

# Satish Kumar & Anr vs State (State Of Nct Of Delhi) on 14 February, 2023

**Author: Yogesh Khanna**

**Bench: Yogesh Khanna**

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
CRL.M.C. 3013/2021 CRL.M.A. 18877-78/2021  
SATISH KUMAR & ANR.

Through: Mr.Siddharth Luthra and Ms  
Luthra, Sr Advocates with  
Saluja, Ms.Shivani Luthra  
Mr.Sheezan Hashmi,  
Agarwal, Mr.Aditya Raju,  
Dangi and Mr.Saahil Mongi  
Advocates.

versus

STATE (STATE OF NCT OF DELHI)

Through: Mr.Mukesh Kumar, APP the St  
with SI Anil Kumar, PS Jam

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA  
ORDER

% 14.02.2023

1. This order be read in continuation of earlier order dated 26.11.2021. Both the petitioners file this petition against orders dated 08.11.2021, 17.11.2021 and 24.11.2021 passed by the learned Trial Court whereby the learned Trial Court had passed certain remarks against them and initiated an action against the SHO and Investigating Officer concerned for filing two separate charge sheets before the learned Trial Court.

2. During the course of hearing on bail application before the learned Trial Court on 08.11.2021, the learned defence counsel drew the attention of the Court to the charge sheet available with the learned counsel for complainant and pointed out the charge sheet filed in the Court and supplied to the accused was different than the charge sheet available with the learned counsel for complainant, though, it was stated charge sheet available with the learned APP for the State and the learned counsel for accused were same.

3. The learned Trial Court passed the impugned order dated 08.11.2021 inter alia saying:-

Filing of two distinct sets of charge sheet, one with the court & accused and other with the Ld. Addl PP for the State & Ld. Counsel for complainant amounts to perjury/fraud and cheating. It amounts to interference with the justice dispensation process. There cannot be any bigger fraud committed upon the court and there cannot be more prejudicial act than the one committed in the present case. It is treachery of the highest order. The conduct/act of the IO/SHO/ACP is perfidious and is reprehensible. Fraud has been played upon the court and this is a classic case of abuse of power/authority by the police. Moreover, the police officials have prejudiced right of the accused to a fair trial. The above officials have committed various offence as provided in Chapter X & XI of the Indian Penal Code, to highlight a few Section 177 IPC 184IPC, 191IPC, 192IPC, 195 IPC, 196 IPC, 197 IPC, 199 IPC and 209 IPC etc.

4. On 17.11.2021 despite a reply filed by the DCP concerned saying the charge sheet before correction was also in the police file which was inadvertently given to the complainant and this mistake happened without any malafide intention, yet the learned Trial Court passed an order whereby not only the bail was granted to the accused but a direction was given to take proper legal action against the Investigating Officer and SHO concerned for the offence punishable under Section 166/166A(d)/167/191/193/195/201/ 218/ 219 IPC and to file the compliance report.

5. On 24.11.2021 the learned Trial Court again passed the following order:-

Accordingly, let appropriate legal action be taken against the IO and SHO concerned as they have prima facie committed offences punishable u/s 166, 166A (d), 167, 191, 193, 195, 201, 218, 219 IPC etc. Let compliance report be called on or before 26.11.2021. Copy of order be sent to the office of Commissioner of Police, Delhi as well as DCP South East for compliance.

6. The learned senior counsel for petitioners submits during the investigation, a draft charge sheet was prepared, as it happens normally in every case and such draft charge sheet was in the police file and was sent to the learned Prosecutor for his advice. As per the advice of the learned prosecutor it is alleged the draft charge sheet was amended, but inadvertently draft charge sheet also remained in the police file and its copy was given by the Naib Court to the prosecutrix and when an amended charge sheet was filed in the Court, it became bone of contention during bail proceedings.

7. During hearing, this Court called for the petitioners to file a chart showing the discrepancies in between two charge sheets. The said chart has been filed containing minor and inadvertent discrepancies as follows:

8. The draft charge sheet read as under :-

Mukadma Haja a mein on the basis of the statement of landlord Mohd Mumtaj S/o Sh. Noor Mohammad, wherein it was found out that a women named Versha Chauhan W/o Faizan Shah R/o H No. 10/17 Dakhsanpuri Extension PS Ambedkar Nagar New Delhi lived along with her husband and two young daughters on rent at

his house for 6 months, who didn't pay him a month's rent of Rs. 2,000 and did not pay even Rs. 1700 for his ration, and vacated the room and left. he never saw Victim U.K despite his entire family lives on the ground floor. During this Versha Chauhan was investigated. It came to be known from Versha Chauhan that Victim U.K stayed for two hours at her house, where UK was brought by a boy named Umer to her house. Versha Chauhan's statement was recorded and the statement of all the witnesses were recorded in the present case.

whereas the amended charge sheet says Mukadma Haja mein Landord Mohd Mumtaj S/o Sh. Noor Mohommad R/O H. No. B-34, Gali No. 4, Madanpur Khadar, JJ Colony, New Delhi Age 58 years statement was recorded (pg/ [82/ 86]/ [pg. 95/99]

9. I have perused the record. Though in the draft charge sheet the statement of Varsha Chauhan was recorded, but whereas in the amended charge sheet per advise of the learned Prosecutor, the statement was rather annexed to the charge sheet and its contents were not recorded in the body of the amended charge sheet to make the amended one as brief as it could be. The learned senior counsel for petitioners then took me to list of documents at page No.80 of the petition wherein the statement of PW Varsha Chuahan, recorded under Section 161 Cr P C, is shown at Serial No.20 of the documents and it contains same facts as were mentioned in the draft charge sheet.

