

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CRIMINAL PROCEDURE

Reserved on: January 15, 2008

Date of Decision: February 5, 2008

CRL. M.C. Nos. 4859-71 of 2005 and CRL. M.A. Nos. 9798-99 of 2005

RAGHURAJ SINGH and ORS.PETITIONERS
Through : Mr. K.K.Sud, Senior Advocate with Mr. Anish Shrestha, Mr. Jayant
K. Sud, and Mr. Rajat Garg, Advocates.

versus

STATE OF NCT OF DELHI and ANR. RESPONDENTS
Through: Mr. Sanjay Lao, APP for State.
Mr. S.S.Gandhi, Senior Advocate with
Mr. R.S. Malik, Advocate.

AND

CRL. M.C. No. 4623 of 2005 and CRL. M.A. No. 9376 of 2005

PRAMOD KUMAR NAYAKPETITIONER
Through : Mr. K.K.Sud, Senior Advocate with Mr. Anish Shrestha, Mr. Jayant
K. Sud, and Mr. Rajat Garg, Advocates.

versus

STATE OF NCT OF DELHI RESPONDENT
Through: Mr. Sanjay Lao, APP for State.
Mr. S.S.Gandhi, Senior Advocate with

Mr. R.S. Malik, Advocate.

: Dr. S. Muralidhar, J.

Crl. M.A. No.9798 of 2005

Exemption allowed subject to all just exceptions.

The application is disposed of.

CRL. M.C. Nos. 4859-71 of 2005 and CRL. M.A.No. 9799 of 2005(stay) and Crl. M.C.

No. 4623 of 2005 and CRL. M.A. No. 9376 of 2005(stay)

1. During the pendency of these petitions the original Petitioner No.1 Jarnail Singh died. The petition [Crl. M.C. Nos. 4859-71 of 2005] abates as regards Jarnail Singh and the cause title of this petition will now read as Raghuraj Singh v. State and Others.

2. The Petitioners in both sets of petitions seek the quashing of a complaint titled Ali Mohamad v. Jarnail Singh and 13 others pending in the court of the Metropolitan Magistrate, New Delhi (MM) and an order dated 27th September, 2003 passed by the learned MM summoning them for the offences under Sections 150,153A, 323, 506 read with 34 IPC.

3. The case of the Petitioners as set out in these petitions under Section 482 of the Code of Criminal Procedure (CrPC) are that the complaint is motivated and on account of the past rivalry between the two factions of the employees of Food Corporation of India (FCI). According to the Petitioners the complaint filed by the Respondent No.2, if read as a whole, does not even prima facie make out a case for the offences for which they have been summoned by the learned MM.

4. The complaint filed by Respondent No.2 Ali Mohammad on 1st March 2000 in the court of the learned MM states that the complainant is an employee of the FCI belonging to the FCI Workers Union headed by H.P.Singh (ex-M.P.) who is its General Secretary. It is stated that in March 1999 the rival faction of H.K.Sharma and G.S. Jena started a dispute as regards the leadership of the union and that dispute is stated to be pending in this Court. As a result of the dispute it is alleged that the Petitioners here, who belong to the H.K. Sharma group became antagonistic to the workers belonging to the H.P.Singh group. It is stated that at around 12 noon on 1st January, 2000 Jarnail Singh, came to the FCI godown at Narela and called the co-accused Raghuraj Singh (Petitioner No.1) and Ram Saran, (Petitioner No.7) and instigated them to finish and destroy the group belonging to H.P.Singh, Ex-M.P. It is stated in the complaint that accused Jarnail Singh further

instigated Ram Saran that the Muslim followers of H.P.Singh Ex-M.P. should be thrown out of the FCI because they are the backbone of H.P.Singh. It is further stated that Jarnail Singh instigated Raghuraj Singh to hire outsiders for rioting and that this conversation was overheard by one Uttam Kishore who was passing by that way. It is stated that on the same day at about 2.30 pm Desh Raj and Jarnail Singh (empty handed), co-accused Raghuraj Singh, Ramraj Singh, Ram Sharma (all armed with lathies), Suraj Pal (armed with saria), Pramod Lenka (armed with iron pipe) and all the other co-accused having bricks and stones in their hands attacked the persons belonging to H.P.Singh group. It is stated that Jarnail Singh and Pramod Kumar Lenka instigated other co-accused to kill the complainant party by saying that the muslim followers of Shri H.P.Singh had to be thrown out.

