
(2006) 05 DEL CK 0160

In the Delhi High Court

Case No : Writ Petition (Criminal) 470 and 2134 of 2005

Laxminarayan Gupta

APPELLANT

Vs

Commissioner of Police and Others

RESPONDENT

Date of Decision : 31-05-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 112, 139, 154, 154(1), 154(3)
Penal Code, 1860 (IPC) — Section 182
Punjab Police Rules, 1934 — Rule 24.4

Citation : (2006) 130 DLT 490 : (2006) 90 DRJ 543 : (2006) 3 RCR(Criminal) 977

Hon'ble Judges : Ramesh Chand Jain, J

Bench : Single Bench

Advocate : Party-in-Person, for the Appellant; Mukta Gupta, for State, for the Respondent

Final Decision : Allowed

Judgement

R.C. Jain, J.—The vexed question of law "whether the police is under a statutory obligation to register FIR on the basis of a complaint made/information given by a citizen disclosing cognizable offence(s) and to take up the investigation or it has any discretion to make preliminary inquiry into the veracity and correctness of the allegations made in the complaint and not to register the FIR" has once again arisen in these two petitions.

2. In both the petitions, the grievance of the petitioner is that no action was taken by the police on his complaints dated 3.1.2005 and 3.8.2005 addressed to SHO, P.S. Kotla Mubarakpur followed by reminders dated 6.1.2005 and 7.8.2005 issued to the Deputy Commissioner of Police (South). In the complaint dated 3.1.2005 the petitioner had alleged that Mr. Bajaj husband of Ms. Urvashi Bajaj, owner of House No. B-59, South Extension, Part-I forcibly entered into his (complainant's) residence at IIInd floor of B-59, South Extension, Part-I occupied by him as a tenant and criminally intimidated him and annoyed him and asked

his mason and labours to throw his luggage here and there and then threatened to hurt him and kill if he objected to their behavior. Mr. Bajaj then asked the mason to build a tight cover of cement over his water motor in such a way that the motor was rendered unworkable. Mr. Bajaj then broke the door and removed the same giving free access to assailant or thief to enter and kill him or destroy his property. He also complained that in the past also Mr. Bajaj had made the staircase dark by painting the doors with black colour and putting obstructions in order to intimidate him. The petitioner accordingly apprehended danger to safety of his life and property. In the second complaint dated 3.8.2005 the petitioner alleged that during the preceding night, he suffered severe chest pain and wanted to attend medical emergency of AIIMS, but was surprised to find that the exit door of the house was locked deliberately and duplicate key was not given to him despite the court's order to the SHO that the passage of the petitioner should not be obstructed. It was also alleged that a guest house was being illegally run on the ground floor and the first floor of the said house and when he gave a call bell to the servants for opening the lock, they did not deliberately respond and, Therefore, the petitioner was compelled to contact the PCR Van, which reached the spot but despite the loud siren of the PCR, the door was not opened. Afterwards the PCR officials got the door opened from the servants who admitted that the door was deliberately closed by them under the instructions of Mr. Khushhal Bajaj and Ms. Urvashi Bajaj, owner of the house. In this complaint he made a reference of the incident of 3.1.2005 as well and asked the concerned SHO to register a case and take up the investigation.

3. Notice on the petitions were issued to the respondent-State and the concerned police authorities who are represented through standing counsel, Government of NCT of Delhi. Separate status reports have been filed in both the petitions. The status report filed in W.P.(Crl.). 470/2005 admits the receipt of complaint from the petitioner and proceeds to state that on the basis of the said complaint enquiries were made and it was revealed that the premises No. B-59, NDSE Part-I is owned by Sh. Kaushal Bajaj and the petitioner is residing on the IInd floor of the said premises as a tenant since 1979. On 25th and 26th December 2004 Mr. Bajaj got some repair work done on the roof of the IInd floor with the consent of the petitioner as there was seepage in the premises and as no cognizable offence was found to have been committed, the complaint was filed. The allegations made by the petitioner about inaction on the part of the local police are denied.

