

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No 838 of 2020
(Arising out of SLP (Crl) No 5021 of 2020)

Vaishno Dhiman

Appellant(s)

Versus

State (Govt. of NCT of Delhi) and Others

Respondent(s)

ORDER

- 1 Leave granted.
- 2 This appeal arises from a judgment and order of a Single Judge of the Delhi High Court dated 30 September 2020. The original complainant is in appeal. On 5 August 2020, the appellant lodged a First Information Report with Police Station Dwarka South, Delhi alleging that the second respondent has committed offences punishable under Sections 376, 328, 354A, 506 and 509 of the Indian Penal Code. The second respondent was arrested on 12 August 2020. The Sessions Court dismissed the application for bail filed by the second respondent on 18 August 2020.
- 3 The second respondent filed Writ Petition (Criminal) No 1571 of 2020 before the Delhi High Court seeking the quashing of the above FIR, No 314/2020, dated 5 August 2020 lodged at Police Station Dwarka South, Delhi. The appellant, at whose behest the FIR was registered was not a party to the

proceedings. By its judgment dated 30 September 2020, the High Court declined to entertain the prayer for quashing the FIR. However, the High Court directed the concerned DCP of Delhi Police to transfer the investigation to a DIU of a district other than Dwarka. The basis on which the High Court issued this direction is contained in its observations against the conduct of the appellant. The observations of the High Court and its order are extracted below:

“10. *Prima facie*, it does appear from the contents of the FIR that the same have been written on legal advice. Clearly, it is not expected that the complainant would be well-versed with the decision in Lalita Kumari and its relevant citation. It is also apparent that there is a considerable delay in filing the said FIR. However, this cannot be a reason for quashing of the FIR at this stage. There is merit in Ms Kapoor's contention that the FIR does not disclose a cognizable offence and, therefore, cannot be quashed.

11. The complainant has made an allegation that she was offered a glass of water while she was in the car and that resulted her in losing her senses (consciousness). She further alleged that she was raped while she was in the car in a dizzy state and was subsequently taken to a room in a five star hotel where she was raped once again. Prima facie, this does not seem probable and considering that the complaint has been made almost after three and a half years, the allegations made would require to be properly investigated.

12. Considering the above as well as the allegation made by the petitioner regarding collusion of his business rivals (partner) with certain police officials, this Court considers it apposite to transfer the investigation forthwith to a DIU. The concerned DCP shall ensure that the case is transferred to DIU of a district other than Dwarka.”(emphasis supplied)

- 4 Mr Sidharth Luthra, learned senior counsel appearing on behalf of the appellant submits that the order of the High Court is manifestly

unsustainable for two reasons. First, it has been urged that in breach of the law which has been laid down by a three-Judge Bench of this Court in ***J.K. International v. State (Govt. of NCT of Delhi)***¹, the appellant, at whose behest the FIR was registered was not impleaded as a party to the proceedings and ought to have been given an opportunity of being heard if the High Court proposed to make observations adverse to the conduct of the appellant. Second, it has been submitted that the second respondent, who is in the position of an accused, did not have a choice in law in regard to the agency which should conduct the investigation or the manner in which the investigation is to be carried out.

5 Responding to the submission of Mr Luthra, Mr Maninder Singh, learned counsel appearing on behalf of the respondent submits that before the High Court passed its order on 30 September 2020, a status report was filed before the High Court indicating that the earlier Investigating Officer had signed the charge-sheet on 29 September 2020. Moreover, it has been submitted that on 3 October 2020, the charge-sheet following the transfer of investigation was signed by the competent officer at DIU and the charge-sheet was actually filed before the competent court on 5 October 2020. Hence, it is submitted that now the charge-sheet has been filed, there would be no occasion for this Court to interfere in exercise of its jurisdiction under Article 136 of the Constitution at the present stage.

6 Before we deal with the merits of the submissions, there is a preliminary aspect which needs to be dealt with. Mr Sidharth Luthra, learned senior counsel appearing on behalf of the appellant drew the attention of the Court

1 (2001) 3 SCC 462

to the fact that the counter affidavit in these proceedings has been filed by Ms Nikita Garg, Advocate who had also appeared on behalf of the second respondent in the High Court. Upon perusing the record, it emerges that the petition before the High Court was filed by the second respondent through a Pairokar – Mr Akash Sethi, “Through Ajay Kumar Pipaniya, Pallavi Pipaniya, Paras Punyani, Akash Sethi, Imtiyaz Hussain, Nikita Garg (Advocates)”. A member of the Bar having filed the petition on behalf of the second respondent, it is inappropriate for her to have filed a counter affidavit in these proceedings. Hence, at this stage Mr Maninder Singh, learned counsel has sought the permission of the Court to file a fresh copy of the counter affidavit in similar terms with the counter affidavit being sworn by an authorized person other than Ms Nikita Garg. Permission to do so is granted and the said exercise shall be carried out within two weeks from today.

