
(2010) 09 DEL CK 0359

In the Delhi High Court

Case No : Criminal M.C. No. 3640 of 2009

Gurmeet Singh

APPELLANT

Vs

State N.C.T. of Delhi

RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 151, 154, 156, 311
Penal Code, 1860 (IPC) — Section 34, 376(2)

Citation : (2010) 119 DRJ 678

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Siddarth Luthra and Rajender Singh, for the Appellant; Anil Kumar, APP for State and Anil Kumar, S.I., for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—These two petitions, one criminal revision petition and one criminal misc petition, have been preferred by Police Inspector Mr. Gurmeet Singh in view of the judgment delivered by learned Additional Sessions Judge in Sessions Case No. 93 of 2008, FIR No. 128 of 2005, Police Station Gokulpuri, u/s 376(2)(g) read with Section 34 of IPC. Inspector Gurmeet Singh was the SHO of Police Station Gokul Puri at the time of incident. The learned Sessions Judge in his judgment gave following directions:

24. Before parting, disquieting features of the case are to be noted. As detailed above, Darshan Kumar ASI suppressed facts and prepared incorrect records in the form of DD No. 76B and Kalandra Ex.CW1/A, in connivance with Gurmeet Singh, Inspector, then SHO PS Gokulpuri, with an intent to screen Raj Kumar and his associates (tried and convicted for the offence of gang rape), knowing well that they would thereby save them from legal punishment. Case was not lodged despite the fact that legal discretion are contained in Section 154 of the Code in that behalf. They disobeyed that direction of law, knowing well that they were to save the accused persons from legal punishment. When directed by the

Magistrate to register a case, Gurmeet Singh, Inspector, then SHO PS Gokulpuri, got recorded statement of Smt. Ranjana on 02.03.2005, which is Ex.PW6/A, projecting that she appeared before the police for the first time that day to lodge a case, thereby creating false record, intending that it would appear in evidence in a judicial proceedings, knowing well that they would thereby save the accused persons from legal punishment. These alarming offences were committed by Darshan Kumar, ASI and Gurmeet Singh Inspector, the then SHO PS Gokulpuri. DCP North-East is commanded to get a case registered against Gurmeet Singh, Inspector (since Darshan Kumar ASI is no more alive), and to investigate it personally or cause it to be investigated by an officer not below the rank of Additional DCP.

25. When investigation was taken over by Kusum Lata ASI, she also inked the deal of her predecessor, without correcting the folly created by Darshan Kumar ASI. Her conduct makes her unbecoming of a public servant. Office of Special Executive Magistrate, Seelampur misplaced the kalandra, when it was needed for the evidence. A kalandra is to be preserved for a period of seven years in pursuance of administrative instructions issued. Therefore, conduct of officials of the office of the Magistrate, Seelampur is also to be probed. DCP, North-East is called upon to initiate suitable departmental action against them.

26. Last but not the least, role of Ajeet Singh, then Magistrate needs commendation. He was alive to the situation, when Smt. Ranjana made a statement before him on 16.02.2005. He wrote to SHO PS Gokulpuri to initiate legal action. When there was no response, he issued reminder to him on 01.03.05. His constant prodding brought local police out of slumbers and ultimately the offenders could be brought to book. Knotting issues, created by regressive act of local police, were solved on account of his sensitive and responsive behaviour.

2. In pursuance of above directions, an FIR was registered. By way of criminal revision petition, the petitioner has sought quashing of directions given by learned ASJ in its judgment as stated above and in criminal misc petition; the petitioner has sought quashing of FIR registered in pursuance of above directions.

