

\$~9

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

+ CRL.A. 107/2022 & CRL.M.A. 5059/2022, CRL.M.A. 5060/2022
MS. M VICTIM Appellant

Through: Mr. Virendra Singh, Advocate

versus

STATE OF NCT OF DELHI THROUGH S.H.O. & ORS.

..... Respondent

Through: Mr. Sanjiv Sabharwal, Ld. APP
Mr. Kanhaiya Singhal, Ms. Priyal Garg, Ms.
Saumya Sharma, Mr. Prasanna, Advocates for R-2
SI Mahesh, PS Alipur, Delhi

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **14.07.2022**

CRL.M.A. 5061/2022-EX.

Allowed subject to all just exceptions.

The application stands disposed of.

CRL.A. 107/2022 & CRL.M.A. 5059/2022, CRL.M.A. 5060/2022

1. This is an appeal filed seeking setting aside final order/ judgment dated 18.11.2021 passed by the learned ASJ, (SFTC) North-West, Rohini Courts, Delhi in SC 565/2021 emanating from the FIR No. 171/2018 registered at PS Alipur, Delhi under Section 376/506/323/328/109/120-B/34 IPC. Mr. Singhal, learned counsel for the respondent No.2 and Mr. Sabharwal, learned APP for the State have drawn my attention to contents of the petition and strongly object to the same.
2. Before going through the merits of the matter, it would be important to

reproduce the allegations made by the appellant against the Judges of the learned Trial Court as well as this Court in the petition.

3. The allegations are contained in paragraph 18 which reads as under:-

*“18. That Further, in spite of humbly praying to the Hon'ble Justice that various legal issues and some miscellaneous applications are pending adjudication before the Trial Court and that a review petition filed under Witness Protection Scheme, 2018, is also pending before the Competent Authority (North District). So, in view of the pending jurisdiction issue to be decided by Your Honour, the proceedings before the Trial Court be stayed as the trial court is not presided over by a Ld. Lady Judge as per mandate of Hon'ble Supreme Court of India. However, Justice **forced the Ld. Trial Court to conduct proceedings taking highly unreasonable and flimsy ground as mentioned in para 4 of the order dated 15.11.2021 reproduced hereunder:***

*“4. Ld. APP for the State submits that today, the matter was fixed for recording of the statements of the two Investigating Officers before the Ld. Trial Court. The main grievance of the learned counsel for the applicant is that it will not be convenient for the complainant to attend proceedings in cross examination before the learned Trial Court as it is presided over by the male judge. Since the examination of the Investigating Officers is going on, this court finds no ground to stay the proceedings before the learned Trial Court at the moment. It is clarified that the proceedings in the meantime will continue before the learned Trial Court. ” Further, from the query regarding operation of the working by the Counsel for the victim, it is revealed that HMJ **deliberately wanted to twist the whole issue as she did, observing that convenience of the Counsel cannot be a ground for transfer of the case, however, it was nowhere the contention by the appellant victim who prayed for transfer to Saket Court or any other court except Rohini Courts and New Delhi Courts so that trial could be conducted by the court presided over by Ld. Lady Judge without any***

interference by any extra judicial source which was actively working since beginning of the trial at Rohini Courts and it would be affected further if the case was kept at Rohini Court premises or transferred to New Delhi District where Ld. Distt. & Sessions Judge being relative of the prime accused as declared by outside of Court No. 29 Delhi High Court on 29.04.2019 with threats given to PW-2 supported by further evidences, would have affected the trial as he did during his tenure at Hon'ble High Court as Registrar General. Further, HMJ illegally called a report from the trial court to find out whether after the transfer of the case, the trial proceeded or not? Further, the Crl. MA was not disposed as per law and stay not granted but adjourned to 03.12.2021 so that trial court proceedings would continue to secure acquittal of the accused, Respondent No.3 & 4. Hence, this type of exercise and conduct not only violated the mandate and verdict of Hon'ble Supreme Court but also infringed and snatched the right of the victim to have fare, transparent and impartial trial enshrined under Constitution of India.”

4. It is also stated that:-

*“HMJ. did not mention the aforesaid submission of the victim in spite of request made to her and strong objection to the false statement of the corrupt I.O. **This shows the personal interest and accused favoring attitude of HMJ** The copy of order dated 23.01.2019 passed in bail application 1555/2018 is annexed as ANNEXURE- A/5.”*

5. Further, the petition also states as under:-

*“9. That Hon'ble illegally, even after objection and complaint made against her by the victim of helping the accused, **being interested in the matter since beginning in the past and praying that she should send the matter to Hon'ble Chief Justice of Hon'ble High Court, decided the transfer petition in an arbitrary, prejudicial and mala-fide manner.**”*

“14. That on 04.10.2021, during course of hearing of the above mentioned transfer petition, the victim humbly requested the Hon'ble Justice to send this case to Hon'ble Chief Justice of Delhi High Court in view of complaint made against her for accused favoritism and non-listening to bonafide and genuine issues of Constitutional Rights of victim and further requested to direct the authority who filed the petition to supply copy of the aforesaid petition to the victim but of no avail as HMJ continued to hear the aforesaid transfer petition.

