(2005) 07 DEL CK 0003

In the Delhi High Court

Case No : Criminal M.C. 2306 of 2004 and Criminal M. 7713 of 2004

Anupam Bharteeya and Another APPELLANT

Vs

State and Others RESPONDENT

Date of Decision : 08-07-2005

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 156(3)

Citation : (2005) 121 DLT 369 : (2005) 83 DRJ 299

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : S.N. Gupta, for the Appellant; Baldev Malik and A.S. Chadha and Kunal Sinha for R 2 to 4, for the Respondent

Judgement

R.S. Sodhi, J.—This petition is directed against the order dated 28th August, 2004, of the Metropolitan Magistrate, whereby the learned Magistrate had directed the police to investigate the matter u/s 156(3) Cr.P.C. and to submit a status report on 8th December, 2004.

2. The facts of the case are that a complaint was filed by the complainant before the Magistrate to the effect that the Citi Bank had issued ATM cards and respective pin number on those cards for the accounts held by the complainant in the name of Mr. Mohanjit Singh, but the same were never used by the complainant since they were not received by the complainant to whom they were posted through Ordinary Post. The complainant on 27th December, 1999, issued a cheque of Rs. 5 lakhs which was dishonoured on account of insufficiency of funds. The complainant on enquiry came to know that somebody had illegally withdrawn money from his account. The matter was reported to the Bank and it revealed that Rs. 17,44,000/- had been withdrawn illegally. The Bank lodges an FIR No. 58/2000 and FIR No. 864/1999 u/s 420/406/467/468 read with Section 120B IPC, which matter is under investigation. Vide letter dated 18th February, 2000, the complainant had asked the Bank to reimburse the account as the same had been fraudulently operated. It is alleged in the complaint that during

investigation the police arrested Shri Aman Kumar Harjai and Shri Pawan Kumar Harjai and the challan was filed on 23rd May, 2002. It is further alleged that the accused persons have entered into a criminal conspiracy with Shri Aman Kumar Harjai and Shri Pawan Kumar Harjai to dishonestly receive the stolen property as also to commit the offence of criminal breach of trust. It is also alleged in the complaint that the accused persons with a common intention with Shri Aman Kumr Harjai and Shri Pawan Kumar Harjai to deprive the complainant of his money have entered into a criminal conspiracy by entering into a Memorandum of understanding, whereby the accused persons agreed not to oppose the bail of Shri Pawan Kumar Harjai and Shri Aman Kumar Harjai and received from them a part of the stolen property, inter alia, a sum of Rs. 5.75 lakhs at the first instance and thereafter, a sum of Rs.1 lakh vide cheque no. 035754 dated 6.11.2003 drawn on Bank of Punjab Ltd. East Patel Nagar Branch, New Delhi and further agreed to receive a sum of Rs. 1 lakh before 30th January, 2004, Rs. 1 lakh before 30th March, 2004, Rs.1 lakh before 30th May, 2004, Rs.1 lakh before 30th July, 2004 and Rs.2.5 lakhs thereafter in terms of the memorandum of understanding. The complainant moved the National Consumer Disputes Redressal Commission against the Citi Bank, whereupon the Citi Bank had agreed to release an amount of Rs. 5.75 lakhs to the complainant. The complainant also alleged that the Bank being a trustee of funds of the complainant is obligated on a demand being made by the complainant to return the money to him. Having refused to do so, the accused persons have committed an offence of criminal breach of trust, as they were entrusted with the safe custody of the complainant''s money. The complainant also complained that the Police is not registering an FIR inspire of several requests. This complaint when came up for consideration before the learned Metropolitan Magistrate, he thought it fit to have the matter investigated u/s 156(3) Cr.P.C. in the first instance and passed an order accordingly. It is this order that the accused persons, who have not yet been summoned in the complaint, seek to challenge as one having been made without application of mind.

3. Counsel for the Petitioners argues that the valuable rights of the accused have been affected inasmuch as the Magistrate had directed investigation u/s 156(3) Cr.P.C. instead of going into the matter himself. This, counsel submits, is abdication of the judicial function of the Magistrate who is bound to examine the complaint himself. He also submits that a reference ought not to be made for investigation to the Police u/s 156(3) as a matter of course but should be an order made upon consideration of the material on record. He has cited various judgments to show that an order u/s 156(3) should not be made mechanically.

4. Having heard counsel for the Petitioners, I am of the view that at a stage when the petitioners have not been summoned in a complaint filed before a Magistrate, they can hardly be aggrieved of the order of the Magistrate, who has postponed the process awaiting a report u/s 156(3) Cr.P.C. in a matter which could be a complicating matter and according to the Magistrate needs expert handling to collect evidence. No doubt, the Magistrate must not refer matters u/s

15(3) Cr.P.C. mechanically, but there is no requirement that he has to give detailed order and reasons for making an order u/s 156(3) Cr.P.C.. It is a discretion vested in the Magistrate and it is his discretion alone which is relevant. It is needless to say that all discretions exercised by a judicial forum will be exercised judiciously. Merely passing of an order u/s 156(3) Cr.P.C. can hardly give a cause of challenge to the accused. In any event of the matter, upon a perusal of the order dated 28th August, 2004, I do not find that the same suffers from any illegality, impropriety, perversity or jurisdictional error or has caused failure of justice, which require the interference of this Court. Consequently, Crl.M.C.2306/2004 and Crl.M.C.2293/2004 are dismissed. Crl.M. Nos. 7713/2004 and 7673/2003 also stand dismissed. Interim orders, if any, stand vacated.