
(2008) 05 DEL CK 0164

In the Delhi High Court

Case No : Criminal M.C. No. 2618 of 2007 and Criminal M.A. No. 9286 of 2007

Brahm Prakash Gupta

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 23-05-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(3), 167, 190, 200
Evidence Act, 1872 — Section 27

Citation : (2008) 106 DRJ 199 : (2008) ILR Delhi 36 Supp

Hon'ble Judges : Aruna Suresh, J

Bench : Single Bench

Advocate : Manish Gandhi, for the Appellant; Lovkesh Sawhney, APP, for the Respondent

Final Decision : Dismissed

Judgement

Aruna Suresh, J.—In this petition filed u/s 482 of the Criminal Procedure Code (hereinafter referred to as Code) the petitioner has sought setting aside of the order dated 11.7.2007 passed by the learned Additional Sessions Judge thereby rejecting the prayer of the petitioner for directions to the police u/s 156(3) of the Code filed along with his complaint dated 10.1.2007 for investigation with further prayer to direct the SHO of the concerned police station to lodge an FIR against the accused persons for the criminal offences which they allegedly committed, under appropriate provisions of the Indian Penal code. Further relief sought is issuance of the order for summoning of the accused person and to take cognizance and conduct the trial.

2. Complainant had purchased a car vide No. DL-2F AH 0100 make Skoda in the month of November 2004 from respondent No. 1 the Managing Director of M/s Silvertone Motors Pvt. Ltd. which was insured with respondent No. 4 Tata AIG Insurance Company Ltd. vide police No. 0195293018 in October 2005. The policy was to expire on 2.11.2006. In April, 2006, the said vehicle met with an accident at Alipur, Delhi and was taken to the workshop of respondent No. 1 & 2. The said

car was inspected by respondent No. 5 authorized surveyor who submitted his report and prepared the claim. This claim was sent to respondent No. 4. The surveyor assessed the total amount to be spent on repairs of the said car as approximately Rs. 6 lacs. However, respondent No. 2 prepared the estimate amount including labour charges and costs of spare parts etc. at Rs. 10,70,311/-. Subsequently, petitioner received repair bill for Rs. 8,73,900/- to which he objected on the plea that the insurance company was ready to pay Rs. 5,78,946/-. The possession of the vehicle was not to be delivered to the petitioner till he cleared the balance amount of Rs. 3,33,650/- as the respondent No. 4 had finally agreed to pay Rs. 6,03,000/-. The petitioner has not taken the possession of the vehicle he has not paid the balance amount. It is argued by the learned Counsel for the petitioner that the bill for Rs. 8,73,900/- was raised by respondents No. 1 & 2 without any information, knowledge or approval or permission of the complainant and the said bill is exaggerated which has been prepared with the connivance of the respondents. The respondent No. 1 & 2 have failed to satisfy the petitioner about their claim as raised in the bill. It is further alleged that on 22.11.2006 when complainant approached respondent No. 2 to enquire about status of his car and for taking other relevant documents, he was only handed over the copy of the bill and it was then that he was told that respondent No. 4 paid only Rs. 6,03,000/-. It is also submitted that the satisfactory letter/discharge voucher and claim form was never got signed from the complainant and therefore the said documents are forged and manipulated by the accused persons. Despite demand by the complainant vide his letter dated 30.11.2006 he has not been handed over original documents like registration certificate, insurance policy and other relevant documents. It is further submitted that petitioner has been cheated by the respondents but the police refused to take any action on his complaint dated 14.12.2006 which was sent to police station Moti Nagar. Thereafter, he filed the complaint before learned metropolitan magistrate along with an application u/s 156(3) of the Code seeking directions to the police to register a case against the respondents and investigate the matter. However, learned trial court dismissed the application of the petitioner u/s 156(3) of the Code and listed the matter for recording of pre summoning evidence on 5.5.2007. This order was challenged by the complainant by way of a revision petition being Criminal Revision No. 34/2007. This revision petition was also dismissed by the learned ASJ by a detailed order dated 11.7.2007.

3. Learned APP for the State has submitted that there is no infirmity or illegality in the order of the learned MM as well as of the learned ASJ vide which the application of the petitioner u/s 156(3) of the Code was dismissed. He has urged that it is the discretion of the court either to proceed with the inquiry himself or in exercise of its power u/s 156(3) of the Code direct the police to register an FIR and investigate the matter. He further argued that generally the power u/s 156(3) of the Code are to be exercised where the Court is of the opinion that it is not feasible to hold inquiry itself and assistance of the police is required for breaking the case and discovering some evidence which the complainant was

unable to collect of his own. Therefore, he has prayed that the petition be dismissed.

4. I have considered the submissions of the learned Counsel for the petitioner and learned APP for the State.

5. Chapter XII of the Code deals with information to the police and its power to investigate the offences. Chapter XV of the Code deals with complaint filed before a Magistrate and the procedure to be adopted by the Magistrate after taking cognizance of an offence. Section 156 of the Code contained in Chapter XII speaks of the powers of the police officers to investigate cognizable cases and Sub clause 3 of the said section gives power to the Magistrate having power u/s 190 of the Code to order such an investigation. Complaint filed u/s 190 read with 200 of the Code before a Magistrate provides an alternative as well as an additional remedy to a complainant whose complaint either is not entertained by the police or who is not satisfied by the investigation being conducted by the police.