*“19. Further, instead of adjudicating the aforesaid Crl. M.A for modification in the light of the aforesaid judgments in this regard passed by Hon'ble Supreme Court, and in view of the Hon'ble High Court's order passed pursuant to the aforesaid judgment Nipun Saxena (supra) being Order No. 05/G-1/GAZ.IA.DHC/2021 dated 28.01.2021 whereby FTSC (POCSO) courts were created as special courts, HMJ **illegally and whimsically deferred the adjudication till 03.12.2021 and illegally called report from the Trial Court** whereas calling report or directing the trial court to conduct proceedings in a particular way was beyond the jurisdiction of the Hon'ble High Court while adjudicating the application for modification of an order in a Transfer Petition. Thus, the whole proceedings conducted by HMJ on 15.11.2021 were accused **favoring and not only against the interest and rights of the appellant/victim but also in derogation of the aforesaid judgments rendered by Hon'ble Supreme Court of India.** The contents of the order as mentioned in para No.5 are reproduced hereunder:-
“5. List this petition before this court on 3rd December 2021 when a report will be sent to this Court by the Ld. Special Fast Track Court, North-West District, Rohini Courts.””*

21. *That on 03.12.2021, aforesaid Crl. M.A. seeking modification of order dated 04.10.2021 was disposed of making and stating it infructuous. The apprehension of the appellant/victim that she would not get justice if the*

*present case continued to be tried in the premises of Rohini Courts and if HMJ adjudicates any matter pertaining to this Sessions Case as complained of against her, has come true. The aforesaid modification application again was disposed of without adverting to and adjudicating the legal question of law and grounds raised therein by the appellant/victim during oral arguments as well as contentions raised in the Crl. M.A. seeking modification of the order dated 04.10.2021 whereby the Sessions Case was transferred to the North-West District without having any competent jurisdiction as per mandate of Hon'ble Supreme Court of India and in spite of grave and sincere objections raised by the appellant/victim to the jurisdiction of the Trial Court. That on 03.12.2021, HMJ dismissed the aforesaid Crl. MA 18007/2021 on the ground that since the judgment had already been delivered by the Trial Court acquitting the respondents (accused), so, application became infructuous and **reiterated the story and course of proceedings conducted in a forced manner at the direction of HMJ which were mentioned in the report sent by the Ld. DJ, (North-West) and the order dated 12.11.2021 which was passed for making ground to acquit the accused persons Respondent No.3 & 4. HMJ while passing the order dated 15.11.2021 when she adjourned the hearing to 03.12.2021, knew well that till then the trial court as per her directions and the orders whereby she had directed the Trial Court to continue proceedings and to send a report whether proceedings conducted or not during that period, the Trial Court would complete the trial by acquitting the Respondent No. 3 & 4. Thus, HMJ since beginning at the time of hearing bail matter 1555/2018, W.P.(Crl.) 3961/2018 and in the whole course of proceedings in T.P. Crl. 45/2021 openly **behaved and passed orders prejudicial to the rights of the victim and favoring the accused persons by violating not only the procedural law, rights of the victim but also disobeyed the mandate and verdict of Hon'ble Supreme Court of India and thus evolved and created her own whimsical and*****

arbitrary procedure to demolish the case of the victim. Her conduct in the open court during the proceedings was clearly accused favoring and inimical to the victim of a heinous crime. The Law and Ethics do not in any way empower and permit any judge of any rank to create and evolve its own course of procedure by which any desired goal can be accomplished. This gross deliberate illegality committed by HMJ, HMJ, Sh.Ld. Distt. & Sessions Judge (NorthWest), Ms. Ld. Distt. & Sessions Judge (North), Sh., Sh., Ld. Predecessor ASJs (FTC North) and. Ld. ASJ (FTC North-West) directly and overtly and Sh., covertly behind the curtain as previously being Registrar General of Hon'ble High Court of Delhi and later, Distt. & Sessions Judge, New Delhi has deeply shaken the faith of the appellant /victim and PW-2 so much so that they have lost faith in the aforesaid Hon'ble Judges and still fear that given the circumstances and the experience for last three and half years multiple proceedings before the Hon'ble Courts, whether they would get fair, fearless and transparent justice in Delhi because if, extra judicial interference of any sort is not abolished in Delhi from this case, the trial or any other proceeding is improbable to be fair and impartial.”

