

Dhanpati @ Dhanwanti vs State & Anr on 1 April, 2025

\$~A-1 to A-3

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Pronounced

+ CRL.M.C. 2330/2017

DHANPATI @ DHANWANTI

.....Petition

Through: Mr. R.D. Rana and Ms. Nagina J
Adv.

versus

STATE & ANR

Through: Mr. Manoj Taneja, Ad

2.

+ CRL.M.C. 2352/2017 & CRL.M.A.Nos.20235/2022 & 26924/202

DHANPATI @ DHANPATI

.....Petiti

Through: Mr. R.D. Rana and Ms. Nagina J
Adv.

versus

STATE NCT OF DELHI AND ANOTHER

.....Respondent

Through: Mr. Siddharth Khatana and Mr. Ri
Daman Bhardwaj, Mr. Kushagra
Kumar and Mr. Abhinav Bhardwaj,
Adv. for R-2

3.

+ CRL.M.C. 2353/2017 & CRL.M.A.20487/2022

DHANPATI @ DHANWANTI

.....Petition

Through: Mr. R.D. Rana and Ms. Nagina J
Adv.

versus

STATE & ANR

Through: Mr. Manoj Chaudhary,
(through VC)

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CRL.M.C. 2330/2017 & connected maters

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN
JUDGMENT

VIKAS MAHAJAN, J.

1. The present petitions have been filed by the petitioner Dhanpati @ Dhanwanti under Section 482 Cr.P.C. against the impugned judgment dated 24.04.2017 passed by the learned Special Judge (PC Act) (CBI)-06, New Delhi District, Patiala House Court, New Delhi, whereby three separate Revisions Petitions filed by Sushil Kumar, Rajender Singh and Dr. Kiran Jakhar were allowed and the order of the learned Metropolitan Magistrate ('MM', for short), Patiala House Court dated 04.07.2016 summoning the accused persons was held to be unsustainable in law and accordingly set aside.

2. The facts in brief giving rise to the present petitions are that the petitioner/complainant namely Dhanpati @ Dhanwanti filed an application under Section 156(3) Cr.P.C. alleging that on 09.12.2024, she was wrongly restrained, molested and threatened by one O.P. Sharma (respondent no.3 in the application) and one unknown person (respondent no.4 in the application) at Patiala House Court, New Delhi. The complainant called the PCR and ASI Diwan Singh (respondent no.5 in the application) came to the spot, but he did not record her statement. The complainant submitted her typed complaint at PS-Tilak Marg, New Delhi. She was asked to sit in the police station and was told by SHO Sushil Kumar that a case would be registered only after her medical examination. The complainant was not willing to get herself medically examined as there was no apparent injury.

But SHO Sushil Kumar ordered ASI Diwan Singh to take the complainant to the hospital. The complainant was thus, taken to RML Hospital, where ASI Diwan Singh had a discussion with the Doctor and told him wrong facts to the effect that the complainant is misbehaving and has become insane. It is further the case of the complainant that she was administered an injection and felt drowsy and was brought back to PS-Tilak Marg. Thereafter, SHO Sushil Kumar asked ASI Diwan Singh and other police officials to take the complainant to a mental hospital at Shahdara, Delhi. The complainant then contacted her lawyer and meanwhile found that SHO Sushil Kumar was talking to Rajender Singh, retired ACP on his mobile phone and saying "Sab Kaam Thik Ho Raha Hai Ap Chinta Mat Karo". The complainant somehow came out of the police station and went home. Next day, the complainant tried to get her case registered. The SHO Sushil Kumar said that it will be registered in 2-3 days and refused to provide her copy of her MLC. The complainant then approached Dr. Ram Manohar Lohia Hospital and got MLC number and then she came to know that she was referred to mental hospital at Shahdara, New Delhi.

3. According to the case of the complainant, ASI Diwan Singh, SHO Sushil Kumar, Rajender Singh and Dr. Kiran Jakhar had conspired to get her admitted in a mental hospital in order to get her declared insane. It is further the case of the complainant that there is a previously registered FIR against Rajender Singh under Section 376/509 IPC and a conspiracy to admit the petitioner in a mental hospital was hatched in order to get the benefit of her alleged insanity for exoneration of Rajender Singh in the said case.

4. In pre-summoning evidence, the complainant examined herself as PW-1. She proved her complaint as Ex.PW1/A, a copy of the report given to police on 09.12.2014 as Ex.PW1/1/B. The record of Dr. Ram Manohar Lohia Hospital was proved by CW-2 Raj Kumar.

