
(2012) 04 DEL CK 0330

In the Delhi High Court

Case No : Criminal M.C. No. 1008 of 2012

Kritender Sharma

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision : 30-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 161, 190, 200, 203
Penal Code, 1860 (IPC) — Section 120B, 420, 468, 471

Citation : (2012) 04 DEL CK 0330

Hon'ble Judges : Pratibha Rani, J

Bench : Single Bench

Advocate : Sudershan Rajan, for the Appellant; Rajdipa Behura, APP, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Ms. Justice Pratibha Rani

1. This petition has been filed by the petitioner impugning the order dated 04.01.2012 passed by learned MM in C.C No. 1625/1 whereby the request of the petitioner to refer the matter for investigation to the police was declined and the petitioner/complainant was directed to lead pre-summoning evidence. In brief, the facts as mentioned in the petition are that the complainant is a social worker carrying on many activities in general public interest. He came to know that one Smt.Manju Tyagi, W/o Shri Devinder Tyagi, R/o House No. 3/20, Tibia College, Karol Bagh, New Delhi 110005 and her accomplice Chetanya Bharti, S/o Shri Chander Bharti, R/o 16/20, Tibia College, Karol Bagh, New Delhi-110005 are trying to grab the Tibia College Property bearing House No. 16/20, Tibia College, Karol Bagh, New Delhi-110005 illegally on the basis of false and fabricated documents like general power of attorney, affidavits and indemnity bond, which have been executed by them with intend to create the title as owner of the said property. The complainant also came to know both of them have also used the same in the office of BSES as well as Delhi Jal Board at the time of taking the

connection. The photocopies of said general power of attorney, affidavits and indemnity bond were enclosed with the complaint alleging that some other people were also involved who helped them in these illegal activities.

2. The matter was reported to the SHO, P.S. D.B.G. Road vide complaint dated 14.04.2009 but due to inaction on the part of the SHO concerned, he was constrained to file criminal complaint no. 1625/1 along with an application u/s 156(3) Cr. P.C. to get the matter investigated. However, the I.O. in connivance with the accused persons was pressurizing him to withdraw this complaint and if FIR is not registered, a wrong message would be sent to the society. The documentary evidence prima facie shows the offence committed by the accused persons having committed the offence punishable u/s 420/468/471/120B IPC.

3. Vide impugned order, after considering the facts of the complaint, learned Trial Court considered the case law on the subject i.e. M/s Skipper Beverages Pvt. Ltd. vs. State reported as 2001 VI AD (Delhi) and Gulab Chand Upadhaya vs. State of U.P. & Others, 2002 CrL. L. J. 2907, Allahabad High Court where it was held that where accused and his address is known to the complainant, the evidence of the witnesses are also known to him and it is not a case where any other material evidence is required to be collected and can be preserved, in such a case no investigation was required by the police for launching a successful prosecution.

4. In the complaint filed by the petitioner also, learned MM was of the view that all the facts and circumstances are within the knowledge of the complainant. Learned MM formed the opinion that there was no ground for directing the police to investigate the matter as there was nothing for which the police assistance was necessary to be called for. Thus complainant was called upon to lead pre-summoning evidence.

5. On behalf of the petitioner it has been submitted by Shri Sudershan Rajan, learned counsel for the petitioner that the complainant is a public spirited person and has every right to inform the SHO and the Court about the commission of a cognizable offence by the accused persons and thereafter it is for the investigating agency to conduct an inquiry, investigate the matter and proceed in accordance with law. It has been submitted that in this case also forgery has been committed by making documents like general power of attorney, affidavits and indemnity bond to grab the government property and matter is required to be investigated by the police as documents are not in the possession of the complainant. Not only that during the proceeding dated 21.03.2012, he submitted before the Court why the police investigation was required and the grounds have been incorporated in para 7 of the order as under:

1. That the originals are to be recovered from the accused persons.
2. That the specimen signatures of the accused have to be taken
3. That the originals as well as specimen signatures have to be sent to the FSL for comparison of documents.

