
(2003) 10 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : Cr.M.M.O. No. 60 of 2001

Geeta Kumari and Another	Vs	APPELLANT
State of H.P. and Others		RESPONDENT

Date of Decision : 15-10-2003

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 107, 109, 112, 139, 145
Penal Code, 1860 (IPC) — Section 427, 447, 506

Citation : (2004) 1 ShimLC 28

Hon'ble Judges : M.R. Verma, J

Bench : Single Bench

Advocate : J.S. Kanihal, for the Appellant; H.K.S. Thakur, Deputy A.G., for the Respondent Nos. 1 to 5 and 8, Bhupender Gupta and A.P. Jaswal, for the Respondents No. 9 to 14, for the Respondent

Final Decision : Allowed

Judgement

M.R. Verma, J.—This petition under Article 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, (hereafter referred to as the Code), has been filed by the Petitioners for directing Superintendent of Police, District Kangra at Dharamsala (Respondent No. 4) to register FIR on the basis of the complaints dated 12.10.2000, 18.10.2000 and 24.10.2000, sent to the Officer-Incharge, Police Station, Lambagaon by Tehsildar and Sub-Divisional Magistrate, Jaisinghpur and get the matter investigated through CBI alongwith FIR Nos. 92 of 1998 and 85 of 1999, Police Station, Lambagaon and the S.H.O. concerned be made to comply with the provisions of Section 154 of the Code.

2. Briefly stated case of the Petitioners as made out in the petition is that against the background of long drawn civil and criminal litigations between the Petitioners and private Respondents, the Petitioner filed a complaint u/s 107/145 of the Code in the Court of S.D.M. Jaisinghpur, who on 15.11.1999, inter alia, passed the order that none of the rival parties shall interfere with the land

comprising Khata No. 50 min, khasra Nos. 182, 185, 186, 187, 188, 189, 190, 192, 193, 194, measuring 3-55-10 hqtrs situate in Mohal, Lambagaon and Tehsildar Jaisinghpura was appointed receiver with the direction to deposit the proceeds of the produce of the said land in the Government treasury till the case pending before the S.D.M. was decided. Pursuant to such appointment, the Tehsildar was in possession of the aforesaid land in his capacity as receiver appointed and such appointment had not been revoked. However, Respondents Nos. 9 and 13 entered upon the aforesaid land on 14th, 15th and 24th September, 2000 and on the last occasion they were accompanied by one Gandhi, their nephew. Respondents No. 11, 10 and 13 also trespassed into the aforesaid land respectively on 24.9.2000, 30.9.2000 and 10th, 11th and 12th October, 2000. The trespass was with the intention of stealing the grass worth Rs. 2,500 after having been cut from Khasra Nos. 186, 182 and 188. Petitioners brought the matter to the notice of Naib Tehsildar, Jaisinghpura vide application, Annexure PM, dated 12.10.2000 and the latter forwarded Annexure PM to S.H.O., Police Station, Lambagaon for registration and investigation of the case. On 18th October, 2000 Petitioner No. 1, through her husband, again lodged complaint, Annexure PN with the Tehsildar intimating that despite knowledge that the land was with the receiver and was not to be interfered with Respondents No. 9, 13 and one more woman trespassed into the land on 13.10.2000 and committed theft of grass therefrom. On 13.10.2000 Respondent No. 14 also helped Nilima Devi and Gayatri Devi in trespassing into the land and committed theft of the grass therefrom. On 14.10.2000 Respondents No. 12, 10 and two other unknown persons also trespassed into the land in dispute and committed theft of grass. On 17.10.2000 Respondents No. 13, 9 and one Reena Devi also trespassed into the land and committed theft of grass. When they were asked not to do so, they threatened to do away with the life of the Petitioner. This complaint was also forwarded by Tehsildar, Jaisinghpura to S.H.O. Lambagaon for necessary action, as warranted by law.

