

(2016) 10 DEL CK 0091

DELHI HIGH COURT

Case No: Crl. M.C. No. 3105 of 2016.

Kanwar Bhan - Petitioner @HASH
State and Others

APPELLANT

Vs

RESPONDENT

Date of Decision: Oct. 18, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), Section 195(1)(b)(ii), Section 482
- Penal Code, 1860 (IPC) - Section 120B, Section 34, Section 465, Section 467, Section 471

Citation: (2017) 1 CriCC 525 : (2016) 234 DLT 125 : (2017) 1 DMC 279 : (2016) 4 JCC 2446

Hon'ble Judges: P.S. Teji, J.

Bench: Single Bench

Advocate: Mr. Kunal Manav, Advocate, for the Petitioner; G.M. Farooqui, Additional Public Prosecutor, for the State

Final Decision: Dismissed

Judgement

P.S. Teji, J. - By this petition filed under Section 482 of Cr. P.C. the petitioner is seeking quashing of order dated 07.05.2016 passed by the learned Additional Sessions Judge vide which the Criminal Revision No.09 of 2016 preferred by the petitioner was dismissed. The said revision petition was filed by the petitioner for setting aside the order dated 05.02.2016 passed by the learned Metropolitan Magistrate whereby the learned Metropolitan Magistrate had rejected the application under Section 156(3) of Cr. P.C. and declined to take cognizance of the offence of forgery against the respondent Nos. 2 to 5 herein.

2. The gist of the facts of the present case are that on 08.12.2014 the petitioner had lodged an FIR No.532/2014 under Section 148/149/323/324/452 of IPC in Police Station Sonapat City (HR) against respondent No.2 to 5 and on the next day i.e.

09.12.2014 a complaint under Section 498-A of IPC was filed against the family of the petitioner. On 26.12.2014, another complaint before CAW Cell, Sector 3, Rohini was filed on behalf of the respondent Nos.2 to 5. Besides that, on 12.01.2015 respondent No. 2 had filed a case of maintenance in the Family Court of Rohini, wherein notice has been issued and duly received by the petitioner herein. It is found that the complaint dated 09.12.2014 annexed with the notice was having alteration with the word "Unhi" as "Humhi" and the same instigated the petitioner to file an application under Section 156(3) of Cr. P.C. before the learned Metropolitan Magistrate for taking cognizance of the offence punishable under Section 465/467/471/120-B/34 of IPC.

3. Learned Metropolitan Magistrate vide order dated 05.02.2016 dismissed the application and declined to take cognizance on the complaint. Being aggrieved from the aforesaid order, the petitioner preferred a revision petition before the court of learned Additional Sessions Judge, Rohini, Delhi, which was also dismissed vide order dated 07.05.2016 and that's why the petitioner has preferred the present petition invoking inherent discretion of this court under Section 482 of Cr. P.C.

4. Learned counsel for the petitioner contended that the FIR registered on 08.12.2014 at the instance of petitioner and the complaint lodged by respondent No. 2 to 5 under Section 498-A against the petitioner, the police has converted both the case into cross case and ultimately filed the final report. It is contended on behalf of the petitioner that it was mandatory for the learned Additional Sessions Judge to direct the police to register an FIR where a cognisable offence was disclosed in the complaint. It is submitted that it is only during pendency of the complaint, the petitioner received notice of Domestic Violence from the Court of learned Metropolitan Magistrate and after going through the notice, it came to notice that the respondents have used the forged FIR again. Thereafter, the petitioner and his son approached the DCP for registration of FIR but to no avail.

5. Learned counsel for the petitioner contended that the learned Metropolitan Magistrate has wrongly relied upon the judgment of Surjeet Singh v. Balbir Singh and contended that when forgery has been committed on a document which is not in custodia legis, or are not the part of the court proceedings, then the bar mentioned under Section 195(1)(b)(ii) of Cr. P.C. does not apply. It is submitted that the time periods of the offences were different, therefore the idea of multiplicity of proceedings is highly unsustainable. It is further contended that when the FIR in Sonipat was registered, the maintenance petition was not filed and the Trial Court has wrongly held that all the material required is within the accessibility of the complainant. According to the petitioner, moot question which requires to be debated in the present case is not only the forgery or manipulation in the FIR but also to find out the person responsible for doing the same.

6. It is further contended on behalf of the petitioner that if the learned Metropolitan Magistrate was of the view that there was no necessity of registration of FIR, then he

ought to have taken cognizance of the offence under Section 190 of Cr. P.C. and should have proceeded with the recording of pre-summoning evidence of the petitioner. The petitioner/complainant is only required to set out the facts in complaint and the court has to consider only averments made in complaint while taking cognizance. The petitioner also contended that the police being the investigation machinery of the State and is under a statutory obligation to register the FIR if a complaint discloses commission of cognisable offence and it cannot preclude itself of its statutory duty.

