

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: January 15, 2014
Judgment Pronounced on: February 03, 2014

+ **CRL.M.C.4645/2013**

DR.MUKESH AGGARWALPetitioner

Through: Mr. C.L. Gupta and Mr.
Akashdeep Verma, Advocates

versus

RAM CHANDER & ORS.Respondents

Through: Mr. Ravi Nayak, Additional Public
Prosecutor for respondent No.5-
State with SI Deepak
Mr. Sumit Chaudhary, Advocate
for respondent No.1
Mr. H.L.Dahiya, Advocate for
respondent No.2
Respondent No.3 in person

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**

1. Petitioner is the complainant, whose application under Section 156 (3) of Cr.P.C. was allowed by learned trial court, at whose instance FIR under Sections 384/385/387/506/120-B of IPC was registered at P.S. Narela, Delhi. Charge-sheet was filed against accused-*Neerja Sharma* in the above-said FIR case and in the supplementary charge-sheet filed, the first four respondents herein were shown in column No.12 due to lack of evidence against them. The trial court did not accept the supplementary charge-sheet qua respondent-ACP (Retd.) *Ram Chander* and had summoned him as an accused. The protest petition of petitioner-

complainant herein against Respondents No.2 to 4 herein was not accepted by trial court vide order of 3rd January, 2012 which was challenged by way of a revision petition by first respondent-ACP (Retd.) *Ram Chander* because he was summoned as an accused.

2. Petitioner had also assailed aforesaid trial court's order refusing to summon respondents No.2 to 4 herein as accused in the FIR case. Learned revisional court vide impugned order of 3rd September, 2013 has rejected petitioner's revision petition against non-summoning of respondents No.2 to 4 herein and has accepted revision petition of ACP (Retd.) *Ram Chander*, who is first respondent in this petition.

3. The undisputed factual background of this case as noted in the impugned order is as under: -

“Complainant is running a clinic in the name of Dr. Mukesh Orthopedic and at U-86 C, Lampur Road, Opposite Government Hospital, Narela, Delhi. A lady namely Neerja Sharma got treatment from that hospital from 09.06.04 to 10-06-04 and 2007 for hip pain. She was treated for sometime by Mr.Pradeep, Physiotherapist. One day ACP Ram Chander and Neerja Sharma visited the said clinic. ACP Ram Chander asked the doctor whether he was paying any tax to Delhi Police or not as he had a very good practice. When he replied in negative, ACP said that same would be covered with the help of Neerja. At that time, Neerja Sharma informed ACP that complainant was owner of crores of rupees, that he was running one nursing home and was in the process of constructing another. Since then ACP and Neerja Sharma started giving threatening calls to the doctor from telephone Nos.9212333095, 9213142103 and 9212150527. They would threat that he would be implicated in a false case as he had raped Neerja Sharma

during treatment. They connived with an advocate namely Narender Malik and another person claiming himself to be encounter specialist of Delhi Crime Branch. Complainant paid them Rs.5 lacs in all due to threats and fear of reputation. Some days back, SI Vinod Gautam along with three other persons came to the nursing home, put him in a gypsy and took to a house in village Alipur. Those persons were in police uniform. Neerja Sharma was found present in that house. Doctor was beaten there and was made to write something on a piece of paper. He was left at last threatening if he made complaint to anybody, he and his family members would be eliminated. Thereafter the accused started blackmailing him and demanded Rs.5 lacs by extending threats that Mr. Ram Chander had become ACP of PS Narela by that time and so they would have no problem in implicating him in a false rape or other case. Further allegation is that Mr. Jitender, the then SHO PS Narela also had connived with them. These persons started sending police officials to his nursing home and house by levelling false allegations that illegal activities were being carried out in his nursing home.”

4. Challenge to the impugned order by learned counsel for petitioner is on the ground that at the stage of summoning, it is to be only seen whether there are sufficient grounds to proceed against an accused and not to weigh the evidence. It was vehemently argued by learned counsel for petitioner that learned revisional court in the impugned order has gone into the merits and has discarded petitioner's case qua first four respondents herein although there is sufficient material on record to prove that accused-*Neerja Sharma* had conspired with respondents No.1 to 4 herein to commit the offence in question. It was pointed out that

there is no basis to discard petitioner's version of first respondent and third respondent extending threats to petitioner of false implication and of extorting rupees five lacs from petitioner particularly when the statement of petitioner is corroborated by the statement of Sanjay, who is wardboy in petitioner's clinic.

5. During the course of hearing, it was asserted by learned counsels for petitioner that fourth respondent herein had abducted petitioner from his clinic and had taken him to a house in Alipur wherein petitioner was tortured and was made to write an apology letter and the plea of alibi taken by fourth respondent herein was pre-planned and has been illegally accepted by learned revisional court. Lastly, it was submitted on behalf of petitioner that first and third respondent herein have committed various offences in connivance with accused-*Neerja Sharma* by adopting same *modus operandi* and accused-*Neerja Sharma* alongwith respondent No.3-ACP *Roop Ram* has been convicted in FIR No.480/05 under Section 306/385/120-B of IPC registered at P.S. Vasant Kunj, Delhi. Thus, quashing of trial court's order and the impugned order is sought in this petition with a prayer that petitioner's protest petition be accepted and first four respondents herein be tried as accused alongwith main accused-*Neerja Sharma* in this FIR case.