3. On 24.10.2000 Petitioner, through her general power of attorney, made Anr. complaint, Annexure PO with a copy to S.D.M. again complaining about trespass into the land and theft by Hem Raj Sharma, his wife, Amit Kumar, Om Swaroop, Sulochna Devi and a few other unidentified persons on 18th August, 2000 and by Kalyan Chand, Sulochna Devi, Hem Raj, Amit Kumar and five other unknown persons also trespassed into the land and committed theft of the grass while armed with Darati. Wife of Pratap Chand of Lambagaon accompanied by one more woman and on 21.10.2000 Sulochna Devi, Amit Kaur and wives of Hem Raj and Pratap Chand and eight other women also trespassed into the land and committed theft of grass from 18th to 20th October, 2000 and stolen grass was worth Rs. 3,500. On 22.10.2000 Gian Chand and his wife alongwith eight women and on 23.10.2000 mother and wife of Pratap Chand, on 24.10.2000 Matti Devi, her daughter and an unknown woman and wife of Pratap Chand committed trespass into the land and committed theft of grass worth Rs. 2,000. The copy of Annexure PO endorsed to SDM, Jaisinghpura was forwarded by him to S.H.O.,

Lambagaon for necessary action. However, according to Petitioners, no action in the matter was taken by the police, hence this petition.

4. Respondents contested the petition. Respondents 1, 3, 4 and 8, in their reply, raised the preliminary objections that effective alternative remedy is available to the Petitioners; all necessary parties have not been joined as such in the petition; that the petition involves controversial mixed questions of law and facts; that it suffers from mis-joinder of causes of action and is an abuse of the process of this Court, therefore, it is not maintainable and deserves to be rejected. On merits, while not giving any specific reply to the contents of paras 1 to 9, 11, 12 and 15 to 18 on the ground that these paras on merits, do not pertain to the answering Respondents, it has been averred in respect of other paras that on receipt of a complaint dated 16.12.1998 from the complainant through Superintendent of Police, Kangra, FIR No. 92 of 18.12.1998, was registered in Police Station, Lambagaon and there was no delay in the registration and investigation of the case. Petitioner No. 1, however, did not co-operate in the investigation in supplying the requisite records or to adduce any evidence in support of her allegations, therefore, the case was sent up for cancellation. Even on the request of Petitioner No. 1 for re-investigation, nothing could be unearthed in the said FIR and the matter was submitted to the Court with cancellation report. In the meanwhile, Anr. request from the Petitioner for re-investigation was received and pursuant to that, further investigation was carried out and finally, the investigation disclosed no case as alleged in the FIR. Regarding complaints dated 12.10.2000 and 18.10.2000, it has been averred that the allegations regarding theft of grass, were subject matter of a civil litigation and thorough investigation having already been conducted in the case FIR No. 92 of 1998 making the investigating agency well versed with the facts of the case, no FIR was registered on the basis of the said complaints, more so because Tehsildar, Jaisinghpur had ceased to be the receiver on 12.10.2000 and 18.10.2000 when the complaints were made. The allegations made vide FIR No. 85 are alleged to have been found incorrect on inquiry into the matter and letter dated 10.5.1999 alleged to have been addressed to the Superintendent of Police was never received by him. However, FIR No. 85 of 1999 has been cancelled by the orders of a Court of competent jurisdiction. It has finally been submitted that case FIR Nos. 92 of 1988, 80 of 2000 and 85 of 2000 have been cancelled by the orders of the Court of competent jurisdiction after due consideration, therefore, no useful purpose is going to be served by re-registration and reinvestigation of the complaints.

5. Respondents 2 and 5, in their reply, raised the preliminary objections that the basic dispute between the parties had been decided by the Civil Courts up to the level of the Apex Court, therefore, the petition is devoid of any merit and substance and deserves to be rejected. On merits, while not disputing the litigation between the parties as referred to in the petition, the other facts averred therein have been denied. It is also admitted that order regarding appointment of receiver was made on 15.11.1999 by Sub Divisional Collector,

Jaisinghpur and such an order was to come to an end with the decision of the case in which he was so appointed. Such a case was decided on 21.2.2000 and, thus, at the material time, land in question was not in possession of the receiver. Thus, it has been claimed that the Petitioner is not entitled for the reliefs claimed.