- 7 Having heard learned counsel for the parties, we are clearly of the view that the procedure which was followed by the High Court was irregular and contrary to the principles which have been enunciated in the judgment of this Court in ***J.K. International*** (supra). This Court has observed:

“The scheme envisaged in the Code of Criminal Procedure (for short “the Code”) indicates that a person who is aggrieved by the offence committed, is not altogether wiped out from the scenario of the trial merely because the investigation was taken over by the police and the charge-sheet was laid by them. Even the fact that the court had taken cognizance of the offence is not sufficient to debar him from reaching the court for ventilating his grievance. Even in the Sessions Court, where the Public Prosecutor is the only authority empowered to conduct the prosecution as per Section 225 of the Code, a private person who is aggrieved by the offence involved in the case is not altogether debarred from participating in the trial. This can be discerned from Section 301(2) of the Code which reads thus:

“301. (2) If in any such case any private person instructs a pleader to prosecute any person in any court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the court, submit written arguments after the evidence is closed in the case.”

- 8 The High Court has proceeded to make adverse observations in regard to the conduct of the appellant. Those observations form the basis of the order for transfer of the investigation. Moreover, the appellant has a reasonable and legitimate apprehension that the observations made by the High Court (without hearing her) will impinge upon the proceedings arising out of the FIR. The appellant, who is the original complainant, at whose behest the FIR was registered, was not a party to the proceedings before the High Court and had no opportunity to controvert the submissions which were made against her or to answer the allegations. The High Court has acted in breach of the principles of natural justice and in a manner which is contrary to the settled principles of law, particularly, those enunciated in the decision in ***J.K. International*** (supra). We, therefore, order and direct that the observations contained in the first two sentences of paragraph 10 and in paragraph 11 of the judgment of the High Court against the appellant shall stand expunged and shall not be utilized in any other court or proceeding.
- 9 Insofar as the transfer of the investigation to the DIU is concerned, a copy of the final report under Section 173 has been filed, together with the counter affidavit of the second respondent. The final report, insofar as is material states as follows:

“Hence, by order of senior officers the case file was marked to me for further investigation. The investigation is almost completed. Therefore the chargesheet is being submitted against accused column No.11 Vikas Kumar Mittal. The co-accused has not been identified so far. Therefore, the investigation regarding co-accused and to comply the order of Hon’ble Delhi High Court shall be filed U/s 173.8 CrPC as a supplementary chargesheet.”

10 The final report was submitted on 5 October 2020. From the above extract, it is clear that the investigation had almost been completed. However, a further investigation has been contemplated under Section 173(8) of the CrPC. In the background of the present case and in order to ensure that the further investigation under Section 173(8) CrPC takes place in a fair manner, we order and direct that the further investigation shall be carried out under the auspices of the Crime Branch of the Delhi Police, which shall be monitored by an officer of the level of the Deputy Commissioner of Police. Hence, we issue the following directions:

- (i) The observations contained in the first two sentences of paragraph 10 and whole of paragraph 11 of the impugned judgment and order of the High Court dated 30 September 2020 in Writ Petition (Criminal) No 1571 of 2020, shall stand expunged and shall not be utilized in any other court or proceeding;
- (ii) The further investigation under Section 173(8) of CrPC which is to take place in terms of the final report, which has been filed on 5 October 2020, shall be carried out under the supervision of an officer of the level of a DCP by the Crime Branch of the Delhi Police.

- 11 The last sentence of paragraph 10 of the impugned judgment and order of the High Court reads as follows:

“There is merit in Ms Kapoor’s contention that the FIR does **not** disclose a cognizable offence and, therefore, cannot be quashed.”(emphasis supplied)

Mr Sidharth Luthra, learned senior counsel appearing on behalf of the appellant, Mr Maninder Singh, learned counsel appearing on behalf of the second respondent and Mr Shamik Sanjhwala, learned counsel appearing on behalf of the CBI, are agreed in stating that the word “not” is an obvious typographical error.

- 12 The criminal appeal is disposed in the above terms.
- 13 Pending applications, if any, stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Indira Banerjee]

New Delhi;
December 7, 2020
CKB

ITEM NO.26

Court 3 (Video Conferencing)

SECTION II-C

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No.5021/2020

(Arising out of impugned final judgment and order dated 30-09-2020 in WPCRL No. 1571/2020 passed by the High Court of Delhi at New Delhi)

VAISHNO DHIMAN

Petitioner(s)

VERSUS

STATE (GOVT. OF NCT OF DELHI) & ORS.

Respondent(s)

(With appln.(s) for IA No. 101484/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 119311/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No. 118471/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 07-12-2020 These matters were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Petitioner(s) Mr. Sidharth Luthra, Sr. Adv.
Mr. Sheezan Hashmi, Adv.
Mr. Anmol Kheta, Adv.
Mr. Yesh Chaturvedi, Adv.
Mr. Prashant Chaudhary, AOR

For Respondent(s) Ms. Madhvi Divan, ASG
Mr. B. V. Balaram Das, AOR
Mr. Ayush Puri, Adv.
Mr. Shamik Sanjhawala, Adv.

Mr. Maninder Singh, Adv.
Mr. Ajay Kumar Pipaniya, Adv.
Mr. Himanshu Mehra, Adv.
Ms. Pallavi Pipaniya, Adv.
Mr. Ajay Kumar Talesara, AOR

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 Leave granted.
- 2 The criminal appeal is disposed of in terms of the signed order.
- 3 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)
Court Master

(Signed order is placed on the file)