4. The status report filed by the police in WP (Crl.) 2134/2005 states that on 3.8.2005 at 6.34 a.m. an information was received from the PCR about one Mr. L.N. Gupta Advocate aged about 70 years resident of B-49, South Extension Part-I, having given information that the person living on the ground floor is quarreling. The said information was recorded vide D.D. No. 30A and the same was entrusted to H.C. Ram Bhajan who reached the spot where the petitioner met him and stated that he is residing on the second floor of the premises No. B-49, South Extension Part-I, New Delhi and that in the morning he asked the servants of Mr. Bajaj, owner of the said premises namely Tun Tun and Narender

to open the locks of the main gate but they opened the door late and due to the locking of the main gate he felt troubled. H.C. Ram Bhajan talked to Mr. Bajaj on telephone who stated that he will hand over one key of the main gate lock to the petitioner and since no cognizable offence was found to have been committed, the said DD was filed.

5. I have heard the petitioner in person and Ms. Mukta Gupta, learned standing counsel for the State, at length and have bestowed my thoughtful consideration to their submissions. The petitioner relying upon the landmark judgment of the Supreme Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, and a decision of the Division Bench of this Court in the case of Kuldip Singh Vs. State, has strenuously urged that the police authorities were under statutory obligation to register the FIR based on the allegations made in the complaint dated 3.1.2005, which disclosed the commission of cognizable offence(s) and to conduct investigation into the said offences and they could not embark upon enquiries of the nature and kind as purportedly conducted by them. As against this learned standing counsel has submitted that the police authorities have the requisite jurisdiction and power to hold preliminary enquiry into the allegations before the registration of the case and has the discretion to register or not to register the FIR based on the outcome of such an enquiry. In any case, it is submitted that as per the Supreme Court decisions in the case of AIIMS Employees' Union v. Union of India and Ors. 1997 SCC (CRI) 3003 and in the case of Gangadhar Janardan Mhatre Vs. State of Maharashtra and Others, , this court cannot and should not make any order or direction to the respondent to register the FIR because an alternate efficacious remedy of filing of a private complaint is available to the petitioner in case he is dissatisfied with the enquiry so held by the police.

6. The question as to whether the police officer is under a statutory obligation to register a case on receipt of information about the commission of a cognizable offence(s) by the citizen u/s 154 of the Code of Criminal Procedure is no more rest integra. Apex court and various High Courts have considered the same in several of its decisions. The point of law is set at rest by the Apex Court in Bhajan Lal's case (supra) and the court after examining the whole gamut and intricacies of the mandatory nature of the provisions of Section 154 of the Code of Criminal Procedure has, in paras 31, 32 and 33 of the said judgment, laid down as under:-

31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which

he is empowered u/s 156 of the Code to investigate, subject to the proviso to Section 157. (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present context.) In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 of the Code.

32. 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 non-qualification 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.

7. The views expressed by the Supreme Court in the above paragraphs leave no manner of doubt that the provisions of Section 154 of the Code of Criminal Procedure are mandatory and the concerned officer is duty bound to register the case on the basis of an information disclosing cognizable offence.

8. In the case of Kuldeep Singh (supra) having regard to the provisions of Section 154 of the Code of Criminal Procedure and the provisions of Rule 24.4 of the Punjab Police Rules 1934, this court held:-

In our view the legal position is clear that information being laid before the Police about the commission of a cognizable offence the police has no option but to register the case and then to proceed with investigation of the case under the provisions of Chapter XII of the Code. The Police can also decide not to investigate in terms contemplated by Section 157(1) of the Code. The police has no right to refuse registration of a case on information being laid before it about commission of cognizable offence and instead proceed with an enquiry and refuse registration as a result of the said enquiry. If it is; left to be determined by the police to decide in which cases of disclosure of commission of cognizable offence it would first hold preliminary enquiry and then decide to register or not to register the case, it would also lead to delay in registration of the crime and in the meantime the material evidence may not be available. The conduct of enquiry itself may entail a long period. There may be then challenge to the said enquiry. The enquiry of the nature suggested by the respondents is not permissible in law.

