

MCRC.11287/2014

Nafis Khan & Ors.
V.
State of M.P. & Anr.

02/05/2017

Shri P.S.Bhadoria, counsel for the applicants.

Shri Girdhari Singh Chauhan, Public Prosecutor for the respondent no.1/State.

None for the respondent no.2 though represented.

This application under Section 482 of CrPC has been filed for quashing the FIR in Crime No.393/2014 as well as quashing the charge-sheet filed by the Police Station Hujrat Kotwali, District Gwalior.

It is submitted by the counsel for the applicant that during the pendency of this application, the charges under Section 195-A,323,294,341,34 of IPC have been framed. It is further submitted that, in the trial, in spite of various opportunities given by the Trial Court, the complainant Deepa Kumari is not appearing and not a single witness has been examined in the trial so far. Thus, it is submitted that in the light of the judgment passed by the Supreme Court in the case of **Satish Mehra v. State of N.C.T. Of Delhi** reported in **(2012) 13 SCC 614**, this petition may be heard and the proceedings can be quashed even if some of the witnesses have been examined.

It is submitted that in the present case not a single witness has been examined and the Trial Court has not proceeded further from the stage of framing of charge.

The necessary facts for the disposal of the present application in short are that on 23/06/2014, the complainant Deepa Kumari Mahar had come to Gwalior

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from Neemach by bus at 6:00 in the morning. When she deboarded from bus near the Rocksy bridge, at that time the applicants came there and by blocking her way, started abusing her and threw her on the ground and slapped her and started assaulting her by fists and blows. On hearing her screaming, the nearby people came there and saved her. The applicants were threatening that the complainant must leave Gwalior and should go back to Neemach and should withdraw the case which she has instituted in the Court otherwise she would be killed.

It is submitted by the counsel for the applicants that the complainant had lodged a FIR for offence under Section 376 of IPC against the applicant no.3. The applicant no.3 was granted bail and the complainant, with an intention to get the bail of the applicant no.3 cancelled, started making false allegations and started lodging false report against the applicant no.3 and other applicants. It is submitted by the counsel for the applicants that on 23/06/2014, when the complainant lodged a report in the police station, an enquiry was got done immediately and report was submitted by the Enquiry Officer mentioning therein that when he went to the spot along with the complainant, then he found that no such incident has taken place. On the basis of the enquiry report, the police decided not to register any offence against the applicants. However, when the complainant realized that no action is being taken against the applicants on the basis of her false report,

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therefore, she made a complaint to the Additional Superintendent of Police (West), City Gwalior who merely on the basis of the allegations made by the complainant and without verifying the fact that whether any enquiry was ever conducted by the police or not and without knowing the outcome of the said enquiry, directed the SHO to register the FIR. Accordingly, under the directions of the Additional Superintendent of Police (West), City Gwalior, the present FIR has been lodged.

The counsel for the applicants has relied upon the judgments of the Supreme Court in the case of **Rajiv Thapar v. Madanlal Kapoor** reported in **(2013) 3 SCC 330** and **Prashant Bharti v. State (NCT of Delhi)** reported in **(2013) 9 SCC 293** and submitted that the enquiry report given by the enquiry officer can be taken into consideration by this Court at this stage also and when the police had found by conducting an immediate enquiry that no incident had taken place, then the FIR, which was lodged on the directions of the Additional Superintendent of Police (West), City Gwalior who issued the directions without conducting any other enquiry, may be quashed. It is further submitted that the applicants had also given some applications pointing out that the directions by the Additional Superintendent of Police (West) City Gwalior have been given without considering the other aspect of the matter and, therefore, their statements may also be recorded but as the direction was given by the superior officer, therefore, the police, without verifying the true facts of the case, has not only

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registered the FIR but also filed the charge-sheet. It is further submitted that because of the guilty consciousness, the complainant is not coming forward to give evidence in the trial also and the applicants are unnecessarily being harassed for no fault on their part.

