
(2002) 09 P&H CK 0121

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 34815-M of 2001

Mithlesh Kumari

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 02-09-2002

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(1), 154(3), 156, 156(3)

Penal Code, 1860 (IPC) — Section 120B, 420, 465, 466, 468

Citation : (2002) 4 CriminalCC 505 : (2002) 4 RCR(Criminal) 541

Hon'ble Judges : A.K. Goel, J

Bench : Single Bench

Advocate : K.S. Sra, for the Appellant; G.S. Gill, D.A.G., Punjab, for the Respondent No. 1 and Mr. P.S. Hundal, for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This petition has been filed for a direction to register a criminal case.

2. It is alleged that the petitioner is daughter of Mota Singh, who had settled in Singapore in 1945 and died on 17.11.1998. The succession mutation was entered on 16.2.2001 in the revenue record in favour of one Deep Kaur, who claimed to be widow of Mota Singh and Manvinder Singh, who claimed to be son of Mota Singh and sanctioned at the instance of Bakhtawar Singh, Gurbax Singh and Gurmail Singh, which amounted to forging to revenue record. On 26.4.2001, the petitioner sent a letter to the SHO asking the SHO to register a case under Sections 420/465/466/468/471 read with Section 120-B IPC against Deep Kaur and others. Since the police did not take any action on written complaint, a complaint was filed in the Court of Magistrate on 21.5.2001, who asked the SHO to investigate the matter and to submit a report dated 3.6.2001 and the SHO submitted a report on the basis of a preliminary enquiry without any

investigation stating that the allegations of the petitioner were not credible. The petitioner thereafter filed an application u/s 482 Cr.P.C., which was dismissed by this Court on 10.8.2001 on the ground that the petitioner had remedy of approaching the Magistrate against the alleged refusal of the police to register the FIR and no interference was called for u/s 482 Cr.P.C. On 16.8.2001, the petitioner filed an application before the Magistrate for a direction for registration of the FIR, which was dismissed on the same day calling upon the complaint to bring preliminary evidence, while observing that no case was made out for a direction u/s 156(3) Cr.P.C., but the Court will consider issuing summons to the accused, if a case is made out from the preliminary evidence of the complainant.

3. Learned counsel for the petitioner contended:-

a) The Police officer is bound to register the FIR, if any information relating to commission of a cognizable offence was given to the officer incharge of a police station and was thereafter bound to investigate the same and submit a report before the Magistrate u/s 173(2) Cr.P.C. Reliance is place on judgments of the Supreme Court in *Madhu Bala v. Suresh Kumar*, 1997 (3) RCR 679 and *Suresh Chand Jain v. State of M.P.*, 2001 (1) RCR 335. It was submitted that the Magistrate had an option either to proceed under Chapter XV Cr.P.C. by taking cognizance u/s 190(1)(a) Cr.P.C. or by giving a direction for investigation u/s 156(3) Cr.P.C. requiring the police to submit a report u/s 173(2) Cr.P.C. on which the Magistrate can take cognizance u/s 190(1)(b) Cr.P.C. and a complaint sent by the Magistrate to the Police can be treated as FIR u/s 154 Cr.P.C.

b) The police had no jurisdiction to hold an enquiry before deciding whether to register the FIR or not and when the police is asked to investigate and submit a report, the police is bound to submit a report u/s 173(2) Cr.P.C.

c) The Magistrate having given a direction to investigate and submit a report, could not proceed under Chapter XIV Cr.P.C. and could not take cognizance u/s 190(1)(a) Cr.P.C.

4. Notice of motion was issued. Reply has been filed by the State justifying non-registration of the FIR and submitting that the Magistrate had called upon the petitioner to adduce evidence in support of her case. It was submitted that Rule 24.4. of the Punjab Police Rules (for short, the PPR) permits the police to enter the substance of information in a station diary and record reasons for suspecting that the offence alleged has not been committed and notify the fact that the case was not proposed to be investigated, but the same is subject to any contrary order of the superior officer. It was explained that under the Punjab Police Rules framed under the Punjab Police Act, 1861 Chapter XXIV deals with procedure for recording of the FIR and while information received was to be entered in the FIR register, if there was a reason to suspect commission of an offence, the information was to be entered in a station diary, if it was suspected that the alleged offence has not been committed. Relevant provisions of Rule 24.1(2) and 24.4(1) of the PPR are extracted below:

24.1(2) With the exception of cases mentioned in rule 24.10 below, in every case in which the officer in charge of a police station, from information or otherwise, has reason to suspect the commission of an offence, which he is empowered u/s 156, Criminal Procedure Code, to investigate, he shall enter in full such information or other intelligence as soon as practicable in the First Information Report Register, shall have each copy signed, marked or sealed by the informant, if present, shall seal each with the station seal, and shall dispose of the copies in accordance with rule 24.5, and if he abstains from the investigation under either of the proviso to section 157 of the Code he shall submit the copy intended for the Magistrate through the Superintendent. At the same time a reference to such report shall be entered in the Station Diary, register No. 11.

