

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CRIMINAL PROCEDURE

CRL.M.C. 1144/2006 and CRL.MAs 1970-71/2006

Date of order : 12th March, 2008

MEERA KAPOORPetitioner
Through:Mr. R.N. Mittal, Sr.
Advocate with Mr. Vijay
Aggarwal and Mr. Rakesh Makhija, Advocates

versus

STATE and ANR.Respondents
Through:Mr. O.P. Saxena, APP

and
CRL.M.C. 3935-36/2006 and CRL.MA. 6592/2006

KHALILD SAFI-ULAH and ANR.Petitioners
Through:Mr. R.N. Mittal, Sr. Advocate with Mr. Vijay Aggarwal and Mr. Rakesh
Makhija, Advocates.

versus

STATERespondent
Through: Mr. O.P. Saxena, APP

Dr. S. Muralidhar, J. (open court)

1. These petitions under Section 482 of the Criminal Procedure Code, 1973 (CrPC) seek the quashing of a Kalandara under Section 175 IPC registered vide DD No. 50-B dated 13th November, 2005 at Police Station Pahar Ganj, Delhi in FIR No.129/2005 under Section 506 IPC also registered at P.S. Pahar Ganj, Delhi. They also challenge an order dated 20th January, 2006 passed by the learned Metropolitan Magistrate(MM), Delhi summoning the Petitioners for the offence under Section 175 IPC.

2. The Kalandara states that enquiries commenced pursuant to a written complaint dated 22nd March, 2005 given by one Shri Yogesh Sharma concerning alleged threats and abuse extended by the personnel of Standard Chartered Bank ("Bank") Indian Express Building, Bahadur Shah Zafar Marg to his brother Rakesh Sharma who was a journalist and who died on 19th October, 2004. The alleged threats were about the non-payment of credit card dues by Shri Rakesh Sharma. The complaint was registered as FIR No.129/2005 dated 23rd March, 2005 under Section 506 IPC at P.S. Pahar Ganj, Delhi.

3. The Kalandara proceeds to state that the ASI Shri S.P. Singh attached to P.S. Pahar Ganj visited the Bank on various dates and served notices under Section 160 CrPC on its legal officers through Shri Megh Singh, the Petitioner No.2 in CrI.M.C. No. 3935-36 of 2006 on 3rd and 20th June 2005, 18th July 2005, 19th September 2005 and 29th October 2005 and that they did not give any information on the whereabouts of Shri Tushar Dhar and other employees named in the FIR. The Kalandara states that the officer met Smt. Meera Kapoor the Petitioner in CrI.M.C. No. 1144 of 2006, who is in-charge, Legal Cell of the Bank on 31st March 2005 and 14th April 2005, Shri Khalid Safi-ullah the Petitioner No.1 in CrI.M.C. No. 3935-36 of 2006, who is the Legal Officer of the Bank on 24th May 2005, 18th July 2005 and 17th August 2005, and Shri Megh Singh, the Petitioner No.2 in CrI.M.C. No. 3935-36 of 2006, who is the Assistant Manager of the Bank on 3rd June 2005, and that notice under Section 91 CrPC was given.

4. It is further stated that on 21st July 2005 and Shri Khalid Safi-ullah came to the police station with reference to the notice dated 18th July 2005 given to him and furnished a written reply in which he mentioned that Manoj Kumar Singh, Ashish Mehra, Vikram Singh, Mukesh Kumar Daksh, Mahesh Sharma and Ms. Neha were not at present on the rolls of the Bank. He further stated in his reply that Mr. Tushar Dhar had earlier been part of the organization but had left it some months ago. The letter indicated that the Bank had written to its H.R. Department seeking details of Mr. Tushar Dhar and would pass on any information regarding Mr. Dhar as and when obtained in due course. The Kalandara then states that since 21st July 2005 till the date of the presenting of the Kalandara, i.e., 13th November 2005, despite repeated telephonic requests and a personal visit by the ASI, the said three named officers of the Bank had not given any written reply or verbal reply and, therefore, they were withholding information and committing an offence under Section 175 IPC. It is alleged that since the three named officials of the Bank had ignored the notices under Sections 160 and 91 CrPC, the Kalandara under Section 175 IPC is being submitted. On the basis of the above Kalandara, the learned MM issued summons to the accused by an order dated 20th January 2006. The Bank then filed a writ petition in this Court in which an interim order was passed staying further proceedings.