5. Learned MM vide her order dated 04.07.2016 took cognizance of the offences and summoned SHO Sushil Kumar, ASI Diwan Singh and Rajender Singh for the following offences punishable under Sections 166A/167/193/201/203/352/464/506/ 120B IPC. Whereas, Dr. Kiran Jakhar was summoned for offences punishable under Sections 166- A/167/193/201/203/464/120B IPC.

6. The summoned accused namely, SHO Sushil Kumar, Rajender Singh and Dr. Kiran Jakhar filed separate Revision Petitions being CR. No. 8830/2016, CR. No. 8969/2016 and CR. No. 8902/2016, respectively before the Special Judge (PC Act) (CBI)-06, New Delhi District.

7. Learned Special Judge vide impugned judgment dated 24.04.2017 held that the order of the learned MM dated 04.07.2016 is not sustainable in law and accordingly set aside the same and consequently the complaint case of the complainant against accused ASI Diwan Singh, SHO Sushil Kumar, Rajender Singh and Dr. Kiran Jakhar, was dismissed.

8. Mr. R.D. Rana, learned counsel appearing on behalf of the petitioner submits that the order of the learned MM was proper and had been passed after taking into consideration the evidence and other material on record wherefrom it is borne out that there are specific allegations against the private respondents herein.

9. He submits that the learned Special Judge has not properly appreciated the evidence on record. He submits that respondent Dr. Kiran Jakhar tampered with the original MLC by adding the words "patient is referred to IHBAS for detailed evaluation in closed ward". He submits that sanction under Section 197 Cr.P.C. was not required in the present case.

10. Mr. Siddharth Khatana, learned counsel appearing on behalf of the respondent no.2- Dr. Kiran Jakhar in CrI.M.C. no. 2352/2017 submits that the present petition against Dr. Kiran Jakhar is devoid of any merit. He submits that Dr. Kiran Jakhar is a doctor by profession, who at the relevant period of time was working as a Government servant in the Psychiatry Department at RML Hospital (Government Hospital). He further submits that the complainant was firstly examined by Dr. Amit Kumar who referred her to the psychiatry department of RML Hospital where she was examined by Dr. Kiran Jakhar, who thereafter referred her to IHBAS for detailed evaluation.

11. He submits that Dr. Jakhar was not even named as an accused in the complaint case filed by the petitioner in December, 2014 and was wrongly and illegally ordered to be summoned by the learned MM.

12. He further submits that the learned Special Judge after examining the pre-summoning evidence has come to the conclusion that basic ingredients of the offences for which Dr. Jakhar was summoned are not even prima facie established or made out.

13. He further submits that as mandatory sanction under Section 197 Cr.P.C. had not been obtained by the complainant in respect of any of the Government servants named in the complaint case including Dr. Jakhar, therefore, the learned Special Judge rightly held that the sanction under the said provision was necessary.

14. Mr. Manoj Taneja, learned counsel appearing on behalf of the respondent - Inspr. Sushil Kumar in Crl. M.C. No. 2330/2017 submits that the ingredients of all the offences for which Inspr. Sushil Kumar was summoned by the learned MM were considered, examined and dealt with by the learned Special Judge and it was found that the ingredients of the offences prima facie were not made out and / or established.

15. He further submits that Inspr. Sushil Kumar was working as an SHO at PS-Tilak Marg on the relevant date and was thus discharging his official duties, therefore, obtaining of sanction order under Section 197 Cr.P.C. was mandatory.

16. He submits that all these aspects have been dealt with by the learned Special Judge in its impugned judgment and there is no illegality in the same. He, thus, urges that the present petition be dismissed.

17. Mr. Manoj Chaudhary, learned counsel appearing on behalf of the respondent Rajender Singh in Crl. M.C. 2353/2017 submits that the summoning order was passed by the learned MM without application of judicial mind. He submits that there is nothing in the order of the learned MM to indicate as to how the offences for which Rajender Singh was summoned are made out against the respondent Rajender Singh. He submits that the learned Special Judge did not find any cogent evidence of conspiracy. Likewise, learned Special Judge has also held that no offences are made out against the other accused persons. He, thus, urges that the impugned order does not warrant any interference.

18. I have heard the learned counsel for the petitioner, as well as, the learned counsel appearing on behalf of the respondents, namely, Sushil Kumar, Rajender Singh and Dr. Kiran Jakhar and have perused the record.

19. A perusal of the impugned judgment shows that the learned Special Judge has allowed the revision petitions filed by the aforesaid private respondents herein on two counts - (i) no ingredients of offences are made out, and (ii) no sanction order under Section 197 CrPC had been obtained.