24.4.(1). If the information or other intelligence relating to the alleged commission of a cognizable offence is such that an officer in charge of a police station has reason to suspect that the alleged offence has not been committed, he shall enter the substance of the information or intelligence in the station diary and shall record his reasons for suspecting that the alleged offence has not been committed and shall also notify to the informant, if any, the fact that he will not investigate the case or cause it to be investigated.

5. Deep Kaur proposed accused also filed an application for being impleaded as a party, being Crl.Misc.No.21948 of 2002, which was allowed. It has been submitted on her behalf that the will set up by the petitioner was found to be forged by the High Commissioner of India and that mutation had been entered on the basis of will, which was genuine and therefore, there was no reason for registration of a case.

6. Learned counsel for the respondents submitted that the order of the Magistrate was not u/s 156(3) Cr.P.C., but u/s 202 Cr.P.C. and merely because that order was passed without recording the statement of the complainant made no difference. Counsel for Deep Kaur relied on judgment reported in Suresh Chand Jain's case (supra) para 7 and also relied on Rule 24 of the Punjab Police Rules, 1954 to submit that if the version of an informant was of doubtful nature, the police could make an enquiry and it was not a must to register the FIR.

7. I have considered the rival submissions and have perused the record of the case.

The following questions arise for consideration:-

i) Whether on receipt of any information relating to commission of a cognizable offence, the FIR must be registered, even if the information appears to be patently absurd or incredible and if not, what procedure is required to be followed?

ii) What is the scope of interference on a grievance against alleged unjustified refusal to register the FIR?

iii) Whether or not a Magistrate is bound to give a direction for registration of FIR

on an allegation that a cognizable offence was committed?

iv) What will be the proper course of action in the present case?

8. Before proceeding to deal with the said questions, it is necessary to reproduce Section 154(1) Cr.P.C., which is as under:-

Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

9. As already stated, learned counsel for the parties referred to the judgments of the Apex Court in Madhu Bala's case (supra) and Suresh Chand Jain's case (supra). In Madhu Bala's case (supra), the question before the Supreme Court was whether a Magistrate had any power to direct registration of a case. It was held that a Magistrate had option either to take cognizance himself u/s 190(1)(a) Cr.P.C. and proceed in accordance with Chapter XV Cr.P.C. or to send the complaint to the appropriate police station for investigation u/s 156(3) Cr.P.C., in which case police was required to investigate and submit a report u/s 173(2) Cr.P.C. treating the complaint sent to the police Station as FIR u/s 154 Cr.P.C. and since the Magistrate had jurisdiction to direct investigation in a complaint u/s 156(3) Cr.P.C., the power of the Magistrate included the power to direct registration of the FIR. In Suresh Chand Jain's case (supra) also, same question arose and without any reference to Madhu Bala's case (supra), same view was taken by the Apex Court.

10. Reference may also be made to some other decisions dealing with the question.

11. I Mohindro Vs. State of Punjab and Others, the Apex Court expressed surprise while noticing that the police had failed to register a case for no reason whatsoever and that counsel for the State submitted that an enquiry was pending, as to how there could be an enquiry without registration of a criminal case.

12. In The State of Uttar Pradesh Vs. Bhagwant Kishore Joshi, it was observed that "in the absence of any prohibition in the Code, express or implied, I am of the opinion that it is open to a police officer to make preliminary enquiries before registering an offence and making a full scale investigation into it." In P. Sirajuddin, etc. Vs. State of Madras, etc., , it was observed as under:-

.....Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious mis-demeanour or misconduct of the type alleged in this case and a first information is lodged against him,

there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general. If the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can be taken to an enquiry by officers of this department, but any such enquiry must proceed in a fair and reasonable manner. The enquiring officer must not act under any preconceived idea of guilt of the person whose conduct was being enquired into or pursue the enquiry in such a manner as to lead to an inference that he was bent upon securing the conviction of the said person by adopting measures which are of doubtful validity or sanction.....

