



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 13th February, 2025
Pronounced on: 22nd May, 2025*

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CRL.L.P. 191/2021

RAJ KUMAR SHARMA

S/o Sh. Virender Kumar,
R/o A-916, Shastri Nagar,
Delhi – 110052

.....Petitioner

Through: Mr. R.K. Rawat & Mr.S.M.
Sharma, Advocates

Versus

1. **SI SANDEEP SRIVASTAVA**
PS: Gulabi Bagh
Delhi – 110052
2. **HC OM PRAKASH MEENA**
PS: Gulabi Bagh
Delhi – 110052
3. **CHANDAN TIWARI, INFORMER**
PS: Gulabi Bagh
Delhi – 110052
4. **THE SHO**
PS: Gulabi Bagh
Delhi – 110052
5. **DCP [NORTH]**
Office of DCP [N]
PS Civil Lines, Delhi
6. **COMMISSIONER OF DELHI POLICE**



New Police Headquarters Bldg.,
Jai Singh Road,
New Delhi - 110001

.....Respondents
Through: Mr. Sachit Sharma, Advocate
for Respondent No.1
Mr. Shoaib Haider, Additional
Public Prosecutor for
Respondent-State with
Inspector Sandeep Srivastava

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Petition under Section 378(4) Cr.P.C. read with Section 482 Cr.P.C. has been filed by the Petitioner against the Judgment and Order dated 01.11.2021 passed by the learned ACMM in Complaint Case No. 6711/2020, whereby his Application under Section 156(3) Cr.P.C. along with Complaint under Section 200 Cr.P.C., have been dismissed.
2. *Briefly stated*, the Petitioner had filed a Complaint under Section 200 Cr.P.C. wherein he had claimed that he has been falsely implicated in FIR No. 56/2020, under Sections 33/38/58 of Delhi Excise Act, by Respondents No.1 and 2, the Police Officials.
3. It is claimed that the CCTV footage clearly shows the Complainant walking with the Police Officials in plain clothes thereby confirming that he was not arrested for illegal liquor in his possession while he was being taken by the Police Officials. It is submitted that he has been falsely implicated



under Delhi Excise Act, for which the FIR under relevant Sections be registered against the Respondents.

4. It is also submitted that Legal Notice under Section 140 of Delhi Police Act read with Section 195 Cr.P.C. and Section 80 CPC, has already been served upon the Respondents.

5. The Complaint under Section 200 Cr.P.C. was supported with an Application under Section 156(3) Cr.P.C. for registration of the FIR.

6. The learned Metropolitan Magistrate *vide* impugned Order dated 01.11.2021 observed that though the Complainant was visible walking with the Police Officials at about 12:50 PM, but he was apprehended with illicit liquor at about 04:30 PM. The trial is yet to be concluded in the FIR under the Delhi Excise Act and the claim of the Complainant that he has been falsely implicated in this case, is premature.

7. Furthermore, Section 140 Delhi Police Act bars any prosecution against the Police Officials acting under the colour of duty or authority. Therefore, it was held that the present Application under Section 156(3) Cr.P.C. as well as the Complaint was completely devoid of merits and was dismissed. Aggrieved by the said Order, the present Petition has been filed by the Petitioner.

8. Essentially, the grounds of challenge are that initially a Complaint was filed before the Police Authorities and Ministry of Home on 24.04.2020, 26.04.2020 and 06.05.2020 along with relevant proofs of his innocence. Furthermore, the Statutory Notice under Section 140 Cr.P.C. was also given within 90 days from the date of release, on 21.04.2020. The present Complaint, after waiting for statutory permission for 90 days, was



filed on 14.10.2020 and listed on 17.10.2020. It is claimed that the learned MM has not appreciated that due compliance of Section 140 of Delhi Police Act had been made.

9. It is further contended that the learned MM on the Application under Section 91 Cr.P.C. filed by the Complainant, *vide* Order dated 02.06.2020, directed to preserve the CCTV screen shot along with DVR for CFSL and the Call Detail Record and Location Data of the Respondents, who had illegally detained the Complainant.

10. It has not been considered that there are specific allegations of illegal detention of the Complainant, which has been manipulated by Respondent No.1 as well as investigation by the officials of the Police Station Subzi Mandi.

11. The Reply under Right to Information Act clearly indicates that no such investigation was effected by the Police Officials of the Police Station Subzi Mandi from Police Station Gulabi Bagh. The Police did not record the statement of the Complainant and the investigations effected were one sided.

12. The role of the Police is to give an opinion whether cognizable offence has been committed on the averments made by the Complainant. The Status Report and the Police enquiry states that no cognizable offence was made out. The specific averments made by the Complainant, have not been considered. There is no ground for dismissing the Application under Section 156 (3) Cr.P.C. along with the Complaint under Section 200 Cr.P.C.



13. It is prayed that impugned Order dated 01.11.2021 be set aside and directions be given for registration of the FIR and the Complaint be registered.