6. Respondents 9 to 14, in their written reply, contested the petition on the preliminary objections that the petition is not maintainable; that it has been rendered incompetent because of death of Petitioner No. 2 and that the Petitioners have not come to the Court with clean hands. On merits, while not disputing the civil litigation between the parties, it has been claimed that the averments in the petition are contrary to the decree of the Civil Court and that the parties have litigated before the Civil Courts in respect of all their contentions and the petitioners cannot be permitted to raise such contentions by this petition. It is further claimed that the Petitioners are mis-representing the material facts and the attorney of Petitioner No. 1, who is a practicing lawyer, has throughout dragged the Respondents and Ors. to unnecessary litigation. It is also claimed that the replying Respondents had committed no offence and it was wholly unnecessary for the Petitioner to have lodged false and frivolous complaints against them and that the petition is intended to put unnecessary pressure on the replying Respondents as the attorney of Petitioner No. 1 had been trying to do always. The interim orders passed by the Sub Divisional Magistrate during the pendency of the appeal before him stood discharged because of the dismissal of the appeal on 21.2.2000. Even the proceedings initiated u/s 107 Code of Criminal Procedure stood terminated on expiry of six months. It is also averred that one case under Sections 447, 427, 506 IPC (FIR No. 96/90) is pending in the Court at Palampur, based on the report lodged by the Petitioner and all the grievances of the Petitioners are rendered infructuous. It is, therefore, claimed that the petition deserves to be dismissed as the Petitioners are not entitled to any relief.

7. Petitioners filed rejoinder to the replies filed by the Respondents denying the grounds of defence taken therein.

8. I have heard the learned Counsel for the parties and have also gone through the records.

9. There is no dispute that in cases FIR Nos. 92/98 and 85/99, the investigating agency filed cancellation reports and the cases were ordered to be cancelled by the Court of competent jurisdiction. Therefore, the question whether these cases should be reinvestigated or not cannot be decided in the absence of the persons against whom accusations were made in the said FIRs. In FIR 92/98, the accusations are against the revenue officials of Lambagaon and Jaisinghpura and it is alleged that they prepared incorrect document and committed forgery. All revenue officials who were party to the alleged forgery are not made party to the present petition. Though, nowhere specifically mentioned on record, it appears that in FIR 85/99, the accusations were made against Roshni Devi and Surinder Kumar that they abducted a minor girl. Said Roshni Devi and Surinder Kumar

have also not been made parties to the petition. Since both these cases stand cancelled by a Court of competent jurisdiction, therefore, directing reinvestigation therein will, by necessary implication, mean setting aside the cancellation orders which is impermissible in the absence of the parties likely to be affected if the relief prayed in this regard is granted. Thus, the petition claiming relief of reinvestigation in abovesaid FIRs is not competent and maintainable for want of impleading the persons likely to be effected by the order granting relief.

10. The main grievance of the Petitioners is that the police had failed to register FIRs on the basis of the complainants, Annexures PM, PN and PO. The common allegations in these complaints are that Respondents 9 to 14 and Ors. committed trespass over the land comprising khata No. 50 min, situate in Lambagaon which was in possession of Tehsildar, Jaisinghpura who was appointed receiver by the S.D.M., Jaisinghpura in the proceedings under Sections 107/145 of the Code and the said trespassers committed theft of grass from the said land on different dates and time during the period 14.9.2000 to 24.10.2000 and intimidated the Petitioners. The complaints prima facie disclose the commission of cognizable offences.

11. The main contention of the Respondents is that in a civil litigation between Petitioner No. 1 and the alleged accused, the Petitioner No. 1 had been restrained from interfering with the possession of the litigating Respondents over the land which was held as owned and possessed by them. Thus, Petitioner No. 1 having been so restrained has no locus to complain of trespass and theft as she is not in possession of the land alleged to have been trespassed. This contention, however, is of no help to the Respondents.

