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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.M.C. 1538/2022

SH VIVEK CHAUHAN

..... Petitioner

Through: Mr. Mohit Mathur and Mr. Rajesh
Yadav, Sr. Advocates with Mr.
Vaibhav Sethi, Mr. Dhananjay
Mehlawat, Mr. Amit Saxena, Ms.
Bhawna Chopra Rustogi, Mr. Bharat
Arora and Mr. Gaurav Kakar,
Advocates.

versus

GOVT OF NCT OF DELHI THROUGH ITS STANDING COUNSEL
CRIMINAL

..... Respondent

Through: Mr. Laksh Khanna, APP for State

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

25.11.2022

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CRL.M.A. 18141/2022

1. The relevant background facts were recorded by this Court vide order dated 09.09.2022 and may be reproduced for reference:

"1. Vide detailed order dated 11.04.2022 passed by this Court, the initiation of proceedings under Section 82 Cr.PC against the petitioner by the learned Trial Court vide dated 15.03.2022 was set aside and detailed directions were issued for sensitizing of newly recruited Officers of Delhi Judicial Service by holding of appropriate sessions at Delhi Judicial Academy with reference to proceedings under Sections 82/83 Cr.PC.

2. Aggrieved, by the continuation of proceedings under Section 82 Cr.P.C against the petitioner, despite the aforesaid order dated 11.04.2022, an application has been preferred on behalf of the petitioner under Section 482 Cr.PC seeking following reliefs:

① Exa

"a. Fix the responsibility and issue directions for initiation of appropriate action against the persons responsible for not complying with the directions contained in the order dated 11.04.2022 passed by this Hon'ble Court.

b. Allow the present instant Application and declare that the publication dated 08.04.2022/09.04.2022 (Annexure 1) under section 82 Cr.P.C. in the newspaper Loksatya and Times of India and affixation of notice at the house of petitioner/applicant on 04.06.2022, public announcement and recording of statement of two neighbors of the applicant as null and void and of no consequence.

c. Expunge the remarks made by Ms. Neetika Kapoor, Ld. MM, Dwarka Court Delhi against Mr. Gaurav Kakar, Counsel for the Petitioner vide order dated 10.06.2022. AND

d. Transfer the matter titled as 'State v. Vivek Chauhan' from the court of Ms. Neetika Kapoor, Ld. MM to some other court of competent jurisdiction for fair and proper trial."

3. Issue notice. Learned APP for the State appears on advance notice served upon the State and accepts notice.

4. Shri Mohit Mathur, Senior Advocate for the petitioner submits that prior to the aforesaid order dated 11.04.2022 passed by this Court, the DCP concerned, in compliance of order dated 15.03.2022 passed by learned MM had taken the steps for publication in two newspapers i.e. Loksatya and Time of India. However, despite order dated 11.04.2022 passed by this Court, setting aside the proceedings under Section 82 Cr.PC, the process appears to have been further taken up by the State and statement of two neighbours of the applicant/petitioner was recorded on 04.06.2022.

The grievance of the petitioner is that publication, affixation, public announcement and recording of statement has caused irreparable harm and injury to the reputation of the applicant/petitioner and is in complete violation of the order dated 11.04.2022 passed by this Court.

① Exam

It is urged that in the aforesaid background, Mr. Gaurav Kakkar, learned counsel for the petitioner appeared before the learned MM for noncompliance of the order dated 11.04.2022, which led to the unfortunate developments during the course of hearing wherein uncalled for adverse observations have been recorded against learned counsel for the petitioner.

The observations regarding disruption or misbehavior observed in the impugned order dated 10.06.2022 have been denied. It is contended by the learned senior counsel for the petitioner that the order dated 10.06.2022 shall harm the reputation of the counsel and would be a blot on his impeccable career. It is also informed that since the aforesaid order passed by the learned trial Court was forwarded to the Registrar General of this Court, a letter has been received by Mr. Gaurav Kakkar, Advocate from the office of the Registrar General for interaction with the Hon'ble Committee of Judges of this Court on 12.09.2022.

The order dated 11.04.2022 passed by this Court is stated to have been received by the learned MM on 18.05.2022 but no steps were taken to ensure that process under Section 82 Cr.PC is not executed. It is also pointed out that inspection of the impugned order was permitted only for five minutes by learned M.M in writing and the petitioner does not expect a fair trial.

