

Shailender @ Kaku vs Nct Of Delhi & Anr on 11 February, 2025

Author: Chandra Dhari Singh

Bench: Chandra Dhari Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.M.C. 924/2012
SHAILENDER @ KAKU

Through:

versus

NCT OF DELHI & ANR
Through:

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH
ORDER

% 11.02.2025

1. The instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") [now Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023] seeking setting aside of the order dated 28th March, 2011 (hereinafter "impugned order"), passed by the learned Metropolitan Magistrate, Karkardooma Courts, Delhi (hereinafter "MM") in CC No. 12115/2010.

2. The brief facts that led to the filing of the instant petition are as follows:

a. The petitioner was married to the respondent no. 2 on 22nd November, 2007 as per Hindu rites and customs, however, marital discord arose between the parties, resulting in multiple complaint being lodged by the respondent no. 2 against the petitioner and his family members. Pursuant to the same, the petitioner herein, filed a divorce petition at This is a digitally signed order.

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b. Thereafter, the respondent no. 2 approached the Hon'ble Supreme Court for transferring of divorce case from Delhi to the Family Court at Agra. Subsequently, the petitioner received a letter from the Hon'ble Supreme Court on 30th December, 2009, regarding the said transfer petition. Upon perusing the annexures of the

transfer petition, the petitioner came to know that the respondent no. 2 had filed a complaint before the police, wherein, she stated that the petitioner threatened to kill her if she contested the divorce case. c. Thereafter, on 21st June, 2010, the petitioner came to know from his office, that respondent no. 2 had filed a complaint before the police officials, alleging that on 17th May, 2010, the petitioner enticed her to his house, locked her in a room, poured kerosene oil on her and attempted to immolate her. The respondent allegedly maligned the reputation of the petitioner by falsely portraying him as a mentally unstable person before his employer, the Municipal Corporation of Delhi.

d. In response, the petitioner filed a complaint under Section 211 of the IPC before the learned MM contending that respondent no. 2 had knowingly made false accusations against him.

e. The learned MM, however, dismissed the complaint vide impugned order dated 28th March, 2011, holding that the bar under Section 195(1)B of the CrPC applies, thereby, preventing cognizance of such a complaint without a prior sanction from the court in which the false complaint was allegedly made.

f. Aggrieved by the impugned order, the petitioner has preferred the This is a digitally signed order.

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3. Learned counsel appearing on behalf of the petitioner submitted that the order dated 28th March, 2011 passed by learned Metropolitan Magistrate, Karkardooma Courts, Delhi in CC No. 12115/2010 is erroneous, perverse and contrary to the settled principles of law.

4. It is submitted that the statutory bar under Section 195(1)(b) of the CrPC applies only when an offence under Section 211 of the IPC is committed "in or in relation to" judicial proceedings. It is further submitted that in the present case, the false allegations were not made before any court but were reported to the police and petitioner's employer.

5. It is submitted that the complaints made to the police and MCD do not constitute "judicial proceedings", therefore, the bar under Section 195(1)(b) of the CrPC does not apply.

6. In respect of the above, the learned counsel for the petitioner relied on the judgment passed by the Hon'ble Supreme Court in M.L. Sethi v. R.P. Kapoor, AIR 1967 SC 528, wherein, it has been held that the statutory bar under Section 195(1)(b) of the CrPC only applies when false charges are filed in or in relation to judicial proceedings.

7. It is submitted that the allegations made by the respondent no. 2 are completely baseless, fabricated and aimed at harassing him and his family. It is further submitted that respondent no. 2 had, on multiple occasions, filed complaints before the police with the intent of falsely implicating the petitioner. Therefore, it is prayed that the instant petition may be allowed and the reliefs be granted as prayed for.

8. Per Contra, learned APP appearing on behalf of the State and learned This is a digitally signed order.

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9. It is submitted that the bar under Section 195(1)(b) of the CrPC applies squarely to the present case, as the allegations forming the basis of the petitioner's complaint arose in connection with ongoing judicial proceedings including the Hon'ble Supreme Court, High Court of Allahabad and learned ACJM, Agra.

