

(2002) 05 DEL CK 0030
In the Delhi High Court
Case No : Criminal M. (M) No. 757 of 2001

Gautam Ram

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 17-05-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 102, 112, 155(2), 173, 190
Delhi Police Act, 1978 — Section 103, 59(1), 59(2)

Citation : (2002) 98 DLT 348 : (2003) 66 DRJ 38 : (2002) 3 RCR(Criminal) 724

Hon'ble Judges : Surinder Kumar Aggarwal, J

Bench : Single Bench

Advocate : R.K. Sharma and Ravinder Tyagi, for the Appellant; Pawan Sharma, for the Respondent

Judgement

S.L. Agarwal, J.—By this petition u/s 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C."), petitioner is seeking quashing of the complaint (Kalandra), u/s 103 of the Delhi Police Act, (for short, "D.P.Act"), and the proceedings thereon pending trial in the court of ACMM, Delhi.

2. The allegations in brief, are that Anti-kidnapping cell of the Police received information that the petitioner, who is working as a beldar (labourer), in the MCD, has been indulging in illegal activities of bringing arms and drugs from the Nepal border; and that some cash and other articles are lying burred in his jhuggi at Vijay Nagar. The information was recorded vide DD No. 7 dated 10.7.97 at P.S. R.K. Puram and was also brought to the notice of Senior Officers. The police visited the jhuggi but it was found locked. The report was kept pending. On 11.7.97 at 6:30 a.m. the police again received information that the petitioner was available at jhuggi. The police party proceeded to the spot. Petitioner was found present there. From the house search Rs. 80,000/- was recovered. It was suspected to be stolen property and was seized u/s 102 Cr.P.C. From the personal search of the petitioner, a photocopy of driving license and another sum of Rs. 7,400/- was recovered.

3. Statement of the petitioner was recorded. He stated that he was working as a labourer in the MCD; that MCD contractors used to give him 10% commission, which was shared by the MCD employees and that Rs. 80,000/- was saved by him out of this amount. He further disclosed that huge amount was also lying buried in his jhuggi. He led the police party to his jhuggi at main road Vijay Nagar from where he dug out the cemented floor and took out an iron box containing Rs. 4.0 lacs of different denomination. This was also seized. The petitioner failed to give any Explanation and it was suspected to be stolen property. Police after inquiry filed a Kalandara (complaint) u/s 103 of the D.P. Act, 1978 before the Court. The trial court took cognizance and on 9.1.1998, framed notice u/s 251 Cr.P.C. for the commission of the offence punishable u/s 103 of the D.P. Act. Aggrieved by this order, petitioner filed a revision petition in Sessions Court, which was dismissed on 20.10.1998. However, petitioner was given liberty to move the trial court to challenge the alleged illegality or impropriety, while effecting his arrest.

Petitioner moved an application before the trial court, which was dismissed on 9.3.1999. The petitioner filed second revision before the Sessions Court, which was also dismissed on 14.9.2000 and the trial court was directed to decide the question of legality of the arrest of petitioner. Petitioner's application was rejected by trial court vide order dated 24.10.2000 and the kalandra was treated as complaint. This order is under challenge.

4. I have heard learned counsel for petitioner and learned APP for State and have been taken through the record.

5. Learned counsel for the petitioner argued that under Clause (c) of Sub-section (1) of Section 59 of DP Act, a police officer is empowered to arrest any person contravening any provision of this Act, or any rule, regulation made there under where such contravention is an offence punishable under the Act. He argued that Sub-section (2) of Section 59 of DP Act further provides that Police Officer shall not arrest any person under Clause (c) of Sub-section (1) of Section 59 Cr.P.C. without the warrant issued by the Metropolitan Magistrate, unless such person commits any of the acts mentioned in Clauses (a) to (F). He argued that none of the clauses were contravened, Therefore, the arrest of the petitioner is bad in law. Learned APP for the State argued to the contrary.

6. I find no merit in the above contention. There is another section in Cr.P.C. which empowers the police to arrest any person. Section 41 Cr.P.C. empowers a police officer to arrest any person, who has been concerned in any cognizable offence or against whom reasonable complaint has been made or credible information has been received or reasonable suspicion exists of his having been so concerned. It reads:-

"41. When police may arrest without warrant. - (1) Any police officer may, without an order from a Magistrate and without a warrant, arrest any person-

(a) 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."

7. In this case as noticed above, the police had information that the petitioner is indulging in some illegal activities and some cash and other articles are lying buried in his houses. Senior Police Officers were informed. The information in this regard was duly recorded in the Daily Diary on 10th July, 1997. However, house of the petitioner was found locked on that day and on the next day on receipt of confirmation, the police reached the spot and found the petitioner present there; from his personal search Rs. 7,400/- was recovered and from the search of Jhuggi No. D-161, Gandhi Vihar, J.J. Colony, Delhi, Rs. 80,000/- was recovered; when he was unable to give any Explanation, the money had to be seized; thereafter petitioner's statement was recorded; he confessed that he is working as a beldar in MCD, he had been receiving his share of bribe given by the contractors to the MCD employees and that amount was lying buried in his Jhuggi. He dug the cemented floor of the Jhuggi, and from an iron box he took out Rs. 4.0 lacs. In the light of the recovery of such huge amount of money from the ground coupled with his statement, it cannot be said that the police had no reasonable suspicion regarding commission of a cognizable offence to arrest the petitioner under Clause (a) of Sub-section (1) of Section 41, Cr.P.C. Thus, the arrest cannot be held to be illegal.

