(2010) 04 DEL CK 0060

In the Delhi High Court

Case No : Criminal M.C. 2106 of 2007

Ashok Kumar Garg APPELLANT

Vs

State of Delhi and Others RESPONDENT

Date of Decision : 05-04-2010

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 173, 173(1), 190, 190(1)
Penal Code, 1860 (IPC) — Section 34, 406, 420, 468, 471

Citation : (2010) 04 DEL CK 0060

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Anupam Sharma, for the Appellant; N. Hariharan and Atul Ahlawat, for the Respondent

Judgement

Sanjiv Khanna, J.—The petitioner, Mr. Ashok Kumar Garg had filed a private complaint u/s 406/420/468/471/506/34 of the Indian Penal Code before the Metropolitan Magistrate, with an application u/s 156(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code).

2. On 18th October, 2003, after hearing the counsel for the petitioner and perusing the facts stated in the complaint, the application u/s 156(3) of the Code was allowed and the SHO, Police Station-Punjabi Bagh was directed to register a FIR and conduct investigation.

3. The police filed cancellation report u/s 173 of the Code on 22nd March, 2004. The petitioner filed objections to the said cancellation report. The objections filed by the petitioner were rejected and vide order dated 29th May, 2004, the cancellation report filed by the police, was accepted.

4. A revision petition filed by the petitioner was dismissed vide order dated 4th April, 2007.

5. The impugned orders passed by the learned Metropolitan Magistrate and the Additional Sessions Judge suffer from two legal fallacies. Firstly, they have held

that after the complaint has been referred for investigation u/s 156(3) of the Code, the complainant loses and does not have any right to lead evidence u/s 200 of the Code and recourse to the said procedure is prohibited/barred. Secondly, it has been held that as the alleged forged bills were relied upon by the respondent in a civil suit and, therefore, provisions of Section 195 of the Code are attracted and without permission of the civil Court, no complaint that the bills were forged and fabricated can be entertained.

6. On the first issue, counsel for the petitioner has rightly relied upon judgments of the Supreme Court in H.S. Bains, Director, Small Saving-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State (Union Territory of Chandigarh), , India Carat Pvt. Ltd. v. State of Karnataka 1989 SCC (Criminal) 306 and Minu Kumari v. State of Bihar (2006) 2 SCC (Crl) 310. In these decisions it has been held that when a private complaint is received by a Magistrate, he has several courses open to him. He can take cognizance of the offence after examine the witnesses. He can dismiss a complaint in case there is no sufficient ground for proceeding further. A Magistrate u/s 202 of the Code also has power to postpone issue of process and enquire into the matter himself or direct investigation by police or stay proceedings. Another course available to the Magistrate is to order an investigation to be made by police u/s 156(3) of the Code. When the said order is made, the police have to investigate the matter and submit a report. After receiving report from the police, a Magistrate initiates process as stipulated u/s 190 of the Code. Irrespective of the police report whether or not a case is made out, a Magistrate can take cognizance of an offence u/s 190(1)(b) of the Code. He can straight away issue the process. The Magistrate is not bound by the conclusions drawn by the police and may proceed to issue the process even if the police have recommended that there is no sufficient ground for proceedings further. It is also open to the Magistrate to record statement upon oath of the complainant and witnesses u/s 200 of the Code and thereafter decided whether to dismiss the complaint or issue process. The mere fact that the Magistrate had earlier ordered an investigation u/s 156(3) of the Code and received a report under the Section 173 of the Code will not have the effect of total effacement on the power of the Magistrate to proceed under Sections 200, 202 and 204 of the Code. In H.S. Bains'' case it has been observed as under:

Thus, a Magistrate who on receipt of a complaint, order an investigation u/s 156(3) and receives a police report u/s 173(1), may thereafter, do one of three things; (1) he may decided that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence u/s 190(1)(b) on the basis of the police report and the process; this he may do without being bound in any manner by the conclusions arrived at by the police in their report (3) he may take cognizance of the offence u/s 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses u/s 200. He adopts the third alternative, he directly hold or direct any inquiry u/s 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process as the case may be.

7. The second legal issue is also covered by the decision of the Supreme Court in Iqbal Singh Marwah and Anr. v. Meenakshi Marwah and Ors. 2005 SCC (Crl) 1101, in which it has been held in paragraphs 25 and 33 as follow:

25. An enlarged interpretation to Section 195(1)(b)(ii), whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in court, is capable of great misuse. As pointed out in Sachida Nand Singh after preparing a forged documents or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the court, were the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed indefinitely. Such an interpretation would be highly detrimental to the interest of the society at large.

33. In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) Cr.PC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodial legis.

8. In view of the aforesaid, the impugned orders passed by the Metropolitan Magistrate and affirmed by the Session Judge are set aside and the matter is remanded back to the learned Metropolitan Magistrate for fresh decision. It is clarified that the observations made in this order are only for the purpose of the decision of the petition. Learned Metropolitan Magistrate will apply his own mind. It is also clarified that this Court has not expressed any opinion on whether or not evidence of the witnesses are required to be recorded or sufficient grounds for issuing process or not are made out. The question whether the respondent herein has right to appear and heard is also left open and is not decided. Records of the trial Court will be sent back.

9. The petitioner will appear before the trial Court on 26th April, 2010, when a further date of hearing will be fixed.

Dasti.