4. That the involvement of other accused persons have to be investigated
5. That the custodial or normal investigation of the accused persons has to be done.
6. That the statement of the witnesses have to be recorded u/s 161 Cr.P.C.
6. The plea of the petitioner is that the original of the documents are to be recovered from the accused persons and after obtaining their specimen signatures the same has to be examined from CFSL and custodial or otherwise interrogation of the accused persons is required to be done as well as recording the statement of witnesses u/s 161 Cr.P.C. which can only be done by the police and not by the complainant.
7. It has been further submitted that since the accused persons may be required to be subjected to custodial interrogation in respect of the offence committed by them this matter requires to be investigated by the police only. Hence the impugned order directing the complainant/petitioner to lead pre-summoning evidence be set aside and police be directed to register an FIR and investigate the matter.
8. On behalf of the State, it has been submitted that even in the complaint case filed before learned MM while moving an application, State through SHO was made a party though SHO is not accused of any land grabbing. It is only on 13.10.2010 that memo of parties was filed impleading Manju Tyagi and Chetanya Bharti as the respondents along with the application of the even date. Even while filing this petition, only State has been impleaded as a party and not Manju Tyagi and Chetanya Bharti against whom accusations have been made.
9. It has been further submitted that the averments made in the complaint show that the documents could be summoned by the complainants for pre-summoning evidence if he feels that there is land grabbing of government land by the accused persons.
10. Before dealing with the above contentions, it would be appropriate to consider to the legal position on this aspect. In Vikrant Kapoor Vs. The State and Others, it was held as under:-
9. In Meenakshi Anand Sootha Vs. State, 2007 (4) JCC 3230 Delhi, the learned M.M. dismissed the application u/s 156(3) Cr.P.C for giving direction to SHO to investigate the matter and instead took cognizance of the case and proceeded with the complaint case of the complainant. On facts the following observations were made by this Court:
10. It is well settled that u/s 156(3), Cr.P.C, the Magistrate has not to pass the order mechanically and has to apply his judicial mind. On this point, decision of this Court, M/s. Skipper Beverages Pvt. Ltd. v. State 2001 IV AD (Del) 625, may be referred to in which it was held:

It is true that Section 156(3) of the Code empowers to Magistrate to direct the

police to register a case and initiate investigation but this power has to be exercised judiciously on proper grounds and not in a mechanical manner. In those cases where the allegations are not very serious and the complainant himself is in possession of evidence to prove his allegations there should be no need to pass order u/s 156(3) of the Code.

10. In case of Minu Kumari and Another Vs. The State of Bihar and Others, the Supreme Court observed thus:

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 All India Institute of Medical Sciences Employees' Union (Regd.) through its President Vs. Union of India (UOI) and Others, It was specifically observed that a writ petition in such cases is not to be entertained.

11. As per the complainant, he came to know that the accused persons namely Manju Tyagi and Chetanya Bharti were trying to grab Tibia College property on the basis of false and fabricated documents like general power of attorney, affidavits and indemnity bond. So even as per the complainant there was only an attempt made to grab the property. It is further mentioned in the complaint that these documents have been used in the office of BSES and Delhi Jal Board at the time of taking connections. The photocopies of these documents were enclosed by the complainant while making complaint to the SHO. This itself is sufficient to bring on record that the complainant is having access to the documents filed before BSES and Delhi Jal Board. Once the property allegedly tried to be grabbed by the accused is a government property as claimed in the complaint, copies of alleged forged documents filed in BSES and DJB are available with the complainant, the same can be proved by summoning the record from the concerned offices.

12. Learned MM in the impugned order has rightly come to the conclusion that all the facts and circumstances of the case are within the knowledge of the complainant requiring no investigation by the police. In the light of judicial pronouncements as discussed in the impugned order, it cannot be said that he has committed any illegality by rejecting the application u/s 156(3) Cr.P.C. filed by him for registration of the FIR.

13. The complainant has approached this Court for exercise of the power u/s 482 Cr.P.C. No doubt, the powers vested in High Court u/s 482 Cr.P.C. are very wide and the very plenitude of the power requires great caution while exercising the same. In Santosh De and Another Vs. Archana Guha and Others, the Apex Court observed that unless a grave illegality is committed the superior Courts should not interfere and they should allow the Court which is seized up with the matter to go on with it. There is no merit in the petition and the same is hereby dismissed.