

(2017) 04 DEL CK 0042

In the Delhi High Court

Case No : 574 of 2016

BAKSHISH SINGH

APPELLANT

Vs

STATE OF NCT OF DELHI & ORS.

RESPONDENT

Date of Decision : 10-04-2017

Acts Referred:

Constitution of India, Article 356 -
Provisions in case of failure of constitutional machinery in States
Code of Criminal Procedure, 1973, Section
482,

Citation : (2017) 04 DEL CK 0042

Hon'ble Judges : Sangita Dhingra Sehgal

Bench : SINGLE BENCH

Advocate : Vinod Malhotra, Nikhil Malhotra, Mukesh Gupta

Judgement

1. The present appeal arises out of the order dated 11.02.2016 passed by the learned Single Judge in W.P.(Crl) No. 2004/2015. The unsuccessful petitioner is the appellant before us.

2. The appeal is brought before this bench by order dated 11.07.2016 passed by the Supreme Court in SLP No. 10621/2016, wherein the Supreme Court permitted the appellant to file an intra-court appeal in the form of Letters Patent.

3. It is the case of the appellant that he is the owner of the property bearing No.2184/168, Plot No.103, Ganesh Pura-B, Tri Nagar, Delhi (hereinafter referred to as "the said property") and he had taken a loan of Rs. 30,000/- against the documents of the said property measuring 90 sq. yards from Ramgarhia Co-operative Bank Ltd, Paharganj, New Delhi.

The appellant had already repaid approximately half of the loan amount. Soon thereafter, the appellant received information regarding someone in connivance with the bank officials had forged his signature and taken away the title documents of the said property. An F.I.R. bearing No. 124/2012 was also registered 05.07.2012.

4. Thereafter, the appellant received information that the said property was being demolished by the respondent No. 6, who claimed to have purchased the property from Smt. Rajinder Kaur i.e. wife of the brother of the appellant. The appellant filed two suits in Tis Hazari Court and made various complaints and representations to the Station House Officer, P.S. Keshav Puram and Deputy Commissioner, MCD but they failed to reply to the same.

5. Aggrieved by the inaction of the authorities, the appellant filed a writ petition bearing W.P.(CrI) No. 2004/2015 before the learned Single Judge. The learned Single Judge vide order dated 11.02.2016 dismissed the petition while relying upon the decision of the Supreme Court in Sakiri Vasu vs. State of U.P. & Ors. reported as (2008) 2 SCC 409 and held as under:-

""26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies? 27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere."

4. In view of the legal position referred to above and remedies available to the petitioner by filing criminal complaint, no direction is required to be issued by this Court in writ jurisdiction.

6. Mr. Vinod Malhotra, learned counsel for the appellant has vehemently argued that there is a specific bar under Section 197 of the Code of Criminal Procedure which prevents a private complaint against public servants, in view of which the only remedy available to the appellant is under Article 226 of the Constitution of

India when the concerned authorities fail to take any action against their delinquent officials. Therefore, the decision of the Supreme Court in the case of Sakiri Vasu vs. State of U.P. & Ors. (supra) is not applicable to the facts of the present case.

7. On the converse, Mr. Mukesh Gupta, learned counsel for the respondent No. 2/ NDMC contended that the appellants have an alternative remedy and hence, the present appeal does not lie.

8. We have heard learned counsel for the parties and perused the material available on record.

9. Before delving into the merits of the case, it would be pertinent to reproduce the prayer made by the appellant in the present appeal, which reads as under:-

"a. Order dated 11.02.2016 in W.P.(Crl) No. 2004/2015 passed by the Ld. Single Bench of Delhi High Court may please be set-aside.

b. The respondents No. 1, 2 and 3 be directed to initiate an inquiry and find out all those officials of their respective department who were on duty at that time and had not taken any action against bonafide complaints of the petitioner and with whose connivance the respondent No. 6 was able to raise an illegal and unauthorized 4 storey building and take appropriate action against them c. After fixing the accountability of their concerned officials for the acts of omission and commission, the respondents No.1, 2 and 3 be directed to register against all those under the relevant provisions of Prevention of Corruption Act including the respondent No.6."

10. It would also be significant to reproduce Section 197 of the Code of Criminal Procedure. It reads as under:-

"197. Prosecution of Judges and public servants- (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government; (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government: Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression" State Government" occurring therein, the expression" Central Government" were substituted.

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government. (3) The State Government may, by notification, direct that the provisions of sub- section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub- section will apply as if for the expression" Central Government" occurring therein, the expression" State Government" were substituted. (3A) Notwithstanding anything contained in sub- section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991 , receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.] (4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

11. After perusal of the record, we are of the view that whenever any offence is committed either under the Indian Penal Code or under any special law such as the Prevention of Corruption Act, the Code of Criminal Procedure provides for initiation of a criminal case, for investigation, enquiry and trial into the same. It is not for the writ Court to act as a substitute for the authorities created by law for institution of criminal cases and for investigation of the same. There is ample scope for any person aggrieved by a criminal act either to lodge an F.I.R. before the concerned Police Station or to make a complaint directly in Court. Criminal Courts are empowered to take cognizance of offences either on complaint or on police report or even on personal knowledge. The Code further provides under Section 154 (3) that if the Officer-in-Charge of a Police Station refuses to record an F.I.R., the complainant could send a copy of his complaint to the Superintendent of Police. There is yet another door open to the complainant i.e. he could approach the Magistrate under section 190 of the Code of Criminal

Procedure with a complaint for referring it to the concerned Police Station for institution of a case and investigation. There being so many alternative remedies available to the petitioner for initiation of a criminal case, this Court in exercise of its writ jurisdiction is not an appropriate forum to look into the matter as a Court of first instance.

12. We are, therefore, in consonance with the view taken by the learned Single Judge that High Courts do not normally exercise writ jurisdiction, in case alternative remedy is available and same has not been availed of by the concerned party.

13. In light of the above observations, we find no reason to interfere with the order under appeal passed by the learned Single Judge.

14. The appeal is accordingly dismissed.