Per contra, it is submitted by the counsel for the State that although the enquiry conducted immediately after the complaint made by the complainant is available in the police case diary but as the superior officer, after conducting the enquiry, had given a direction to register the FIR, therefore, the police did not commit any mistake in registering the offence against the applicants.

Heard the learned counsel for the parties.

Before considering the submissions made by the counsel for the applicants, it would be appropriate to consider the letter dated 09/11/2014 written by the Additional Superintendent of Police (West) City Gwalior on the basis of which, the offence was registered by the police.

Order dated 09/11/2014 reads as under:-

"कार्यालय अतिरिक्त पुलिस अधीक्षक (पश्चिम)
शहर, जिला ग्वालियर म0प्र0
क्रमांक/अपुअ/पश्चिम/शहर/ग्वा0/पु0अ0/शि0पु/एच.
आर.सी./05/14 दिनांक...../../

प्रति,
थाना प्रभारी
थाना-कोतवाली

विषय:- आवेदिका दीपा कुमारी महार पुत्री स्व0 श्री राजकुमार महार निवासी केशव नगर वार्ड क्रमांक 3 मकान न0 29 तहसील सिंगोली जिला नीमच म0प्र0 के शिकायती पत्र दिनांक 23/06/14 पर आपराधिक प्रकरण दर्ज कर कार्यवाही करने के सम्बन्ध में।

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सन्दर्भ:- श्रीमान् वरिष्ठ पुलिस अधीक्षक महोदय ग्वालियर के पत्र क्रमांक वपुअ/ग्वा/शि0पु0/एच.आर.सी. /53/14 दिनांक 18/09/14 के पालन में।

...../ /

उपरोक्त विषय में लेख है कि आवेदिका दीपा कुमारी महार पुत्री स्व0 श्री राजकुमार महार निवासी केशव नगर वार्ड क्रमांक 3 मकान न0 29 तहसील सिंगोली जिला नीमच म0प्र0 हाल- रामदास गौतम शिवनगर कुम्हरपुरा मुरार बालाजी स्कूल के पास मुरार ग्वालियर द्वारा आरोपी अनीस खान, नफीस, अयूब खान, मंसूर खान, बसीम खान व बन्टी यादव के विरुद्ध आवेदिका की हत्या की साजिश रचे जाने बावत माननीय राष्ट्रीय मानव अधिकार आयोग नई दिल्ली को शिकायत की गयी है जिसकी जांच निर्देशानुसार इस कार्यालय द्वारा की गयी।

शिकायती पत्र की जांच के दौरान आवेदिका दीपा कुमारी महार पुत्री स्व0 श्री राजकुमार महार निवासी केशव नगर वार्ड क्रमांक 3 मकान न. 29 तहसील सिंगोली जिला नीमच म0प्र0 को सुना गया। उसके साथ अनावेदक अनीस खान द्वारा शादी करने का झांसा देकर किये गये शारीरिक शोषण के सम्बन्ध में महिला थाना पडाव पर पंजीबद्ध अप0क्र0 47/14 धारा 376,506 ता0हि0 3(1)12 एस.सी./एस.टी. एक्ट की कार्यवाही उपरांत आरोपी अनीस खान जमानत पर होकर आवेदिका (फरि.) दीपा महार पर राजीनामा करने के लिये दबाव बना रहे है जिसके लिये दिनांक 23/06/14 को आवेदिका आई.टी.एम. कॉलेज जाने के लिये श्रीनाथ ट्रेवल्स से नीमच से आकर सुबह 06:00 बजे ग्वालियर आयी थी तभी रोकसी पुल पर अनीस खान, नफीस खान, अयूब खान, मंसूर खान, बसीम खान व बन्टी यादव द्वारा उसे घर कर मादरचोद,रण्डी,कुतिया,छिनाल चमरिया की जातिगत गालिया देकर मारपीट की गयी। जिसकी शिकायत आवेदिका द्वारा उसी दिन थाना हुजरात कोतवाली में की गयी थी लेकिन उक्त घटना की शिकायत पर भी कोई कार्यवाही नहीं की गयी। जिसके कारण आवेदिका वरिष्ठ अधिकारियों को शिकायतें कर रही है। आवेदिका दीपा महार की ब्यथा सुनकर प्रथम दृष्टया उसके साथ अनावेदक अनीस खान आदि द्वारा प्रकरण में राजीनामा करने के लिये दबाव बनाने ज्यादाती करना पता चलता है।

