(2008) 02 DEL CK 0283

Delhi High Court

Case No: Criminal M.C. 4183-86 of 2006 and Criminal M.A. 7108 of 2006

Abdul Rehman and Others		APPELLANT
	Vs	
Anees-Ul-Haq and Others		RESPONDENT

Date of Decision: Feb. 26, 2008

Citation: (2008) 2 DMC 34 : (2008) 101 DRJ 688

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

Bench: Single Bench

Advocate: Party-in-Person, for the Appellant; M.P. Singh, APP and G.D. Gandhi, for R-1, 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 quashing of the Criminal Complaint No. 180/1 of 2002 titled K.M. Anees-Ul-Haq v. Abdul Rehman and Ors. pending before the learned Metropolitan Magistrate (''MM'') New Delhi and all proceedings consequent thereto.

2. The facts leading to the filing of this petition are that Shri K.M. Anees-Ul-Haq the respondent complainant in this petition was earlier serving in the office of the Director General of Doordarshan. It is stated that the Petitioner Shri Abdul Rehman, his wife and two daughters became friends of the Respondent No. 1 Shri K.M. Anees-Ul-Ha q during the time that he was serving as Deputy Director General at the Doordarshan. During the periodic visits to the Petitioner''s house during the year 1999 he proposed the name of his nephew, K.M. Furkhan-ul-Haq @ Muneeb for marriage with the Petitioner No. 3 Ms. Aalya Rehman, the daughter of the Petitioner Nos. 1 and 2. It is stated that the Petitioners accepted the proposal and an engagement ceremony was performed at New Delhi at the residence of Respondent No. 1 on 16th January 2000. It is claimed that a lot of money was spent by the Petitioners and the date of marriage was fixed at 4th November, 2000.

3. It is then stated that on 27th October 2000 the Respondent No. 1 and his wife Smt. Nusrat informed the Petitioner No. 1 that the marriage could not take place in November 2000 and had to be postponed in view of the death of close relations of the bridegroom. Thereafter no date for marriage was fixed nor was any intimation sent to the Petitioners. The Petitioners'' enquiries were repelled or were not responded to at all. It is alleged that the Respondent No. 1 having cheated the Petitioners started leveling false allegations against them on fraudulent grounds.

4. According to the Petitioner No. 1, on 24th June, 2002 he had a telephonic conversation with the father of the Muneeb. It is alleged that the latter demanded a sum of Rs. 25 lakhs before a firm date for marriage could be fixed. The very next date i.e. 25th June, 2002 the Petitioner No. 1 filed a complaint against the Respondents with the Crimes Against Women (''CAW'') Cell.

5. In the said case the Respondent and four others filed an application for grant of anticipatory bail in the court of the learned Additional Sessions Judge (''ASJ'') Karkardooma, Delhi. Ultimately when the Respondent No. 1 came to know about the registration of the FIR, he filed a present complaint Case No. 180/1/2002 alleging that the Petitioners had made false allegations against the Respondents and Therefore they should be summoned for the offence under Sections 211 and 500 IPC read with Sections 109/114/34 IPC.

6. In the said complaint which was filed in the court of the learned MM on 26th July, 2002 it was stated that the Respondent No. 1 had approached the Petitioner No. 1 who was an advocate for legal advice for taking action against the proprietor, editor and publishers of Indian Express for publishing a defamatory news item against Respondent No. 1 in the newspaper''s edition dated 15th August, 1999. The complainant was advised by the Petitioner No. 1 to engage him for filing a suit seeking damages to the tune of Rs. 1 crore against the Indian Express and its editor and publisher and was assured that he would be successful in the suit. According to the complainant, he had made a payment of Rs. 7.27 lakhs through his friends and well wishers towards courts fee and expenses as per the advice of the Petitioner No. 1. Despite receiving the said amount, the Petitioner No. 1 did not file a suit nor spend any amount towards courts fee or other legal expenses. It is further alleged that the Petitioner No. 1 had indulged in bargaining with the agents and officials of Indian Express to get the Petitioner No. 4 Miss Shaniya employed as a Press Correspondent and thus obtained undue favor from them in consideration of not filing any suit for damages against the Indian Express.

7. It is then stated that the complainant then filed a civil suit against the Petitioner No. 1 for recovery of Rs. 10.57 lakhs i.e. Rs. 7.27 lakhs towards the principal amount and Rs. 3.30 lakhs towards the interest of the said amount. That suit is pending in the court of the learned ADJ, Delhi. It is stated that the complainant also filed a criminal case for the offence of cheating which is also pending in the court of the learned MM, Delhi. The complainant also stated that he made a complaint to the Bar

Council of Delhi for taking necessary action against the Petitioner No. 1 u/s 35 of the Advocates Act.