5. The complaint proceeds to narrate that Raghuraj Singh inflicted lathi blows on the left wrist of complainant Ali Mohamad, Ram Raj inflicted lathi blow on the nose of the complainant and Ram Sharma inflicted a lathi blow on the ear of the complainant. The complainant narrowly escaped from the saria blow given by Suraj Pal. It is stated that co-accused Desh Raj caught hold of Uttam Kishore and Pramod Lenka inflicted a danda blow on the left leg of Uttam Kishore. It is stated that the other co-accused persons who were having bricks and stones started throwing bricks as a result of which the other co-accused persons namely Raghu Raj Singh, Pramod Kumar Lenka, Ram Raj, Desh Raj and Suraj Pal also received injuries.

6. The complaint proceeds to state that although the police arrived at the spot no action was taken against the accused persons. However, FIR No. 2 of 2000 was registered against the complainants under Sections 147/148/149 and 308 IPC. It is stated that although the police assured that they would register a case on the basis of the complaint by the complainant, they ultimately refused to do so and this compelled the Petitioners to file the present complaint on 1st March 2000. The list of witnesses appended to the complaint includes Ali Mohamad, Uttam Kishore, a doctor of the concerned hospital who attended to the injuries of the complainant and other witnesses with the permission of the court.

7. On 27th September 2003 the learned MM passed the summoning order against the Petitioners after holding that there was a prima facie case made out against the petitioners for the offences under the provisions mentioned. The learned MM examined the complaint as well as the depositions of the complainant's witnesses: CW-1 Uttam Kishore and CW-2 K.V.Singh Record Clerk, Hindu Rao Hospital for proving the MLC. Thereafter, the present petition was filed.

8. Mr. K.K. Sud, learned Senior counsel appearing for the Petitioners submits that the records of the case shows that this was a group clash and that the complainants were in fact the aggressors. The complainant had successfully got an FIR

registered against the present Petitioners with the connivance with the police. As a result the Petitioners were arrested and a complaint registered against them. He submits that on the face of it the complaint did not make out any offence under Section 150 of the IPC since all the parties were in fact employees of the FCI and could not be said to belong to groups for that purposes of that Section. As regards Section 153A IPC, it is clear that without previous sanction of the Central Government as required by Section 196 (1)(a) CrPC, the learned MM could not have taken cognizance of the offence. As regards Section 323 it is submitted that the medical record shows that these were only abrasions and could hardly be said to be injuries of a grievous nature. He points out that although it is a group clash, the complainant is able to give the details only about the injuries suffered by the complainant. The narration seems to suggest that some of the accused persons, the Petitioners here, suffered injuries at the hands of the other co-accused persons and this was inherently absurd and improbable. As regards Section 506 CrPC it is stated that there is no averment whatsoever to support such a charge. The story of attacking by bricks and stones with a view to kill the other parties is also a fiction of imagination. Mr. Sud submits that the delay of two months in registering the FIR is not satisfactorily explained nor is the suppression of facts concerning past cases filed by the Petitioners here against the complainant. Mr. Sud submitted that the past history of the case indicates that the present complaint is malafide and purely as a counter blast. He sought to rely on the judgments in *Ashok Kumar v. State of Haryana* AIR 2003 SC 777, *Shiv Dutt Salwan v. State (Delhi Administration)* 26 (1984) DLT 260, *Kanshi Ram v. State* 86 (2000) DLT 609, *Bhim Sen Garg v. State* 68 (1997) DLT 135, *Dr. Subramanian Swamy v. C. Pushpraj III* (1998) CCR 477. He relied on the judgments in *Nagawwa v. Veeranna Shivalingappa Konjalgi* AIR 1976 SC 1947 *Pepsi Foods Ltd. v. Special Judicial Magistrate* (1998) 5 SCC 749 and *State of Haryana v. Bhajan Lal* (1992) Supp 1 SCC 335 to contend that this was a case where this Court should exercise its power under Section 482 CrPC and quash the complaint.

