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

Reserved on: 31.10.2019
Pronounced on: 04.12.2019

\+ CRL.M.C. 2024/2018& Crl. M.A. 7164/2018, 7786/2018, 7787/2018 & 28577/2018

SHUBHAM BANSAL ..... Petitioner
Through Mr.S.C. Buttan, Adv.

versus

THE STATE (GOVT OF NCT OF DELHI) & ANR..... Respondents
Through Mr.K.K. Ghei, APP for State.
SI Sandeep Crime Branch R.K. Puram.
Mr. J. M. Kalia, Adv. for R-2 with respondent no.2.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, the petitioner seeks direction thereby to set aside the observations of the learned Court passed in application under section 173(8) Cr.P.C. in FIR No.130/2012 in case titled *'State vs. Shubham Kansal*'.

2. Further seeks direction thereby setting aside order dated 04.01.2017 passed in Criminal Revision No.138/2016 and restore order dated

26.02.2016 passed by learned CMM whereby proceedings under Section 66A, IT Act and Section 509 IPC against the petitioner has been dropped.

3. The brief facts of the case are that the respondent no.2/complainant filed an application before the police about the commission of an offence under section 66A of the Information & Technology Act (hereinafter referred to as the IT Act). Though the investigation was continuing but was not to the satisfaction of the complainant, therefore, the complainant had filed Writ Petition No.399/2012 praying for registration of FIR regarding unsolicited phone calls and SMS. This Court directed the Police to hold the inquiry and register the FIR as per the provisions of law. Consequently, FIR No.130/2012 was registered on 11.05.2012 under section 66A of the IT Act.

4. The allegations levelled against the petitioner were that the complainant was a student of law and was undergoing internship. On 06.03.2012, her telephone number 9873748416 started receiving many calls from different numbers who, as per her, were talking non-sense and even some calls from internet which continued non-stop due to which she was unable to even use her telephone for outgoing calls. Accordingly, she lodged a report with Anti Stalking Helpline Desk of Delhi Police and also sent complaint to bk.gupta@nic.in. Since she was getting a large number of calls

regularly, therefore, on 09.03.2012 and even on 10.03.2012, she sent another reminder through e-mail and ultimately when she did not get response, she filed W.P. No.399/2012 and, therein, as per her submissions, the status report was called from Delhi Police and on 12.03.2012 submitted the same.

5. The complainant in her complaint further mentioned that on 10.03.2012 she joined the enquiry and mentioned that a false Facebook account in the name of Nidhi Taneja was created which contained the telephone number of the complainant. This caused to her annoyance, insult and harassment and, therefore, a request was made for registration of the FIR. During the inquiry, before the registration of FIR, complainant mentioned that she had interaction with Ashish Mittal over his phone who informed that mobile no.987377486 has been mentioned as contact number of Nidhi Taneja on the Facebook and therefore, he had obtained the telephone number from the same and contacted the complainant accordingly. During the pre-registration inquiry, it is mentioned that a legal notice on 20.03.2012 under section 91 Cr.P.C. was sent to the legal investigation team of face-book inc 1601 California ave palo. Alto CA 93404 US and during that period it was found that IP address, date and time of registration of the Account with a log in account details of the Facebook

account of '*Nidhi Taneja'* and '*beautiful Nits'* were activated by one Nidhi Taneja whose telephone number was mentioned as 9013499938 and the account bearing this number was also activated as Nidhi Taneja. Similarly certain other investigations were also made out and ultimately the Police Inspector Ms. Arti Sharma reached to House No. A-12/F-1, Dilshad Garden and interrogated the petitioner who disclosed that he and the complainant were friends and studied in the same School but due to their relations having ended, he was using the Facebook account in the name of Nidhi Taneja using his IP address.

6. However, during investigation, CPU Lenovo G560 Laptop and One Black colour mobile phone of Nokia were taken into custody by the Police and ultimately the Police found that the fake ID number was being used by accused Shubham Kansal/ petitioner by creating Facebook account in the name of Nidhi Taneja and therefore, the Challan was filed before the court mentioning that the petitioner be prosecuted for an offence under Section 66A of the IT Act along with Section 509 IPC. However, the learned Metropolitan Magistrate passed the order on 21.02.2012 mentioning that the fresh challan has been filed and the Magistrate that the cognizance of the offence punishable under Section 66 A of the Act read with Section 509 IPC

was taken and therefore, the petitioner who was already on police bail and was produced before the concerned Court was ordered to be released on bail.

