

(2015) 05 TP CK 0006
In the Tripura High Court
Case No : Criminal Petn. No. 71 of 2014

Birajit Sinha

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 08-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 139, 154, 154 (1), 154(1), 155
Penal Code, 1860 (IPC) — Section 120-B, 409, 420
Prevention of Corruption Act, 1988 — Section 13(2), 13(i)(a)

Citation : (2015) 05 TP CK 0006

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Advocate : P.K. Biswas, Senior Advocate and P. Majumder, for the Appellant; A. Ghosh, P.P., Advocates for the Respondent

Final Decision : Disposed off

Judgement

S. Talapatra, J.—Heard Mr. P.K. Biswas, learned senior counsel assisted by Mr. P. Majumder, learned counsel appearing for the petitioner as well as Mr. A. Ghosh, learned P.P. appearing for the State.

Mr. Nabadwip Jamatia, the Addl. Superintendent of Police, Unakoti Tripura and Mr. Chabir Ahamed, Officer-in-Charge of Kailashahar Police Station appeared in person before in terms of the order dated 07.05.2015.

2. On demonstrating anxiety Mr. Biswas, learned senior counsel has submitted that from the reply filed by the State it transpires that the complaint by the petitioner was not considered for registration of the case, even though the complaint discloses a clear-cut cognizable offence. He has referred to the communication dated 27.10.2014, Annexure-A to the said reply filed by the State on 10.12.2014, addressed to the Additional Secretary, Home Department, Government of Tripura by the Assistant Inspector General of Police (Crime) which reflects that after the scrutiny of the audit reports enclosed with the complaint, it was not clear that if the conduct of the accused is criminal in nature or not and

therefore, a request was made for referring the matter to the Vigilance Department for making further inquiry. When this Court asked Mr. Jamatia, Addl. Superintendent of Police, Unakoti Tripura why the complaint lodged by Mr. Birajit Sinha, the petitioner herein was not registered as a specific case, he has replied that the persons named in that complaint were not found involved in any culpable act in the inquiry. But the complaint filed by Dr. Sandeep N. Mahatme, the Mission Director, National Health Mission is specific about the misappropriation of the public fund. Accordingly, on the basis of that information, Kailashahar P.S. case No. 17 of 2015 under Sections 409/120-B/420 of the I.P.C. along with Section 13(2) and 13(i)(a) and (d) of the Prevention of Corruption Act, 1988 was registered. Mr. Jamatia has further submitted that as this court has been examining the matter, they preferred not to register any case on that complaint. He has categorically contended that the complaint of the petitioner even does not clearly reveal commission of cognizable offence. Allegations are extremely vague and as such, immediately no case was registered. After the complaint was received, the information, so far material in the context, has been recorded in the General Diary (GD) and thereafter, a preliminary inquiry was taken up. In the midst of that inquiry, this petition had been filed and before culmination, the case has been registered for sake of the expeditious investigation on the basis of the specific information of cognizable offence by the Mission Director.

3. Mr. Biswas, learned senior counsel has submitted further that the police has not conducted inquiry in accordance with the provisions of law. If on the basis of any information a preliminary inquiry is taken up, then on the culmination of that inquiry it has to be decided whether or not that a specific case be registered but no law authorizes registration of a case on the basis of the subsequent complaint or information in respect of the same offence or its transaction. He has further submitted that the audit reports which were enclosed with the complaint of the petitioner provided the basis of the information by the Mission Director. Therefore, it does not suit in the mouth of the police officers to say that the Mission Director revealed something new forming disclosure of the cognizable offence.

4. In *Lalita Kumari Vs. Govt. of U.P. and Others*, (2013) 12 AD 209 : AIR 2014 SC 187 : (2014) CriLJ 470 : (2013) 6 CTC 353 : (2014) 1 JCC 1 : (2013) 14 JT 399 : (2013) 4 RCR(Criminal) 979 : (2013) 13 SCALE 559 : (2014) 2 SCC 1 : (2014) 1 SCJ 68 , the apex court has categorically held that:

"73. The legislature has consciously used the expression "information" in Section 154(1) of the Code as against the expression used in Section 41(1)(a) and (g) where the expression used for arresting a person without warrant is "reasonable complaint" or "credible information". The expression under Section 154(1) of the Code is not qualified by the prefix "reasonable" or "credible". The non qualification of the word "information" in Section 154(1) unlike in Section 41(1) (a) and (g) of the Code is for the reason that the police officer should not refuse

to record any information relating to the commission of a cognizable offence on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, reasonableness or credibility of the said information is not a condition precedent for the registration of a case.