अतः आपको निर्देशित किया जाता है कि अनुसूचित जाति की महिला आवेदिका दीपा महार के साथ दिनांक 23/06/14 को रोकसी पुल पर हुयी आपराधिक घटना के सम्बन्ध में आवेदिका द्वारा थाना कोतवाली में प्रस्तुत किये गये शिकायती पत्र पर से अनावेदक अनीस खान आदि के विरुद्ध तत्काल आपराधिक प्रकरण दर्ज कर विवेचना के दौरान उपलब्ध साक्ष्य के आधार पर विधि सम्मत कार्यवाही की जावे।

सलंगन:- आवेदिका के घटना दिनांक 23/06/14

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की फोटोप्रति-1 प्रति

(राहुल कुमार लोढ़ा)
अति०पुलिस अधीक्षक
शहर
(पश्चिम) जिला ग्वालियर”

From the plain reading of this letter, it is clear that on the basis of the direction given by the Senior Superintendent of Police, Gwalior, the Additional Superintendent of Police (West), City Gwalior conducted the enquiry. In this order, it is specifically mentioned that during the enquiry, the complainant Ms. Deepa Kumari Mahar was heard. Apart from the allegations made by Deepa Kumari Mahar, it is also mentioned that the complainant had made a complaint to Police Station Hujrat Kotwali on the very same day but no action was taken on the complaint made by the complainant, therefore, she is constantly making complaints to the senior officers. It is again specifically mentioned that on considering the plight of the complainant Deepa Kumari Mahar, it appears that the applicants are pressurizing her to compromise the case which she had initially instituted against the applicant no.3.

Thus, it is clear that although Senior Superintendent of Police, Gwalior had directed the Additional Superintendent of Police (West), City Gwalior to conduct the enquiry but it appears that except hearing the complainant, no other action was taken by the Additional Superintendent of Police (West), City

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Gwalior and merely on the basis of the complaint made by Ms Deepa Kumari Mahar and without verifying that whether any action was taken by the police authorities on the complaint made by her or not, directed for registration of the FIR. The Government Advocate has also admitted that on the report of Deepa Kumari Mahar dated 23/06/2014 immediately an enquiry was got done and ultimately it was found that no such incident had taken place.

From the case diary, it appears that the SHO, Police Station AJK, District Gwalior by its letter dated 24/11/2014 had produced the enquiry report before the Court of Special Judge [Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act], Gwalior and the copy of the said letter and the enquiry report are also the part of the case diary.

It appears that from the enquiry report dated 10/07/2014, that after the complaint was made by the complainant, the statements of the independent witnesses were recorded who stated that at the time of the incident, they were fetching water from public tap and no such incident has taken place. A Rojnamcha Sana dated 23/06/2014 is also available in which it is mentioned that immediately after the complaint was made by the complainant, the police party went to the spot alongwith the complainant and matter was got verified and the complaint was found suspicious.

The copy of the enquiry report dated 10/07/2014 and the copy of the Rojnamcha Sana dated 23/06/2014

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are as under:-

“थाना कोतवानी ग्वालियर जिला ग्वालियर म.प्र.

क.

ज.सु./42/14

दिनांक 10.07.14

प्रति,

श्रीमान पुलिस अधीक्षक महोदय
जिला ग्वालियर

विषय— आवेदिका दीपा कुमारी पुत्री राजकमार निवासी
सिंगौली जिला नीमच म.प्र. की शिकायत की जांच रिपोर्ट
बावत्।

संदर्भ— श्रीमान् के आदेश पत्र जनसुनवाई/1304 सिंगौली
जिला नीमच म.प्र. की शिकायत की जांच रिपोर्ट बावत्।
महोदय,

