

## **Amit Goyal Vs State (Govt. Of Nct Of Delhi) & Anr.**

**Court:** Delhi High Court

**Date of Decision:** Jan. 24, 2020

**Acts Referred:** Indian Penal Code, 1860 " Section 34, 324, 506  
 Code Of Criminal Procedure, 1973 " Section 41, 41A, 154, 154(3), 156(3), 482

**Hon'ble Judges:** Brijesh Sethi, J

**Bench:** Single Bench

**Advocate:** R.P.S. Bhatti, R.S. Kundu

**Final Decision:** Disposed Of

### **Judgement**

Brijesh Sethi, J

1. This is a writ petition under Article 226 of the Constitution of India r/w. Section 482Cr.P.C. filed by the petitioners seeking directions to the

respondents to arrest the accused persons in case FIR No. 230/2018, u/s. 506/324/34 IPC, PS Mansarovar Park and to investigate the matter fairly

and properly. The incident in question had happened on 06.10.2017 and the FIR was registered on 26.07.2018. Ld. Counsel for the petitioner has

submitted that right from the beginning, the local police has been favouring the accused persons and one of the accused Jyoti has been granted bail

upon surrendering in the court with the cooperation of the police. It is submitted that petitioner was badly beaten up and burnt with hot iron rods by the

accused persons. The said rods have also not been recovered by the investigating officer.

2. Ld. Counsel for the petitioner has further submitted that one of the accused Rajender Sharma has attacked the wife of the petitioner and molested

her and the said incident was duly reported vide FIR no. 302/2019, PS Mansarovar Park but still the police have not arrested the accused persons.

3. Ld. Counsel for the petitioner has further submitted that on 21.08.2019 Sh. Rajender Sharma and his son Arun Sharma and two other persons had

hurdled filthy abuses and also given beating to his wife. The local police is, however, unduly favouring Rajender Sharma and has not arrested him till

date. It is, therefore, prayed that respondents be directed to arrest the accused persons in case FIR No. 230/2018, u/s. 506/324/34 IPC, PS

Mansarovar Park, Delhi and to investigate the matter as per law.

4. On the other hand, Ld. APP for the state has opposed the petition and submitted that allegations levelled by the petitioner are false and vague. He

has prayed for dismissal of the petition.

5. I have considered the rival submissions and also gone through the report submitted by the Ld. APP. An information vide DD no. 21-B was received

on 07.10.2017 at PS Mansarovar Park, Shahdara, Delhi from GTB hospital that one Amit Goyal has been admitted in the hospital after getting injured

in a quarrel at Shanti Building, Main Mandoli Road, Delhi. On 26.07.2018 injured/ petitioner Amit Goyal came to PS Mansarovar Park and gave his

statement that on 01.03.2017, he had met one Jyoti and her husband, one Rajender Sharma, Arvind Gupta and Rajesh and it was agreed that they will

arrange a loan for him. The petitioner had given Rs. 50,000/- in cash to them and subsequently on 05.03.2017, he had also given a cheque of Rs.

30,000/- to Jyoti. Thereafter, he visited the office of accused persons several times but they neither got issued any loan nor returned his money. On

06.10.2017, when he had reached near Jyoti's office to ask for his money, she had met him in the way and taken him to a lonely place near railway

station, Mansarovar Park where her husband, one Rajender Sharma, Arvind Gupta and Sheetal Prashad had tried to kill him by pressing his throat.

Jyoti's husband and Sheetal Prashad had attacked him with hot iron rod on his right foot while other persons had beaten him with fist and kicks.

6. After recording statement of the petitioner, FIR No. 230/2018, u/s. 506/324/34 IPC, PS Mansarovar Park, Delhi was registered by SI Kapil Kumar.

The case was handed over to ASI Dilbag for further investigation. Notice u/s. 41 A CrPC was served upon Sheetal Prasad on 06.10.2018 and on

26.10.2018 accused Jyoti @ Umesh Rani surrendered before the court of Ld. MM. KKD, Shahdara where she was arrested in the case and granted

bail by the Ld. MM.

7. Subsequently on 30.01.2019, the case was handed over to ASI Kadir Ahmad for further investigation. On 08.08.2019 a notice u/s. 41-A CrPC was

served upon co-accused Rajender Kumar Sharma and Arvind Gupta, who had joined investigation on the same day. During interrogation accused

Rajender Kumar Sharma stated that petitioner Amit Goyal was selling one property bearing plot no. 1/2600-B, Gali no.6, Ramnagar, Shahdara to him

and through Jyoti he had given a sum of Rs.5 lacs (cash) to petitioner as Bayana. The said property belongs to petitioner's wife Anuradha

Goyal. During interrogation on 08.08.2019, co-accused Arvind Gupta stated that Jyoti had introduced him to petitioner Amit Goyal for arranging loan

for him against his property. However, as the petitioner could not produce the required documents, his loan was not sanctioned. On 09.08.2019,

Jyoti's husband Sanjeev Kumar Dubey was interrogated who submitted that he is living separately for last 4 years and their divorce petition is

pending in Karkardooma Courts. On 14.08.2019 co-accused Rajesh Kumar was also interrogated who submitted that he had arranged a loan of Rs.