74. The above view has been expressed by this Court in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp which is as under:

32...in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Section 41(1)(a) [by errata : who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or"]

The new Sections 41(1)(a), (b) and (ba) are as follows:

41. (1)(a) who commits, in the presence of a police officer, a cognizable offence; (b) against whom a reasonable complaint has been made, or credible information has been received;

(ba) against whom credible information has been received that he has committed a cognizable offence.] or (g) of the Code wherein the expressions, "reasonable complaint" and "credible information" are used. Evidently, the non-qualification of the word "information" in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, "reasonableness" or "credibility" of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word.

75. In *Parkash Singh Badal and Another Vs. State of Punjab and Others*, AIR 2007 SC 1274 : (2007) CLT 567 Supp : (2007) 1 JT 89 : (2006) 13 SCALE 54 : (2007) 1 SCC 1 : (2006) 10 SCR 197 Supp : (2007) AIRSCW 1415 : (2006) 8 Supreme 964, this Court held as under:

65. The legal mandate enshrined in Section 154(1) is that every information relating to the commission of a "cognizable offence" [as defined under Section 2(c) of the Code] if given orally (in which case it is to be reduced into writing) or in writing to "an officer in charge of a police station" [within the meaning of Section 2(o) of the Code] and signed by the informant should be entered in a book to be kept by such officer in such form as the State Government may prescribe which form is commonly called as "first information report" and which

act of entering the information in the said form is known as registration of a crime or a case.

66. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the police officer concerned cannot embark upon an inquiry as to whether the information laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157 thereof. In case an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by Sub-section (3) of Section 154 of the Code.

67. It has to be noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Sections 41(1)(a) or (g) of the Code wherein the expressions "reasonable complaint" and "credible information" are used. Evidently, the non qualification of the word "information" in Section 154 (1) unlike in Sections 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, "reasonableness" or "credibility" of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that "every complaint or information" preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that "every complaint" preferred to an officer in charge of a police station shall be reduced in writing. The word "complaint" which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word "information" was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(c) of the Code. An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must

be an information and that information must disclose a cognizable offence.

68. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information."

[Emphasis added]

5. Having referred to *Lalita Kumari v. Government of Uttar Pradesh and others*, Mr. Biswas, learned senior counsel has submitted that the reasonableness or the credibility of the information is not a premise for registration of a case. But in this case, despite cognizable offence is disclosed by the audit report accompanied with the complaint, the police has not registered any case. Hence, this petition under Section 482 of the Cr.P.C.

6. Mr. A. Ghosh, learned P.P. appearing for the State has fairly submitted that since the police had taken up the preliminary inquiry on the basis of the complaint/information filed by the petitioner, then they should have waited till culmination of the said inquiry. He has fairly admitted that during the inquiry the second information had been received from the Mission Director and that has given further credibility to the complaint filed by the petitioner. In such circumstances, the police ought to have registered the case on the basis of the complaint filed by the petitioner.

7. This Court is confronted with a bizarre circumstance. After registration of the case, this Court cannot pull back the case on a previous date for registration. Moreover, this Court does find that any prejudice would cause to the fair investigation, if this Court does not interfere with action of the police. But for future guidelines, it is categorically observed that if such conduct of the police officer is revealed and come to the knowledge of the Court, this Court would take harsher action against the erring police officer, as the apex court in *Lalita Kumari v. Government of Uttar Pradesh and others* has further observed that :

"in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR,

what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR."

8. Having due regard to the law as enunciated by the apex court in *Lalita Kumari v. Government of Uttar Pradesh* and others, this Court has no hesitation to hold that the conduct of the police officers in this case is not only regrettable but is highly illegal. But in the circumstance, this court cannot grind the time for asking them to register the case on the basis of the information/complaint filed by the petitioner.

Since according to this Court, the conduct of the police officers (the Officer-in-Charge, Kailashahar Police Station and the Addl. Superintendent of Police who is supervising the case) is reprehensible, they are hereby "censured". "Censure" be recorded in their service records. This order has been passed after hearing the concerned police officers.

With this observation and direction, this petition stands disposed of.

A copy of this order be sent to the Director General of Police for taking appropriate action having regard to the observation made in this order.