(2010) 08 GAU CK 0014

In the Gauhati High Court

Case No : Writ Petition (C) No. 430 of 2010

Chingangbam Dinesh Singh APPELLANT

Vs

State of Manipur and Others RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 156(1), 156(3), 200

Citation : (2010) 6 GLR 15

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : Kh. Mani, for the Appellant; H. Raghumani Singh, for the Respondent

Judgement

T. Nandakumar Singh, J.—Heard Mr. Kh. Mani, learned Counsel appearing for the Petitioner and also Mr. Raghumani Singh, learned G.A. appearing for the Respondents 1 to 4.

2. The only prayer sought for in the present writ petition is for a direction to the Respondent No. 4, officer in-charge, Moirang P.S., Bishenpur District to register an FIR case on the complaint lodged by the present Petitioner and investigate the matter.

3. Short fact leading to the filing of the present writ petition is recapitulated. The Petitioner is the ex-employee (Cont.) of the National Hydro Electric Power Co-Operation, Loktak Project, Manipur (NHPC). Some of the employees of NHPC, Manipur entrusted upon the Petitioner by executing a power of attorney dated 3.6.2007, nominating him as their Attorney for the task of withdrawal and receipt of their Income Tax return by approaching before the Income Tax Office and other Department concerned for the refund/return/withdrawal of their Income Tax Return for the assessment year, 2007-08. But, during the course of his endeavour to withdraw the said amount, the Petitioner came to know that a sum Rs. 9,20,161 (Rupees nine lakhs twenty thousand one hundred and sixty-one) was found to have withdrawn from Moirang Primary Co-operative Bank Ltd.

Moirang by one Shri Shougrapkpam Ibungomacha Singh, s/o S. Dhananjoy Singh of Phubala Awang Leikai, P.S. Bishnupur in collusion with Smt. Salam Ongbi Ibemchaobi Devi, Manager of the Moirang Primary Co-operative Bank Ltd. Moirang by forging the signatures of the real account holders.

4. It is also stated that the Petitioner sent legal notice dated 30.10.2008 to Smt. Salam Ongbi Ibemchaobi Devi, Manager of the Moirang Primary Co-operative Bank Ltd. Moirang and to that legal notice she sent her reply dated 15.11.2008 wherein she requested to wait for two months so as to enable to bring amicable salutation during the said period of two months in the interest of the Bank. Even after lapse of many months from 15.11.2008 Smt. Salam Ongbi Ibemchaobi Devi, Manager of the Moirang Primary Co-operative Bank Ltd. Moirang did not take any steps. Being aggrieved, the Petitioner approached the CJM, Bishnupur by filing complaint for that alleged fraudulent withdrawal of amount of Rs. Rs. 9,20,161 by Smt. Salam Ongbi Ibemchaobi Devi, Manager of the Moirang Primary Co-operative Bank Ltd. Moirang.

5. Learned CJM, vide order dated 16.11.2009 sent down the said case for investigation and report to O.C. Moirang Police Station. The only grievance made out in the present writ petition is that in spite of the order of the learned CJM for investigation of the said complaint filed by the present Petitioner, the O.C. Moirang P.S. has not registered a criminal case, i.e., FIR.

6. Mr. Mani, learned Counsel for the Petitioner contends that the CJM, in exercise of the powers u/s 156(3) of the Code of Criminal Procedure can order police officer for investigation and report. On bare perusal of Section 156(3) of the Code of Criminal Procedure, it is crystal clear that Magistrate has the power to order the concerned police to investigate the complaint filed by the complainant before the CJM.

7. The Apex Court in a catena of cases held that it is the duty of the officer in-charge of the Police Station to register an FIR when the Magistrate concerned ordered for investigation in exercise of the power u/s 156(3) of the Code of Criminal Procedure even when the Magistrate expressly does not say so. In the present case also the officer in-charge, Moirang P.S. was directed to investigate and report by sending down the complaint received by the CJM. In such situation, it is the duty of the officer in-charge Moirang P.S. to register an FIR and investigate the matter. Regarding this point I may recall the decision of the Apex Court in (i) Mohd. Yousuf Vs. Smt. Afaq Jahan and Another, , (ii) Sakiri Vasu Vs. State of U.P. and Others, (iii) Dharmeshbhai Vasudevbhai and Others Vs. State of Gujarat and Others, Paras 11 and 15 of the SCC in Mohd Yousuf''s case (supra) read as follows:

11. The clear position, therefore, is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation u/s 156(3) of the Code. If lie does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police

to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in-charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation u/s 156(3) of the Code that an FIR should be registered, it is the duty of the officer in-charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.

15. A faint plea was made by learned Counsel for Respondent 1 that the petition filed by the Appellant was not a complaint in the strict sense of the term. The plea is clearly untenable. The nomenclature of a petition is inconsequential. Section 2(d) of the Code defines "complaint" as follows:

(d) ''complaint'' means any allegation made orally or in writing to a Magistrate, with view to his holding section under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation. -A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.

Paras 6 and 7 of SCC in Dharmeshbhai Vasudevbhai''s case (supra) is quoted:

6. It is well settled that any person may set the criminal law in motion subject of course to the statutory interdicts. When an offence is committed, a first information report can be lodged u/s 154 of the Code of Criminal Procedure (''the Code''). A complaint petition may also be filed in terms of Section 200 thereof. However, in the event for some reasons or the other, the first information report is not recorded in terms of Sub-section (1) of Section 156 of the Code, the Magistrate is empowered under Sub-section (3) of Section 156 thereof to order an investigation into the allegations contained in the complaint petition. Thus, power to direct investigation may arise in two different situations - (1) when a first information report is refused to be lodged; or (2) when the statutory power of investigation for some reason or the other is not conducted.

7. When an order is passed under Sub-section (3) of Section 156 of the Code, an investigation must be carried out. Only when the investigation officer arrives at a finding that the alleged offence has not been committed by the accused, he may submit a final form; on the other hand, upon investigation if it is found that a prima facie case has been made out, a charge sheet must be filed.

8. For the foregoing reasons, this writ petition is disposed of by directing the Respondent No. 4, O.C. Moirang P.S. to register an FIR and investigate the

matter as per direction of the learned CJM.