3. I have gone through the trial court record and the documents attached with it. The kalandra (report u/s 107/151 Cr.P.C.) that was not traceable earlier has been traced and has been perused by me. The learned Sessions Judge was rightly disturbed at the lack of sensitivity of the petitioner to a gang rape victim and his grave dereliction of duty in not registering FIR in a gang rape case. From the facts, it is revealed that when the complainant and her husband, on the morning of 20th January 2005 apprehended one of the accused by tracing the house where she was gang-raped on night of 19th January 2005 and brought him to police station for action as per law, no FIR was registered by the police. It need not be emphasized that SHO is the real master of the police station and no FIR is registered in the police stations unless SHO gives directions to the duty officer to register an FIR. A person who goes to the duty officer for registration of an FIR

of a cognizable offence is not obliged with registration of an FIR unless SHO gives a nod. The duty officer first asks the SHO whether an FIR should be registered or not and it is only when the duty officer gets directions to register an FIR, then only he registers an FIR. Normally a duty officer is a person of the rank of head constable and being quite junior in hierarchy, he cannot dare defy the direction of SHO.

4. In the present case, from the documents produced before the learned Sessions Judge, it was revealed that when the woman and her husband after apprehending one accused went to police station, ASI Darshan Kumar instead of registering an FIR told the woman that if she gets an FIR registered, her name would be made public and tarnished in newspapers and she would be defamed and maligned. She being a family woman should not take such a step of getting an FIR registered. The woman and her husband were practically deterred from registration of FIR putting them in a fear of blot coming on the family. However, Darshan Kumar, ASI, registered a report u/s 107/151 Cr.P.C. vide DD No. 16B dated 20th January 2005 showing that a brawl/quarrel was going on between accused Raj Kumar and the woman and he apprehended the accused. This report u/s 107, 151 Cr.P.C. was sent to Special Executive Magistrate (SEM) and the SEM in usual course summoned the complainant on 16th February 2005 to record her statement. The prosecutrix told SEM on 16th February 2005 that she was actually gang raped by the accused and his accomplices on the night intervening 19th and 20th January, 2005, the kalandra was falsely registered by ASI Darshan Singh instead of registering a gang rape case FIR. On the same day, SEM sent his note to the SHO for taking appropriate action and to explain why action was not taken earlier. Despite this note having been sent by SEM to SHO i.e. present petitioner, the present petitioner did not register an FIR and did not respond to the SEM. The SEM then issued a reminder on 1 March, 2005. It is only after this reminder of SEM that an FIR u/s 376(2)(g) of IPC was registered on 2nd March, 2005.

5. It is argued by the Counsel for the petitioner that the petitioner was not heard by learned Sessions Judge and the learned Sessions Judge passed the observations against the petitioner unwarrantedly. This allegation of the petitioner is also false. The learned ASJ after noting these facts passed an order dated 5th March, 2009 summoning the petitioner and the then SEM, ACP Ajeet Singh u/s 311 of Cr.P.C. As a result, ACP Ajeet Singh appeared on 1st April, 2009 and his statement was recorded and he confirmed to the facts as noted by learned ASJ. The present petitioner did not appear before the Court on 1st April, 2009 and his bailable warrants were issued to the tune of Rs. 5,000/- for next hearing. On next hearing, he appeared and learned Sessions Judge asked his explanation as to why he did not register FIR and initiate legal action when the complainant complained of gang rape initially on the morning of 20th January, 2005 and later on when SEM forwarded her statement to him, he offered no explanation so the court did not record his statement and discharged him.

6. The petitioner was neither cited as a witness nor was a witness as he had not investigated the case. The petitioner was SHO of the Police Station and had not allowed registration of an FIR and his junior deterred the complainant from getting FIR registered u/s 376(2)(g). When the SEM sent his note for taking legal action, he again referred the matter to same ASI Darshan Kumar who had deterred the complainant from getting the FIR registered. It is only when SEM sent a reminder that the petitioner was shaken from his inaction and dereliction in duties and he registered an FIR.

