66Ct. Cases1304/2022 RAVI BABABU Vs. RAHUL GANDHI (MukherjiNagar)

17.04.2023

By way of this order I shall dispose application of complainant/applicant u/s 156(3) Cr.P.C.

Present:- Complainant in person with counsel.

- The brief facts of the complaint as per applicant are that the applicant Ravi Babu is a resident of H.No. 348, Bhai Parmanand Colony, Mukherjee Nagar, Delhi-110009, where he resides with his family comprising of his wife, two sons namely Rahul Malhotra and Mohit Malhotra and his daughter in law. It is submitted that he is engaged in the business of real estate and is a responsible citizen of the Country.
- The applicant submits that respondent no. 2 Praveen Lamba (now deceased) was also a residing in the neighbourhood of applicant at H.No. 428, Bhai Parmanand Colony which is 10-12 houses away from the house of applicant. It is submitted that deceased Praveen Lamba was habitual of consuming liquor and roaming around in his car while putting on loud music in the car, in the night. It is submitted that due to these acts of deceased Praveen Lamba the entire neighbourhood including the applicant and his family were disturbed and troubled.
- ➤ That in the morning hours of 09.05.2022 at about 4:00/4:30 am also, the applicant and his family suddenly woke up to loud music being played by deceased Praveen Lamba in his car which had been parked by him in

the middle of the road right infront of the house of the complainant. The complainant submits that on that night deceased Praveen Lamba was accompanied by another person whose name has now been disclosed as Rahul Gandhi (nephew of deceased Praveen Lamba) and both of them were found to be in a state of heavy intoxication and they tried to urinate infront of the house of applicant on a wall with photos of Hindu Gods and Goddesses affixed on it.

- It is further submitted that when the son of applicant namely Rahul Malhotra asked them not to urinate on the wall as it would hurt religious sentiments of the family because the wall had tiles printed with the pictures of gods and goddesses, both deceased Praveen Lamba and respondent no. 1 instead of listening to the requests of applicant's son started to hurl abuses and threats in the most execrable and obnoxious language on him and his family. They also stated "yehi par inke bhagwan ke photo par moot mein dekhta hun kaun rokta hai insabhi bhagwan ki photos ko apne moot se nehla de gandi ho gyi hain saaf ho jayegi, kiske baap me dum hai jo aakar hume rok le". Complainant has annexed video clip of the said incident.
- That in the meantime the applicant came out of his home and asked both the above-named persons to stop creating nuisance and leave from there but instead of leaving, the above-named persons continued to abuse and threaten the applicant and said "hum to yahin par beech sadak me jor jor se music baja kar dance bhi karenge aur tumhare bhagwan ke upar mootenge bhi, agar ma aka doodh pia hai to neeche aao tum dono ko yahin maar maar kar adhmara kar denge".
- > That suddenly thereafter respondent no. 1 with deceased Praveen Lamba

started throwing bricks and stones at the house of the applicant i.e. on the first floor as a heap of bricks was lying infront of their house. This resulted in the breaking and shattering of the window panes of the applicant's balcony. On seeing the above-named persons getting more violent, the applicant immediately dialled no. 112 of the police control room seeking help but before the police could arrive both the respondents continued to throw bricks and stones at the house of applicant while abusing them continuously. It is submitted that in the meantime deceased Praveen Lamba who was heavily drunk and under the influence of alcohol, accidentally got his left foot injured as some of the glass pieces which after breaking from the window panes fell down, had caused injury to him. Deceased Praveen Lamba suffered injury on his left foot and instead of taking care of his wound he kept standing under the house of applicant with respondent no. 1 instead of taking care of the wound as blood was oozing out of the same.

- That in the meantime the PCR arrived and on finding Praveen Lamba in an injured condition took him to BJRM hospital with respondent no. 1 where the doctors gave him medical treatment and also opined the nature of injury as simple. In the meantime his family members got him discharged from the hospital as they were not satisfied with the medical treatment given at BJRM hospital and took him to a private hospital in Gujrawala Town from where he was referred to another hospital namely PENTAMED where the doctors declared him "brought dead".
- Complainant further contended that the death of deceased Praveen Lamba occurred due to loss of crucial time at the moment when he required urgent and effective medical care and attention, which unfortunately was not timely provided to him. Complainant has further

asserted that for the death of deceased Praveen Lamba, he and his son Rahul Malhotra were implicated in case FIR no. 536/2022, PS Mukherjee Nagar filed u/s 304/302/34 IPC, whereas respondent no. 1 alongwith deceased respondent no. 2 were responsible for triggering a situation which culminated into fatal injuries sustained by the deceased on account of his own actions. Besides this the complainant asserted that while the entire incident transpired, his wife namely Ms. Seema Rani Malhotra also suffered glass cut injuries on her left arm resulting in excessive bleeding.

