

Madan Lal Suryanwanshi vs State & Ors on 30 November, 2023

Author: Amit Sharma

Bench: Amit Sharma

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 2999/2014 & CRL.M.A. 23125/2022
MADAN LAL SURYANWANSHI

Through: Ms. Astha (DHCLSC)
Petitioner in person

versus

STATE & ORS

Through: Mr. Hitesh Vali, A
SI Anil Kumar, PS
East.
Mr. Sumit Choudhary
R-3 and R-6.
Mr. Narender Mann,
R-7.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

OR

% 30.11.2023

1. The present petition under Section 482 of the Cr.P.C. seeks the following prayers:

"a) set aside the IMPUGNED ORDER DATED 25.3.2014 PASSED BY SH. SANJAY JINDAL, ASJ, WEST-04, TIS HAZARI COURT, DELHI IN CRIMINAL REVISION PETITION NO. 16/3 filed against the order dated 10.09.2013 passed by Sh. Rajinder Kumar, Ld. MM-07, (West) Delhi in CC No. 39/1/13, TITLED AS MADAN LAL SURYAWANSHI V/S THE STATE & ORS.

b) Allow the application under Section 156 (3) Cr.P.C. and register the FIR against the Respondent No. 2 to 7

c) Any other relief deemed fit or proper in the facts and circumstances of the case may in favour of the petitioner and against the respondent."

2. The present petitioner filed a complaint under Section 156(3) read This is a digitally signed order. CRL.M.C. 2999/2014 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 02/12/2023 at 22:39:25 with Section 200 of the Cr.P.C. against the present respondents for commission of offences punishable under Sections

120B/107/315/319/321/327/330/340/348/350/191/377/384/499/504/506 of the IPC and Sections 3(VII) and 3(2) of the SC/ST Act 1989. The case of the present petitioner in the said complaint was that the respondents who were serving in Delhi Police in various capacities, framed him in case FIR no. 786/2004, registered at P.S. Paschim Vihar.

3. It is the case of the petitioner that the respondents raided his house and abused him in un-parliamentary language while arresting him. It is further the case of the petitioner that on account of the fact that he was incarcerated, his wife got sick and due to unavailability of any other person in the family, the pressure came on her, on account of which she suffered a miscarriage. It is further alleged that the respondents, in connivance with other officials, tortured the present petitioner by beating him. They clicked his pictures, abused him and also sexually assaulted him. It is further the case of the petitioner that he was finally discharged from the said FIR on 06.05.2011. It is further alleged in the complaint that the petitioner apprehended that the respondents may cause harm to him and therefore a prayer for registration of FIR was made.

4. The aforesaid complaint under Section 156(3) of the Cr.P.C. was dismissed by the learned Metropolitan Magistrate on 10.09.2013 and the complaint case was fixed for the petitioner to lead pre-summoning evidence.

5. Aggrieved by the aforesaid order, the petitioner preferred a revision petition bearing no. 145/2013 before the Court of learned Additional Sessions Judge, which was dismissed vide the impugned order dated 25.03.2014.

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6. Learned counsel appearing on behalf of the petitioner submits that the aforesaid orders are not sustainable in law as the learned Courts below have ignored the allegations made by the present petitioner in his complaint. It is prayed that the said order be set aside and a direction be given for registration of FIR against the present respondents.

7. Learned counsel appearing on behalf of the respondents submits that apart from the fact that the learned Metropolitan Magistrate rightly rejected the application under Section 156(3) of the Cr.P.C. while recording the fact that there is no requirement for any investigation which was upheld by learned Additional Sessions Judge, in addition to that, it is submitted that there was no sanction under Section 140 of the Delhi Police Act with respect to the present respondents.

8. Heard learned counsel for the parties and perused the record.

9. A perusal of the complaint filed on behalf of the petitioner reflects that the allegation with regard to the present respondents relate to the exercise of their duties as officers of Delhi Police. Section 140 of the Delhi Police Act, 1978 provides as under:

"140. Bar to suits and prosecutions.-

(1) In any case of alleged offence by a police officer or other person, or of a wrong alleged to have been done by such police officer or other person, by any act done under colour of duty or authority or in excess of an such duty or authority, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained and if entertained shall be dismissed if it is instituted, more than three months after the date of the act complained of: Provided that any such prosecution against a Police Officer or other person may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence. (2) In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall give to the alleged This is a digitally signed order. CRL.M.C. 2999/2014 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 02/12/2023 at 22:39:25 wrongdoer not less than one month's notice of the intended suit with sufficient description of the wrong complained of, and if no such notice has been given before the institution of the suit, it shall be dismissed. (3) The plaint shall set forth that a notice as aforesaid has been served on the defendant and the date of such service and shall state what tender of amends, if any, has been made by the defendant and a copy of the said notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof"

10. As per complaint of the petitioner, he was arrested in the year 2004 and the complaint was made after his discharge in the year 2011. As per Section 140 of the Delhi Police Act, 1978, as mentioned hereinabove, the complaint filed before the learned Metropolitan Magistrate was time barred.

11. Be that as it may, the order rejecting the application under Section 156(3) of the Cr.P.C. passed by the learned Metropolitan Magistrate further reflects that the date of commission of offence has not been mentioned in the complaint. It is pertinent to note that an opportunity was given to the present petitioner to lead his pre-summoning evidence and the complaint was not dismissed in toto. The learned Additional Sessions Judge, while dismissing the revision petition filed on behalf of the petitioner has further examined the records and has held that in light of the observations made by the learned Metropolitan Magistrate and the records, no wrong, illegality, impropriety or irregularity is found in the impugned order.

12. It is pertinent to note that the present petition under Section 482 of the Cr.P.C. has been filed as the petitioner is otherwise barred from filing second revision petition. The exercise of jurisdiction of Section 482 of the Cr.P.C. in cases where a second revision petition is not maintainable is limited to the extent that it ought to be exercised only if the impugned order suffers from a perversity or any irreparable error on the face of the record.

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13. In view of the above, the present petition is dismissed and disposed of accordingly.

14. Pending application(s), if any, also stand disposed of.

AMIT SHARMA, J NOVEMBER 30, 2023/bsr This is a digitally signed order. CRL.M.C. 2999/2014 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 02/12/2023 at 22:39:26