5. Considering the facts and circumstances, a report be called from the learned trial Court, qua the factual position in respect of proceedings under Section 82 Cr.PC. A reply be also filed by the SHO, Police Station Janak Puri within a period of three weeks with an advance copy to the learned counsel for the petitioner explaining the circumstances under which the process under Section 82 Cr.PC was executed despite order dated 11.04.2022 passed by this Court. SHO along with the Investigating Officer shall appear in person before this Court on the next date of hearing.

The operation of the impugned order dated 10.06.2022 making adverse observations against the counsel for the petitioner is stayed till the next date of hearing without prejudice to the interaction fixed before the Hon'ble Committee of Judges on 12.09.2022. Considering the facts and circumstances, the

① Chauhan

petitioner shall be at liberty to prefer an application before the competent Court for transfer of matter titled as 'State v. Vivek Chauhan'."

2. Pursuant to aforesaid order, reply has been filed on behalf of the State and it is submitted that during the proceedings, process under Section 82 Cr.PC was issued by the concerned MM vide order dated 15.03.2022. The same was received at Police Station: Janak Puri. Thereafter, the petitioner Vivek Chauhan had filed a petition before High Court and vide order dated 11.04.2022, the same was set aside. However, in the meantime, the publication for proceedings under Section 82 Cr.PC had already been done on 09.04.2022. The matter before High Court is stated to have been attended on 11.04.2022 by SI Ankur from Police Station Janak Puri, who by inadvertent error failed to inform Head Constable Rohit Kumar about the setting aside of the proceedings under Section 82 Cr.PC. It is urged that due to unintentional and genuine error, the proceedings were initiated and a note has been sent to senior officer for taking necessary departmental action against SI Ankur.
3. Also, a report has been received from concerned MM stating that the order dated 11.04.2022 passed by this Court was communicated to her on 20.04.2022 but the publication of process was done even prior to quashing of proceedings by this Court. However, she did not pass any directions regarding process bearing judicial discipline in mind and since the State was represented by Public Prosecutor before High Court along with SI Ankur. Further, Ahlmad placed the order with the file for further proceedings on 10.06.2022. It is also informed that the matter was taken by the Hon'ble Inspecting Committee of the officer for the year 2022 and thereafter the matter had been resolved with the counsel, on being summoned by the learned

① Exam
② Stay

Principal District & Sessions Judge.

4. Mr. Mohit Mathur, learned senior Advocate for the petitioner submits that since the matter has been resolved between learned MM and Sh. Gaurav Kakkar, Advocate before the concerned learned District and Sessions Judge, the adverse remarks be expunged. He further urges that Sh. Gaurav Kakkar, Advocate also expresses his unconditional and sincere regret, as at no point of time, the intention was to lower the dignity of the Court in any manner, without admission of observations in order dated 10.06.2022.

5. In the facts and circumstances, since the proceedings under Section 82 Cr.P.C. were set aside by this Court vide order dated 11.04.2022, the publication dated 08.04.2022/09.04.2022 issued under Section 82 Cr.PC in the newspaper 'Loksatya' and 'Times of India' and affixation of notice at the house of petitioner on 04.06.2022, public announcements and recording of statement of two neighbours of the petitioner are declared null and void. Further, in view of reply filed on behalf of the State informing that publication had been forwarded prior to 11.04.2022 and follow-up action consequent to order dated 11.04.2022 passed by this Court could not be communicated due to inadvertent error and an action has been recommended against the concerned official for the lapse, no further directions are called for in this regard.

In the light of the report forwarded by the learned MM, informing that the matter has been resolved with Mr. Gaurav Kakar, Advocate and the fact that learned counsel has expressed his unconditional regret, adverse remarks/observations made against Mr. Gaurav Kakar, Advocate vide order dated 10.06.2022 by the learned MM stand expunged, without any expression of opinion on merits.

① Examp
② Stay

Application is accordingly disposed of.

A copy of this order be forwarded to the learned Registrar General of this Court; Ms. Neetika Kapoor, learned MM and learned Trial Court for information.

NOVEMBER 25, 2022/A

Sd
ANOOP KUMAR MENDIRATTA, J.

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EXAMINER

