

(2020) 03 DEL CK 0200

In the Delhi High Court

Case No : CriminalWrit Petition No. 3220 Of 2019

Angad Sahlot

APPELLANT

Vs

State & Ors

RESPONDENT

Date of Decision : 16-03-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Indian Penal Code, 1860 — Section 34, 120B, 147, 148, 149, 307, 308, 363, 364, 365, 367, 395, 397, 398, 399, 427, 448, 452, 506, 511

Code Of Criminal Procedure, 1973 — Section 154, 154(3), 156(3), 161, 482

Citation : (2020) 03 DEL CK 0200

Hon'ble Judges : Brijesh Sethi, J

Bench : Single Bench

Advocate : Rohit P. Ranja, Prashant Jain, Sanjay Lao

Final Decision : Dismissed

Judgement

Brijesh Sethi, J

1. This writ petition under Article 226 of the Constitution of India r/w. Section 482 Cr.P.C. has been filed for issuing directions to the respondent no. 1 for instituting an enquiry against the respondent no-2 & 3 i.e. the Commissioner of Police & the Dy. Commissioner of Police (South) respectively for their failure to book respondent no-4 i.e. Dalip Kumar, SHO PS Fatehpur Beri as an accused and for further directions to arrest investigate and prosecute him for openly conniving with accused persons who committed offences of dacoity and attempt to murder and further having failed to register a proper FIR under the appropriate sections of law and lastly to transfer the investigation of the case to any independent agency working independently without any interference of Delhi police.

2. It is submitted that respondent no-4 who is the head of the police station of the local area where the crime in question was committed has miserably failed to book the culprits and to recover the weapons of the offence and the fire arms looted by the culprits. He has also failed to record the statements of the injured

persons, security guards and PSOs even after the receipt of their MLCs.

3. It is submitted that father of the petitioner had taken the Farm bearing no-104-105, Radhy Mohan Drive New Delhi on lease with effect from-07.09.2010 and 24.10.2011 and since then, he is in occupation and in possession of the said farm. It is submitted that since the execution of the lease deed dated 07.09.2010 and 24.10.2011, various understandings have been arrived at between the father of the petitioner as well as the owners of the said farm and based upon the aforesaid understanding the father of the petitioner claims to be the owner of the said Farm.

4. It is further submitted that petitioner and his family members are receiving continuous threats to their life at the hands of the alleged owner of the Farm as well as through their goons. In fact various complaints in this regard have been made to the SHO concerned right from 2013 till date but he has failed to take appropriate action. The present SHO i.e respondent no. 4 is hand in glove with the accused persons. He has not only derelicted from discharging his official duties rather aided and abetted the accused persons by giving them shelter in their attempt to illegally dispossess the petitioner and his family members from the Farm in question by forcibly taking over the possession of the farm without following due process of law on 16.10.2019.

5. It is further submitted that respondent no-4 has taken no action despite receipt of more than 25 complaints. In view of continuous threats and inaction on the part of respondent no.4 coupled with the fact that the alleged owners of the Farm intend to illegally dispossess the petitioner and his family members from the said Farm without following due process of law, the father of the petitioner has filed a suit for permanent injunction before the court of Ld. District Judge, South Saket on 23.09.2019. The defendants in the said suit who are now accused in FIR No. 380/2019 have been duly served and after hearing the parties, the Ld. ADJ vide his order dated 09.10.2019 has directed the parties to maintain status quo.

6. It is further submitted by the petitioner that despite having a restraint order from the competent court, the accused persons along with their goons including 10 to 15 ladies armed with deadly weapons, iron rod, lathis, Gaiti and knives arrived at the Farm house of the petitioner along with JCB and forcibly broke the wall and illegally entered into the Farm house of the petitioner on 16.10.2019.

7. It is further submitted that after illegally entering into the Farm of the petitioner the accused persons committed dacoity and damaged the entire Farm including the horses of the petitioner, broke the CCTV cameras installed in the farm and looted the cash and the jewelleries worth crores from the locker installed in the Farm.