6. On behalf of first four respondents, it was submitted by learned counsels that impugned order suffers from no illegality or infirmity and there has to be a proper application of mind at the stage of summoning an accused and that the supplementary charge-sheet gives cogent reasons for putting first four respondents herein in column No.12 in the supplementary charge-sheet. On behalf of respondents No.2 to 4, it was

submitted that on mere suspicion, a person cannot be summoned as an accused and that respondents No.2 to 4 are police personnel, who have been exonerated in departmental proceedings in this case and there are concurrent findings of both the courts below providing cogent reasons for accepting the supplementary charge-sheet qua them and this petition is misconceived and thus, deserves to be dismissed outrightly.

7. On behalf of first respondent herein, it was submitted that the instant case is a counter-blast to the FIR No.526/07 registered for the offences of rape, etc. at the instance of *Neerja Sharma*, who has been made an accused in this case. It was pointed out that handwritten apology letter of 4th May, 2007 written by petitioner leaves no manner of doubt that first respondent herein cannot be prosecuted in this FIR case and Section 140 of *Delhi Police Act* also specifically bars petitioner's prosecution without obtaining sanction from concerned authorities. Lastly, it was pointed out that petitioner had pleaded guilty in FIR case under Section 287/338 of IPC and so, it cannot be possibly said that first respondent had got petitioner falsely implicated in criminal case to extract money. Thus, dismissal of this petition is sought by learned counsel for first respondent and remaining three respondents.

8. After having heard both the sides and on perusal of the charge-sheet and the supplementary charge-sheet, trial court's order and the impugned order, I find that trial court has analytically dealt with supplementary charge-sheet qua the first four respondents herein in its order of 3rd January, 2012 while noting as under: -

"on the other hand the supplementary chargesheet submitted by the IO reveals that during the relevant period

HC Vinod Gautam was on official duty to somewhere near J & K border. It was also submitted by IO that in two of the cases registered against the complainant during the tenure of Inspector Jitender as SHO, PS Narela, U/s 202/287/338 IPC, the complainant has pleaded guilty. In respect of ACP Roop Ram (Retd.) it is stated that he was not the subscriber of any mobile phone mentioned in FIR whereas the complainant has alleged that he received threatening phone calls from a person who posed himself as ACP Roop Ram"

9. However, trial court found that there was sufficient material against respondent-ACP (Retd.) *Ram Chander* and had accordingly summoned him as an accused in this FIR case. No doubt, learned revisional court in the impugned order has in detailed analysed the supplementary charge-sheet and has highlighted the investigation conducted qua first four respondents herein, but has not, in any way, believed or disbelieved petitioner's version and so, it cannot be reasonably said that learned revisional court has applied the parameters which are required to be applied at the stage of hearing on the point of charge. The need for proper application of mind by the courts at the stage of summoning has been highlighted by the Apex Court in *Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 749. The pertinent observations made by the Apex Court in *Pepsi Foods (supra)* are as under: -

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The

order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

10. It has to be kept in mind that on mere suspicion, a person cannot be summoned as an accused. When a person is to be arrayed as an accused with the aid of Section 120-B of IPC, like in the instant case, then a reasonable nexus has to be shown, which petitioner fails to do so particularly qua respondents No.2 to 4. In this considered opinion of this Court, there is no palpable error in the reasoning adopted by learned revisional court in paragraphs No.7 to 9 of the impugned order.

11. So far as first respondent herein i.e. ACP (Retd.) *Ram Chander* is concerned, I find that though he was not ACP of P.S. Narela and was posted in Patel Nagar, but the fact remains that he had visited petitioner's clinic before filing of the complaint which is basis of instant FIR and he has not explained as to what was the occasion for him to have visited petitioner's clinic when he was not officially posted in that area. Though there is no call record to show interaction between first respondent-ACP (Retd.) *Ram Chander* and main accused-*Neerja Sharma*, but the

complicity of first respondent in the alleged commission of offence in question is probablized from the fact that in the charge-sheet filed on 7th July, 2008, it was said that accused-*Neerja Sharma* had entered into a criminal conspiracy but the conspiracy angle was being investigated and the supplementary charge-sheet would be filed.

12. When petitioner asserts that main accused-*Neerja Sharma* alongwith respondent- ACP (Retd.) *Ram Chander* had visited his clinic to extort money and had threatened him to implicate in a false case and infact, petitioner was arrayed as an accused in a rape case, in which, after investigation, cancellation report was filed. At this stage, it is to be only seen as to whether the allegations levelled are sufficient to summon a person as an accused and it is not to be seen at this initial stage, as to whether a prima facie case is made out against first respondent herein. This will be seen at the stage of framing of the charge. Although trial court has not given any reasons to summon respondent-ACP (Retd.) *Ram Chander* as an accused, but upon perusal of paragraph No.6 of the impugned order, which discusses in detail about the role of first respondent, I find that there is sufficient material on record to summon respondent- ACP (Retd.) *Ram Chander* as an accused.

13. In the aforesaid view of this matter, impugned order is maintained so far as it dismisses petitioner's revision petition No.59/2012 against respondents No.2 to 4 herein. However, impugned order is quashed to the extent it accepts first respondent's revision petition No.51/2012. The net result is that the impugned order is quashed and trial court's order of 3rd January, 2012 is maintained. Since no worthwhile arguments were raised regarding lack of sanction for prosecution of first respondent

herein, therefore, this aspect is left open to be considered by the trial court at the stage of hearing on the point of charge.

14. This petition is disposed of in aforesaid terms while not commenting upon the merits of this case lest it may prejudice either side before trial court.

(SUNIL GAUR)
JUDGE

FEBRUARY 03, 2014

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