7. On 26.02.2016, the learned Court after finding that the provisions of 66A of the Act have been held to be illegal and vitiated by the Hon'ble Supreme Court in ***Shreya Singhal vs. Union of India: III (2015) S.L.T. 1*** and held that the proceedings cannot be continued under these sections.

8. Learned counsel appearing on behalf of the petitioner submits that since the challan was filed along with Section 509 IPC as well, therefore, the Ld. Court finding that the offence under section 509 IPC consisted of the maximum punishment to one year before the amendment, therefore, finding the challan has not been filed within one year from the date of the offence/FIR in 2012, dropped the proceedings under Section 509 IPC. Thus, dropping of proceedings ended in the acquittal of the petitioner under Chapter XX Cr.P.C.

9. Further submitted that after the Court had taken the cognizance vide its Order dated 21.02.2015, the complainant hurriedly moved an application dated 27.04.2015 which was fixed for hearing on 28.04.2015 under Section 173 (8) Cr.P.C. thereby requesting further investigation u/s 173(8) Cr.P.C. to

be held by the I.O. However, after moving this application, the complainant did not appear before the Court nor pursued this application, therefore, the application remained without perusal and since the proceedings has been dropped, the same was deemed to be dismissed.

10. Learned counsel further submits that after the order dated 26.02.2016, when the Court was pleased to drop the proceedings under section 66A of the Act and Section 509 IPC against the petitioner, the complainant filed a revision petition, thereby challenging the order passed by the learned MM dated 26.02.2016. The complainant also pleaded that sections 67 and 67A of the IT Act and certain offences of IPC were also attracted and mentioned that the challan has been filed in 2015 for an offence under the summons case, which is alleged to have taken place in 2012 but pleaded that under section 468 Cr.P.C. and 473 Cr.P.C., the court should have condoned the delay. In the aforesaid revision petition, the learned ASJ remanded the case vide its order dated 04.01.2017 to the MM directing that application under section 173(8) Cr.P.C. be dealt with. Learned session Judge also directed that detailed order be passed by the trial court thereby disclosing how it opined that no case was made against respondent no.2.

11. Thus, the learned sessions Judge sent back the case FIR No.130/2012 to learned MM for its consideration. The said court vide its order dated 16.12.2017 mentioned in the order sheet that the part arguments had been heard on the application under section 173 (8) Cr.P.C. and issued the notices to the Investigation Officers for filing the status report and fixed the case for 17.03.2018.

12. The case of the petitioner before this court is that once section 66A of the IT Act had been held to be illegal and void-ab-initio, there was no possibility for looking into the limitation provided under that section and it had to be seen in regard to remaining offences. The learned sessions Judge overlooked the provisions of section 468/473 Cr.P.C. since the challan was filed after the period of limitation and since there was no application for condonation of delay. The learned court could not have taken the cognizance or could have condoned the delay without reasonable ground.

13. Further case of the petitioner is that since the offence was committed in the year 2012 and limitation is for one year for offence under section 509 IPC, and the challan was filed in 2015, so no cognizance should have been taken but learned Sessions Judge illegally directed for looking into the aspect of section 66A of the IT Act. The learned sessions judge was further

illegal in passing the impugned Order when there could be no charge framed against the petitioner under Section 509 IPC as it was a case under the summons trial where only the notice could be served and therefore, the dropping of the proceedings will amount to acquittal of the petitioner. Therefore, the Revision Petition was not maintainable against that Order and if at all there was any grievance, appeal could have been filed for its consideration but the Ld. Court did not look into this aspect and passed the impugned Order which is liable to be set aside.

14. Since offence under section 509 IPC is punishable by one year imprisonment and after that the cognizance taken was bad in law and time barred.

15. To strengthen his arguments, learned counsel for the petitioner has relied upon the case of ***State of Punjab vs. Sarwan Singh: 1981 SCALE (1) 619*** held that *"the prosecution is barred by limitation under sections 468(2)(a) and 469(b) of the Code of Criminal Procedure."*

16. He further relied upon the case of ***Japani Sahoo vs. Chandra Sekhar Mohanty: AIR 2007 (SC) 2762,*** wherein it is held that *"the purpose of computing the period of limitation, the relevant date must be considered as*

the date of filing of complaint or initialling criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a court."