9. Similar question arose before another Division Bench of this court in the case of Abhay Nath Dubey v. State of Delhi and Ors. 2002 VI AD (Delhi) 528. The Division Bench relying upon the observations made in the case of Sanjeev Kumar v. Commissioner of Police (2002) III AD 92, held as under:-

The position that emerges and which is reiterated is that Section 154(1) casts a statutory obligation on an officer to enter substance of information laid before him disclosing commission of cognizable offence in the prescribed form/book and to register an FIR. He may conduct some enquiry if he finds the information and allegations contained in the complaint/report indefinite, uncertain and vague raising doubts on the commission of cognizable offence. But where such offence was, prima facie, disclosed, he had no option to embark on full/fledged enquiry to ascertain the genuineness or reliability of such information and allegations and draw his conclusions and render the investigation redundant and to refuse registration of FIR. He would be breaching the mandate of Section 154(1), thereby.

Refusal to register an FIR is loaded with some serious consequences for informant/complaint. It seals the fate of his complaint for good and deprives him of participation in investigation in which he could substantiate his allegations. It also deprives him of a second opportunity to support his case before Magistrate

in the event Police Officer files a closure report in the FIR in which he is entitled to a notice and to oppose such closure report. The officer is neither empowered nor could he be allowed to assume the role of investigator before registration of FIR. His role begins with registering the FIR and ends with presenting charge-sheet or challan before the competent court on the alleged offence.

In the present case, all this seems to have been overlooked and given a go-by. Respondents claim to have conducted a full/fledged enquiry into the petitioner's complaint and found no substance in it. This amounts to putting cart before the horse and runs counter to the scheme of Chapter XII. It is not their case that allegations in petitioner's case were indefinite and uncertain or ambiguous causing any doubt on commission of cognizable offence. But their case, on the contrary, is that they had conducted an enquiry on their own and found the allegations in the petitioner's case without substance. The course adopted appears to be untenable on the face of it. Needless to emphasize that it cannot be left to sweet will of Police Officer to assume the role of trial court and sit over judgment on the merit and substance of informant/complainant's information / complaint.

10. Ms. Mukta Gupta, learned standing counsel for the State could not possibly dispute the above legal proposition but it was contended by her that the writ for the nature of relief sought by the petitioner i.e. for issuance of a writ or direction in the nature of mandamus to register the FIR and take up the investigation is not maintainable, because the petitioner has an efficacious alternative remedy of filing a complaint. In that behalf she pressed into service the Supreme Court decision in the case of All India Institute of Medical Sciences Employees' Union (Regd.) through its President Vs. Union of India (UOI) and Others, and placed reliance on paras 4 and 5 of the judgment, which is as under:

4. 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 the 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.

5. In this case, the petitioner had not adopted either of the procedure provided under the Code. As a consequence, without availing of the above procedure, the petitioner is not entitled to approach the High Court by filing a writ petition and seeking a direction to conduct an investigation by the CBI which is not required to investigate into all or every offence. The High court, Therefore, though for

different reasons, was justified in refusing to grant the relief as sought for.

11. The above legal position was reiterated by the Apex Court in the case of *Gangadhar Janardan Mhatre v. State of Maharashtra and Ors.* by holding as under:-

There is no obligation on the Magistrate to accept the report if he does not agree with the opinion formed by the police. The power to take cognizance notwithstanding information of the opinion by the police which is the final stage in the investigation has been provided for in Section 190(1) 9c).

The report may state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he has again option of adopting one of the three courses open i.e., (1) he may accept the report and drop the proceedings or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police u/s 156(3). The position is, Therefore, now well-settled that upon receipt of a police report u/s 173(2) a Magistrate is entitled to take cognizance of an offence u/s 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the Investigating Officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the Investigating Officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise of his powers u/s 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case u/s 190(1)(a) though it is open to him to act u/s 200 or Section 202 also.

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.

