
(2005) 05 DEL CK 0053

In the Delhi High Court

Case No : Criminal M.A. No. 4560 of 2005 in Criminal M.C. No. 1509 of 2005

Ramesh L. Aneja @ R.L. Aneja

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 17-05-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 470(2), 473
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 20, 3
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 —
Rule 7(2)

Citation : (2005) 122 DLT 81 : (2005) 4 RCR(Criminal) 457

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : D.C. Mathur and Mohit Mathur, for the Appellant; Richa Kapoor, for the Respondent

Judgement

Manju Goel, J.—The application filed by respondent No.1/state seeks vacation of ex parte order dated 25.4.2005 as well as a direction to carry on with investigation in case FIR No.98/2005 dated 21.4.2005. On 25.4.2005 this court made an order issuing notice to the state as well as staying the operation of the order dated 19.4.2005 of the Metropolitan Magistrate directing registration of a FIR and investigation in accordance with law.

2. The proceedings before the Metropolitan Magistrate had been initiated on a complaint u/s 3(x) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the Act') against the petitioner, on receipt of the complaint. On 11.4.2005 the Metropolitan Magistrate passed an order as under:

"SHO to report on 15/04/05 at 2 PM."

3. On 15.4.2005 the order-sheet of the Metropolitan Magistrate says:

"Present: Cl. for Complainant.

I.O. in Person.

I.O. states that 2 days time may be granted to him, request is allowed. At request adjourned for further proceedings on 19.4.2005."

4. On 19.4.2005 the report was filed signed by the SI Hari Singh and forwarded by the SHO, Chanakyapuri. This report says that on receipt of the complaint, the SI initiated enquiry and found that the petitioner had actually not committed any offence and that the complaint had been filed in order to pressurize the petitioner to deter him from proceeding against the complainant who failed to deposit Rs.59,670/- in the bank handed over to him by the petitioner for depositing in the bank. On receipt of the report, the Magistrate passed the impugned order of 19.4.2005 which is as under:

"Present: Complainant with counsel.

I have heard the Ld. Counsel for Complainant.

In view of the natures of the allegation, S.H.O. is directed to register an FIR and investigation in accordance with law.

Put up for Status report on 31.8.2005."

5. The plea of the petitioner is that first order of 11.4.2005 was sufficient to register a FIR and the report of 19.4.2005 was, in fact, report in the nature of Section 173 Cr.P.C. and that after such a report the Magistrate could not again direct the police to register FIR and proceed afresh to investigate. On this plea this court directed stay of operation of the order of Magistrate dated 19.4.2005.

6. It is contended by the respondent that the FIR had been registered by then. Further it is contended that as per the rules framed under the Act the investigation must be complete within one month of the registration of the FIR and that if that is not concluded on account of this order the report u/s 173 Cr.P.C. pursuant to the FIR will become bad in law.

7. On behalf of the petitioner, court's attention is drawn to the provisions of Section 470(2) wherein it has been laid down that where a prosecution has been stayed by an order of injunction the period of continuation of injunction would be excluded in computing the period of limitation. Further Section 473 Cr.P.C. also prescribes that the court, if satisfied that the delay in presenting the challan has been properly explained, can take cognizance after expiry of period of limitation. On behalf of the respondent/state, however, attention is drawn on Section 20 of the Act which gives this Act an overriding effect over other laws.

8. After considering the provisions of Cr.P.C. as well as that of the Act, I am of the opinion that the provisions of Cr.P.C. in respect of limitation cannot be ignored while considering the question of limitation under the Act. Section 20 which gives overriding effect has been enacted to give more strength to the Act and not to deprive the victims of atrocities of the benefit of Cr.P.C. wherever such provisions are beneficial. It does not stand to reason that on account of Section

20 of the Act read with Rule 7(2) framed under the Act on the expiry of one month of the registration of FIR, the complainant will be entirely remedy-less and the court will not be entitled to take cognizance of the offence for which the FIR was registered if the delay is caused by an order of stay. The fear of the state counsel is, Therefore, altogether unfounded.

9. The counsel for the respondent/state further submitted that the report of 19.4.2005 was not an investigation report at all because the FIR was not registered and, Therefore, the state should be allowed to investigate into the allegations of the FIR. Going into this question will mean going into the main petition. It is not necessary to do this exercise at this stage.

10. On 4.5.2005 it was clarified that the FIR registered will remain in existence despite the order of stay dated 25.4.2005. No more clarification or direction is necessary in this application. The application of respondent No.1/state is disposed of accordingly.