12. The undisputed facts are that in a proceeding under Sections 107/145 of the Code, the Sub Divisional Magistrate, Jaisinghpura vide his order dated 15.11.1999, directed Petitioner No. 1 and Respondents 9 to 14 not to interfere with the land in dispute till the disposal of the related issues and parties were debarred from having the produce of the land and Tehsildar Jainsinghpura was appointed receiver of the land in dispute with direction to deposit the proceeds of the produce of the land in the Government treasury till the entitlement of the persons to the produce was decided. According to the Petitioners the appointment of Tehsildar as receiver held good even during the period 14.9.2000 to 24.10.2000 when the land was trespassed and grass stolen therefrom. The Respondents 1, 3, 4 and 8 claim that appointment of receiver stood terminated on 13.6.2000 when the revenue appeal was disposed of, whereas according to Respondents 2, 5 and 9 to 14, such appointment came to an end on 21.2.2000. The Respondents who claim that the appointment of receiver in the proceedings under Sections 107 and 145 Code of Criminal Procedure came to an end before the time of alleged trespass and theft have not brought on record any order discharging/removing the receiver before 24 10.2000. On the contrary, the complaints Annexures PN and PM, respectively dated 12.10.2000 and

18.10.2000. addressed to the Tehsildar (the receiver) were forwarded by the Tehsildar to the S.H.O., Police Station, Lambagaon for registration and investigation and for action as warranted by law. Similarly, Annexure PO dated 24.10.2000 was addressed to Tehsildar (Receiver), with a copy to the Sub Divisional Magistrate who had appointed the receiver. The latter forwarded the copy endorsed to him to the SHO for action and report. Had the order of appointment of receiver been cancelled/varied or was inoperative at the relevant time, the S.D.M. who appointed the receiver and the Tehsildar who was appointed receiver had no occasion to forward these Annexures to the S.H.O. The Court appointing the receiver and the receiver were in fact competent to ask the police for action when the possession of receiver was interfered with. Both of them intended by their endorsements that action should be taken on the information given vide Annexures PM, PN and PO which, as already stated, disclosed the commission of offences of trespass and theft of the property in possession of the receiver. Had the property not been in possession of the receiver at the relevant time, they would not have forwarded the complaint to the S.H.O. for action in accordance with law. The receiver vide notice, undisputed English translation whereof is Annexure PT, had notified in his capacity as receiver of the disputed land that the grass on such land would be auctioned on 25.10.2000 at 4 p.m. Had he not been the receiver in possession at the relevant time, he could not notify the date for auction of the produce of the land in question.

13. The stand of Respondents 1, 3, 4 and 8 regarding non-registration of FIRs on the basis of complaints dated 12.10.2000 and 18.10.2000, is self contradictory and self destroying. The precise allegations regarding police inaction on the aforesaid complaints are in para 13 of the petition which reads as under :

13. That the matter regarding the stolen grass was reported to the Tehsildar and S.D.M. Jaisinghpur by my husband and tehsildar and S.D.M. Jaisinghpur forwarded the complaint dated 12.10.2000, 18.10.2000 and 24.10.2000 of commission of cognizable offence to the S.H.O., Police Station, Lambagaon for registration of the cases. But to help the accused, the S.H.O. Lambagaon did not register the case. When the contents of the complaint clearly state that the accused persons have committed cognizable offence and S.H.O. have no option but to register cases on basis thereof. Due to non registration of case the accused are having a free hand in stealing/ looting the grass without any fear bar. Thus the police let up and laxity encourage the accuse to commit crime freely on the one hand disobeyed the Government orders where from they are earning their bread and butter, beside causing harmful to the general public. Therefore, the need of the hour is to put a stop to this practice by taking stern action against defaulting police officer in order to help streamlining work in the police set up especially in rural area. Copy of complaints 12/10, 18/10 and 24.10.2000 are appended as Annexures PM, N,O.