10. Further, the draft charge sheet record:

On the analysis of CDR of accused Shavez mobile No. 8448778507, the location of Shavez is not coming as MadanPurKhadar, JJ Colony (Dated 02.02.2021-06.02.2021) which is the scene of crime [pg.70/74]/ [74/78] In the amended charge sheet, nothing of above sort was though mentioned but the list of documents annexed to the amended charge sheet at Sr. No.27 show such CDR of accused Shevez, being part of amended charge sheet.

11. Lastly, the draft charge sheet read:-

As per the investigation so far the complainant Victim U.K Age 14 years statement U/s 161 CrPC, U/s 164 CrPC and MLC of Accused Shavez @ Chootu S/o Mohd Ali R/o Gali No. 9, Jama Masjid WaliGali, Zakir Nagar New Delhi, the chargesheet has been made and produced before the Court. During investigation another accused Umer's name is coming after investigation a Supplementary Chargesheet shall be submitted with regards to him. According to the Complainant/ Victim U.K, accused Shavez lured her and kept her under house arrest for 6 days and raped her several times! Chargesheet U/s 363, 366, 376, 342, 506 IPC and S. 8 of POCSO has been prepared against the accused Shavej and submitted before the Court. [pg.70/74]/ [75/79] and whereas the amended charge sheet records:

On 31.05.2021 the mobile phones of both accused and complainant have been deposited in FSL, Rohini, vide RC No.60/21/21 through Constable Rajesh,

No.29275/SE. Witnesses have been recorded. FSL result is not received. On receipt of the FSL result, the supplementary charge sheet under Section 173(8)Cr P C shall be filed separately.

12. It is the submission of the learned senior counsel for the petitioners there was no occasion to mention in the amended charge sheet the facts recorded in bold in the draft charge sheet since the amended charge sheet noted the FSL result has not been filed and after obtaining the FSL result, the supplementary charge sheet shall be filed.

13. Even otherwise, I have gone through both the charge sheets, the omission of the words in bold per draft charge sheet could not have effected either the case of the accused or of the prosecutrix. In any case, supplementary charge sheet qua Umar is still pending.

14. In the circumstances stated above, all such omissions in amended charge sheet were allegedly per advice of the learned Prosecutor and the plea viz the handing over of draft charge sheet lying in the police file to the prosecutrix by the Naib Court in inadvertence, as alleged cannot be disbelieved. Admittedly, when this inadvertence came to notice immediately the amended charge sheet was supplied to the prosecutrix, hence it did not cause her any prejudice. The facts do show there was never any malafide intent on the part of the officers concerned considering the fact mentioned in the draft charge sheet, even otherwise, were duly taken care of in the Amended charge sheet, hence, there was absolutely no occasion for the learned Trial Court to pass orders dated 08.11.2021, 17.11.2021 and 24.11.2021.

15. Further I may say while deciding an application under Section 439 Cr.P.C. the Courts are bound to determine it within four corners of the statute. In State vs. M.Murugesan (2020) 15 SCC 251 and in Sangitaben Shaileshbhai Datanta vs. State of Gujarat (2019) 14 SCC 522 it was held the Court should desist from directing registration of FIR in bail proceedings. The contents of the chargesheet, even otherwise, were merely an opinion of an Investigating Officer and would not have affected fair trial of the accused. The impugned orders as above were rather passed without allowing the petitioners to explain their action. It is settled law judicial strictures be passed with utmost circumspection, as criticism may have a devastating effect on the professional career of the officer, see para 22 of Ajit Kumar vs. State in W.P.(CRL.)2236/2022 dated 22.11.2022.

16. Consequently, the following remarks passed in the orders dated 08.11.2021 and 17.12.2021 mentioned as below stand expunged from the said orders:

" Order dated 08.11.2021 "Filling of two distinct sets of the charge sheet, one with the court and accused and other with the Ld. Addl PP for the State and Ld. Counsel for the Complainant amount to perjury/ fraud and cheating. It amounts to interference with the justice dispensation process. There cannot be any bigger fraud committed upon the court and there cannot be more prejudicial act than the one committed in the present case. It is treachery of the highest order. The conduct/ act of the IO/SHO/ACP is perfidious and is reprehensible. Fraud has been played upon the Court and this is a classic case of abuse of power/ authority by the police. Moreover, the police officials have prejudiced rights of the accused to a fair trial. The above officials have committed various offences

as provided in Chapter X and Chapter XI of the Indian Penal Code to highlight a few sections: 177 IPC, 184IPC, 191 IPC, 192IPC, 195IPC, 196 IPC, 197 IPC, 199 IPC AND 209 IPC."

Order dated 17.12.2021 "Undoubtedly investigation is the sole prerogative of the police officials but it is expected that investigation shall be conducted by them in an absolute fair, honest and transparent manner and same should not be motivated or malafide. ....But it is a big slap on the Delhi Police Logo of "Shanti, Seva, Nyay". Nyay has been taken for a ride by them, twisted, and wrapped as per their whim and fancies. If this continues, and the police officials are not dealt sternly, the public shall loose their faith in police system. They not only have mocked the court/judicial system but also abused their power qua the people they have pledged to serve and protect. The Court obviously though already circumspect about their approach in certain matters, would be much more cautious and think twice before believing their claim."

17. Thus, the orders dated 17.11.2021 and dated 24.11.2021 so far as it relate to direction for registration of FIR against the petitioners are also set aside. The petition stands disposed of in above terms. Pending application, if any, also stands disposed of. Order dasti.

YOGESH KHANNA, J.

FEBRUARY 14, 2023 M