6. Powers vested in a Magistrate to direct police officer to investigate a matter u/s 156(3) of the Code is to be exercised judiciously on appropriate grounds and not in a mechanical manner. There may be cases where the allegations are not very serious and the complainant himself is in possession of evidence to prove his allegations, there is no need to pass an order u/s 156(3) of the Code. The Magistrate has to exercise power u/s 156(3) of the Code only after proper application of mind and only in those cases where the Magistrate feels that the nature of allegations in the complaint are such that complainant himself may not be able to collect and produce evidence before the court and feels the necessity of the police stepping in to help the complainant. Police assistance can also be taken by a Magistrate u/s 202(1) of the Code after taking cognizance and proceeding with the enquiry of the complaint filed u/s 200 contained in Chapter 15 of the Code. Section 156(3) of the Code curtails and controls the arbitrariness on the part of the police authorities in the matter of registration of FIRs and not taking up investigation even in those cases where the same are warranted. However, complainant cannot be allowed to misuse this provision to get police case registered even if the allegations in the complaint are not serious in nature and the Magistrate can hold inquiry himself and proceed against the accused if required.

7. In Gulab Chand Upadhyaya Vs. State of U.P. and Others, , it was held by this Court:

7. The causes for non-registration of FIR at police stations in cognizable case can vary widely. The overworked police may be indifferent to the common man's woes, the accused may be influential, registering of FIRs may be refused to keep the crime statistics of that police station low. Also, in some cases the police may be aware of the true state of affairs and may refuse to register false or pre-emptive FIRs.

10. Section 41 Cr.P.C. gives the power to the police to arrest without warrant in cognizable offences, in cases enumerated in that Section. One such case is of receipt of a "reasonable complaint" or "credible information" or reasonable suspicion" [see Section 41 (a) & (g)]. When a Magistrate directs registration of FIR and investigation, it would be a little difficult for the police officer of the rank of inspector or sub-inspector to still contend that the complaint or suspicion is not "reasonable" or that the information (in the FIR) is not "credible". Although the use of the word "may" in Section 41 Cr.P.C. indicates that, it is not obligatory for police to make arrest in every case. But if arrest is made, it does not require any, much less strong, reasons to be recorded or reported by the police. Thus so long as the information or suspicion of cognizable offence is "reasonable" or "credible", the police officer is not accountable for the discretion of arresting or no arresting. At best the arrested person can be granted bail, or maybe in extreme cases remand can be refused u/s 167 Cr.P.C.

It was observed:

22. The scheme of Cr.P.C. and the prevailing circumstances require that the option to direct the registration of the case and its investigation by the police should be exercised where some "investigation" is required, which is of a nature that is not possible for the private complainant, and which can only be done by the police upon whom statute has conferred the powers essential for investigation, for example

(1) where the full details of the accused are not known to the complainant and the same can be determined only as a result of investigation, or

(2) where recovery of abducted person or stolen property is required to be made by conducting raids or searches of suspected places or persons, or

(3) where for the purpose of launching a successful prosecution of the accused evidence is required to be collected and preserved. To illustrate by example cases may be visualized where for production before Court at the trial (a) sample of blood soaked soil is to be taken and kept sealed for fixing the place of incident; or (b) recovery of case property is to be made and kept sealed; or (c) recovery u/s 27 of the Evidence Act; or (d) preparation of inquest report; or (e) witnesses are not known and have to be found out or discovered through the process of investigation.

8. In *Gangadhar Janardan Mhatre Vs. State of Maharashtra and Others*, , Division Bench of the Supreme Court while discussing the entire scheme contained in Chapter XII and XV of the Code held:

When the information is laid with the Police, but no action in that behalf is taken, the complainant is given power u/s 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds

a prima facie case instead of issuing process to the accused, he is empowered to direct the Police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint u/s 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in *All India Institute of Medical Sciences Employees' Union (Reg.) through its President v. Union of India and Ors.* It was specifically observed that a writ petition in such cases is not to be entertained.

9. Both these judgments (*supra*) have been discussed in right prospective by the learned MM in his order dated 8.3.2007 as well as learned ASJ in her order dated 11.7.2007.

10. Coming to the facts of this case, complainant is in the knowledge of the entire facts and circumstances of this case. He is in possession of the evidence which he can adduce at pre summoning stage in the inquiry of the complaint by the Magistrate. The facts narrated in the complaint clearly indicate that no assistance of the police is required either by directing it to register a case and investigate the same when Magistrate himself can hold an inquiry in view of the fact that there is no such evidence required to be produced on record which the complainant may not be able to procure or produce it before the Magistrate during inquiry. Therefore, learned ASJ rightly dismissed the revision petition being without merits. I do not find any infirmity or illegality in the said order. Hence, no interference is required.

11. It is pertinent to mention here that in the alternative complainant made a prayer requesting the Magistrate to issue order for summoning of the accused persons and take cognizance of the offences and conduct trial against the respondents. Therefore, even otherwise, the grievance of the petitioner in view of his alternative prayer is without any basis.

12. Hence, the petition is hereby dismissed.