17. He also relied upon the case of ***V.V. George vs. State of Kerala in Crl.A.844/2000*** decided on 20.05.2015 thereby held that *"a question may arise whether the exercise of power under Section 473 Cr.P.C. must precede the act of taking cognizance under section 190(1)(b) Cr.P.C. On a reading of Section 473 Cr.P.C., it is evident that it confers power on the court for taking cognizance of an offence, even after expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that is necessary so to do in the interests of justice."*

18. He further relied upon the case of ***Harvinder Singh vs. State of Punjab: 2013 LawSuit(P&H) 369*** in Crl.Rev.P.1275/2011 decided on 28.01.2013 and held as under:

> *"8. Counsel would first refer to Mander Singh and others versus Ladi 2008 (4) R.C.R. (Criminal) 388. The Court while dealing with Section 253 Cr.P.C. has observed that the petitioner when discharged in summons case, it amounts to acquittal within meaning of Section 255 Cr.PC. It is further held that the revision against such*

order of discharge would not be maintainable before the Sessions Judge and that appeal would be maintainable before this Court. In this case, reliance is placed on Bal Ram Suraj versus Dev Raj Dhiman 1987 (1) R.C.R. (Criminal) 616.

9. The legal issue arising in this case and as was under consideration before the Court while deciding the case of Mander Singh (supra) has been summed up as under:-

> *"The only legal issue raised by learned counsel for the petitioners is that the discharge of the petitioners by the learned Magistrate amounted to acquittal and against an order of acquittal, no revision was maintainable as the only remedy available to the respondent was by way of filing leave to appeal before this Court under Section 378 Cr.P.C. He has relied upon a judgment of Hon'ble the Supreme Court in the case of* ***Major General, A.S.Gauraya and another v. S.N.Thakur and another, 1986 Criminal Law Journal 1074*** *and judgments of this Court in* ***Municipal Committee v. Shri Labhu Ram and others, 1969 Current Law Journal 619; Arjan Dass v. Market Committee, Hissar, 1980 Punjab Law Reporter 469; Bal Ram Suraj v. Dev Raj Dhiman, 1987(1) Recent Criminal Reports 616; Ashok Kumar v. State of Haryana and another, 1987(2) Recent Criminal Reports 317; State of Haryana v. Ram Singh, 1996(3) Recent Criminal Reports 134****."*

Reference is then made to the case of Shri Labhu Ram (supra), where it is held as under:-

> *"The first point raised by learned counsel for the Committee was that all the 14 cases fell*

> *within the category of summons cases in relation to which the Code of Criminal Procedure does not envisage an order of discharge in any event and that the impugned orders were liable to be set aside on that account alone. To the first part of this contention no exception can be taken as Chapter XX of the Code, which deals with the trial of summons-cases, does not talk of an order of discharge at all. On the other hand, it is clear from the provisions thereof that the proceedings against an accused person in a summons-case can end only two ways, i.e., either in his conviction or his acquittal. The second part of the contention, however, does not commend itself to us as it is well recognized that an order of "discharge" passed in such circumstances would amount to one of acquittal and may be treated as such. The contention, therefore, does not help the Committee in any way." (emphasis supplied)"*
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> *11. Finally, reference is made to Bal Ram Suraj's case (supra), where it was opined that the order of discharge has to be read as an order of acquittal deemingly to have been passed under Section 255 Cr.P.C. and on that finding no revision was competent before the Additional Sessions Judge and such order was declared to be illegal."*

19. I have heard counsel for the parties and perused the material available on record.

20. It is not in dispute that the right of the complainant to file protest petition and power of the court to direct further investigation under section

173(8) of Cr.P.C. is well settled and recognized by the Apex Court as elaborately discussed in AIR 1999 SC 2332, 2009 Crl.L.J 3721 and also in AIR 2012 SC 2326, which hold the field of the law. The issue sought to be raised by the accused through the petition under section 482 of Cr.P.C., thus not maintainable even prima facie and rather filing itself is abuse of the process of the law with the motive to delay the trial and frustrate the complainant. The judgment sought to rely by the accused in Amrutbhai's case (AIR 2017 SC 774) is not only distinguishable on facts the same being in the context of belated application at the final stage, but also has been overruled by the Hon'ble Apex Court in ***Vinubhai Haribhal Malviya and Ors. vs. State of Gujarat & Anr. in Crl.A.478-79/2017.***