5. Crl. M.C. No. 1144/2006 was filed by Smt.Meera Kapoor on 3rd March 2006 and on 6th March 2006, this Court passed the following order: “Crl.M.C. No. 1144/2006 Notice returnable on 12th September, 2006. Crl.Misc. No. 1970/2006 Notice for 12th September, 2007. The petitioner has been summoned by the court below for not making compliance of Provisions of Section 91 of the Cr.P.C. which is made punishable under the provisions of Section 175 IPC. Learned counsel for the petitioner while addressing arguments urged that in fact no written notice was served on the petitioner by the Police Officer which is pre-requisite of initiating the proceedings under Section 175 IPC. He has drawn my attention to the Kalendra prepared by the police where there is no mention of the notice to the petitioner. The notice was given to Mr. Umed Singh and not to the petitioner. The petitioner is the Law Officer and was under legal obligation to produce certain documents only on being issued written notice under Section 91 Cr.P.C. It was the duty of the police officer to issue written notice under Section 91 Cr.P.C. and it does not seem to have been done in this case. Accordingly the proceedings before the trial court shall remain stayed. The trial court record including the Kalendra be summoned for the next date of hearing. List on 12th September, 2006. Dasti.” In the accompanying petition, Crl.M.C. No. 3935-36/2006 by an order dated 10th July 2006 while directing notice to the Respondents, this Court stayed the proceedings in the trial court. The record of the case has been perused by this Court.

6. From the record it is seen that the notices issued by Investigating Officer Shri S.P. Singh have been attached to the Kalandara. The first notice dated 3rd June 2005 was issued to “The Standard Chartered Bank B.S.Z. Marg, New Delhi” which mentioned about the death of Rakesh Sharma on 19th October 2004, and the fact that certain employees of the Bank had made calls to him. Information was sought on the named employees of the Bank. The next notice under Section 91 CrPC was issued on 28th June 2005 to “The Manager Legal Cell, Standard Chartered Bank” and it was served upon one “Surender” of the Legal Department. This notice acknowledged the fact that the police had been informed that Tushar Dhar no longer working in the Bank. The notice required that his present address, place of employment and other details should be ascertained and furnished to the police. Further details regarding the name of the officer in charge of the recovery of the dues on the two credit cards issued to the deceased Rakesh Sharma earlier asked to be furnished.

7. The third document attached to the Kalandara is dated 18th July 2005 issued to Shri Khalid Saif-ullah which is a notice under Section 160 CrPC asking him to appear before the officer on 20th July 2005 and to bring information on the seven named employees of the Bank.

8. There are two documents. The first is a notice dated 19th September 2005 addressed to “The I/C Legal Cell, Standard Chartered Bank” under Section 160

CrPC seeking an identical information. This was served on 19th September 2005 and received by "Surinder Gulati". The notice requires that "same information may kindly be furnished by tomorrow i.e., 20/9/05 positively." The next document is another notice under Section 160 CrPC addressed to "The In charge Legal Cell, Standard Chartered Bank" again served on one "Surender" on 29th October 2005 in which again the ASI has demanded information about "Mr. Tushar Dhar, his home address and the job where he is serving at this time." The information is asked to be furnished "by hand today i.e., 29/10/05 positively."

9. Annexed to the present petitions are copies of the letters written by the Bank to the SHO and Assistant Commissioner of Police one of which is acknowledged in the Kalandara itself. This is the written reply dated 1st July 2005 furnished by the authorised signatory of the Bank stating as under: "This is to inform you that Manoj Kumar Singh, Vikram Singh, Mukesh Kumar Daksh, Mahesh Sharma, Ashish Mehra, Ms. Neha are not on the rolls of the bank and we have no idea about who they are. Mr. Tushar Dhar was part of this organization but has left it some months back. We have written to our HR department seeking his details and will be inform you if any information is given to us regarding him in due course." There is an acknowledgment of that date on the letter and in any event this is mentioned in the Kalandara. However, a copy of this letter is not annexed to the Kalandara.

10. It appears that on 14th December 2005 after the Kalandara was filed in the court, the authorised signatory of the Bank sent another letter to the ACP enclosing a whole set of documents. The said letter contains the acknowledgment with seal dated 14th December 2005 of the office of the ACP. The said letter reads as under: "Mr. M.R. Gothwal Date: 14th Dec.2005 Asstt.Commissioner of Police Police Station, Paharganj New Delhi Sir, Please find enclosed all the documents as required by you. 1) Name and addresses of the officers Encl. 2) Name of the Agencies. Agency owner and the Address Encl. 3) Email ID"s of the agencies Encl. 4) List of officers responsible for collection Encl. 5) Our manual which states the policy for appointing the collection agency (Pg 1-7) Encl. 6) Copy of the CACS(Computer Assisted Collection System) manual (Pg 1-11) Encl. 7) Names and details of officers senior to Mr.Deepal Singh in the hierarchy Encl."