13. The above judgments were referred to in *State of Bihar and Another Vs. P.P. Sharma, IAS and Another*, *In State of Karnataka v. Arun Kumar Agarwal and others*, AIR 2000 SC 4112, the Apex Court was considering the appeal against a direction of the High Court to register the FIR. The Apex Court observed in para 16 of the above judgment of that "acts of person will not be subject of criminal investigation, unless a crime is reported to have been committed or reasonable suspicion thereto arises. On mere conjecture or surmise that some crime might have been committed somewhere, by somebody, but the crime is not known, the persons involved in it or the place of crime unknown, cannot be termed to be reasonable basis at all for starting a criminal investigation." In *All India Institute of Medical Sciences Employees' Union (Regd.) through its President Vs. Union of India (UOI) and Others*, , it was observed that if the police does not take action under the provisions of the Cr.P.C., aggrieved person can approach the Magistrate u/s 190 read with Section 200 Cr.P.C. by filing a complaint before a Magistrate, but without availing the said procedure, a person cannot approach the High Court by filing a writ petition and seeking a direction to conduct investigation by the CBI, which is not required to investigate in all or every offence. In *Secretary, Minor Irrigation and Rural Engineering Services v. Sahngoo Ram Arya*, 2002 (3) RCR 413, the Apex Court observed that right to life under Article 21 includes right of a person to live without being hounded by the police and a direction to CBI could be issued by the High Court only on coming to the conclusion that there was material calling for such an investigation and not in routine or merely because a party makes allegations. In *D.N. Bhattacharjee and Others Vs. State of West Bengal and Another*, while discussing the scope of Section 203 Cr.P.C., the Apex Court observed that a Magistrate could dismiss a complaint, if a bare perusal of the complaint showed that essential ingredients of the offence were absent or that the dispute was only of a civil nature or that there were such patent absurdities that it would be waste of time to proceed further.

14. In *Binay Kumar Singh and others Vs. State of Bihar*, it was observed "the officer in charge of a police station is not obliged to prepare FIR on any nebulous information received from somebody who does not disclose any authentic

knowledge about commission of the cognizable offence. It is open to the officer-in-charge to collect more information containing details about the occurrence, if available, so that he can consider whether a cognizable offence has been committed warranting investigation thereto." In *State of Haryana and others Vs. Ch. Bhajan Lal and others*, , it was observed that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirement of Section 154(1) of the Cr.P.C. the said police officer has no other option, but to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. A Division Bench of Delhi High Court in *Kuldip Singh v. State*, 1994 (2) RCR 498, observed that leaving the decision to police to register or not to register FIR may be abused and therefore, the police should have no option, but to register FIR on receipt of any information relating to commission of a cognizable offence, though the police may decide not to investigate the offence under proviso (b) to Section 157(1) Cr.P.C. However, another Division Bench of Delhi High Court in *Sanjeev Kumar v. Commissioner of Police*, 2002 (2) RCR 261, after referring to various decisions, held in para 22 as under:-

From the aforesaid precedents it is clear that following conclusions can conveniently be drawn: (i) whenever it is brought in writing or otherwise that a cognizable offence has been committed in terms of the decisions in the case of *Bhajan Lal* (supra) a First Information Report should be recorded, (ii) if the information given is not clear or creates a doubt as to whether it discloses the commission of a cognizable offence some enquiry can precede before registration of the offence, (iii) in case of a complaint of such nature made against public servants it is doubtful or similarly if it found that *ex facie* there is some un-truth in the same, an enquiry can be conducted before registration of the case, (iv) the enquiry need not partake that of an investigation. It only is a preliminary enquiry that can be held.

15. A Single bench of this Court in *Luxmi Devi v. State of Haryana*, 2001 (1) RCR 178, held that a party, aggrieved by failure/refusal to register FIR on the basis of an enquiry, has to approach the Magistrate in the first instance instead of moving this Court u/s 482 Cr.P.C.