21. To strengthen his arguments, learned counsel for the respondent no.2 has relied upon the case of ***Vinubhai Haribhal Malviya and Ors. vs. State of Gujarat & Anr. in Crl.A.478-79/2017*** decided on 16.10.2019 and held as under:

> *"51. We have already noticed that there is no specific embargo upon the power of the learned Magistrate to direct "further investigation" on presentation of a report in terms of Section 173(2) of the Code. Any other approach or interpretation would be in contradiction to the very language of Section 173(8) and the scheme of the Code for giving precedence to proper administration of*

criminal justice. The settled principles of criminal jurisprudence would support such approach, particularly when in terms of Section 190 of the Code, the Magistrate is the competent authority to take cognizance of an offence. It is the Magistrate who has to decide whether on the basis of the record and documents produced, an offence is made out or not, and if made out, what course of law should be adopted in relation to committal of the case to the court of competent jurisdiction or to proceed with the trial himself. In other words, it is the judicial conscience of the Magistrate which has to be satisfied with reference to the record and the documents placed before him by the investigating agency, in coming to the appropriate conclusion in consonance with the principles of law. It will be a travesty of justice, if the court cannot be permitted to direct "further investigation" to clear its doubt and to order the investigating agency to further substantiate its charge-sheet. The satisfaction of the learned Magistrate is a condition precedent to commencement of further proceedings before the court of competent jurisdiction. Whether the Magistrate should direct "further investigation" or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct "further investigation" or "reinvestigation" as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, reinvestigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation. In this regard, we may refer to the observations made by this Court in Sivanmoorthy v. State: [(2010) 12 SCC 29: (2011) 1 SCC (Cri) 295]."

22. The issue raised by the accused/petitioner in the petitioner under section 482 Cr.P.C. pertaining to limitation in filing the charge-sheet/report is also no more res-integra having been finally settled by the Hon'ble Supreme Court while interpreting section 468 of Cr.P.C. governing limitation period, in case of ***Japani Sahu vs. Chandra Shekhar: AIR 2007 SC 2762*** followed in ***Mrs.Sarah Mathew & Ors. vs. The Institute of Cardio Vascular Diseases: AIR 2014 SC 448***, based upon which the Session's Court set aside the discharge order passed by the Trial Court.

23. The question raised by the petitioner/accused regarding the jurisdiction of the Revisional Court/Session Court, is no more res integra, having been settled by the Hon'ble Supreme Court in case of ***Jagbir and Another vs. State of Punjab: AIR 1998 SC 3130*** and thus the question raised by the petitioner is not maintainable.

24. This Court also has held in ***Nishu Wadhwa vs. Sidharth Wadhwa: 2017 SCC Online Del 6444*** that an order dismissing or allowing an application u/S 156(3) Cr.P.C. is not an interlocutory order and a revision petition against the same is maintainable.

25. The question raised by the accused regarding summoning of the investigating officer by the trial court under section 173(8) of Cr.P.C. in

terms with session's court directions, is no more *res-integra* as is well-settled by the Hon'ble Supreme Court in ***Sri Bhagwan Samrdha Sreepada vs. State of Andhra Pradesh: (1999) 5 SCC 740***, holding that the power of the court to direct further investigation cannot have any inhibition and there is nothing to suggest under section 173(8) of Cr.P.C. that the court is obliged to hear the accused before any such direction is made. Thus the issue raised by the accused (therein) does not fall for any further debate or discussion as sought by the accused.

26. Conjoint reading of section 156 read with section 173(2) & (8) and 210 of Cr.P.C. clearly lead to legislative intent to the effect that when a protest petition seeking further and proper investigation is pending at the instance of the complainant, the propriety demands that the investigating officer must refrain from submitting final report till the Magistrate issue direction on the pending petition/complaint filed by the complainant. Alternative course remained open to the IO that he may file report on the basis of the investigation carried out reserving right to file supplementary challan/report on the pending protest petition seeking further investigation.

27. In view of the above discussion and legal position, I find no merit in the present petition and the same is accordingly dismissed.

Crl. M.A. 7164/2018, 7786/2018, 7787/2018 & 28577/2018

28. In view of the order passed in the present petition, these applications have been rendered infructuous and are accordingly, disposed of.

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 04, 2019
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