8. It is further submitted that since the intention of the accused persons was to commit murder of the petitioner and his family members, the accused persons finding the petitioner to be alone in the farm attacked him with the sole motive

to eliminate him and beat him with iron rod, gaiti and knives.. Thereafter, the accused persons forcibly took the petitioner in their vehicle with an intent to take the petitioner at some unknown place where they can kill him. However in the meantime the PCR van arrived at the spot and after seeing the PCR van the accused persons threw the petitioner out from their vehicle and ran away from the spot.

9. It is submitted that respondent no-4 being hand in glove with the accused persons, deliberately and intentionally did not register the FIR u/s. 307/363/364/367/395/397/398/399 IPC read with 511 and 120-B IPC. He rather registered an FIR under section 448/452/308/427/406/34 IPC only. Since the respondent no-4 has not registered the FIR under proper sections and no proper investigation has been carried out to catch hold of the culprits and to recover the arms used in the crime, the petitioner filed an application under section 156(3) CrPC upon which the LD. MM has passed an order dt-25.10.2019 calling the status report from the respondent no.4.

10. It is submitted that the video and the photographs clearly show that the intention of the accused persons was to commit murder but because of arrival of PCR van, the life of the petitioner was saved. The nature of injury sustained on the vital parts of the body makes out a case under Section 307 IPC which has been deliberately diluted by the respondent no.4 while registering the FIR and, therefore, a direction is required to be given to the investigating officer to add section 307 of IPC in the captioned FIR. It is submitted that bare perusal of the FIR reveals that the acts of the accused persons squarely fall within the mischief of section 363, 364 and 365 read with 511 and 34 IPC which have deliberately and intentionally not been added in the FIR by the respondent no.4. It is, therefore, prayed that the investigating officer be directed to add section 363, 364 and 367 of IPC read with 511 and 34 IPC in the FIR.

11. It is further submitted that perusal of the contents of the FIR reveals that allegations alleged therein also constitute offences punishable under section 395, 397, 398 and 399 IPC which has been deliberately and intentionally not added in the said FIR by respondent no.4. It is, therefore, prayed that investigating officer be directed to add section 395, 397, 398 and 399 IPC read With 34 IPC in the FIR.

12. It is lastly prayed that investigation of the F.I.R No-380/2019 dt-16.10.2019 registered with P.S Fatehpur Beri be transferred to the CBI or to any other independent agency having no control of Delhi police so that a fair and impartial investigation can be carried out.

13. Ld. APP for the state on the other hand has submitted that allegations levelled by the petitioner are false and vague. On 16.10.2019, a PCR call vide DD No. 21A was received at PS Fatehpur Beri, Delhi mentioning that some persons have forcefully entered in caller's farmhouse and have broken the boundary wall with the help of JCB Machine. On reaching the spot i.e. Farm no. 104-105,

Radhey Mohan Drive, Fatehpur Beri New Delhi, it was found that the boundary wall of the said Farm House was broken and the cars bearing No. DL ICK 5222, DL 2CV 5587, and DL 7CG 4499 were also found in a damaged condition.

14. During investigation it was revealed that the said farmhouse was given to Mr. Surender Sahlot (father of petitioner) on lease for a period of 9 years by one Deepak, Giriraj and Chandrwati. Though the lease expired on 14.09.2019, but Mr Surender Sahlot did not vacate the said farm house. On 16.10.2019, the accused persons forcibly entered in the farm house and the complainant Mr Angad Sahlot and his guards/Bouncers/PSO's were brutally beaten by the accused persons along with their associates and they sustained several injuries. It was further revealed during investigation that the articles kept in the farm house were also broken.

