

Mohd Mehendi Shah vs State on 11 November, 2021

Author: Chandra Dhari Singh

Bench: Chandra Dhari Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.M.C. 2802/2021
MOHD MEHANDI SHAH

Through Mr. Ashwin Vaish,

versus

STATE

Through Ms. Kusum Dhalla,

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH
ORDER

% 11.11.2021 (Through Video Conferencing) CRL.M.A. 17777/2021 (Exemption)

1. Exemption allowed subject to just exceptions.

2. The application stands disposed of.

1. The instant application has been filed on behalf of the Petitioner u/s 482 of Cr.P.C in FIR no. 654/2021 registered at Police Station Ranhola for offence punishable u/s 498-A, 304-B of IPC.

2. Learned Counsel for Petitioner prays for quashing the order dated 01.11.21 passed by the Court of Ld. Additional Sessions Judge-03, West, Tis Hazari Courts, Delhi, in case bearing FIR No.654/2021 Police Station Ranhola under sections 498-A, 304-B of the Indian Penal Code.

3. Heard.

4. Issue notice. Notice is accepted by Learned APP for State.

5. State is directed to the file Status Report and counter-

17:45:37 affidavit/objections before the next date of hearing.

1. The instant Interim Application prays for ad-interim ex-parte order staying the impugned order dated 01.11.21 passed by the Court of Additional Sessions Judge-03 (West), Tis Hazari Courts, Delhi and to direct the Court of Additional Sessions Judge to decide the bail application on its own merit on 17.11.2021.

2. Learned Counsel for Petitioner submitted that the Additional Sessions Judge has no inherent powers and cannot delve into the realm of investigation, while sitting in bail jurisdiction.
3. Heard learned counsel for the Petitioner, perused the entire material on the record and contentions made in the petition.
4. In the instant case, the Additional Sessions Judge, while passing the impugned order has made observations with regard to the conduct of investigating officer and lapses in the investigation.
5. In light of the facts and circumstances of the case, it is pertinent to peruse the position of law laid down in this context.
6. Section 6 in Chapter 1, part H (titled "The Judgment") of the Delhi High Court Rules for "Practice in the Trial of Criminal Cases" states as follows:-

"6. Criticism on the conduct of Police and other officers--It is undesirable for Courts to make remarks censuring the action of police Officers unless such remarks are strictly relevant of the case. It is to be observed that the Police have great difficulties to contend with in this country, chiefly because they receive little sympathy or assistance from the people in their efforts to detect crime. Nothing can be more disheartening to them than to find that, when they have worked up a case, they are regarded with distrust by the Courts; that the smallest irregularity is magnified into a grave misconduct and that every allegation of ill-usage is readily accepted as true. That such 17:45:37 allegations may sometimes be true it is impossible to deny but on a closer scrutiny they are generally found to be far more often false. There should not be an over-alacrity on the part of Judicial Officers to believe anything and every thing against the police; but if it be proved that the police have manufactured evidence by extorting confessions or tutoring witnesses they can hardly be too severely punished. Whenever a Magistrate finds it necessary to make any criticism on the work and conduct of any Government servant, he should send a copy of his judgment to the District Magistrate who will forward a copy of it to the Registrar, High Court, accompanied by a covering letter giving reference to the Home Secretary's circular Letter No. 920-J-36/14753, dated the 15th April, 1936."

7. In *State of Madhya Pradesh v. Narmada Bachao Andolan and Anr.* (2011) 12 SCC 689, the Hon'ble Supreme Court observed as under:

"13. The cardinal principle of the administration of justice requires for proper freedom and independence of Judges and such independence must be maintained and Judges must be allowed to perform their functions freely and fairly and without undue interference by anybody, even by this Court. However, it is also equally important that in expressing their opinions the Judges must be guided by consideration of justice, fair play and restraint. It should not be frequent that sweeping generalizations defeat the very purpose for which they are made. Thus, it is

relevant to consider:

- (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;
- (b) whether there is evidence on record bearing on that conduct justifying the remarks; and
- (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct

8. While in the instant case, the application before the Court below was only for granting bail, the Hon'ble Supreme Court in the State of West Bengal v. Mir Mohammad Omar & Ors (2000) 8 SCC 382, has directed the courts to ordinarily desist from castigating the investigation even while ordering acquittal. It observed as under:

"41. Learned Judges of the Division Bench did not make any reference to any particular omission or lacuna in the investigation. Castigation of investigation unfortunately seems to be a regular practice when the trial courts acquit accused in criminal cases. In our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavory criticism against investigating officers. If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation. Courts should bear in mind the time constraints of the police officers in the present system, the ill-equipped machinery they have to cope with, and the traditional apathy of respectable persons to come forward for giving evidence in criminal cases which are realities the police force have to confront with while conducting investigation in almost every case. Before an investigating officer is imputed with castigating remarks the courts should not overlook the fact that usually such an officer is not heard in respect of such remarks made against them. In our view the court need make such deprecatory remarks only when it is absolutely necessary in a particular case, and that too by keeping in mind the broad realities indicated above."