14. ***The Status Report has been filed on behalf of the Respondent-State*** wherein it has been explained that on 13.04.2020, while Constable Parvesh and Constable Mohan Lal were on Picket Duty and they were checking vehicles near Kishan Ganj Railway Station, Old Rohtak Road, Delhi , at 04:30 PM an Ertiga Car, of silver colour and bearing registration No. DL 8C AX 3518, came from Sarai Rohilla Railway Station and its glasses were covered with blue polythene and black blanket, which looked suspicious. The car was stopped by Constable Parvesh and on checking, it was found to contain 20 boxes (total 960 quarters) of illicit liquor from Haryana. On enquiry, the Driver revealed his name as Raj Kumar Sharma and also disclosed his involvement in the aforesaid case.

15. Consequently, FIR No. 56/2020, under Sections 33/38/58 of Delhi Excise Act was registered at Police Station Gulabi Bagh. Investigations were taken over by Head Constable Om Prakash. The illicit liquor was seized and Petitioner/Raj Kumar Sharma was sent to judicial custody. He was released on bail by the learned Metropolitan Magistrate, on 21.04.2020.

16. It is further explained that though the Complainant Raj Kumar Sharma has alleged his frivolous implication in FIR No. 56/2020 under Delhi Excise Act, but this contention is solely based on the CCTV footage installed in the premises of Petitioner and his neighborhood.

17. It is explained that the DVR produced by the Complainant containing CCTV footage, has been sent to CFSL and the expert opinion is awaited. It



is submitted that the allegations made by the Petitioner are superficial and there is no merit in the present Petition.

18. *Reply/Written Submissions have also been filed by Respondents No.1 & 2* who have relied upon decision by this Court in CrI. M.C. 1952/2000, Manohar Singh vs. State and Others dated 10.04.2013, wherein it has been held that Order under Section 156(3) Cr.P.C. *is revisable*, and can be entertained only if it suffers from illegality or perversity. It is submitted that the present Petition Appeal under Section 378(4) Cr.P.C. read with Section 482 Cr.P.C. against the impugned Order dated 01.11.2021, is not maintainable.

19. It is further explained in detail that while on Picket Duty, the Complainant was caught red handed with illicit liquor. Consequentially, FIR No. 56/2020, under Sections 33/38/58 of Delhi Excise Act, was registered at Police Station Gulabi Bagh, Delhi. The claim of the Complainant of being falsely implicated rests on CCTV footage installed in his premises. He has failed to reveal the correct facts since he was never escorted to Police Station Gulabi Bagh at around 12:50 PM, as has been asserted by him.

20. It is explained that according to the Complainant, Respondents No.1 & 2 had arrived around 12:51 PM on 13.04.2020 and took him to Police Station in connection with investigation of FIR No. 89/2020, Police Station Sabzi Mandi. He had relied upon it in his Bail Application in FIR No. 56/2020, registered at Police Gulabi Bagh, Delhi. The footage clearly shows that he has not been taken to any Police Station and that the Respondents No. 1 & 2 had come to his house to make an enquiry in FIR No. 89/2020, registered at Police Station Gulabi Bagh and the inquiry took



place in the street near the Complainant's house and lasted only about 45 minutes. Thereafter, Respondent's No. 1 & 2 had departed from the scene without the Complainant.

21. It is further submitted that the DVR produced by the Complainant has already been sent to CFSL, Rohini for expert opinion. It is submitted that there is no merit in this Petition and, it is liable to be dismissed.

22. *Submissions heard and record perused.*

23. *The Counsel for Respondents No. 1 & 2 at the outset has taken objection that Order under Section 156(3) Cr.P.C. is revisable, against which the present Petition is not maintainable.* However, without going into the technicalities and considering that by the impugned Order, the Complaint under Section 200 Cr.P.C. has also been dismissed, the impugned Order is considered on merits.

24. In Order to understand the averments made in the Petition in the right perspective, it is pertinent to note that in the earlier *FIR No. 89/2020 registered at Police Station Subzi Mandi* against the petitioner, the Respondents No.1 & 2, on 13.04.2020 at about 12:50 PM, had come to make an enquiry which according to them continued for 45 minutes outside the house of the Complainant. The CCTV footage apparently shows the Complainant coming out of his house with the Police Officials. There is no *prima facie* evidence to show that the Complainant was taken to the Police Station at about 04:30 PM and thereafter, illegally detained.

25. The *second aspect* is that on the same day i.e. 13.04.2020, at about 4:30 PM, the Complainant was apprehended driving Ertiga car in which



illicit liquor was recovered and consequently, second FIR No. 56/2020 under Excise Act, was registered at Police Station Gulabi Bagh.

26. The learned Metropolitan Magistrate has rightly observed that the investigations were being done in two separate FIRs and merely because the enquiry was done by Respondents No. 1 & 2 of Police Station Subzi Mandi at about 12:50 PM, there is nothing on record to show that that there was any illegal detention. It has been rightly observed that there are two FIRs which are still pending trial and the Complaint alleging false implication, is premature.

27. The Complaint under Section 200 Cr.P.C. as well as Application under case under Section 156(3) Cr.P.C. has been rightly dismissed.

28. With aforesaid, the present Petition is accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 22, 2025

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