7. The Counsel for the petitioner relied upon Emperor v. AH 16 PWR 1910 wherein the Sessions Judge had directed the police to make further inquiry u/s 156 Cr.P.C and the Court had observed that the powers u/s 156 Cr.P.C were available only to a Magistrate and not to the Court of Sessions. I consider that this case is not applicable to the facts of the present case since in the present case the learned Sessions Judge had not entertained an application u/s 156 Cr.P.C but informed the facts as were revealed to him during trial to the authorities and directed for registration of an FIR on the basis of those facts. The petitioner also relied upon State of U.P.v Mahender Narain 1964 SC 703. In this case, while hearing an appeal, the Ld. High Court Judge had made disparaging remarks in respect of entire Police force and made observations that there was not even a single lawless group in the whole of the country whose record of crimes comes anywhere near the record of group which is known as Indian Police Force. The Supreme Court while expunging the remarks in that case observed that the case before the High Court Judge related only to one police officer Mohd. Nairn and the learned Judge was not justified in making generalized remarks against entire police force. In the present case, the learned Sessions Judge had not made remarks against entire Delhi police but has made observations only in respect of conduct of the petitioner and, therefore, this judgment rather goes against the petitioner because the Supreme Court has observed that a Judge can always make remarks about the police officer whose conduct appears blameworthy during trial of the case. Similarly, the other judgment relied upon by the petitioner 1988 Cr.L.J 1175 S.K. Viswambaran v. E. Koyakunju does not help the petitioner as this judgment also talks of sweeping remarks against the entire organization. In State of West Bengal Vs. Mir Mohammad Omar and Others etc., relied upon by the petitioner, the Supreme Court observed that while acquitting the accused persons castigation of investigating agency and deprecated remarks should be made only when it is absolutely necessary in a particular case and that too keeping in mind the broad realities as indicated by the Supreme Court.

8. I think the observations made in this case by learned Sessions Judge were absolutely essential because the case reflected a deliberate attempt on the part of the SHO not to register a case of gang rape despite the fact that the complainant and her husband had approached the police station after apprehending one of the accused of gang rape and brought him to the police station. The fact that kalandra was false is clear on perusal of original record.

The accused arrest memo shows time of arrest as 3 pm on 20.01.2005 while DD entry No. 76 B of arrival and arrest of accused shows time of arrest as 7.35 pm. The DD entry itself reflects that woman had complained of incident of previous night.

9. The Learned Counsel for the petitioner has also drawn my attention to Delhi High Court Rules regarding criticism and conduct of police and other officers. The High Court Rules provide that it was undesirable for the courts to make unnecessary remarks unless such remarks were directly related to the case. I consider that there could not have been a more appropriate situation for the learned Sessions Judge to make observations about conduct of petitioner. It is obligatory on the part of court to send information to the superior officials of police as to how the junior officials were acting contrary to law so that correctional measures can be taken. The learned Sessions Judge in this case directed registration of an FIR and had also brought the relevant facts to the notice of the senior police officials. It was expected of the police department to have taken action immediately and swiftly in this case. The most unfortunate part is that whatsoever wrong the police officials may do, the department rarely takes action against them instead they are protected despite dereliction of duties on their part.

10. I also consider that a judicial officer apart from being a Judge is also a human being and citizen of this country. He while discharging his functions as a Judge cannot remain aloof and oblivious to his functions as a citizen of this country and cannot just adjudicate the matter and rest with it when he finds that a police officer involved in the investigation of the case had deliberately tried to save the accused persons. It is his constitutional duty to bring it to the notice of the department and ask for appropriate action including registration of an FIR. An FIR can be registered at the instance of any person, who has the information of commission of crime. If a Judge during performance of his/her duties learns about commission of a crime, either inside the court or he learns about commission of crime by the investigating officer/SHO, during course of trial, there is no reason why he cannot inform about this crime having been committed by one of the police officers, to his superior officers and ask that action should be taken in accordance with law.

11. In view of aforesaid facts, I find no force in these petitions. The petitions are hereby dismissed with no orders to costs.