16. In series of judgments, the Apex Court held that unwarranted imitation of criminal law to harass a person cannot be permitted. In *G. Sagar Suri and Another Vs. State of U.P. and Others*, it was observed that "criminal proceedings are not a short cut of other remedies available in law. Before issuing process, a criminal court has to exercise a great deal of caution. For the accused, it is a serious matter." It was also observed that if a criminal proceeding is instituted by way of abuse of process of the court, proceedings will be liable to be quashed. Reference was also made to an earlier judgment of the Apex Court in *Chandrapal Singh and Others Vs. Maharaj Singh and Another*, , wherein the Court disapproved initiation of criminal proceedings by a frustrated landlady after having failed in civil court, which was held to be abuse of process of the Court. In

Punjab National Bank and others Vs. Surendra Prasad Sinha, it was observed that on a complaint, a Magistrate could proceed only after satisfying that an offence is committed, lest the law would become an instrument in the private hands as vendetta to harass the persons needlessly. Vindication of majesty of justice is the price object of criminal justice, but it would not be the means to wreak personal vengeance. In Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others, , it was observed that the Court cannot allow criminal prosecution to continue, where the same was being utilized for an oblique purpose. These broad principles are applied by the Court, while considering whether a criminal prosecution should be permitted. Question is whether even in such type of cases, it should be held that the investigating agency must register the FIR.

17. A perusal of above case law shows that information received by an officer in charge of a police station relating to commission of a cognizable offence is required to be entered in a book kept at the police station in the form of FIR. At the same time, it cannot be ignored that a malicious or baseless information may do incalculable harm to the person against whom such information is furnished. If the information is uncertain, indistinct or patently absurd, the officer in charge of a police station is not debarred from a brief enquiry. Such a course is permissible under Rule 24.4 of the PPR, which has been quoted in the earlier part of the judgment. Observations of the Apex Court in Bhagwant Kishore Joshi's case (supra) and P.Sirajuddin's case (supra) also expressly permit such a course⁴ to be adopted. Decisions of the Apex Court in Arun Kumar Aggarwal's case (supra), G.Sagar Suri's case (supra), Chandrapal Singh's case (supra) Surendra Prasad Sinha's case (supra) and Madhavrao Jiwajirao Scindia's case (supra) also supports such a course. View of the Division Bench of Delhi High Court in Sanjeev Kumar's case (supra) also recognises this course to be adopted. While abuse of power by the police in adopting such a course cannot be ruled out, forcing the police to register FIR on any motivated, frivolous, absurd, vague, malicious version will be equally undesirable. There is no reason to presume that wholly false malicious or vague version will not be furnished by motivated informants to the police and if the police is to mechanically register FIR, it will put liberty of any innocent citizen into jeopardy. It is for this reason that FIR registered making out no case, if it is mala fide or if it is abuse of the process of law, is liable to be quashed. What is liable to be quashed cannot be liable to be registered. No doubt, checks and balances are required in the matter of registering the FIR as well as in the matter of refusal to register FIR, because abuse of power in registering as well as in refusing to register is required to be checked to advance the majesty of justice; which is the prima object of law.

The first question is answered accordingly.

18. What is the remedy of a person, who is aggrieved by illegal refusal of the officer in charge of the police station to register the FIR? Under rule 24.4 of the PPR, there is a statutory obligation on the officer in charge to intimate the

informant that the FIR was not being registered. Such information must be sent at the earliest and depending upon the nature of the case, inference can be drawn that the officer in charge has refused to register the FIR, even where no intimation is received. The Code of Criminal Procedure extends safeguards against such a decision, if the same is arbitrary. One safeguard is to approach the higher officers u/s 154(3) Cr.P.C., which provides for approaching the Superintendent of Police who "if satisfied that such information discloses the commission of cognizable offence, can investigate the case himself or direct investigation by a police officer subordinate to him." The Superintendent of Police is also not expected to act mechanically, as the statute itself requires him "to be satisfied that such information discloses commission of a cognizable offence." In case the Superintendent of Police wrongly fails to register the FIR and direct investigation of the case, remedy is available u/s 156(3) of the Code to move a Magistrate empowered to take cognizance u/s 190 Cr.P.C. to direct investigation and the said power has been held to include power to direct registration of the FIR. The Magistrate is also not expected to act mechanically, but to satisfy himself that an order u/s 156(3) Cr.P.C. was warranted. If the order of the Magistrate directing investigation or refusing to direct investigation is erroneous, the same is open to challenge in appropriate proceedings under the Code of Criminal Procedure. The Magistrate has also the power to directly take cognizance in appropriate cases and either to issue process u/s 204 Cr.P.C. or to postpone the issue of process pending enquiry by himself or pending investigation by police officer. While summoning an accused, the Magistrate has also powers u/s 205 Cr.P.C. to dispense with personal attendance of an accused. The Magistrate can also call for report from the police officer conducting investigation about the progress of investigation, if the complaint is filed before the Magistrate u/s 210 Cr.P.C.