10,00,000/- for Mrs. Anuradha Goyal (wife of the petitioner) and after that he has never met the petitioner.

8. Perusal of the record, thus, reveals that police is investigating the offence and one of the accused Jyoti has also been arrested. All the accused

persons are joining the investigation. It is a settled law that Court cannot interfere in the investigation carried out by the investigating agency and also

cannot direct the investigating officer to arrest particular person who is alleged to have committed an offence. Hon'ble Supreme Court in case titled

"Sakiri Vasu vs. State of U.P. and others, (2008) 2 SCC 409" has held that in case a person has a grievance that FIR has not been registered by

the police on his complaint or even after registration of the FIR, no proper investigation is held, he can file an application under Section 156 (3) Cr.P.C.

before the learned Magistrate concerned. The Learned Magistrate can direct a proper investigation to be made and can also monitor the investigation.

The relevant para runs as follows;

11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154

Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any

satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the

aggrieved person, to file an application under Section 156 (3) Cr.P.C. before the learned Magistrate concerned. If such an application under

Section 156 (3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made,

in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the

investigation to ensure a proper investigation.

9. Hon'ble Supreme Court in another case titled "M.C. Abraham and another vs. State of Maharashtra and others, (2003) 2 SCC 649" while

dealing with a challenge to the order passed by the Nagpur Bench of the High Court of Bombay whereby High Court had directed to State to arrest

the accused and to produce him before the Court, had observed that arrest of the accused is a part of the investigation and is within the discretion of

the Investigating Officer. It is open to the Investigating officer in the course of investigation to arrest any person. Since this power is discretionary, a

police officer is not always bound to arrest an accused even if the allegations against him is having committed of cognizable offence. The relevant

paras runs as follows;

“14. Tested in the light of the principles aforesaid, the impugned orders dated 10th January, 2002 and 11th January, 2002 must be held to be orders

passed by over-stepping the para-meters of judicial interference in such matters. In the first place, arrest of an accused is a part of the investigation

and is within the discretion of the investigating officer. Section 41 of the Code of Criminal Procedure provides for arrest by a police officer without an

order from a Magistrate and without a warrant. The section gives discretion to the police officer who may, without an order from a Magistrate and

even without a warrant, arrest any person in the situations enumerated in that section. It is open to him, in the course of investigation, to arrest any

person who has been concerned with any cognizable offence or against whom reasonable complaint has been made or credible information has been

received, or a reasonable suspicion exists of his having been so concerned. Obviously, he is not expected to act in a mechanical manner and in all

cases to arrest the accused as soon as the report is lodged. In appropriate cases, after some investigation, the investigating officer may make up his

mind as to whether it is necessary to arrest the accused person. At that stage the Court has no role to play. Since the power is discretionary, a police

officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence. Since an arrest is in

the nature of an encroachment on the liberty of the subject and does affect the reputation and status of the citizen, the power has to be cautiously

exercised. It depends inter alia upon the nature of the offence alleged and the type of persons who are accused of having committed the cognizable

offence. Obviously, the power has to be exercised with caution and circumspection.

15. In the instant case the appellants had not been arrested. It appears that the result of the investigation showed that no amount had been defalcated.

We are here not concerned with the correctness of the conclusion that the investigating officer may have reached. What is, however, significant is

that the investigating officer did not consider it necessary, having regard to all the facts and circumstances of the case, to arrest the accused. In such

a case there was no justification for the High Court to direct the State to arrest the appellants against whom the first information report was lodged, as

it amounted to unjustified interference in the investigation of the case. The mere fact that the bail applications of some of the appellants had been

rejected is no ground for directing their immediate arrest. In the very nature of things, a person may move the Court on mere apprehension that he

may be arrested. The Court may or may not grant anticipatory bail depending upon the facts and circumstances of the case and the material placed

before the Court. There may, however, be cases where the application for grant of anticipatory bail may be rejected and ultimately, after investigation,

the said person may not be put up for trial as no material is disclosed against him in the course of investigation. The High Court proceeded on the

assumption that since petitions for anticipatory bail had been rejected, there was no option open for the State but to arrest those persons. This

assumption, to our mind, is erroneous. A person whose petition for grant of anticipatory bail has been rejected may or may not be arrested by the

investigating officer depending upon the facts and circumstances of the case, nature of the offence, the background of the accused, the facts disclosed

in the course of investigation and other relevant considerations.

10. In view of the above law laid down by the Hon'ble Supreme Court and the report submitted by the investigating agency, there are no reasons to

interfere in the investigation being carried out by the investigating officer and there are no grounds to direct the respondents to arrest the accused

persons. Moreover, the petitioner has an equally efficacious remedy by filing an application u/s. 156 (3) CrPC before Ld. MM in case he is aggrieved

that proper investigation is not being carried out. Since it is a settled law that it is for the investigating officer to carry out the investigation and to

decide at the appropriate time after conclusion of investigation whether to arrest the accused or not, the present petition is dismissed and stands

disposed of accordingly.