
(2009) 04 DEL CK 0119

In the Delhi High Court

Case No : Criminal M.C. 1092 and 4020 of 2009

Neeraj Gulati

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 21-04-2009

Acts Referred:

Citation : (2009) 04 DEL CK 0119

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : D.C. Mathur, Devinder Chauhan and Maruf Khan, for the Appellant;
Pawan Bahl and Sanjay Lao, APPs., for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—This is a petition u/s 482 of the Code of Criminal Procedure 1973 (CrPC) seeking the following prayers:

- a) To call for record of the case and after examination of the case quash the proceeding arising out of the FIR No. 54/2007.
- b) To withdraw/cancel/quash the red corner notice issued against the petitioner in the present FIR.
- c) Set-aside the order dated 23.08.2007 passed by Shri Gautam Manan, M.M. New Delhi declaring the petitioner a proclaimed offender

2. On 19th February 2007, FIR No. 54/2007 u/s 376 IPC was registered at Police Station Naraina against the Petitioner, a citizen of the United States of America (U.S.A) and holder of a passport of that country, at the instance of the prosecutrix, aged 18 years and a permanent resident of Jharkhand. She stated that she was working as a domestic help at the residence of the Petitioner's father in New Delhi having been placed on that since 14th December 2006 job by her maternal uncle who ran a placement agency in Delhi. The Petitioner's father was the owner of the house. She also used to live in the upper room of the same

premises. She stated that on 6th February 2007 the Petitioner came alone live at his father's house leaving behind his wife and children in the U.S.A. On 15th February 2007 at about 5 pm, the Petitioner asked for a glass of water. At that time he was in his bed and the Petitioner's father had gone out for a walk. When the prosecutrix gave water to the Petitioner he caught hold of her and when she protested he shut her mouth with his hand and raped her. She stated that since the owner of the house had locked the telephone, she could not immediately make a call. She stated that on 17th February 2007 at about 6 pm, when the married sister of the Petitioner came to the father's residence the prosecutrix informed her of the incident. The prosecutrix was rebuked by the sister for making a complaint. Thereafter that the Petitioner and his sister took the prosecutrix in a car and dropped her at the placement agency. The prosecutrix confided the facts to her uncle who then brought her to Deen Dayal Upadhyaya Hospital on 18th February 2007 where she was medically examined. She gave a statement to the police and on that basis the above FIR was registered on 19th February 2007 and investigation was taken up.

3. Annexed to this petition is a copy of a Look Out Circular dated 19th February 2007 addressed by the Deputy Commissioner of Police(South-West District) to the Foreigners Regional Registration Officer mentioning that the Petitioner was wanted in FIR No. 54/2007 u/s 376 IPC registered at Police Station Naraina and that he was evading arrest in the case.

4. On 21st February 2007, the statement of the prosecutrix u/s 164 CrPC was recorded and a warrant of arrest of the Petitioner was issued by the learned Metropolitan Magistrate (MM). The Petitioner has annexed the complete transcript of the proceedings u/s 164 CrPC wherein the prosecutrix has reiterated before the learned MM that the Petitioner raped her in the manner indicated in the FIR. On the same date the learned MM issued a non-bailable warrant against the petitioner for 20th March 2007. The application of the police, on which the said order was issued by the learned MM was issued, has been annexed to this petition. It shows the address of the petitioner at Georgia in the U.S.A. Annexed to this petition is a copy of the red corner notice issued on 29th May 2007 for circulation in the media (including the internet) with the photograph of the petitioner under the caption "Fugitive wanted for Prosecution.. A further proclamation u/s 82 CrPC was issued on 30th June 2007 by the learned MM against the petitioner which was pasted on his residence of his father as per the report of the process server dated 18th July 2007. Consequently on 23rd August 2007 the learned MM passed an order declaring the petitioner as a proclaimed offender (P.O).

5. The petition states that on 17th October 2007 a lawyer purporting to be of the prosecutrix wrote to the In-charge P.S.Naraina that the prosecutrix had got the FIR registered "under duress and threat from one Vinod who wanted to settle his personal score against the father of the accused Neeraj Gulati." It was claimed in this letter that the prosecutrix "has sworn this fact on an affidavit too."

Accordingly it was requested that the In-charge should have the statement recorded before the learned MM u/s 164 CrPC. It appears that on 19th November 2007 the lawyer for the prosecutrix filed an application before the learned MM seeking the re-recording of her statement u/s 164 CrPC, enclosing an affidavit dated 9th August 2007 of the prosecutrix to the above effect. A copy of the said application and the affidavit dated 9th August has also been enclosed with the present petition.