20. The offences for which the respondents herein were summoned by the learned MM are spelled out in paragraph 5 hereinabove. The learned Special Judge after dealing with the allegations made and the material available against each of the respondents found that the ingredients of the offences were prima facie not made out.

21. Insofar as the respondent Sushil Kumar is concerned, it has been noted by the learned Special Judge that the said respondent was the SHO of the concerned police station at the relevant time, who ordered medical examination of the complainant having regard to the nature of incident reported by the complainant. It is thus, unerringly noted by the learned Special Judge that such medical examination was an essential requirement as a matter of preliminary inquiry to ascertain whether cognizable offence is disclosed or not, thus, no mandate of law seems to have been disobeyed knowingly by Sushil Kumar and he rightly acted in the given circumstances.

22. The learned Special Judge also noted that there is nothing on record to suggest as to which incorrect document has been prepared by SHO Sushil Kumar or how false evidence is given by him and what evidence he caused to disappear. Also, there has been no allegation or evidence of assault by SHO Sushil Kumar so as to bring his case within the ambit of Section 352 IPC. Likewise, there is no allegation of any false document having been prepared by him so as to invoke Section 464 IPC against him. Further, it has also been observed that no threat has been extended by SHO Sushil Kumar to attract the offence under Section 506 IPC. The learned Special Judge also noted that conspiracy for the offence allegedly committed by Shri O.P. Sharma alongwith another unknown person cannot be extended to SHO Sushil Kumar as there is no apparent connection between SHO Sushil Kumar and O.P. Sharma. The relevant findings of the learned Special Judge in respect of the respondent Sushil Kumar reads as under:

"16. The petitioner SHO Sushil Kumar in view of nature incident reported by the complainant, ordered medical examination of the complainant, which was an essential requirement as a matter of preliminary inquiry to ascertain whether cognizable offence is disclosed or not, In this way, no directions of law seems to have been disobeyed knowingly by petitioner SHO Sushil Kumar and he has acted correctly in the given circumstances. Also, there is nothing on record to suggest as to which incorrect document has been framed by SHO Sushil Kumar, how false evidence is given by him, what evidence he caused to disappear and where he has given false information concerning any offence, Also, there has been no allegation or evidence of assault by SHO Sushil Kumar so as to bring him within the ambit of Section 352 IPC. Similarly no false document has been prepared by him so as to bring him within the ambit of Section 464 IPC nor any threat has been extended by him to attract the offence u/s 506 IPC. There can be no possibility that complainant has definite information as to whom SHO Sushil Kumar was talking on his mobile.

17. The conspiracy for the offence allegedly committed by O.P. Sharma with unknown person cannot be extended to SHO Sushil Kumar. There has been no apparent connection between SHO Sushil Kumar and O.P. Sharma, No illegal act is committed by petitioner SHO Sushil Kumar. The allegations of conspiracy are also not made out with Rajender Singh as merely talking to someone on mobile phone does not attract the ingredients of conspiracy to do some illegal act."

23. A perusal of the complaint and the pre-summoning evidence which is available on the record of CrI.M.C. 2352/2017 shows that there is no legal infirmity in the aforesaid findings of the learned Special Judge.

24. As regards the respondent/Dr. Kiran Jakhar, the learned Special Judge has noted that Dr. Kiran Jakhar has not been named in the original complaint or even in the testimony of CW-2 recorded on 24.02.2016. The application seeking summoning of Dr. Kiran Jakhar was filed only on 04.07.2016, the date when the summoning order was passed by the learned MM. It is also observed by the learned Special Judge that according to MLC - Ex.CW2/A and Ex.CW2/B, the complainant was firstly examined by Dr. Amit Kumar, who referred her to Psychiatry Department and thereafter by

Dr. Kiran Jakhar, referred the complainant to IHBAS for detailed evaluation.

25. The learned Special Judge has rightly observed that there is no evidence that the doctors conspired to lodge the complainant to mental hospital and merely referring the complainant for detailed evaluation regarding her mental condition does not show that the doctors tried to lodge the complainant in mental hospital. In this backdrop, the learned Special Judge has also rightly held that an application seeking to summon Dr. Kiran Jakhar on 04.07.2016 is nothing but an afterthought, more particularly, when no specific role has been attributed to her and when there is no evidence of conspiracy against Dr. Kiran Jakhar. The relevant findings of the learned Special Judge qua Dr. Kiran Jhakhar read as under:

"19. It is also important to note that doctor has not been named in the original complaint and only on 04/07/2016 when the order was passed, application was given implicating Dr. Kiran Jakhar as accused, According to the MLC Ex, CW 2/A and Ex CW 2/B, the complainant was firstly examined by Dr. Amit Kumar who referred her to Psychiatry department and thereafter by Dr. Kiran Jakhar, who referred her to IHBAS for detailed evaluation. It has been the judgment of the doctors on duty, who examined the complainant to refer her to IHBAS for detailed evaluation.