8. It was further alleged in the complaint that after coming to know about the proceedings, the Petitioner No. 1 made a false and frivolous complaint to the CAW Cell, Nanakpura New Delhi regarding which a notice dated 27th June, 2002 had been received by the complainant. The complaint made to the CAW Cell by the Petitioner No. 1, was, according to the complainant, full of falsehoods and fabrications. He claimed that the complainant or his wife did not have any role to play in the negotiations for matrimonial alliance or in the subsequent breakdown thereof since the complainant''s brother and his family members are leading quite an independent life at Bangalore. It was then alleged that the complaint made before the CAW cell was to put pressure on the complainant and his family members to defame and degrade them in the eyes of the police and others. It is stated that there is no bar of Section 195 CrPC to the filing of the present complaint as no judicial proceedings whatsoever has taken place so far in any court of law and the matter was still pending for enquiry/investigation before the CAW Cell.

9. By an order dated 3rd February, 2003 the learned MM held that sufficient material existed to summon the accused persons for the offence u/s 211 IPC read with Section 500 IPC.

10. Aggrieved by the summoning order the Petitioners here filed a Criminal Revision Nos. 40 and 41 of 2003. The revision petitions were dismissed as barred by limitation.

11. On 22nd July 2006 this Court passed the following order:

Crl M C No 4186-86 & Crl M No. 7108/2006

One of the issues raised in this petition is that the learned Metropolitan Magistrate could not take cognizance of the complaint u/s 211/500 IPC inasmuch as this complaint was based on the averments that petitioners herein had made false allegations in complaint case filed by them against the respondent herein u/s 406/34 IPC read with Sections 3 & 4 of the Dowry Prohibition Act, which is pending that and, Therefore, it is in those proceedings that the trial court could make reference u/s 195 IPC read with Section 340 CrPC. His submission is that in the impugned order dated 3.2.2003 the learned trial court wrongly applied the principle laid down by the Supreme Court in M.L. Sethi Vs. R.P. Kapur and Another, . In this case, the issue in question was not decided but was left open. Learned Counsel further referred to the subsequent judgment of the Apex Court in the case of Kamlapati Trivedi Vs. State of West Bengal, .

Notice. Mr. Bhanot, learned Counsel for the complainant, accepts notice. Copy of the petition be supplied within two days.

List for arguments on 15th December, 2006.

12. The contention of the Petitioner is that the order of the learned MM summoning the Petitioners for the offence u/s 211 read with Section 500 IPC was erroneous inasmuch as he relies upon the judgment of the Supreme Court in M.L. Sethi v. R.P. Kapur 1966 CAR 121 (SC) although the said decision does not permit taking cognizance of the offence u/s 211 IPC when the Court is seized the matter. It is submitted that the Supreme Court in Santokh Singh Vs. Izhar Hussain and Another, held that the statement to be made on oath falsely supporting the prosecution case against an accused person more appropriately amounts to an offence under Sections 193 and 195 IPC and not u/s 211 IPC. It is further submitted that there was no proceeding pending in any court when the complaint was filed before the CAW cell and that no cognizance had been taken by the learned MM.

13. Learned Counsel for the Respondent No. 1 on the other hand argued that the judgment in M.L. Sethi v. R.P. Kapur permits the Magistrate to take cognizance of an offence u/s 211 IPC even where the criminal cases pending at the stage of the investigation. It is further submitted that the Supreme Court in CREF Finance Ltd. Vs. Shree Shanthi Homes Pvt. Ltd. and Another, held that once the Court on a perusal of the complaint is satisfied that the complaint discloses the commission of an offence and there is no reason to reject the complaint at that stage. The Magistrate should proceed further in the matter, and must be held to have taken cognizance of the offence. It is further explained that if the Magistrate proceeds to examine the complaint and any other evidence that the complainant produced it should held that the Court has taken cognizance of the offence and, has proceeded to the next stage of the enquiry/trial.

14. It is pointed out in the rejoinder that in any event offence u/s 500 IPC would not be attracted in the instant case. Moreover as against the Petitioner Nos. 2 to 4 there was absolutely any averment in the complaint that there were in any manner responsible for the offence complained of.