6. After reading the above paragraphs, I have put to the learned counsel for the appellant that he should retract these paragraphs and challenge the findings of the learned Trial Court as well as this Court in accordance with law without making any personal, tainted and *malafide* allegations against the judges.
7. Mr. Singh, learned counsel for the appellant, however, states that he will not amend the appeal and it needs to be adjudicated. He also states that these are not the allegations, but statements of facts which can easily be seen and perused and borne out from the record.
8. A bare perusal of the averments made hereinabove show that they are

scandalous and aimed at lowering the dignity and majesty of this Court. They have been made *malafidely* and interfere with administration of justice and amount to contempt. The allegations made in the petition are intrinsically contemptuous in nature and fall within the definition of “*Criminal Contempt*” of the Contempt of Courts Act, 1971 under Section 2(c)(i).

9. There is a direct attack on the reputation and functioning of not only one Judge, but several Judges of this Court. This vilification of Judges can affect the administration of justice as it becomes a form of public mischief. An unwarranted attack on a Judge, citing and unscrupulous administration cannot be ignored by this Court.
10. For a healthy democracy, there must be impartial Judiciary, however, it cannot be impaired by vindictive criticism. The Judiciary is not immune from criticism, but when the criticism is based on distorted facts or gross misrepresentation of material averments, to intentionally lower the dignity and respect of this Court, it must be taken cognizance of.
11. The above quoted representations and allegations are biased and intended to scandalize this Court. To make allegations that a Judge deliberately wanted to twist issues in order to favour an accused or that they were personally interested in the matter acted illegally or impartially are unjust statements.
12. From the perusal of the supporting affidavit, it seems that it is not the contentions of the appellant. Paragraph 2 of the affidavit accompanying the appeal reads as under:-

“2. *That I have heard and understood the contents of*

accompanying Criminal Appeal U/s 372 of Cr. P.C., which has been drafted by my counsel and the same are true and correct to my knowledge and may be read as part and parcel of this affidavit.”

13. From the perusal of the affidavit, it seems that these are not allegations which are being made by the appellant but are on legal advice received by the appellant from her counsel.
14. It has been held by the Hon'ble Supreme Court in '*Prashant Bhushan & Anr., In re (2021) 3 SCC 745* that:-

“This Court holds, that the judiciary is the guardian of the rule of law and is the central pillar of the democratic State. It holds, that in our country, the written Constitution is above all individuals and institutions and the judiciary has a special and additional duty to perform i.e. to oversee that all individuals and institutions including the executive and the legislature, act within the framework of not only the law but also the fundamental law of the land. It further holds, that this duty is apart from the function of adjudicating the disputes between the parties, which is essential to peaceful and orderly development of the society. It holds, that if the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. It has been held, that otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. It has been held, for this purpose that the courts are entrusted with the extra-ordinary power of punishing those who indulge in acts whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalising them and obstructing them from discharging their duties without fear or favour. It has been held, that when the court

exercises this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attacked or scandalised, but to uphold the majesty of the law and of the administration of justice. It has been held, the foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded.

56. *It could thus be seen, that it has been held by this Court, that hostile criticism of judges as judges or judiciary would amount to scandalizing the Court. It has been held, that any personal attack upon a judge in connection with the office he holds is dealt with under law of libel or slander. Yet defamatory publication concerning the judge as a judge brings the court or judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. This Court further observed that any caricature of a judge calculated to lower the dignity of the court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. It has been held, that imputing partiality, corruption, bias, improper motives to a judge is scandalization of the court and would be contempt of the court. It has been held, that the gravamen of the offence is that of lowering his dignity or authority or an affront to the majesty of justice. This Court held, that Section 2(c) of the Act defines 'criminal contempt' in wider articulation. It has been held, that a tendency to scandalize the Court or tendency to lower the authority of the court or tendency to interfere with or tendency to obstruct the administration of justice in any manner or tendency to challenge the authority or majesty of justice, would be a criminal contempt."*

15. I am of the view that notice of contempt needs to be issued. Accordingly, I issue a notice of contempt to the learned counsel for the appellant to show cause as to why contempt proceedings be not initiated against him.
16. In this view of the matter, I deem it appropriate to issue contempt notice to Mr. Virendra Singh, Advocate, Chamber No. 373, Patiala House Courts, New Delhi (Mob: 8800545200) show cause as to why contempt proceedings be not initiated against him. He shall file a response to the contempt notice within 2 weeks from today.
17. The matter be listed before the Hon'ble Division Bench handling criminal contempt subject to the orders of Hon'ble the Chief Justice.
18. List on 08.08.2022 before the Roster Bench.
19. Re-notify CrI. A. 107/2022 for 22.09.2022.

JASMEET SINGH, J

JULY 14, 2022 / (MS)

[Click here to check corrigendum, if any](#)