



2024:DHC:8095



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IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of Decision: 09th October 2024**

+ CRL.M.C. 8034/2024 & CRL.M.A. 30708/2024

PAWANJIT SINGH BAWA

.....Petitioner

Through: Mr. Vikas Sharma with Mr. Shailesh
Tiwari, Ms. Jyoti Sharma, Mr. Surya
Singh, Advocates.

versus

THE STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Utkarsh, APP for the State with
SI Satish Kumar, P.S.: Lajpat Nagar.**CORAM:****HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI****J U D G M E N T****ANUP JAIRAM BHAMBHANI J.****CRL.M.A. 30709/2024**

Exemption granted, subject to just exceptions.

The application stands disposed-of.

CRL.M.C. 8034/2024

By way of the present petition filed under section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), the petitioner seeks quashing of case FIR No. 0534/2023 dated 04.08.2023 registered under section 3 of the Delhi Prevention of Defacement of Public Property Act, 2007 ('DPDPP Act') at P.S.: Lajpat Nagar, New Delhi.

2. The genesis of the matter is a flex-board relating to one *Yatha Pre-School Day Care-Activity Centre*, which was found installed on a



electricity pole at a roundabout in Lajpat Nagar, New Delhi. The petitioner has been implicated in the matter since the flex-board contained a cellphone number which belongs to the petitioner; and the school/activity centre which was mentioned on the flex-board is stated to be run by the petitioner's wife.

3. Mr. Vikas Sharma, learned counsel appearing for the petitioner submits, that the principal ground on which the petitioner seeks quashing of the subject FIR, is that *both* the complainant in the matter (one Head Constable Brijesh Phogat) and the Investigating Officer ('I.O.') to whom investigation of the matter has been entrusted, *are one and the same person* which is anathema to the law. Counsel submits that the said HC Brijesh Phogat is therefore also the person who has filed chargesheet dated 04.10.2023 in the matter.
4. Learned counsel submits, that in similar cases concerning offences under the DPDPP Act, different Co-ordinate Benches of this court have quashed FIRs on the very same ground *viz.* that the complainant and the I.O. cannot be one and the same person.
5. In this behalf, Mr. Sharma draws attention to the decisions of Co-ordinate Benches of this court in ***Prerna Singh vs. State***,¹ ***Ashok Kumar @ Ashoki vs. State (GNCT of Delhi)***² and ***Vikas Kumar vs. State NCT of Delhi***.³
6. Mr. Sharma states, that the decisions of the Co-ordinate Benches of this court cited above have proceeded on the basis of judgments of the

¹ 2019:DHC:6652

² 2019:DHC:6596

³ 2024:DHC:4912



Supreme Court laying down the principle that the officer who has registered a crime must not be the investigating officer of the case, since that vitiates the very concept of fair and professional investigation.

7. To buttress the above submission, counsel has relied upon the following decisions of the Supreme Court, which have also been relied upon by the Co-ordinate Benches of this court :

***Mohan Lal vs. State of Punjab*⁴ :**

“17. In a criminal prosecution, there is an obligation cast on the investigator not only to be fair, judicious and just during investigation, but also that the investigation on the very face of it must appear to be so, eschewing any conduct or impression which may give rise to a real and genuine apprehension in the mind of an accused and not mere fanciful, that the investigation was not fair. In the circumstances, if an informant police official in a criminal prosecution, especially when carrying a reverse burden of proof, makes the allegations, is himself asked to investigate, serious doubts will naturally arise with regard to his fairness and impartiality. It is not necessary that bias must actually be proved. It would be illogical to presume and contrary to normal human conduct, that he would himself at the end of the investigation submit a closure report to conclude false implication with all its attendant consequences for the complainant himself. The result of the investigation would therefore be a foregone conclusion.

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“30. In view of the conflicting opinions expressed by different two-Judge Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the

⁴ (2018) 17 SCC 627



*individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. **It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded.** This requirement is all the more imperative in laws carrying a reverse burden of proof.”*

(emphasis supplied)

Babu Bhai vs. State of Gujarat⁵ :

“32. The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the investigating officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The investigating officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness”

(emphasis supplied)

8. In the above view of the matter, issue notice.
9. Mr. Utkarsh, learned APP appears on behalf of the State on advance copy; accepts notice; and fairly submits that while the petitioner appears to have no defence insofar as the factual allegations are concerned, the legal objection raised on behalf of the petitioner is supported by the principle of law cited; and is borne-out by the judgments of the Supreme Court and Co-ordinate Benches of this

⁵ (2010) 12 SCC 254



court. In the circumstances, learned APP leaves it to the court to pass appropriate orders.

10. Upon a perusal of the subject FIR, it is found that the complainant Head Constable Brijesh Phogat of P.S.: Lajpat Nagar, New Delhi *was indeed* also the person to whom investigation of the subject FIR was entrusted and who has subsequently filed the chargesheet in the matter.
11. In the circumstances, this court is persuaded to accept the submission made by learned counsel for the petitioner, namely that the investigation in the subject FIR *stands vitiated* in terms of what has been laid-down by the Supreme Court in the *Mohan Lal* case, as followed by Co-ordinate Benches of this court in the *Prerna Singh*, *Ashok Kumar* and *Vikas Kumar* cases.
12. Accordingly, the present petition is allowed and case FIR No. 0534/2023 dated 04.08.2023 registered under section 3 DPDPP Act at P.S.: Lajpat Nagar, New Delhi is quashed. All proceedings arising therefrom also stand closed.
13. The petition stands disposed-of.
14. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

OCTOBER 9, 2024

HJ/ds