

(2019) 11 DEL CK 0446

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 6127 Of 2019, Criminal Miscellaneous Application No. 41496, 41497 Of 2019

XXX

APPELLANT

Vs

State & Anr

RESPONDENT

Date of Decision : 29-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 376, 385, 506, 509
Code Of Criminal Procedure, 1973 — Section 438
Information Technology Act, 2000 — Section 67A

Citation : (2020) 1 AD(Delhi) 202

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Suhail Malik, Vikas Malik, Imraj Rautela, Ankit Prakash, Panna Lal Sharma, Sameer Sharma, Krishan Kumar, S P Nangia, RCS Bhedoria

Final Decision : Disposed Of

Judgement

Suresh Kumar Kait, J

CRL.M.A. 41498/2019

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

CRL.M.C. 6127/2019

3. By way of the present petition, the petitioner seeks the following prayers:-

(i) To set aside the order dated 22.10.2019 passed by the learned Additional Sessions Judge (Pilot Court), West, Tis Hazari Courts, Delhi in Bail Appln. No.3612 to the extent it directs registration of F.I.R against the petitioner;

(ii) To direct the learned Additional Sessions Judge 04 (West), Tis Hazari Courts, Delhi to dispose of the third application of the respondent No. 2 bearing number

4124 seeking anticipatory bail on its own merits and in ignorance of the impugned observations made in order dated 22.10.2019; &

(iii) To transfer the investigation of F.I.R. No.414/2019 dated registered at Police Station, Hari Nagar for the offences punishable under Sections 376 of the IPC to an officer of the rank of A.C.P or above in Crime Branch or the Special Cell of Delhi Police.

4. The petitioner is a prosecutrix in F.I.R. No.414/2019 registered at Police Station, Hari Nagar for the offences punishable under Sections 376/506/509 IPC for the alleged offences from 19.03.2018 to 30.04.2019 and is materially aggrieved by the order dated 22.10.2019 passed by learned Addl. Sessions Judge (Pilot Court), West, Tis Hazari Courts, Delhi exceeding its mandate under Section 438 Cr.P.C. whereby, the Sessions Judge has been pleased to erroneously order F.I.R. against the petitioner for committing the offence of "extortion" on the basis of a complaint dated 18.09.2019 filed by the accused/ respondent No.2.

5. The factual matrix leading to filing of the present petition is that on 30.08.2019, the petitioner filed an F.I.R. under Sections 376/506/509 IPC against the respondent No. 2 for developing sexual relations with her on the false pretext of marriage and taking her objectionable pictures and videos against her consent and sometimes through use of force. The said F.I.R. was registered after a delay of 18 days, that too only after the petitioner visited senior officials of the district including the DCP. Even after the indulgence of the DCP, a case under diluted provisions of Law was registered as Section 67-A of the Information Technology Act, 2000 was neither invoked nor was the investigation carried out from that perspective. On 12.09.2019, the first application filed by respondent No.2 under Section 438 Cr.P.C. seeking anticipatory bail was dismissed by the learned Sessions Judge thereby holding that custodial interrogation is imperative for the recovery of objectionable photos and videos, in possession of the respondent No. 2. On 18. 09.2019, respondent No. 2 filed a criminal complaint against the petitioner accusing her of attempting to extort Rs. 25,00,000/- from him on 29.08.2019. The said incident of 29.08.2019, supposedly captured in an audio recording, does not find any mention in the first application dated 11.09.2019 and the same is an afterthought of respondent No. 2, only to arm twist the entire case and put pressure on the petitioner to resile from her charge. The entire conversation in the alleged audio recording is glaringly scripted with 3 out of 2 voices being that of respondent No. 2 and his uncle. The third voice is alleged to be that of the previous counsel of the petitioner, which appears to be morphed and/ or motivated, as the petitioner never issued any such instruction to her counsel. The petitioner never participated in the alleged meeting, which is itself evident from the recording. On 30.09.2019, respondent No. 2 filed second application under Section 438 Cr.P.C. seeking anticipatory bail. During the course of hearing, respondent No. 2 heavily relied on the audio recording and his counter allegations against the petitioner, whereafter the court granted him interim protection till 09.10.2019. The court also directed the Investigating

Officer of the case to verify the audio recording and submit a report on the next date. On 02.10.2019, respondent No.2 joined investigation and on 09.10.2019, submitted her report in compliance of the order-dated 30.09.2019 and the matter was adjourned to 22.10.2019 and the interim protection was also extended till then. On 22.10.2019, the learned Sessions Judge vide the impugned order directed the SHO Police Station, Hari Nagar to register FIR against the petitioner for extortion, without even appreciating that the I.O while conducting this misadventure did not even bother to summon the persons alleged to be involved in the conversation or collect their voice samples. The learned Sessions Judge failed to appreciate that the alleged audio recording has not even been verified by the FSL. The Learned Sessions Judge did not pay attention on the aspect of territorial jurisdictional as the alleged incident is stated to be that of Punjabi Bagh (West), which does not come under the jurisdiction of Police Station Hari Nagar. The learned Sessions Judge had no territorial jurisdiction over the place of occurrence of the attempted crime. The learned Judge vide the same impugned order dismissed the bail application of respondent No. 2 holding that there is no change in circumstances since 12.09.2019 and that the objectionable videos and photographs are yet to be recovered from his possession. On 22.10.2019, respondent No. 2 was directed by the IO to join the investigation, however, he failed to show up. On 23.10.2019, IO of the case filed an interim charge-sheet in the matter and also sought issuance of non-bailable warrants against respondent No. 2. The learned Metropolitan Magistrate-09 (West), Tis Hazari Courts was pleased to issue non-bailable warrants against respondent No.2 for his production on 14.11.2019. On 19.11.2019, while the non-bailable warrants were still in force, respondent No. 2 filed third application under Section 438 Cr.P.C seeking anticipatory bail and was again successful in obtaining an interim protection till 05.12.2019 through this non-speaking order, despite the fact that non-bailable warrants were in force on that day and circumstances were stationary since vide the previous application, the respondent no.2 was on interim protection till 22.10.2019.

