

(2020) 01 DEL CK 0225

In the Delhi High Court

Case No : Civil Writ Petition No. 2865 Of 2018, Civil Miscellaneous Application
No. 11582 Of 2018

Ajay Gautam

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 15-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 141

Code Of Criminal Procedure, 1973 — Section 156(3)

Citation : (2020) 01 DEL CK 0225

Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ;C. Hari Shankar, J

Bench : Division Bench

Advocate : Vikram Jetly, Satyakam

Final Decision : Dismissed

Judgement

D.N. Patel, CJ

W.P.(C) 2865/2018

1. This so-called Public Interest Litigation has been preferred with the following prayers:

"(i) Allow the present Writ Petition;

(ii) Issue an appropriate writ, orders or direction for declare the procedure being followed by Delhi Police (Respondent No.3) with regards to inquires/ investigations made in pursuant to order passed by Ld. Metropolitan Magistrate under Section 156(3) of Code of Criminal Procedure for submitting Action Taken Report being arbitrary, illegal and ultra virus, in the interest of justice and equity;

(iii) Issue an appropriate writ, orders or appropriate direction to the No.1 (Ministry of Law and Justice), Respondent No.2(State Govt. of NCT of Delhi) Respondent No.3 (Delhi Police) for issue appropriate guidelines or frame appropriate procedure to deal with the application filed under section 156/(3)

Cr.P.C. with regards to power of Investigating Officer, functioning of Ld. Subordinate Court, what is the maximum time period for filing action taken Report , what is the maximum time period for decide application filed under section 156(3) Cr.P.C.

(iii). Pass any other or further order which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case in the interest of justice."

2. It is submitted by the petitioner in person that the procedures being followed by the trial court and the exercise of powers by the Police in matters relating to conducting a preliminary inquiry and investigations is in violation of law laid down by the Supreme Court in *Lalita Kumari v. Govt. of U.P.*, (2014) 2 SCC 1 and *State of Haryana v. Bhajan Lal & Ors.*, 1992 Supp (1) SCC 335.

3. This writ petition essentially ventilates the grievance of the petitioner himself and cannot, therefore, strictly speaking, be treated as a public interest litigation. However, we note that the petitioner had approached this Court, in his personal capacity in W.P.(Crl.) 318/2018 (*Ajay Gautam v. Union of India*) and that a learned Single Judge of this Court had, vide order dated 2nd February, 2018, opined that the litigation was more in the nature of public interest litigation and had, therefore, directed that the matter be listed before the appropriate Bench, as per Roster, dealing with PILs.

4. As such, we do not propose to enter into this issue.

5. The grievance of the petitioner, essentially, is that, as per the judgment of the Supreme Court in *Lalita Kumari supra* and *Bhajan Lal supra*, if a complaint, lodged with the police, discloses a cognizable offence, an FIR is required to be registered forthwith, whereas, if the complaint discloses a non-cognizable offence, the police is required to conduct a preliminary inquiry, before registering the FIR.

6. The petitioner contends that the said preliminary inquiry cannot partake the character of an investigation.

7. The petitioner submits that, in respect of two complaints, filed against the petitioner and his wife, inquiry was directed by the learned Metropolitan Magistrate, and that the petitioner and his wife are being subjected to needless harassment, by the police, in the course of the said inquiry. He submits that the said inquiry proceedings are investigative in nature, which is contrary to the decisions in *Lalita Kumari supra* and *Bhajan Lal supra*.

8. According to the petitioner, the said inquiry, which is relatable to Section 156(3) of the Code of Criminal Procedure, 1973, is only intended to ascertain whether, on the allegations, a cognizable offence is, or is not, made out, and cannot involve any investigative exercise.

9. Founded on these allegations, the petitioner has suggested guidelines, for conducting of inquiries, by the police, under Section 156 (3) of the Code of

Criminal Procedure, 1973, and prays, by this writ petition, that the said guidelines be made mandatory.

10. Having heard the petitioner in person and learned counsel for the respondents, it appears that the grievance ventilated in this writ petition is with respect to various procedures being followed in the trial court by the court of learned Metropolitan Magistrate and subsequently inquiry and investigations being carried out by the Delhi Police in a complaint case.

11. Moreover, the petitioner in person is seeking several directions and guidelines to be issued by this Court to the trial court as well as to the Delhi Police for conducting preliminary inquiry in a complaint case, in accordance with law laid down by the Supreme Court in *Lalita Kumari supra* and

12. We are not inclined to direct framing of any guidelines, to govern the exercise of conducting of inquiry by the police, whether under Section 156 (3) Cr.P.C., or otherwise.

13. The judgments of the Supreme Court in *Lalita Kumari supra* and *Bhajan Lal supra* declare the legal position, under Article 141 of the Constitution of India, with more than sufficient clarity and it would be presumptuous, of this Court, therefore to authorise the framing of guidelines, to effectuate the implementation of the judgments of the Supreme Court.

14. That apart, if the petitioner, or his wife, are aggrieved by the proceedings being conducted by the police, in their individual cases, the remedy lies elsewhere, and not in this public interest litigation.

15. Hence, there is no substance in this writ petition and the same is dismissed.

CM APPL. 11582/2018

1. In view of the order passed in the writ petition, this application stands disposed of.