limitation Act, the period of limitation prescribed by Section 140 of the Act would be the period of limitation prescribed for such suits and not the period prescribed in the Schedule to the Limitation Act. This means that if the suit filed by the appellant falls within the ambit of Section 140 then the period of limitation.

19. Having regard to the principles laid down in the aforementioned decisions of this Court on provisions contained in Section 161(1) of the Bombay Police Act, 1951 which are similar to those contained in Section 140(1) of the Act, we are of the view that the High Court was right in holding that the present case falls within the ambit of Section 140 of the Act. What is alleged against respondents 3 and 4 by the appellant in the plaint is that respondent 4, who was in charge of Mayapuri police post had registered a false, vexatious and malicious report against the appellant, and respondent 3, who was Station House Officer, P.S. Naraina, had filed the challan in the Court against appellant and other accused on the basis of the said report. The facts in the present case are similar to those in Virupaxappa Veerappa Kadampur Vs. The State of Mysore, where the allegation was about the preparation of false panchnama and report of seizure of ganja. The said action of the appellant in that case was held to be done under the colour of duty since it was the duty of Police Head Constable to prepare a panchnama and for that reason it was held that there was a nexus between the act complained and the statutory duty that the Police Head Constable was to perform. Similarly in the present case it was the duty of respondent 4, being in-charge of Police Post Mayapuri, to record the report and so also it was the duty of respondent 3 the SHO of P.S. Naraina to file the challan in court. The acts complained of thus had a reasonable connection and nexus with the duties attached to the offices held by respondents 3 and 4. The acts complained of were, therefore, done under the colour of office of the said respondents and fell within the ambit of Section 140(1) of the Act. It is not disputed that if Section 140(1) is found applicable the suit filed by the appellant, as against the respondents, was barred by limitation having been filed after the expiry of three months and it could not be entertained against them.

Therefore, the acts in the instant case have reasonable connection and nexus with the duties of the office held by the petitioner. The acts, complained of are, therefore, done under the colour of office of respondent and fell within the ambit of Section 140 (1) of the Act.

38. The Co-ordinate Benches of this Court have also taken similar view in Balvinder Singh Sodhi v. Mahender Singh (Inspector) 1997 VI AD (Delhi) 830 and Kiran Bedi v. NCT of Delhi & Anr 2001 DLS 51 HC.

39. Admittedly in the instant case, while handling the case mentioned above he allegedly committed the alleged offence as public servant. The prosecuting authority was supposed to take the sanction as enumerated u/s 140 of Delhi Police Act, and u/s 197 (1) of the Code, which they failed to do.

40. Keeping the above discussion into view, I do not agree with the observation made by Id. Trial Judge that the alleged offence committed by the petitioner was not a part of official duty and no sanction was required.

41. Accordingly, Criminal M.C.No.3549/2007 is allowed and the impugned order dated 26.06.2007 is hereby quashed qua the petitioner only.

42. No order as to costs.