

(2012) 05 DEL CK 0656

In the Delhi High Court

Case No : Writ Petition (Criminal) 1467 of 2011

Minni

APPELLANT

Vs

High Court Of Delhi

RESPONDENT

Date of Decision : 11-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200
Penal Code, 1860 (IPC) — Section 341, 354, 499, 506

Citation : (2012) 4 AD 685

Hon'ble Judges : S.P. Garg, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : A.K. Singh and Mr. S.K. Singh, for the Appellant; Viraj Datar, Advocate., for the Respondent

Judgement

S.P. Garg, J.—The Petitioner Ms. Minni impugnes the order dated 30.04.2011 of learned Additional Chief Metropolitan Magistrate-02, (North) Delhi by which she was directed to obtain permission of this Court as a condition precedent to proceed with the complaint case filed by her against an officer of Delhi Judicial Service alleging commission of offences punishable under Sections 341/354/499/506 IPC. We have heard the learned counsel for the parties and have considered their contentions. It reveals that in the complaint case filed u/s 200 Cr.P.C., the Trial Court declined to proceed with the trial as it contained scandalous allegations against the Judicial Officer and the Petitioner had not obtained sanction/permission of this court. It further reveals that on 17.09.2011 this Court, on administrative side, declined to grant sanction for registering an FIR against the Judicial Officer observing that the allegations in the complaint case did not disclose commission of cognizable offences warranting registration of an FIR.

2. We find that no specific reasons have been given in the impugned order for declining to proceed with the complaint case. The Criminal Procedure Code 1973, does not mandate that first, the permission of this Court is required, to proceed

with a complaint case disclosing commission of cognizable or non-cognizable offence. The only bar to protect the independence of the judiciary is that there can be no registration of an FIR against a Judicial Officer without seeking the permission of the Chief Justice of this Court. (Delhi Judicial Services Association's case JT 1991(3) SC 617). In the present case, the Trial Court has not yet formed its opinion to direct registration of an FIR against the Judicial Officer or rejection of the complaint. u/s 200 Cr.P.C., on receiving the complaint, the Magistrate has to apply his mind with respect to the allegations in the complaint, and then proceed at once to take cognizance or may order it to be sent to the Police Station for being registered and for investigation. The Trial Court is yet to decide if it intends to proceed itself u/s 200 Cr.P.C. or to get the case investigated u/s 156(3) Cr.P.C. If the Trial Court after seeking status report (if any) from the concerned police station orders registration of an FIR u/s 156(3) Cr.P.C., in that eventuality, the Petitioner would be required to first seek permission of the Chief Justice of this Court. If the Trial Court investigates the matter itself either at the initial stage or after getting the status report u/s 156(3) Cr.P.C. there will be no requirement of such permission. Thus, the matter is still at initial stage and it is premature to direct the Petitioner to approach this Court for permission/sanction.

3. In the matter of "U.P.Judicial Officers" Association vs. U.O.I. & Ors." JT 2002 (8) SC 133, the Supreme Court categorically observed that "No crime for investigation should be registered pursuant to any FIR without the permission of the Chief Justice of the concerned High Court." In the said case also there was no prohibition for the concerned investigating agency to inquire the allegations levelled against the Judicial Officer. Since no FIR has been ordered to be registered against the Judicial Officer, the impugned order directing the Petitioner to obtain the permission/sanction of this Court cannot be sustained and is set aside. However, it is made clear that in case the Trial Court comes to the conclusion that an FIR is required to be registered against the Judicial Officer for committing the offences alleged in the complaint case, that order shall be kept in abeyance till the Chief Justice of this Court grants permission in this regard. The petition stands disposed of, accordingly.