15. In the first instance it requires to be examined if the Magistrate could have taken cognizance u/s 211 IPC. The said section reads as under:

Section 211 - False charge of offence made with intent to injure Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

16. Since both sides have relied upon the judgment of the Supreme Court in M.L. Sethi v. R.P. Kapur, that decision may be discussed at some length. The facts in that case were that Shri M.L. Sethi had lodged a complaint with the Inspector General of Police, Chandigargh against Shri R.P. Kapur and his mother-in-law charging them with commission of offence punishable under Sections 420,109,114 and 120 IPC. The allegation was that Shri Kapur and his mother-in-law had cheated Shri Sethi and his wife for a sum of Rs. 20,000/- by persuading Shri Sethi to accept the sale deed of some land on certain false representations. That on the date when the sale deed by Shri Kapur''s mother-in-law was executed in favor of the wife of Shri Sethi, the title of the vendor had already been extinguished since the land stood acquired under the Land Acquisition Act, 1894. On 11th April 1959 Shri Kapur filed a complaint in the court of learned Judicial Magistrate, Chandigarh against Shri Sethi for commission of offences under Sections 204, 211 and 385 IPC. It is stated that Shri Sethi had purchased the land knowing fully aware of the land acquisition proceedings but since the compensation rate was low, he suffered a loss of nearly Rs. 13,000/-. The complainant Shri Sethi started threatening to mother-in-law of Shri Kapur and demanded a sum of Rs. 13,000/- by which the compensation was reduced. He further threatened to file a criminal proceeding if the money was not paid. It was further thereafter the FIR was lodged with the police on 10th December, 1958. The charge in the complaint was further that the allegations made in the FIR by Shri Sethi was false to his knowledge and the said FIR was filed only to harass and threaten the Respondent and his mother-in-law. The complaint filed by Shri Kapur against Shri Sethi as well as the proceeding instituted by the police on the basis of the FIR was transferred to the court of Additional District Magistrate (''ADM'') at Saharanpur. Ultimately by an order dated 10th December, 1962 the High Court of Allahabad discharged Shri Kapur and his mother-in-law. It was specifically pointed out that between 10th December, 1958 when the FIR was lodged and 18th July, 1959 when the Respondent was arrested in connection with it, there was, at any stage, any order had been passed by an Magistrate in connection with the investigation that was going on.

17. The ADM has passed on 6th May 1963 on the application presented by Shri Sethi to the effect that the previous sanction as provided u/s 195 CrPC no cognizance could be taken of the offence. The second application was made that the trial should not proceed since cognizance of the offence u/s 211 IPC could not have taken in view of provisions of Section 195(1)(a) & (b) IPC. Both these applications were rejected by the learned ADM on 6th August, 1963 and 5th October, 1963 it was held that no further proceedings had been pending in any Court when the complaint against Shri Sethi was filed and consequently Section 195 IPC was inapplicable. This view was concurrently upheld by both by the Sessions Judge and the High Court. That is how Shri Sethi preferred the appeal before the Supreme Court.

18. The Supreme Court postulated three situations in which the question could be examined. The first was that there might be no proceeding pending in any court at

all. The second was that a proceeding in a court "might actually be pending at the point of time when cognizance was sought to be taken of the offence u/s 211 IPC." The third was that "though there might be no proceeding pending in any court in which, or in relation to which, the offence u/s 211 IPC, could have been committed, there might have been a proceeding which had already concluded and the offence u/s 211 IPC may be alleged to have been committed in, or in relation to, that proceeding." It was held that in both the latter two circumstances envisaged above, the bar to take cognizance u/s 195(1)(b) would come into operation. Turning to the first situation which arose from the facts of the case the Court pointed out that "the question of time when the applicability of this provision has to be determined, assumes importance. On the facts of the case it was held (see para 15 page 129):

It appears to us that at the time when in the present case the Judicial Magistrate at Chandigarh had to determine the applicability of this bar, he could not be expected to come to a decision whether any proceeding in any Court was under contemplation in, or in relation to, which the offence u/s 211 IPC of which he was asked to take cognizance, was alleged to have been committed. In fact, it would be laying on the Magistrate''s burden which he could not be expected to discharge properly and judicially as no Magistrate could determine in advance of a proceeding in a Court whether the offence u/s 211 IPC of which he is required to take cognizance, will be an offence which will be found subsequently to have been committed in relation to the contemplated proceeding to be taken thereafter. This interpretation, sought to be placed on this provision on behalf of the appellant, cannot, Therefore, be accepted.

Accordingly, the appeal of Shri Sethi was dismissed.

19. There is nothing in the reading of the decision of the Supreme Court which indicates that the Supreme Court held that the power u/s 195(1)(b) would be attracted even when only the investigation was going on and the Court has not taken cognizance of the offence. It was rightly pointed out by the Supreme Court that the bar when the applicability of the provision applies assumes importance.

20. Therefore, the question really is whether on the date that the learned MM took cognizance of the offence i.e. 3rd February, 2003 it could be said that there some judicial proceeding pending a court in relation to which the complainant was alleging the commission of offence u/s 500 IPC.