6. The petition proceeds to state that a charge sheet filed by the police on 3rd March 2008 disclosing the offences under Sections 376/342/341/34 IPC and cognizance of the offences was taken by the learned MM. The thrust of the grounds urged in the petition is that there was no justification for declaring the petitioner to be a P.O. since no proclamation notice was issued at his address at the U.S.A which was known to the police. It is claimed that in view of the affidavit dated 9th August 2007 of the prosecutrix the petitioner "is totally innocent and he was falsely implicated in the said case" and therefore "no fruitful purpose would be served in continuing the proceedings."

7. According to Mr. D.C. Mathur, learned Senior Advocate appearing for the Petitioner it was inconceivable how on 19th February 2007 there could be a Look Out Circular for the Petitioner when one day prior thereto he had left the country. He refers to the endorsement on the Petitioner's passport which shows that he left the country on 18th February 2007 itself. He further submits that it is inconceivable that on the date of the registration of the FIR itself the police somehow came to know that the Petitioner was evading his arrest.

8. During the course of the hearing of this petition on 17th April 2009, this Court sought the explanation as to why the Petitioner did not approach any Court for over two years seeking the reliefs sought in this petition. This appeared to be surprising according to the Petitioner the prosecutrix had sworn to an affidavit dated 9th August 2007 stating that she had made a false allegation against the Petitioner. Faced with this query, Mr. Mathur sought an adjournment which was granted.

9. At today's hearing, Mr. Mathur produced print outs of certain pages from the internet showing a news item titled "Who Are The World's Most Wanted?" published in the Parade Magazine in the United States in February 2009. Among those featured in the news item is the Petitioner whose photograph, age and nationality are indicated. Under the caption "Crime" it is stated: "accused of raping a maid in India, fled the country before the local authorities could arrest him." It is urged before this Court that till the Petitioner saw the above publication on the internet, he was not aware that he had been declared a P.O. and was required to surrender in India.

10. The above contention of the Petitioner is palpably false. This is apparent from the record of the case available with the police, provided by the learned APP, and perused by this Court. The Petitioner filed three applications for anticipatory bail

before the trial court in this very case and each of them was rejected. The first of such application was filed by him on 9th August 2007 itself. The second application appears to have been rejected on 22nd/23rd August 2007 and soon thereafter the Petitioner was declared P.O. Since these applications were filed by the petitioner through counsel there was no question of his not being aware of these facts. It appears that on 19th November 2007, an application for getting the prosecutrix's statement again recorded u/s 164 CrPC was filed. This application was dismissed by the learned MM on 21st November 2007. It appears that the affidavit dated 9th August 2007 of the prosecutrix was indeed enclosed with this application. Clearly, the trial court was not persuaded by the affidavit dated 9th August 2007 of the prosecutrix which in any event was not addressed to the Court.

11. What is surprising is that the fact of the Petitioner having applied for anticipatory bail on more than one occasion without success has nowhere been mentioned in the present petition. In the considered view of this Court, this is a wilful suppression of a material fact. It also belies the submission that the Petitioner was not aware that he was wanted in a criminal case. Instead a false impression was sought to be given that the petitioner was not aware of his being declared P.O till he noticed the aforementioned pages on the internet. The Petitioner has not come to this Court with clean hands.

12. The Petitioner has also failed to inform this Court that the application for re-examination of the prosecutrix u/s 164 CrPC on the basis of her affidavit of 9th August 2007 was rejected by the learned MM on 21st November 2007. This is yet another wilful suppression of a material fact.

13. The crime for which the Petitioner is wanted is for the commission of rape and indeed a very serious one. According to the prosecution, he committed the crime on 15th February 2007 and before the prosecutrix could approach the police, he fled the country on 18th February 2007. The charge sheet was filed on 3rd March 2008. The case has not been able to progress to the next stage because of the deliberate attempt by the Petitioner in frustrating the criminal process by staying outside the country knowing fully well that he is wanted in a very serious offence. The attempt of the Petitioner to file this petition seeking the quashing of criminal proceedings by suppressing material facts calls for the strongest disapproval. It constitutes a gross abuse of the process of law.

14. The petition and the application are accordingly dismissed with costs of Rs. 1 lakh which will be paid by the Petitioner to the Delhi Legal Services Authority within a period of four weeks from today. Proof of payment of costs be deposited with the Registry. It is expected that the Respondent will take expeditious steps to have the Petitioner, who has remained a fugitive from justice for over two years, brought back to this country to face prosecution for the aforementioned offences.

15. A copy of this order be given dasti to both the parties. A copy of this order be

also sent to the learned trial court concerned forthwith.