सेवा में निवेदन है कि शिकायती पत्र उपरोक्त जांच
की गई तो हालात निम्न पाये गये।

यह कि आवेदिका दीपा कुमारी का प्रेम प्रसंग अनोवदक
अनीस खान से अर्से से चल रहा था जबकि अनीस खान पूर्व
से शादीशुदा है जब आवेदिका द्वारा अनीस खान मे अपने
साथ शादी करने की दबाव डाला तथा अनीस द्वारा शादी
नहीं करने पर आवेदिका द्वारा दिनांक 09.03.14 ये महिला
थाना ग्वालियर में अपने साथ हुए बलात्कार की रिपोर्ट दर्ज
कराई गई जिस पर से महिला थाना के अपराध क्र. 47/14
धारा 376, 506 भादवि 3(1)(12) एसी एसटी एक्ट का प्रकरण
पंजीबद्ध होकर चालान न्यायालय प्रस्तुत किया गया है
प्रकरण विचारधीन न्यायालय हैतथा आरोपी अनीस खान
माननीय न्यायालय द्वारा जमानत पर है।

यह कि, आवेदिका को आरोपी के जमानत पर छूटने
की पता चलते ही अनावेदक अनीस खान व उसके अपाहिज
पिता नफीस खान, साले मंसूर खान, वसीम खान तथा
बंटी यादव वकील के खिलाफ एक प्रायवेट इस्तगाशा
माननीय न्यायालय में किया गया है तथा आवेदकगण को
जेल भिजवाने के लिये मनगढत कहानी बताकर शिकायते
करती रहती है तथा स्वयं कथन देने हेतु उपस्थित नहीं
मिलती है।

यह कि दिनांक 23.06.14 को आवेदिका दीपा कुमारी
द्वारा एक शिकायत अनावेदकगण के विरुद्ध चिटनिस की
गोठ मे उसे अश्लील गाली देने व मारपीट कर धमकी देने
बावत् की गई थी जिसकी मौके पर जाकर आवेदिका के
साथ तस्दीक की गई जहां मोहल्लावासियों के निष्पक्ष रूप से
बताया कि साक्षी वहां बताई गई घटना के वक्त नलो से
पानी भरते थे वहां पर आवेदिका के साथ अनावेदकगण द्वारा
किसी भी प्रकार की कोई घटना होना पूरी तरह से असत्य
बताया जिसकी रिपोर्ट रोजनामचा आम में दर्शाई गई है।

यह कि, आवेदिका ने अपना कथन भी नहीं दिया
और अपना निवास श्रीराम धर्मशाला मे बताया जिसकी तलाश
श्रीराम धर्मशाला में की गई वहां रहना भी नहीं पाया गया

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आवेदिका से बार-बार मोबाईल पर संपर्क किया गया तो नीमच में होना पाया गया तथा अपना स्वास्थ्य खराब होना बताते कथन हेतु उपलब्ध नहीं होना बताया तथा फोन पर अनावेदकगण को जेल भिजवाने की बात कही है।

यह कि, गुमला जांच से आवेदिका द्वारा की शिकायत असत्य पाई गई है।

अतः जांच रिपोर्ट अवनोकनार्थ श्रीमान् जी की सेवा में सादर प्रेषित है।

संलग्न प्रपत्र—

1. असत्य शिकायत पत्र मय कवरिंट लेटर व प्रपत्रा के
2. नकल रोजनामचा
3. कथन अनावेदक —दो
4. पंचनामा तस्दीक
5. अनावेदकगण द्वारा की गई शिकायतो की छाया प्रतियां मुताबिक सूची”

The copy of Panchanama is as under:

“पंचनामा

थाना कोतवाली ग्वालियर जिला ग्वालियर म.प्र.