9. Similarly, in Teesta Setalvad and Anr. v. State of Gujarat, (2004) 10 SCC 88, the Hon'ble Supreme Court held that:

"9. Observations should not be made by courts against persons and authorities, unless they are essential or necessary for decision of the case. Rare should be the occasion and necessities alone should call for its resort. Courts are temples of justice and such respect they also deserve because they do not identify themselves with the causes before them or those litigating for such causes. The parties before

them and the counsel are considered to be devotees and pandits who perform the rituals respectively seeking protection of justice; parties directly and counsel on their behalf. There is no need or justification for any unwarranted besmirching of either the parties or their causes, as a matter of routine.

10. Courts are not expected to play to the gallery or for any applause from anyone or even need to take up cudgels as well against anyone, either to please their own or anyone's fantasies. Uncalled-for observations on the professional competence or conduct of a counsel, or any person or authority or harsh or disparaging remarks are not to be made, unless absolutely required or warranted for deciding the case."

10. The Hon'ble Supreme Court in *State v. M. Murugesan* [(2020) 15 SCC 251] was confronted with the question regarding the exercise of power under Section 439 of the Code. Therein, the Madras High Court had constituted a committee for rehabilitation of the convict/accused and for the purpose of improving the quality of investigation in the State. The directions came to be passed by the High Court while deciding a matter under Section 439 of the Code. The Hon'ble Supreme Court after going through catena of judgements revoked those directions since the court lacked the jurisdiction to issue such directions under Section 439. It was observed by the Hon'ble Court as under:

"11. We find that learned Single Judge has collated data from the State and made it part of the order after the decision of the bail application as if the Court had the inherent jurisdiction to pass any order under the guise of improving the criminal justice system in the State. The jurisdiction of the Court under Section 439 of the 17:45:37 Code is limited to grant or not to grant bail pending trial. Even though the object of the Hon'ble Judge was laudable but the jurisdiction exercised was clearly erroneous. The effort made by the Hon'ble Judge may be academically proper to be presented at an appropriate forum but such directions could not be issued under the colour of office of the Court."

11. The Supreme Court in another case of *Sangitaben Shaileshbhai Datanta v. State of Gujarat* [(2019) 14 SCC 522] also examined the extent of power under Section 439 of the Code. In this case, the High Court after granting the bail to the accused ordered the accused and his relatives to undergo scientific medical test. The Hon'ble Supreme Court deprecated such practice of the High Court because in doing so the High Court violated the statutory requirements under Section 439 of the Code. The Apex Court observed thereunder:

"6. Having heard the counsel for the parties, it is surprising to note the present approach adopted by the High Court while considering the bail application. The High Court ordering the abovementioned tests is not only in contravention to the first principles of criminal law jurisprudence but also violates statutory requirements. While adjudicating a bail application, Section 439 of the Code of Criminal Procedure, 1973 is the guiding principle wherein the court takes into consideration, inter alia, the gravity of the crime, the character of the evidence, position and status of the accused

with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and 17:45:37 obstructing the course of justice and such other grounds. Each criminal case presents its own peculiar factual matrix, and therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. However, the court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police, or rather order specific tests as done in the present case."

12. Furthermore, it is a settled position of law that the lower courts are not akin to constitutional courts. While deciding an application under Section 439 of the Code, the courts are bound to decide it within the four corners of the statute. It has been observed by the Supreme Court in the case of Abdul Basit v. Mohd. Abdul Kadir Chaudhary [(2014) 10 SCC 754] as under:

"It is a well-settled proposition of law that "what cannot be done directly, cannot be done indirectly". While exercising a statutory power a court is bound to act within the four corners of the statute. The statutory exercise of the power stands on a different pedestal than the power of judicial review vested in a court. The same has been upheld by this Court in Bay Berry Apartments (P) Ltd. v. Shobha [(2006) 13 SCC 737] , U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey [(2006) 1 SCC 479 : 2006 SCC (L&S) 250] and Rashmi Rekha Thatoi v. State of Orissa [(2012) 5 SCC 690 : (2012) 2 SCC (Cri) 721] . It is the duty of the superior courts to follow the command of the statutory provisions and be guided by the precedents and issue directions 17:45:37 which are permissible in law."

13. In light of the above, I am inclined to stay the Impugned Order dated 01.11.2021 passed by the Additional Sessions Judge, Tis Hazari Courts, Delhi in FLR No. 654/2021, PS Ranhola U/s. 498A/304B IPC.

14. The Impugned Order is stayed. The Concerned Court is directed to hear the application bearing no. 3439/2021 on merits and decide in accordance with law.

15. List the matter on 08.12.2021.

CHANDRA DHARI SINGH, J NOVEMBER 11, 2021 at 17:45:37