12. The question has been considered by the Apex Court in a recent decision in the case of Ramesh Kumari v. State (NCT of Delhi) and Ors. 2006 (2) SCALE. In that case also the controversy was in regard to the non-registration of the case by the police pursuant to complaints dated 9.9.1997 and 13.9.1997 filed by the appellant. The appellant in the first instance had approached the this Court by means of a writ of mandamus/direction on the police to register the case. A Division Bench of this court declined to issue a writ or direction of the nature as sought for by the appellant on the premises firstly; that the appellant had filed a contempt petition which was pending before the High Court and secondly that the appellant had an alternative remedy available to her, albeit, without indicating what is the alternate remedy available to the appellant. The said decision was challenged through a Special Leave Petition. Apex court on examination of some of its decision including the decision in Bhajan Lal's case ruled that the provisions of Section 154 of the Code are mandatory and the concerned officer is duty bound to register the case on the basis of such an information disclosing cognizable offence. The court accordingly directed the CBI to register a case and take up the investigation on the complaints filed by the appellant on 9.9.1997 and 13.9.1997. In para-3 of the judgment, the Court observed as under:-

We are not convinced by this submission because the sole grievance of the appellant is that no case has been registered in terms of the mandatory provisions of Section 154(1) of the Criminal Procedure Code. Genuineness or otherwise of the information can only be considered after registration of the case. Genuineness or credibility of the information is not a condition precedent for registration of a case. We are also clearly of the view that the High Court erred in law in dismissing the petition solely on the ground that the contempt petition was pending and the appellant had an alternative remedy. The ground of alternative remedy nor pending of the contempt petition would be no substitute in law not to register a case when a citizen makes a complaint of a cognizable offence against the Police Officer.

13. Bearing in mind the legal position which emerges from the above decisions this court must hold that a statutory duty is cast upon the police to register and investigate the case on receipt of an information relating to the commission of a cognizable offence and it cannot be left to the sweet will or the so called discretion of the police officer to register or not to register a case or to undertake a preliminary inquiry even before registration of the case. The Police Officer cannot embark upon an enquiry in regard to the correctness or veracity of the facts/allegations disclosed from the information. It would be hazardous to give such sweeping power or discretion to the police in the matter of registration of FIR which would go contra to the very scheme of the Code of Criminal Procedure and Criminal Justice delivery system in the country. Such a situation may play havoc more particularly so when the matter is left in the hands of unscrupulous police officer(s) who are not acting bona fide or who fail to approach the matter with the desired objectivity and sensitivity as may be required in the matter.

14. This court can take judicial notice of the factual scenario as to how the provision of Section 154 is being worked out by the police officers in practice at the ground. Filing of a large number of petitions under Article 226 of the Constitution complaining inaction on the part of the police authorities to register the crime despite information given/complaint made to the concerned police authorities is a clear indication that the concerned police officers are generally loath to register a crime more particularly so in disclosing certain trivial cognizable offences and economic offences. The reasons for doing so are not very difficult to understand. One reason may be to keep the crime graph low in the Metropolis of Delhi and the other could be to save itself from the botheration of investigation in a large number of cases. None of these reasons can be said to afford justifiable ground for not registering the crime. The very object of having a strong and large police force in any State is to register, detect and investigate the crimes and prosecute the violators of law besides of course maintaining the law and order etc.. Law and order can only be maintained if the commission of crime is prevented and when the crime is committed, the same is thoroughly and properly investigated and criminals brought to the book. For these reasons also it is incumbent upon the police officer to make strict compliance of the provisions of Section 154 Cr.P.C. rather than to embark upon a kind of preliminary enquiry in order to ascertain the correctness and veracity of the allegations made in the complaint.

15. Now turning to the facts of the present case the complainant claims to be elderly advocate of Supreme Court aged about 70 years and is tenant on the second floor of a house. He felt aggrieved and intimidated by certain acts of commission and omission on the part of his landlady and her agents and servants. The acts complained by him prima facie disclose several cognizable offences. Therefore, having regard to the above legal position the police was under a statutory obligation to register the First Information Report and take up the investigation. However, if as a result of investigation it was found that the allegations made in the complaint could not be substantiated or were false, the investigating agency would have been well advised to take further necessary action in accordance with law including an action for recommending initiation of criminal proceedings against the complainant in terms of Section 182 IPC if the Investigating Officer had come to a finding that the complainant had moved the police machinery by giving false information in order to cause him to use his lawful power to the injury or annoyance of any person.

16. In the result the petitions are allowed and the respondents are directed to register the cases on the basis of complaints dated 3.1.2005 and 3.8.2005 made by the petitioner to the concerned police station followed by the reminders sent to the Deputy Commissioner of Police under appropriate provisions of law and to investigate the same and take further action in accordance with law.