- ➤ The complainant on the basis of the allegations delineated in the foregoing paragraphs prayed for direction to the SHO of PS Mukherjee Nagar to register an FIR against respondent no. 1 under the appropriate provisions of law for causing heavy damage to their property/house and also for causing injuries to complainant's wife.
- ➤ Complainant also asserted that he made complaints about incident to the SHO of PS Mukherjee Nagar and when his grievance was not addressed and receiving no respite from them, he made complaint to the DCP (North-West) but still no action was initiated.
- ➤ Pursuant to the filing of the complaint supported by an application u/s 156(3) Cr.P.C, action taken report was summoned from the SHO of PS Mukherjee Nagar which was duly filed. The report was filed by SI Pradeep. The report reiterated the assertions of the complainant stated in the complaint and submitted that the incident which occurred on the fateful night of 09.05.2022 had resulted in the death of respondent no. 2 Praveen Lamba and on the statements of the eye witnesses, the applicant and his son were found involved in case FIR No. 536/22 as the main

accused. The IO further recorded that the accused persons were sent to JC pending investigation.

- ➤ Submissions heard. Entire record of the case including ATR is perused.
- A comprehensive reading of the facts and details of the present case indicates that in the morning hours, just before dawn i.e. between 4:00 to 4:30 am on 09.05.2022 an unexpected incident led to the death of Praveen Lamba, named as respondent no. 2 herein. According to the complainant's assertions and contentions, at the above-mentioned time when he was fast asleep with his family members, he was suddenly woken up by the loud noise of music being played on the road and he once again realized that it was deceased Praveen Lamba, his neighbor who was habitual of wandering during long hours in the night in his car in a state of intoxication. The complainant's assertions have further revealed that when he and his family tried to stop Praveen Lamba and another person accompanying him from creating mischief and from urinating on the wall opposite to the house of complainant, with tiles printed with the pictures of Hindu Gods and Goddesses, they began hurling stones and bricks which were lying adjoining to the abovesaid wall, at the house of complainant, which led to breaking of window panes of the complainant's house. The complainant's contentions and assertions as made out from the complaint also indicate that in this incident wife of complainant had also suffered glass cut injuries and consequent damage to his house/property was also caused. The complainant has relied on a video recording of the entire incident which was played in the court and was seen by the undersigned.
- ➤ Besides this, complainant also relies on the MLC dated 09.05.2022 of

his wife namely Seema Rani recording glass cut injuries suffered by his wife. Another crucial aspect which cannot be overlooked and needs to be underscored is that complainant alleges that while the alleged incident was occurring, he had made a PCR call expecting the police authorities to reach timely for diffusing the already flared up situation and the irked respondents.

- From the factual matrix brought to light by the complainant, one cannot lose sight of the fact that the complainant and his family members also prima facie appear to be victims of the unfortunate incident which occurred on the fateful night of 09.05.2022 as the deceased Praveen Lamba and respondent no. 1 are also clearly seen in the video to be hurling abuses and stones/ bricks on the house of complainant. No doubt that deceased Praveen Lamba suffered injuries as a consequence of the incident and later on passed away but respondent no. 1 alongwith the deceased is clearly seen to be indulging in illegal and unlawful activities being committed against the complainant and his family members not only causing injuries to them but also causing damage to their property.
- ➤ In the considered opinion of this court, in view of these facts and circumstances, this is a fit case for giving directions to the police for investigating the present case from the point of view of the complainant as a different version from the side of complainant has emerged regarding the incident which may not have come to the knowledge of the investigating agency, earlier while investigation from the stand point of the deceased.
- Admittedly, even though FIR regarding the alleged incident has already been registered against the complainant and his son u/s 304/34 IPC for

allegedly committing the culpable homicide of deceased Praveen Lamba, yet in the considered opinion of this court appropriate investigation on the lines of the version of complainant of the alleged incident seems essential for digging out the true facts of the case and also in the interest of justice.

- ➤ While directing the police authorities to register an FIR on the version of complainant Ravi Babu, the incident, this court relies on the decision of the Hon'ble Supreme Court in *Upkar Singh vs Ved Prakash & Ors.* (decided on 10.09.2004) where the Hon'ble Supreme Court has clearly observed.
 - "23.Be that as it may, if the law laid down by this court in T. T. Antony's case is to be accepted as holding a second complaint in regard to the same incident filed as a counter complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question consequently he will be deprived of his legitimate right to bring the real accused to book. This cannot be the purport of the Code.
 - 24. We have already noticed that in the **T.T.** Antony's case this court did not consider the legal right of an aggrieved person to file counter claim, on the contrary from the observations found in the said judgment it clearly indicates that filing a counter complaint is permissible."
- ➤ Therefore, in light of the facts and circumstances discussed in the foregoing paragraphs, the SHO of PS Mukherjee Nagar is directed to register an FIR on the complaint of the complainant and conduct proper investigation to unearth the true and correct facts of the case.
- ➤ With these observations, the application of complainant/applicant u/s

156(3) Cr.P.C stands allowed.

- ➤ Compliance report be filed by the SHO, PS Mukherjee Nagar on or before the NDOH.
- > Application stands disposed of.
- ➤ Re-notify on 29.04.2023.

(Neeti Suri Mishra) A.C.M.M. (North)/Rohini Court Delhi/17.04.2023