There is no evidence that the doctors conspired to lodge complainant to Mental Hospital. Merely, referring the complainant for detailed evaluation regarding her mental condition would not mean that they tried to lodge the complainant in Mental Hospital. Also, there is no explanation as to why the name of Dr, Kiran Jakhar has not been mentioned either in the complaint or even after the testimony of CW 2 was recorded on 24/02/2016. The application seeking to summon Dr. Kiran Jakhar on 04/07/2016 is nothing but an after thought. No specific role has been attributed to Dr. Kiran Jakhar by the complainant in her testimony. It is strange that Dr. Kiran Jakhar has also been summoned for offences punishable u/s 166A/167/193/201/203/464/120B IPC, whereas there is no evidence of conspiracy against her. There has been no discussion by Id. magistrate in her order as to how various offences and ingredients thereof are made out against the accused persons. The order suffers from complete non application of mind and hence is not sustainable."

26. Insofar as the respondent/Rajender Singh is concerned, there are no direct allegations against him nor his presence is alleged either in the Patiala House Courts where the alleged incident of molestation had taken place or at the police station or the hospital. The only allegations are that the complainant heard SHO Sushil Kumar speaking to Rajender Singh over phone and assuring him that everything is going well.

27. The learned Special Judge has thus, rightly held that allegations of conspiracy are not made out qua Rajender Singh as merely talking to someone on mobile phone does not attract ingredients of conspiracy to do some illegal act. To be noted, it was the case of the complainant herself in a complaint filed under Section 156(3) CrPC that she had lodged an FIR No.606/2014 against

Rajender Singh under Sections 376/506 IPC.

28. In the facts and circumstances of the case, the learned Special Judge has correctly observed that the complainant seems to be overzealous about her case against Rajender Singh and thinks as if everyone is teaming up against her for helping Rajender Singh, whereas the doctors and the police officials were carrying their usual official duties and they have committed no offence. The relevant part of the impugned order reads as under:

"27. Complainant seems to be overzealous about her case against Rajender Singh and thinks as if everyone is teaming up against her for helping Rajender Singh. The doctors and police officials were carrying their usual official duties and they have committed no offence, while discharging their official functions."

29. At this stage, it would be apposite to refer a decision of the Hon'ble Supreme Court in Deepak Gaba & Ors. v. State of Uttar Pradesh & Anr., (2023) 3 SCC 423, wherein the Hon'ble Apex Court held that in case of a private complaint, Magistrate can issue summons when the evidence produced at pre-summoning stage shows that there is sufficient ground for proceeding against the accused. The material on record should indicate that the ingredients for taking cognizance of offence and issuing summons to the accused are made out. The relevant fact of the decision reads thus:

"21. xxx xxx xxx The court must cautiously examine the facts to ascertain whether they only constitute a civil wrong, as the ingredients of criminal wrong are missing. A conscious application of the said aspects is required by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Even though at the stage of issuing process to the accused the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set the criminal proceedings into motion. The requirement of Section 204 of the Code is that the Magistrate should carefully scrutinize the evidence brought on record. He/she may even put questions to complainant and his/her witnesses when examined under Section 200 of the Code to elicit answers to find out the truth about the allegations. Only upon being satisfied that there is sufficient ground for summoning the accused to stand the trial, summons should be issued. [Birla Corporation Limited v. Adventz Investments and Holdings Limited and Others, (2019) 16 SCC 610; Pepsi Foods Ltd. (Supra); and Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420]. Summoning Order is to be passed when the complainant discloses the offence, and when there is material that supports and constitutes essential ingredients of the offence. It should not be passed lightly or as a matter of course. When the violation of law alleged is clearly debatable and doubtful, either on account of paucity and lack of clarity of facts, or on application of law to the facts, the Magistrate must ensure clarification of the ambiguities. Summoning without appreciation of the legal provisions and their application to the facts may result in an innocent being summoned to stand the prosecution/trial. Initiation of prosecution and summoning of the accused to stand trial, apart from monetary loss, sacrifice of time, and effort to prepare a defence, also causes humiliation and

disrepute in the society. It results in anxiety of uncertain times."

30. In the present case, the learned MM did not examine whether the allegations made in the complaint attract the provisions invoked under the relevant sections of the IPC. On the contrary, the learned Special Judge has specifically dealt with the allegations made in the complaint and has rightly come to the conclusion that the ingredients of various offences alleged are not made out against the accused persons/respondents for taking cognizance.