9. Appearing for the Respondents Mr. S.S.Gandhi, learned Senior counsel did not contest the petitioners submission that no cognizance of the offence under Section 153A IPC could have been taken by the learned MM without the requisite sanction under Section 196 (1) (a) CrPC. As regards the other offences, he referred to the complaint itself to show that there was sufficient indication on a reading of it as a whole that the offences were made out under these provisions. The delay was explained by the refusal by the police to initially register a complaint. He points out that there were specific averments in the complaint to bring out the offence under Section 506. He relied on the decision in *Sudhir v. State of M.P.* (2001) 2 SCC 688 where it was held that where there are cross cases it would be better to have the cases tried together. In *Nathi Lal v. State of U.P.* 1990 (Supp) SCC 145 it was held that where one of the cross-cases was triable by the court of sessions and

other by the court of the Magistrate, then the Sessions Judge should decide both these cases one after the another.

10. Having considered the materials on record and the submissions of learned counsel for the parties, this Court finds that the complaint and the impugned summoning order call for interference only with regard to the offence under Section 153A IPC. There can be no manner of doubt that Section 196 (1)(a) CrPC mandates the prior sanction of the Central Government for proceeding to prosecute the accused for that offence. In this case admittedly such sanction was not obtained. Therefore there is no difficulty in quashing the summoning order as regards the offence under Section 153 A IPC is concerned.

11. As regards the objection to the learned MM taking cognizance beyond the permissible period of limitation, the complaint in paras 6 and 7 appears to suggest that the police were approached immediately but no action was taken and that on 28th February, 2000 the police at PS Narela Industrial Area categorically refused to register the case. These averments in the complaint do sufficiently explain the prima facie reasons for the delay. It cannot be said that the learned MM erred in taking cognizance of the offence at this stage. Whether or not the explanation for the delay is truthful can be examined at the trial.

12. The submission of Mr. Sud that the offence under Section 150 is also not made out cannot be accepted. That offence envisages hiring persons to join or become a member of any unlawful assembly. Even amongst employees of the same organisation it is not unusual to have factions and groups. The complaint read as a whole along the evidence of the witnesses at the pre-summoning stage indicates that there was sufficient material for the learned MM to proceed to take cognizance and summon the Petitioners here. Likewise the averments in paras 4 and 5 of the complaint are sufficient in so far as summoning the petitioners for the offences under Section 323 and 506 is concerned. Of course, the truth of these allegations can only be examined at the trial.

13. As explained in Nathi Lal this is an instance of there being two criminal cases arising out of the same incident. There are several provisions to take care of the contingencies to provide for a joint trial to avoid conflicting decisions. Applying the law as explained by the Supreme Court in Bhajan Lal this Court does not find any grounds for interference except to the extent of Section 153 A IPC. In other words, barring the summoning of the Petitioners to face trial under Section 153A IPC, neither the complaint nor the impugned summoning order in so far as the other offences are concerned, viz., Sections 150, 323 506 read with 34 IPC does not call for any interference.

14. Accordingly this petition is disposed of with the direction that except for the offence under Section 153 A IPC, the criminal complaint titled Ali Mohamad v. Jarnail Singh and Ors pending in the court of the Metropolitan Magistrate, New Delhi will now proceed in accordance with law. The impugned summoning order dated 27th September 2003 will stand modified only to the extent that the Petitioners will not have to face trial under Section 153A IPC. The trial of the Petitioners for the offences under Sections 150, 323, 506 read with 34 IPC, as directed by the learned MM in the summoning order dated 27th September 2003 will hereby proceed in accordance with the law.

15. In view of the death of Jarnail Singh, the criminal complaint as against him stands abated. Therefore the case will now proceed against Raghu Raj Singh and 11 others as well as Pramod Kumar Nayak. 16. The petitions are accordingly disposed of. The interim protection stands vacated and the petitions and the application stands dismissed.

Sd/-
S. MURALIDHAR, J.