21. It is a matter of record that the Petitioners here approached the CAW cell on 25th June, 2002. The complainant attended the CAW cell on 18th July, 2002. The complaint was filed on 25th July, 2002. It is nobody''s case during this time the Court had taken cognizance of the offence in relation to which the Petitioner here had approached the CAW cell. Obviously the case was only at the stage of the investigation. Therefore, the learned MM did not have the power to taking cognizance of the offence u/s 211 IPC. Therefore the bar u/s 195 (1) (b) CrPC would

not be attracted.

22. As regards the offence u/s 500 IPC, this Court cannot possibly determine if any of the Explanations u/s 499 IPC would apply to the facts of the present case. At this stage it is not possible to come to the conclusion that not even a prima face case is made out against the petitioners for the offence u/s 500 IPC.

23. In Kamlapati Trivedi Vs. State of West Bengal, the facts were entirely different. There were warrant of arrest issued, the accused had attended the Court of Sub-Divisional Judicial Magistrate on the dates fixed for the submission of police report, and the Magistrate having jurisdiction passed an order releasing the accused on bail. Thereafter a final report was submitted to the Magistrate. Agreeing with the report, the Magistrate passed an order discharging the accused. Thereafter the accused filed a complaint accusing the appellant of commission of offence u/s 211 and 182 IPC. The Magistrate took cognizance of the case and summoned the appellant u/s 211 IPC. The Appellant appeared in the court accordingly and was released on bail. The Appellant then moved to the High Court for quashing the proceeding on the ground that the Magistrate was debarred from taking cognizance of the offence in the absence of a complaint in writing u/s 195 (1)(b) IPC. By a majority of 2:1 the Supreme Court allowed the appeal and held that the proceedings before the Sub-Divisional Magistrate were in fact judicial proceedings and sanction of Section 195(1)(b) had necessarily to be taken. The facts in the present case are entirely different. No such judicial proceeding is yet pending in any court at the time when the present complaint was filed by the Respondent. The impugned order dated 3rd February 2003 was passed summoning the accused after recording of the pre-charge evidence the cognizance had been taken as already explained by the Supreme Court in CREF Finance Ltd. Vs. Shree Shanthi Homes Pvt. Ltd. and Another, in the following passage: (para 10 page 4287)

10. In the instant case, the appellant had filed a detailed complaint before the Magistrate. The record shows that the Magistrate took cognizance and fixed the matter for recording of statement of the complainant on 01.06.2000. Even if we assume, though that is not the case, that the words "cognizance taken" were not to be found in the order recorded by him on that date, in our view that would make no difference. The cognizance is taken of the offence and not of the offender and, Therefore, once the Court on perusal of the complaint is satisfied that the complaint discloses the commission of an offence and there is no reason to reject the complaint at that stage, and proceeds further in the matter, it must be held to have taken cognizance of the offence. One should not confuse taking of cognizance with issuance of process. Cognizance is taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed. The issuance of process is at a later stage when after considering the material placed before it, the Court decides to proceed against the offenders against whom a prima facie case is made out. It is possible that a

complaint may be filed against several persons, but the Magistrate may choose to issue process only against some of the accused. It may also be that after taking cognizance and examining the complainant on oath, the Court may come to the conclusion that no case is made out for issuance of process and it may reject the complaint. It may also be that having considered the complaint, the Court may consider it appropriate to send the complaint to police for investigation u/s 156 of the Code of Criminal Procedure. We can conceive of many other situations in which a Magistrate may not take cognizance at all, for instance, a case where he finds that the complaint is not made by the person who in law can lodge the complaint, or that the complaint is not entertainable by that Court, or that cognizance of the offence alleged to have been committed cannot be taken without the sanction of the competent authority etc. These are cases where the Magistrate will refuse to take cognizance and return the complaint to the complainant. But if he does not do so and proceeds to examine the complainant and such other evidence as the complainant may produce before him then, it should be held to have taken cognizance of the offence and proceeded with the inquiry. We are, Therefore, of the opinion that in the facts and circumstances of this case, the High Court erred in holding that the Magistrate had not taken cognizance, and that being a condition precedent, issuance of process was illegal.

24. The judgments in Santokh Singh v. Izhar Hussain, are again distinguishable. The question was whether the statement supporting the prosecution case against the accused person amounting to an offence under Sections 193 and 195 IPC and not u/s 211 IPC. On the facts of the present case it is held that offence u/s 211 cannot be said to be made out. Here there is no question of statement of role having been played by the Petitioners here for which the complaint could have been filed u/s 193 and 195 IPC.

25. For the aforementioned reasons, this Court does not find any infirmity in the impugned order dated 3rd February 2003 passed by the learned MM summoning the accused to face a trial. Accordingly, the petition is dismissed in the circumstances of the case no orders as to costs. The pending application also stands dismissed.