10. It is submitted that in *M.L. Sethi v. R.P. Kapoor* (Supra), the Hon'ble Supreme Court clarified that the bar under Section 195(1)(b) of the CrPC applies when an offense under Section 211 of the IPC is alleged to have been committed "in or in relation to" judicial proceedings.

11. It is submitted that the learned MM rightly held that since multiple proceedings were pending before competent courts, the petitioner's complaint falls within the third category identified in *Gitika Batra v. O.P. Batra* 2009 (2) AD Delhi 761, thereby, attracting the statutory bar under Section 195(1)(b) of the CrPC.

12. It is submitted that the findings in the impugned order are based on settled principles laid down by the Hon'ble Supreme Court and this Court regarding the applicability of Section 195(1)(b) of the CrPC in cases involving false complaints. In light of the above submissions, it is prayed that the present petition may be dismissed.

13. Heard learned counsel for the parties and perused the material on record.

14. Having considered the submissions of the parties and materials on record, this Court finds that the primary issue in the present case revolves This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 01/03/2025 at 00:48:40 around the applicability of the bar under Section 195(1)(b) of the CrPC.

15. At this stage, it is imperative to refer to the bar referred under Section 195(1)(b) of the CrPC, hence, the relevant portion of the said provision is reproduced as below:

"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.--(1) No Court shall take cognizance--

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause

(i) or sub-clause (ii)"

16. The learned MM, vide the impugned order, has categorically held that cognizance of an offence under Section 211 of the IPC cannot be taken without a complaint by the court in which the alleged offence has been committed. The relevant portion of the impugned order is reproduced below:

"...Keeping in view of the above principles, admittedly there were proceedings pending before the court of Ld. ACJM, Agra as well as before the Hon'ble High court of Allahabad and a transfer petition (civil) No. 1349/09 pending before the Hon'ble Supreme court and the offence u/s 211 IPC is alleged to have been committed in those proceedings and would thus fall in 3rd category of cases as observed by the Hon'ble High court in the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 01/03/2025 at 00:48:40 judgment of Seetika Batra's case (supra). Hence, the present complaint U/s 211 IPC is not maintainable since section 195 (1) (b) CrPC bars taking cognizance and hence dismissed. File is consigned to record Room."

17. Upon perusal of the aforesaid, it is observed that the learned MM noted that since the respondent's allegations were linked to ongoing proceedings before the learned ACJM Agra, the Allahabad High Court and a transfer petition before the Supreme Court, the case falls under the third category outlined in Gitika Batra v. O.P. Batra (Supra).

18. Here, it becomes essential to consider the core issue in the present case i.e., whether the petitioner's complaint under Section 211 of the IPC was maintainable or barred under Section 195(1)(b) of the CrPC. With regard to the same, it is apposite to examine the interpretation of

Section 195(1)(b) of the CrPC, particularly in the context of cases where a false complaint has led to judicial proceedings.

19. The Hon'ble Supreme Court in *M.L. Sethi v. R.P. Kapur* (Supra), provided guidance in this aspect. The relevant portion of the said judgment is reproduced below:

"11. There is, of course, no doubt that in the complaint before the Magistrate a charge under Section 211 IPC, against the appellant was included, so that the first ingredient clearly existed. The question on which the decision in the present cases hinges is whether it can be held that any proceeding in any court existed when that Magistrate took cognizance. If any proceeding in any court existed and the offence under Section 211 IPC, in the complaint filed before him was alleged to have been committed in such a proceeding, or in relation to any such proceeding, the Magistrate would have been barred from taking cognizance of the offence. On the other hand, if there was no proceeding in any court at all in which, or in relation to This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 01/03/2025 at 00:48:40 which, the offence under Section 211 could have been alleged to have been committed, this provision barring cognizance would not be attracted at all.