7. It is further contended that the complainant is required only to put the facts making out compoundable averments before the court and the FIR as referred to under Section 154 Cr. P.C. seeks only to contain information relating to the commission of a cognisable offence, which is the foundation of the FIR and the FIR has not to be an encyclopedia of the entire offence but only has to reveal commission of an offence. It is further contended that the accused persons have committed an offence punishable under Section 467 of Cr. P.C. as the forged FIR dated 09.12.2014 is covered under the purview of valuable security which is defined under Section 30 of the Indian Penal Code. Thereafter, Learned counsel for the petitioner also contended on the issue of powers of learned Metropolitan Magistrate under Section 156(3) Cr. P.C. and in support of all his averments and contentions, relied upon the following judgments:

- (a) Iqbal Singh Marwah and Another v. Meenakshi Marwah and Another, (2005) 4 SCC 370;**
- (b) Mahesh Chand Sharma v. State of UP & Ors, 2009 (4) JCC 2568;**
- (c) Sabir v. Jaswant & Ors, 2002 Cri.LJ 4563 (Allahabad);**
- (d) Ajay Malvia v. State of U.P. & Ors, 2001 Cri.LJ 313;**
- (e) Ram Babu Gupta & Anr. v. State of U.P. & Ors., 2001 Cri. PLJ 3363 (Allahabad);**
- (f) Mahavir Prasad Gupta and Anr. v. State of NCT of Delhi, 2000 Cri.LJ 4665;**
- (g) Rashmi Kmar v. Mahesh Kumar Bhada, 1997 SCC (Cri) 415;**
- (h) A.C. Aggarwal SDM and Anr. v. Mst. Ram Kali, etc., 1968 Cri.LJ 82;**
- (i) Acharya Arun Dev v. State & Anr, 2005 (2) JCC 897;**
- (j) Superintendent of Police, CBI and Ors. v. Tapan Kumar Singh, 2003 SCC (Cri) 1305;**
- (k) Rajesh Bajaj v. State of NCT of Delhi, 1999 Cri.LJ 1833;**
- (l) Sivananda Mudali v. Unknown, AIR 1926 Mad. 1072;**
- (m) Emperor v. Ragho Ram, ILR 55 All 783**

(n) **Satvinder Kaur v. State, AIR 1999 SC 3596;**

(o) **State of A.P. v. Punati Ramulu, AIR 1993 SC 2644;**

(p) **Satvinder Kaur v. state, AIR 1999 SC 3596;**

(q) Decision of this court in W.P. (Crl.) No.50/2010 titled as K.S. Food Products & Ors. v. State & Anr.;

(r) **Rajwati v. State of UP, 2006 (10) ADJ 539;**

(s) **Bharat Hiralal Sheth v. Jaysinh Amarsinh Sampat, 1997 Cril.LJ 2509.**

8. I have heard the submissions made on behalf of the petitioner and also gone through the contents of petition and the impugned order passed by learned Additional Sessions Judge.

9. Perusal of the petition reveals that the petitioner has taken exhaustive pleas and referred many judgments, which are only relating to the power of learned Metropolitan Magistrate, learned Additional Sessions Judge, this court and certain principles with regard to certain issues, which this court need not to go into those facts and issues in the present facts of the case. This court observes that the petitioner has preferred the instant petition to invoke inherent powers of this court under Section 482 of Cr. P.C. Let us confined to the issue of inherent powers under Section 482 Cr. P.C. and to examine as to whether the present case is a fit case to exercise the power. In this regard, judgment of the Supreme Court in **Inder Mohan Goswami & Anr. v. State of Uttaranchal & Others, AIR 2008 SC 251** will be relevant, extract of which are reproduced as under:

"Inherent powers under Section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute."

10. The Hon"ble Supreme Court has dealt with the powers of High Court under Section 482 of Cr. P.C. in a recent judgment passed in **Criminal Appeal No. 773 of 2003, titled as Sundar Babu & Ors. v. State of Tamil Nadu decided on 19.02.2009**, the extracts of which are reproduced hereunder:

"The parameters for exercise of power under Section 482 have been laid down by this Court in several cases. The Section does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances, under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of

justice."

11. This court also perused the order dated 07.05.2016 passed by learned Additional Sessions Judge in Revision Petition preferred by the petitioner and observes that the order also records the submissions of the petitioner and the judgments relied upon by him. Apart from the aforesaid, it also records the reasoning given in the order dated 05.02.2016 passed by learned Metropolitan Magistrate, in paras 11 to 13. The learned Additional Sessions Judge also considered the fact that the parties are already involved in various litigations on the basis of alleged incidents of 08.12.2014 and 09.12.2014. The learned Additional Sessions Judge has observed that the maintenance case is already subjudice before the learned Family Court and the revisionist/petitioner is always at liberty to take all his plea before the Learned Family Court. The proceedings before the Sonapat Court and the forgery committed by the respondent Nos. 2 to 5 before the Family Court, Rohini, Delhi were found to be not independent in nature, as generally the FIR is registered on the basis of Tehrir only. Since the revisionist has already taken an objection of alteration in Tehrir before the learned Court of Sonapat City, Haryana and that court may take necessary action in accordance with law and on the other hand the petitioner can take similar objection or may file appropriate complaint before the learned Family Court, Rohini, regarding the alleged forgery in FIR, if any, and the learned Family Court may take appropriate action, if so warranted. The learned Additional Sessions Judge also held that taking cognizance on the complaint may breed multiplicity of the proceedings between the parties, which are neither desirable nor warranted, especially when the competent courts have already been dealing with the matter and the parties may file appropriate applications before the aforesaid courts only and the aforesaid courts may take appropriate action in the light of the facts and circumstances of the case, if the situation so warrants.

12. In the light of the aforesaid facts and circumstances and the foregoing discussions on the principles relating to exercise of inherent powers under Section 482 of Cr.P.C., this Court does not find the present case being fit for exercising the inherent powers under Section 482 of Cr.P.C. Finding no irregularity or infirmity in the impugned order dated 07.05.2016 passed by learned Additional Sessions Judge and there being no merit in the present petition, the present petition is dismissed.