8. Learned counsel for petitioner next argued that the said amount of Rs. 4.80 lacs was seized by the police u/s 103 of D.P. Act which is punishable with imprisonment for a term which may extend to three months or with fine which may extend to one hundred rupees, or with both, which is non-cognizable as per first Schedule of Cr.P.C. Section 155(2) of Cr.P.C. prohibits investigation by a police officer into a non-cognizable offence without the order from a Magistrate. The violation of this provision would stamp the investigation with illegality. Therefore, no valid cognizance of such an offence could be taken and the same is liable to be quashed.

9. Cognizance of an offence can be taken by a Magistrate u/s 190 Cr.P.C. This Section provides that the Magistrate may take cognizance of an offence upon receiving a complaint, or upon a police report or upon information from a person other than the police officer or upon his own knowledge. Clause (d) of Section 2 Cr.P.C. defines the complaint. It reads:-

"2. (d) "complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking action 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".

10. In this case, the police did not register the formal FIR. To repeat, petitioner was only a beldar in MCD; Rs. 4.8 lacs was recovered from a Jhuggi; he confessed in his statement that it was his share of bribe received by him from the MCD contractors for the employees. This was enough to create suspicion of the commission of an offence and he was arrested. Thereafter the police had the option to register the case and investigate the matter further. However, for the reasons best known to them, they chose only to file the complaint made u/s 103 of DP Act which reads:-

"103. Possession of property of which no satisfactory account can be given.-- Whoever has in his possession or conveys in any manner, or offers for sale or pawn, anything which there is reason to believe is stolen property or property fraudulently obtained, shall, if he fails to account for such possession or act to the satisfaction of the Metropolitan Magistrate, on conviction, be punished with imprisonment for a term which may extend to three months or with fine which may extend to one hundred rupees, or with both."

This Section deals with two aspects of the property: (a) possession or (b) conveys. It also recognises two methods on acquiring; one stolen and second fraudulently obtained. In this section police has been given enormous powers as this reads "anything which there is reason to believe". In this case, police filed "Kalandara", it has to be treated as the complaint by the Investigating Officer of the commission of an offence in the court. This view finds support from the decision of this Court in S.A.S. Pahwa v. State, 88 (2000) DLT 194 wherein it was held:-

"5. In order to properly appreciate the question of jurisdiction of learned MM, certain legal points may be seen, for it was also submitted that the learned MM could not take cognizance without examining the complainant and his witnesses. The offence u/s 112 of the Act, at the first instance being punishable with fine of rupees fifty only, is a non-cognizable offence. Consequently, no investigation could be undertaken by any police officer u/s 55 of the Cr.P.C. without an order of a learned Metropolitan Magistrate. Moreover, the concerned SI not being an officer in charge of the police station could not undertake the investigation. Therefore, Kalandra filed by the SI, could not be a police report u/s 173 of the Cr.P.C. Consequently, it would be treated to be a complaint only."

11. Learned counsel for the petitioner next argued that the statement recorded by the police during investigation was obtained under threat. It is, inter alia, pleaded in the petition "that the amount recovered from the petitioner was a loan which he received from Shri Nathu Ram Nagar, son of Shri Ran Nagar, r/o. 75, Rameshwar Nagar, Model Town-III, Delhi and as well as from Smt. Saroj Rani Aggarwal, wife of Shri Rakesh Aggarwal, r/o. M/s. Engineering Corporation of India, 205, Delhi Road, Meerut, U.P. in July, 1997 for the purchase of land in the native place of the petitioner but with malafide intention, the petitioner has been falsely implicated in the case by the police merely on surmises and conjectures." Assuming it to be true, at best, it would have to be proved in defense.

12. No other point was argued. Learned counsel for petitioner placed reliance on Jagdish Chander Bhatia v. The State & Ors., 1983 C.C.C 361 ; Narain Singh v. The State, 1986 C.C.C 182 ; Anjali v. State of Haryana, 1995 (3) C.C.C 387 ; AIR 1936 253 (Privy Council) ; Mam Chand & Ors. v. State, 1999 2 Del 197; Ajit Singh v. The State, 1990 CCC 66 ; Hazari Lal v. State, 1984 RLR 538; Jagdish Chander & Ors. v. State & Ors., 1990 (1) CCC 286; Ms. Swaran Sabharwal v. Commissioner of Police, 1987 C.C.C 505; Pradeep Narayan Madgaonkar etc. v. State of Maharashtra, 1995 (2) C.C.C 133; Samunder Singh v. State, 1994 (3) C.C.C 432; Balbir Singh v. The State of Punjab, 1989 C.C.C 204 ; Ram Nath v. The State of Haryana, 1985 C.C.C 335 ; Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojraro Angre and Others, ; Chand Khan v. State, 2000 (1) C.C.C 419; and Mohd. Raffique v. The State, 2000 (1) C.C.C 415. These decisions are not applicable to the facts and circumstances of this case and detailed reference to these judgments is not necessary.

For the foregoing reasons, I find no merit in the petition. The same is dismissed. Trial court is directed to proceed with the case expeditiously. Petition stands disposed of.

Copy of this order be sent to the Commissioner of Police, who shall examine why the matter was not probed further and would pass such orders as he may deem suitable. dusty.