31. On the aspect of Section 197 CrPC, the learned MM had opined that the bar of Section 197 is not attracted, however, no reasons were given for such a finding. Whereas, the learned Special Judge noted that SHO Sushil Kumar, ASI Diwan Singh and Dr. Kiran Jakhar were government servants and they were discharging their official duties at the relevant time. Therefore, the protection under Section 197 CrPC was clearly available to them. Thus, in the absence of sanction, the cognizance should not have been taken by the learned MM.

32. There does not seem to be any legal infirmity in the view taken by the learned Special Judge. The law is well settled that insofar as public servants are concerned, cognizance in an offence, by any court, is barred under Section 197 CrPC unless sanction is obtained from the appropriate authority, if the offence alleged to have been committed was in discharge of official duty. Reference in this regard may be had to the decision of the Hon'ble Supreme Court in *D. Devaraja v. Owais Sabeer Hussain*, (2020) 7 SCC 695, wherein, it held as under:

"1. Leave granted. This appeal is against the judgment and order dated 31-1-2018 [*H. Siddappa v. Owais Sabeer Hussain*, 2018 SCC OnLine Kar 3805] passed by the Karnataka High Court, disposing of the application of the appellant under Section 482 of the Code of Criminal Procedure, 1973 for quashing an order dated 27-12-2016 passed by the Additional Chief Metropolitan Magistrate III, Bengaluru City in PCR No. 17214 of 2013, taking cognizance of a private complaint being PCR No. 17214 of 2013 inter alia against the appellant-accused, for offences punishable under Sections 120-B, 220, 323, 330, 348 and 506-B read with Section 34 of the Penal Code, 1860. The High Court did not quash the impugned order [*H. Siddappa v. Owais Sabeer Hussain*, 2018 SCC OnLine Kar 3805] of the Additional Chief Metropolitan Magistrate dated 27-12- 2006, but remitted the complaint back to the learned Additional Chief Metropolitan Magistrate instead, with inter alia liberty to the appellant-accused to apply for discharge.

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75. There is also no reason to suppose that sanction will be withheld in case of prosecution, where there is substance in a complaint and in any case if, in such a case, sanction is refused, the aggrieved complainant can take recourse to law. At the cost of repetition, it is reiterated that the records of the instant case clearly reveal that the complainant alleged of police excesses while the respondent was in custody, in the course of investigation in connection with Crime No. 12/2012. Patently, the

complaint pertains to an act under colour of duty.

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77. In our considered opinion, the High Court clearly erred in law in refusing to exercise its jurisdiction under Section 482 of the Criminal Procedure Code to set aside the order of the Magistrate impugned taking cognizance of the complaint, after having held that it was a recognised principle of law that sanction was a legal requirement which empowers the court to take cognizance. The Court ought to have exercised its power to quash the complaint instead of remitting the appellant to an application under Section 245 of the Criminal Procedure Code to seek discharge."

33. Likewise, in *Om Prakash Yadav v Niranjan Kumar Upadhyay and Others*, 2024 SCC OnLine SC 3726, the Hon'ble Supreme Court summarized the position of law relating to Section 197 Cr.P.C. to hold that Section 197 ensures that public servants are not prosecuted for anything which is done by them in the discharge of their official duties, without any reasonable cause.

34. As noted above, the alleged offences committed by SHO Sushil Kumar, ASI Diwan Singh and Dr. Kiran Jakhar were apparently in discharge of their official duties. Incidentally, SHO Sushil Kumar was the incharge of the police station where the complainant had approached. SHO Sushil Kumar had asked the complainant to go for a medical examination, which was conducted at RML Hospital. ASI Diwan Singh had accompanied the complainant along with a lady constable for the purpose of medical examination of the complainant. Likewise, the complainant was firstly examined by Dr. Amit Kumar who referred her to the psychiatry department of RML Hospital where she was examined by Dr. Kiran Jakhar, who thereafter referred her to IHBAS for detailed evaluation. Thus, the learned Special Judge was right in holding that the cognizance was barred under Section 197 CrPC.

35. In the light of the aforesaid discussion, this court finds that the impugned judgment dated 24.07.2017 passed by the learned Special Judge does not suffer from any illegality nor the learned counsel for the petitioner has been able to point out any infirmity in the said order. Thus, there is no merit in these petitions and, accordingly, the same are dismissed. Consequently, the pending applications (if any) stand disposed of.

VIKAS MAHAJAN, J.

APRIL 01, 2025/N.S. ASWAL