19. I now take up last question. It is necessary to examine whether the Magistrate must direct registration of FIR, if police is asked to submit his report and whether the Magistrate is debarred from taking cognizance himself on the basis of complaint itself. There is no doubt that the Magistrate has power to direct registration of FIR, but after requiring the police to submit a report, no fault can be found with the order of the Magistrate deciding to take cognizance himself. It cannot be said that once the Magistrate uses the word investigation his taking cognizance on the basis of complaint would amount to review. Under the scheme of the Cr.P.C., the Magistrate can ask investigation to be made by the police officer for the purpose of deciding whether or not there is sufficient ground to proceed. This power u/s 202(1) Cr.P.C. is subject to proviso (b) to the said subsection i.e. the complainant and the witnesses present have already been examined on oath. Section 202 Cr.P.C. comes into picture where Magistrate takes cognizance u/s 190(1)(a) Cr.P.C. It does not mean that for the purpose of considering whether cognizance is to be taken, such a power cannot be used. As will be seen from the subsequent order of the Magistrate, the Magistrate wanted to proceed with the complaint itself. Mere asking for a report from the police

does not debar the Magistrate implied registration of FIR, FIR was not registered, it will be open to the Magistrate either to give an express direction to register FIR or to take cognizance on the basis of complaint himself. Even after asking the police to submit a report, option of the Magistrate is not exhausted. This aspect of the matter is fully covered by a decision of the Apex Court in Tula Ram and Others Vs. Kishore Singh, para 13.

20. While deciding the course of action to be taken in the present case, it is also necessary to decide as to whether a petition will lie u/s 482 Cr.P.C. in the present case. Section 482 Cr.P.C. saves inherent powers of the High Court to give effect to any order under the Cr.P.C., to prevent abuse of process of the Court or to secure the ends of justice. In Madhu Limaye Vs. The State of Maharashtra, it was held that the power was not to be resorted to, if there was a specific provision in the Code; the power has to be exercised very sparingly and it should not be exercised as against the express bar of law. Normally specific statutory remedy under Sections 190 and 200 of the Cr.P.C. has to be first resorted to where there is any wrongful action or refusal on the part of the police or the Superintendent of Police in the matter of registration of FIR. In a rare case, the High Court may exercise its inherent power. Exercise of the inherent power by the High Court to examine whether the FIR is to be registered or not is not a routine.

21. Since the learned Magistrate has called upon the petitioner to produce the evidence to enable the Magistrate to decide whether cognizance of offence could be taken on the basis of preliminary evidence, which may be produced by the petitioner, no interference is called for in these proceedings.

22. I may now summarise my conclusions:-

A) The officer in charge of a police station is bound to register FIR disclosing commission of a cognizable offence, but if the information is nebulous and is received from a source having no authentic knowledge about commission of offence or dispute is primarily of civil nature or is inherently absurd, the officer in charge can first cross check the information in a summary manner and inform the informant of his decision accordingly. Such a decision of the officer in charge of the police station has to be prompt and bona fide and is subject to scrutiny by higher authorities as well as by the Courts.

B) If there is inaction or the decision is erroneous, the same can be corrected by the Superintendent of Police or the Magistrate.

If action of the officer in charge of police station or the Superintendent of Police is not only erroneous but also mala fide, they may be individually liable also for such action/inaction in appropriate proceedings.

A petition u/s 482 Cr.P.C. will not be a "routine" remedy in the matter, unless remedy of approaching the Magistrate has been exhausted. In a case presenting special features, the High Court can go into the matter u/s 482 Cr.P.C. or under Article 226 of the Constitution. Such a course is to be confined to rare cases

warranting "judicial review" by the High Court.

C) Para-meters applied for decision by the Superintendent of Police as well as by the Magistrate in taking a decision whether FIR is to be registered or not, should be identical to the parameters applied by the officer in charge of the police station, guiding star (being) "advancement of majesty of justice."

D) In the present case, impugned order of the Magistrate, having called upon the complainant to bring preliminary evidence, does not call for any interference.

The petition is dismissed.