6. Be that as it may, Mr. Sameer Sharma, Addl. DCP (West) is personally present in Court and has verified from the P.S. Janakpuri that a complaint was received in the said police station on 16.08.2019 from respondent no.2 which was registered as DD No.100A, wherein, it is stated that "he met Ms. X, more than a year ago through his company and she used to do anchoring for his events. Being very professional and friendly with her, they parted ways as things were not going well. After few months, she again started calling him and coming to his office without any reason and used to harass him and his staff. She used to book events on different rates, charging higher amounts from his staff and she used to threaten that she would ruin his image, if he doesn't listen to her. She also used to call many of his friends and industry people, fabricating stories and killing his professional reputation and harass and threaten him by saying that "main to ladki hu, kuch bhi kar sakti hu" (I am a girl, can do anything)".

7. The Addl. DCP has verified that no FIR was lodged on the basis of said

complaint dated 16.08.2019 of respondent no.2 against the petitioner.

8. It is pertinent to mention here that petitioner lodged complaint at P.S. Hari Nagar on 30.08.2019 which culminated into F.I.R. bearing No.414/2019, wherein the petitioner made allegations of rape against respondent No. 2.

9. It is not disputed that respondent no.2 is on interim bail granted by the Sessions Court till date. Had the Police Station - Janak Puri lodged the FIR on the complaint of respondent no.2 dated 16.08.2019 received vide DD No.100-A, there was no occasion for the petitioner to make complaint against respondent no.2 which culminated into FIR No.414/2019.

10. It is pertinent to mention here that the present matter was heard briefly before lunch and since there was no clarity forthcoming on the issue from the learned APP, the DCP concerned was directed to appear in the post lunch session.

11. The issue raised by the petitioner is that the Sessions Court has no power to direct a police station to register an F.I.R. However, without going into the issue raised by the petitioner, the fact is that on complaint dated 18.09.2019 at P.S. Hari Nagar, on being transferred to concerned P.S. Punjabi Bagh, F.I.R. no.671/2019 has been lodged for the offences punishable under Section 385 IPC.

12. On receipt of a complaint/ information, either oral or in writing, a Police Station is empowered to register F.I.R., if the offence mentioned in the complaint is a cognizable offence. Further, for the said purpose of registering an FIR of a cognizable offence, no permission is required from any organ of the state machinery, judicial or administrative.

13. Since in the present case, though belatedly, F.I.R. has been registered, as mentioned above, the instant petition has become infructuous.

14. However, in view of the facts and circumstances of this case, as discussed above, I hereby direct the Commissioner of Police, Delhi to initiate departmental action against the then SHO, PS - Janak Puri and the IO, who dealt with the complaint and did not register F.I.R. on receipt of complaint dated 16.08.2019 vide DD No.100A, and take further action, if required, as per law.

15. It is not disputed that if the complaint is received of any cognizable offence at a Police Station and the offence was not committed within its jurisdiction, the Police Station is duty bound to register a 'Zero F.I.R.' and thereafter, transfer it to the concerned Police Station. However, this has not happened in the present case due to which the petitioner made complaint of sexual harassment against respondent no.2 which culminated into F.I.R. bearing no.414/2019, as mentioned above.

16. Accordingly, I direct that the inquiry of the complaints made by the petitioner and respondent no.2, be assigned to an officer of the Crime Branch, who shall not be below the rank of DCP. Further, after inquiry, the said official shall issue instructions to the concerned Police Station to take further action in the matter,

as per law.

17. Since the charge sheet has already been filed in F.I.R.No.414/2019, if the facts come otherwise, the police officials concerned are directed to file supplementary charge sheet and/or take action as per law.

18. I further make it clear that no coercive steps shall be taken by the police either against the petitioner or against the respondent no.2, till the DCP, Crime Branch comes to the conclusion as to who is the actual culprit in the present matter.

19. At this stage, learned counsel for the petitioner submits that the said complaint was lodged by the petitioner against respondent no.2 on 12.08.2019 and the F.I.R. was registered on the basis of the same on 30.08.2019. He further submits that petitioner met the DCP with her uncle Mr. Kanwaljit Singh on 15.08.2019, at his office, but FIR was registered on 30.08.2019.

20. Accordingly, DCP Crime Branch shall look into this fact as well.

21. Order dasti under the signatures of the Court Master.

22. In view of the above directions, the petition is disposed of.