15. It is submitted that the statement of one of the injured i.e. Angad Sahlot (petitioner) was recorded. He stated that on 16.10.2019 at around 11:45AM Deepak s/o. Dulichand, Dharmender s/o. Giriraj, Sanjay s/o. Giriraj, Chandrwati w/o. Dulichand along with another 10-15 persons entered inside the farm-house by breaking the walls with the help of JCB Machine. Thereafter they started beating the guards of the petitioner with lathis & rods and they also attacked the petitioner with lathis and rod. Somehow the petitioner escaped and locked himself inside a room. After that they broke various articles and also took away expensive articles lying in the house. After that they again attacked the petitioner and hit him on head with rod. In the meanwhile, the PCR came and the petitioner was taken and admitted in the hospital.

16. It is further submitted that on statement of Mr. Angad Sahlot (petitioner), the present case vide FIR No. 380/19 dated 16.10.2019 u/s 448, 452, 308, 427, 506, 34 IPC was registered and the investigation was taken up. The statements of other injured persons namely, Mohit, Balwan Singh, Kameshwar Rai, Jai Kumar were recorded u/s 161 CrPC. They also corroborated the version of the petitioner in FIR.

17. During investigation, it was revealed that there was a dispute between the family of the petitioner and accused persons. On 16.10.2019. the accused persons came in large number at the farm-house and forcibly entered inside by breaking the boundary wall by JCB Machine. After that they beat up the complainant and his servants. They also looted all the belongings of the complainant. On 21.10.2019 one accused Ajab Singh was arrested. He disclosed that on the night of 15.10.2019, a secret meeting of all the family members took place at Fatehpur Beri village and they conspired to take forceful possession of the said farm house. After his statement, sections 147/148/149/395/397/120-B IPC were added in the present case. Accused Ajab Singh, Nawab Khan, Noor Mohammad, Richpal, Gopi Chand, Mahender and Dharmender have been arrested so far in the case. Accused Dharmender is still in judicial Custody. The NBW's have also been obtained against accused Deepak, Mehar Singh, Sanjay Tanwar and Bijeder. Efforts are being made to arrest the remaining accused

persons.

18. I have considered the rival submissions. Perusal of the record reveals that police is investigating the FIR and has also arrested some of the accused persons. Hon'ble Supreme Court in case titled "Sakiri Vasu vs. State of U.P. and others, (2008) 2 SCC 409" has held that in case a person has a grievance that FIR has not been registered by the police on his complaint or even after registration of the FIR, no proper investigation is held, he can file an application under Section 156 (3) Cr.P.C. before the learned Magistrate concerned and the Learned Magistrate can direct a proper investigation to be made and can also monitor the investigation. The relevant para runs as follows;

11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156 (3) Cr.P.C. before the learned Magistrate concerned. If such an application under Section 156 (3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

19. In view of the above law laid down by the Hon'ble Supreme Court, Ld. MM u/s. 156 (3) CrPC can monitor the investigation. According to the petitioner, the Ld. MM is already seized of the matter. An application under Section 156(3) CrPC has already been filed before him. Thus, there is an alternate efficacious remedy available to the petitioner. Sections 147/148/149/395/397/120-B IPC have been added in the present case on the basis of the statement of co-accused Ajab Singh. Some of the accused persons have been arrested. NBWs have also been obtained against those accused persons who are absconding. The investigating agency is, thus, carrying out the investigation as per law. However, if the petitioner is still aggrieved by the fact that particular sections have not been added, he can raise the issue before the Ld. MM u/s. 156(3) CrPC. The investigation conducted so far prima facie does not reveal that respondent no.4 is not carrying out the investigation as per law. There is no material on record to suggest that SHO concerned is biased and in these circumstances, there are no reasons to transfer the investigation to some other agency and in the opinion of the Court it should not be so done for the reason that Ld. MM is already seized of the matter under Section 156(3) CrPC and he also has the power to monitor the investigation as well.

20. In view of the above discussion, when an equally efficacious remedy is available to the petitioner and he has already filed an application under Section 156(3) CrPC before Ld. MM and Investigation agency is carrying out the

investigation fairly and has even added sections 147/148/149/395/397/120-B IPC and also arrested some accused persons and obtained NBWs against remaining accused persons who are absconding, the present petition is not maintainable and the same is, therefore, dismissed and stands disposed of accordingly.