14. The reply of the Respondents 1, 3, 4 and 8 to the above para is contained in

para 13 of their reply which reads as under :

That contents of para 13 are wrong, incorrect, ill designed with oblique motive and the same are hereby denied. The allegations that SHO Lambagaon did not register the case are wrong, incorrect, false and specifically denied. The complaint of the Petitioner No. 1 was registered as FIR No. 80/2000 on 20.10.2000 and the duly investigated. As regards complaints dated 12.10.2000 and 18.10.2000 regarding allegations of theft of grass from the land which was subject matter of civil litigation as mentioned hereinabove the police having conducted thorough investigation into the matter in FIR No. 92/98 had become well versed with the facts of the case. The persons who are alleged to have removed the grass are the decree holders as Plaintiffs in respect of the land in question and they have been declared as owners in possession of the land in dispute by a decree passed by Court of competent jurisdiction and upheld upto Apex Court. Petitioner No. 1/Complainant stands permanently restrained from interfering with the possession of the Plaintiffs by way of decree of permanent injunction passed against her. In these circumstances, no case of theft is made out as alleged by the Petitioner No. 1 against the persons who are owner in possession of land in dispute. The appointment of Tehsildar as Receiver had come to an end with the disposal of appeal of Petitioner No. 1 by learned Collector Sub Division Jaisinghpur decided on 13.6.2000. The Tehsildar Jaisinghpur had thus ceased to be the Receiver on the date of 12.10.2000 and 18.10.2000 when Petitioner No. 1 had made complaints regarding of theft of grass. It appears that the Petitioner No. 1 having lost legal battle upto Hon?ble Supreme Court has now started making false complaints against the owner of land in dispute and Revenue staff to unnecessarily harass them with oblique motive.

15. It is evident from the above reply that out of the three complaints Annexures PM, PN and PO which are based on similar background and allegations but for the different time and accused the police thought it proper to register a case on one of them but did not deem it proper to register the case on the basis of the remaining two because they have past history of an FIR on the basis of which it was found not proper to register the FIRs. Be it stated that in the matter of substance and merit, all the three complaints Annexures PM, PN and PO, not only disclose commission of cognizable offence but stand on the same footing. Thus, the reason for non registration of FIRs on complaints dated 12.10.2000 and 18.10.2000 as put forward by the Respondents is devoid of any merit and substance as they have shown by their own doings i.e. by registering a case on the basis of one of such complaints.

16. Once an information disclosing commission of a cognizable offence is given to the officer in charge of a police station, he is duty bound to act u/s 154 of the Code i.e. to reduce such information into writing and to proceed to act in accordance with the provisions of Section 157 of the Code. Non-compliance of the provisions of Section 154 of the Code and resultant non-compliance of the provisions of Section 157 of the Code deprives the concerned Judicial Magistrate

of his power and duty u/s 159 of the Code which cannot be permitted to be done in view of the provisions of the Code relating to the registration and investigation of Criminal Cases.

17. In *Sada Nand Chauhan v. State of H.P. and Ors.* 2000 (3) SLC 389, this Court held as under :

10. It is evident from a bare reading of the above provisions that:

(i) When an information in respect of the commission of a cognizable offence is given to the officer-in-charge of a Police Station, he has no option but to reduce/cause the same to be reduced in writing.

(ii) The substance of such information and when the information regarding commission of a cognizable offence is given in writing, the substance thereof, shall be entered in a prescribed book, that is to register a case on the basis of such information.

It follows that an officer-in-charge of a Police Station is legally bound to record the information disclosing commission of a cognizable offence and to register a case on the basis of such information. This view is fully fortified by the ratio in *Bhajan Lal's* case (*supra*).

18. In *R.S. Raghunath Vs. State of Karnataka and another*, the Hon^{ble} Supreme Court held as under :

Be it 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 Section 41(1)(a) or (g) of the Code wherein the expressions, "reasonable complaint" and "credible information" are used. Evidently, the nonqualification 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. 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

present Code of 1973 (Act 2 of 1974). 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.

33. 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.

19. In view of the above discussed factual aspects and the position in law, the omission on the part of Respondent No. 8 to record 3 separate FIRs on the basis of Annexures PM, PN and PO and consequential refusal to investigate is contrary to the mandate of law.

20. As a result, this petition is partly allowed and Respondent No. 8 is directed to register such FIRs not registered as yet on the basis of the Annexures PM, PN and PO and to investigate the cases so registered in accordance with law. The reliefs claimed in the petition over and above the relief hereinabove granted are dismissed.