स्थान — चिटनिस की गोठ थाना कोतवाली ग्वालियर

नाम पंचान—

1. गणेश वर्मा पुत्र
रामकिशन वर्मा आयु 60 वर्ष निवासी
चिटनिस की गोठ
2. ओमप्रकाश पुत्र सीताराम
कोली आयु 43 वर्ष निवासी
सदर
3. हेमंत कुमार पुत्र श्री
सीतारा कोली आयु 49 वर्ष निवासी
सदर

उपरोक्त पंचान के समक्ष आवेदिका कुमारी दीपा कुमारी पुत्री राजकुमार निवासी केशवनगर तहसील सिंगरौली जिला नीमच म.प्र. अपने द्वारा अनावेदक द्वारा अनीस खान, नफीस खान, बंटी यादव, मंसूर खान, वसीम खान, द्वारा अश्लील गालियां देकर झगडा मारपीट करना बताये जाने पर तत्काल मौके पर जाकर आवेदिका के साथ तस्दीक की तो आवेदिका द्वारा किया गया आवेदन असत्य व निराधार पाया गया। मौके के निवासी उपरोक्त पंचान मौजूद को वहां पर आवेदिका व अनावेदकगण का वहां गया एवं किसी प्रकार का कोई विवाद झगडा मारपीट होना नहीं पाया गया मौके पर पंचनामा बनाया गया।

हस्ताक्षर पंचान

1. गणेश वर्मा

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2. ओमप्रकाश
3. हेमंत कुमार”

Thus, it is clear that immediately after the report was made by the complainant, the police party was sent to the spot alongwith the complainant and the police party, after thorough enquiry conducted in presence of the complainant, came to a conclusion that the complaint made by the complainant is suspicious. The said fact was not only reported in writing to the SHO, Police Station, Hujrat Kotwali, District Gwalior but it was mentioned in the Rojnamcha Sana also. It appears that thereafter again a detailed enquiry was got done by the police and by report dated 10/07/2014, it was opined that the complaint made by the complainant is false. Thus, it is clear that the Additional Superintendent of Police (West), City Gwalior, without considering the fact that not only an enquiry on the very same date was conducted immediately after the complaint but again a detailed enquiry was conducted by the police and on both the occasions, it was found that no incident had ever taken place on 23/06/2014 as alleged by the complainant and thus no action was taken against the applicants on the basis of the complaint made by the complainant on 26/03/2014.

The Supreme Court in the case of **Rajiv Thapar(supra)** has held as under:-

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in

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the High Court under [Section 482](#) of the Cr.P.C.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

(v) If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under [Section 482](#) of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."

The Supreme Court in the case of **Prashant Bharti (supra)** has held as under:-

"25. Based on the holistic consideration of the facts and circumstances summarized in

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the foregoing two paragraphs; we are satisfied, that all the steps delineated by this Court in Rajiv Thapar's case (supra) stand - satisfied. All the steps can only be answered in the affirmative. We therefore have no hesitation whatsoever in concluding, that judicial conscience of the High Court ought to have persuaded it, on the basis of the material available before it, while passing the impugned order, to quash the criminal proceedings initiated against the accused-appellant, in exercise of the inherent powers vested with it under [Section 482](#) of the Cr.P.C. Accordingly, based on the conclusions drawn hereinabove, we are satisfied, that the first information report registered under [Sections 328, 354](#) and [376](#) of the Indian Penal Code against the appellant-accused, and the consequential chargesheet dated 28.6.2007, as also the framing of charges by the Additional Sessions Judge, New Delhi on 1.12.2008, deserves to be quashed. The same are accordingly quashed."

If the enquiry report dated 10/07/2014, panchanama dated 23/06/2014 and rojnamcha sana entry dated 23/06/2014 are taken into consideration, then it would be clear that immediately after the alleged incident on the complaint of the complainant, the police went to the spot alongwith the complainant and the entire incident was found to be suspicious and in the detailed enquiry which was conducted by the police, it was found that in fact no incident has taken place.

Under these circumstances, this Court is of the considered view that prosecution of the applicants for the above mentioned offences in Crime No.393/2014 would be nothing but the misuse of process of law.

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Accordingly, relying on the enquiry report dated 10/07/2014 as well as panchanama dated 23/06/2014, the FIR in Crime No.393/2014 and the criminal proceedings in Criminal Case pending against the applicants are hereby quashed.

The application succeeds and is hereby **allowed**.

(G.S.Ahluwalia)
Judge

AKS