12. In this case, as we have already indicated when enumerating the facts, the complaint of which cognizance was taken by the Judicial Magistrate at Chandigarh was filed on April 11, 1959 and at that stage, the only proceeding that was going on was investigation by the police on the basis of the First Information Report lodged by the appellant before the Inspector-General of Police on December 10, 1958. There is no mention at all that there was, at that stage, any proceeding in any court in respect of that FIR. When examining the question whether there is any proceeding in any court, there are three situations that can be envisaged. One is that there may be no proceeding in any court at all. The second is that a proceeding in a court may actually be pending at the point of time when cognizance is sought to be taken of the offence under Section 211 IPC. The third is that, though there may be no proceeding pending in any court in which, or in relation, to which the offence under Section 211 IPC could have been committed, there may have been a proceeding which had already concluded and the offence under Section 211 may be alleged to have been committed in, or in relation to, that proceeding. It seems to us that in both the latter two circumstances envisaged above, the bar to taking cognizance under Section 195(1)(b) would come into operation. If there be a proceeding actually pending in any court and the offence under Section 211 IPC is alleged to have been committed in relation to that proceeding, Section 195(1)(b) would clearly apply. Even if there be a case where there was, at one stage, a proceeding in any Court which may have concluded by the time the question of applying the provisions of Section 195(1)(b) arises, the bar

under that provision would apply if it is alleged that the offence under Section 211 IPC, was committed in relation to that proceeding. The fact that the proceeding had concluded would be immaterial because Section 195(1)(b) does not require that the proceeding in any court must actually be This is a digitally signed order.

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20. The Hon'ble Supreme Court has clarified that this bar applies in two situations, firstly, when a false complaint is made in a pending court proceeding, or secondly, when a false complaint was made in connection with a judicial proceeding that has since concluded. The crucial factor is whether the false accusation was linked to a court case, and not whether the case was still pending at the time cognizance was sought. If no judicial proceeding existed when the alleged false complaint was made, Section 195(1)(b) of the CrPC would not apply, and a magistrate could take cognizance of the offence under Section 211 of the IPC.

21. In the present case, the allegations made by the respondent No. 2 were linked to the ongoing judicial proceedings, namely:

- a. The transfer petition filed by respondent no. 2 before the Hon'ble Supreme Court, seeking to shift the divorce case from Delhi to Agra and;
- b. The divorce petition filed by the petitioner before the learned Family Court, Karkardooma Courts.

22. This Court is of the considered view that the allegations against the petitioner were not isolated but were directly related to the ongoing judicial proceedings before the Family Court (divorce petition) and the Hon'ble Supreme Court (transfer petition).

23. The Hon'ble Supreme Court's ruling in M.L. Sethi (Supra) makes it clear that if a false charge is in relation to a pending or concluded proceeding in a court, the bar under Section 195(1)(b) of the CrPC applies.

24. In view of the direct nexus between the respondent's allegations and This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 01/03/2025 at 00:48:41 the judicial proceedings, this Court is of the considered view that the learned MM correctly dismissed the petitioner's complaint vide order dated 28 th March, 2011, holding that the bar under Section 195(1)(b) of the CrPC applies, thereby, preventing the court from taking cognizance of the offence under Section 211 of the IPC without a prior sanction from the court where the proceedings are pending or concluded.

25. In light of the aforesaid discussions, this Court finds no reason to interfere with the order passed by the learned Metropolitan Magistrate, as the same is legally justified and in complete consonance with the statutory mandate of Section 195(1)(b) of the CrPC.

26. Accordingly, the impugned order dated 28th March, 2011 passed by the learned Metropolitan Magistrate, Karkardooma Courts, Delhi in CC No. 12115/2010 is upheld.

27. In view of the above, this Court finds no merit in the present petition as no grounds for interference are made out. Accordingly, the instant revision petition stands dismissed along with the pending applications, if any.

CHANDRA DHARI SINGH, J FEBRUARY 11, 2025 Rt/kj/ryp Click here to check corrigendum, if any This is a digitally signed order.

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