
(2014) 09 DEL CK 0326
In the Delhi High Court
Case No : CRL. M.C. 4934/2013

Manish Aggarwal

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 05-09-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 200, 203
Penal Code, 1860 (IPC) — Section 156(3), 203, 380, 411, 430

Citation : (2014) 09 DEL CK 0326

Hon'ble Judges : V.P. Vaish, J

Bench : Single Bench

Advocate : Puneet Goel, Advocate for the Appellant; Yogesh Verma, APP,
Advocate for the Respondent

Judgement

V.P. Vaish, J.—By way of this petition, the petitioner has challenged the order dated 05.01.2013 passed by learned Chief Metropolitan Magistrate, Karkardooma Courts, Delhi and order dated 23.05.2013 passed by learned District & Sessions Judge (East) , Delhi.

2. In short, the facts of the case are that the petitioner filed a complaint for the offences under Sections 380/ 411/ 430 IPC on the allegation, inter-alia, that the complainant had purchased the first floor of property bearing No. 102, Yojna Vihar, Delhi-92 from Smt. Kajal Gupta. Respondent No. 2/Smt. Sudha Garg with intend to annoy, harm and to cause injury to Shri Rakesh Gupta engaged a private person/stranger to steal the water tank of owner of the first floor. On 23.11.2002, the said stranger engaged by Smt. Sudha Garg opened the entire fitting of pipe connections attached with the water tank of first floor and then attempted to remove the same from the terrace of first floor. In the mean time, Mr. Rakesh Gupta who was then the owner of first floor reached at the spot and saw that the said stranger was stealing the water tank along with the pipes and fixtures, on the instructions of Smt. Sudha Garg. Shri Rakesh Gupta objected to the same but he could not succeed in stopping the stranger from stealing the

water tank because there was a danger to his life. Therefore, he called police and a PCR van along with police officials arrived at the spot and asked Smt. Sudha Garg to return the water tank and re-install the same. Smt. Sudha Garg agreed to the same in the presence of the police and later on, she threw the said water tank down from the terrace and the said stranger removed the same from the spot. Shri Rakesh Gupta lodged a complaint dated 23.11.2002, but no FIR was registered. Hence, the petitioner filed a complaint for the offences under Sections 380/ 411/ 430 IPC.

3. An application under Section 156(3) was also filed along with the complaint. Vide order dated 21.04.2009, an application under Section 156(3) was dismissed by the trial Court and the petitioner was directed to adduce complainant's evidence.

4. After recording pre-summoning evidence, the complaint was dismissed by learned trial Court under Section 203 IPC vide order dated 05.01.2013.

5. Against the said order, the petitioner filed Crl. Rev. No. 08/2013 which was dismissed by learned District & Sessions Judge (East) , Karkardooma Courts, Delhi vide order dated 23.05.2013.

6. Being aggrieved by the order dated 23.05.2013, the petitioner has preferred the present petition.

7. Learned counsel for the petitioner urges that the complaint dated 23.11.2002 lodged by Shri Rakesh Gupta discloses a cognizable offence and therefore police was bound to register FIR, but no FIR was registered. Counsel for the petitioner has relied upon judgment of the Hon''ble Supreme Court of India in Minu Kumari and Another Vs. The State of Bihar and Others, and Gangadhar Janardan Mhatre Vs. State of Maharashtra and Others, .

8. Learned counsel for the petitioner submits that the trial Court should have summoned respondent No. 2.

9. I have carefully considered the submissions made by learned counsel for the petitioner and perused the material placed on record. In Minu Kumari's case (supra) , it was observed:

"16. When the information is laid with the Police, but no action in that behalf is taken, the complainant is given power under Section 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 under Section 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 (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."

10. A similar view was taken in *Gangadhar Janardan Mhatre's case (supra)* relied upon by counsel for the petitioner.

11. Chapter XV of the Code of Criminal Procedure envisages the procedure regarding complaints to Magistrate. Undisputedly, when an information is laid with the police, but no action is taken, the complainant is given power under Section 190 read with Section 200 of the Cr.P.C. 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. In case, the Magistrate after recording evidence finds a prima facie case, he is empowered to direct the police to investigate into the offence under Section XII of the Cr.P.C. and to submit a report. In case the Magistrate finds that the complaint and the evidence recorded by him prima facie discloses evidence, he is empowered to take cognizance of the offence and would issue process of the accused. However, in case the Magistrate finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Cr.P.C. The same was highlighted by the Hon'ble Supreme Court of India in *All India Institute of Medical Science Employees' Union (Regd.) through its President's case (supra)* .

12. In the instant case, the petitioner has not disclosed when he had purchased first floor of property bearing A-102, Yojna Vihar, Delhi-92. It is alleged by the petitioner that on 23.11.2002, Mr. Rakesh Gupta who was the then owner of first floor of said property saw that some person who was engaged by Smt. Sudha Garg opened the fitting of pipes attached with the water tank of first floor and attempted to remove the same. It is also alleged by the petitioner that Smt. Sudha Garg threw the water tank from the terrace and the said person/stranger removed the same from the spot. A complaint dated 23.11.2002 was lodged by Shri Rakesh Gupta with the SHO registered at P.S. Anand Vihar.

13. Learned District and Sessions Judge, East, Delhi as well as trial Court have observed that the petitioner had purchased the property in the month of August, 2008 and the alleged incident is about six years prior to the purchase of property by the petitioner. It has also come in the testimony of the petitioner Manish Aggarwal (CW-1) that Smt. Sudha Garg is owner of second floor of property bearing No. A-102, Yojna Vihar, Delhi. The petitioner was not the owner of the property on 23.11.2002, that is the alleged date of incident. It has not come on record that the petitioner was present at the time of alleged incident.

14. Mr. Rakesh Gupta, who was the then owner of the first floor of property bearing No. A-102, Yojna Vihar, Delhi has not filed the complaint. It is not the

case of the petitioner that he was authorized by Mr. Rakesh Gupta to institute the present complaint.

15. Learned District and Sessions Judge, East, Delhi and learned Chief Metropolitan Magistrate, Delhi have given a concrete finding that the petitioner is not the aggrieved person as he was not the owner of the property in question and he had purchased the said property after about six years from the date of alleged offence.

16. Considering the facts and circumstances of the instant case, the impugned order dated 05.01.2013 passed by learned Chief Metropolitan Magistrate, Karkardooma Courts, Delhi and order dated 23.05.2013 passed by learned District & Sessions Judge (East) , Delhi does not call for any interference.

17. Hence, the petition is devoid of any merits and is hereby dismissed.