11. It appears that after 14th December 2005 another notice was sent under Section 91 CrPC to the Bank which was replied on 26th December 2005 in which it has been mentioned that High Court had granted a stay of the proceedings. In this letter the Bank gave assurance that it would cooperate with all necessary investigations. This letter also appears to have been received by the police with the seal of the office of the Asstt. Commissioner of Police on the same date, i.e., 26th December 2005.

12. The submission of Mr. R.N. Mittal, the learned Senior Counsel appearing for the Petitioners is that there was only one notice issued under Section 91 CrPC to the "Manager Legal Cell." This was served on one "Surender" of the Legal Department. The notice did not comply with the requirements of Section 91 CrPC because that Section requires the summons to require production of "documents or other thing" requires the notice to inform the person to whom the notice is addressed "to attend and produce it, or to produce it, at the time and place stated in the summons or order." Moreover, the Manager Legal at that point of time was Petitioner No.2 in CrI.M.C. No. 3935-36/2006 i.e., Shri Megh Singh and no notice was served on him personally but on one "Surender". Admittedly, no notice under Section 91 was served either on Smt. Meera Kapoor or Khalid Saif- ulah. He further submits that the Kalandara was filed under a misconception about the offence under Section 175 IPC. Notices, if any, were issued under Section 160 CrPC, again only requiring information and not for supply of documents. The notice received by Saif-ulah on 18th July 2005 under Section 160 CrPC was duly replied by him on 21st July 2005 as acknowledged in the Kalandara itself. The notices under Section 160 CrPC issued to the In charge, Legal Cell, was again not served on the In charge, i.e., Smt. Meera Kapoor but received by one Surender and in any event that also required only furnishing of information. He accordingly submits that the entire proceedings under Section 175 IPC was misconceived and the Magistrate ought not to have issued summons without applying mind to the basic requirement that Section. Mr. Saxena, the Learned APP appearing for the State could not dispute the factual position.

13. Section 175 IPC reads as under:- "175-Omission to produce document or electronic record to public servant by person legally bound to produce it. Whoever, being legally bound to produce or deliver up any 1[document or electronic record] of any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both, or, if the [document or electronic record] is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

14. It is clear, therefore, that the offence under Section 175 IPC is attracted only in the event of an omission to produce any "documents or electronic record to public servant" and further there must be an intentional omission to produce or deliver up such document or electronic record. It is clear from the above narration of facts throughout the ASI was only asking for information about the whereabouts of Tushar Dhar and at no point of time did he require any of the officers to actually deliver any document or electronic record.

15. Section 91(1) CrPC which is relevant for this case reads as under: “91 - Summons to produce document or other thing. (1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.”

16. Mr. Mittal is right in his submission that the only notice under Section 91 CrPC was addressed to the Manager, Legal Cell but clearly it was not received by him since it was served on one “Surender”. Moreover, Section 91 (1) requires that summons should state the place and time at which the addressee of the notice should produce “the document or thing.” The notice issued in the present case does not mention any such document, that is supposed to be produced and definitely does not mention the place and time. The notice does not even therefore meet the basic requirement of Section 91 CrPC. The offence under Section 175 IPC is attracted only if there is a willful omission to produce a document or electronic record.

17. From a reading of the provisions, it is clear that the Kalandara does not even prima facie indicate that an offence under Section 175 IPC was committed by any of the petitioners.

18. In view of the above facts and circumstances of the case, this Court is of the view that the criminal proceedings instituted against the petitioners under Section 175 IPC on the basis of the impugned Kalandara is wholly misconceived. Accordingly, the Kalandara and all proceedings consequent thereto including the summoning order dated 28th January, 2006 passed by the learned MM stand quashed.

19. The petitions are allowed. No order as to costs. All the pending applications stand disposed of accordingly.

20. Dasti to the counsel for the parties.

21. The trial court record in Crl. M.C. No.1144/2006 be sent back immediately along with a copy of this order.

Sd/-
S. MURALIDHAR, J.

