

(2019) 05 DEL CK 0158

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 5429 Of 2017, Criminal
Miscellaneous Application No. 21186 Of 2017

Ms. Aparna Bhattacharya

APPELLANT

Vs

Nct Of Delhi & Ors

RESPONDENT

Date of Decision : 31-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 227

Code Of Criminal Procedure, 1973 — Section 154, 156(3), 190, 200, 482

Indian Penal Code, 1860 — Section 120B, 182, 192, 193, 354, 465, 469, 499, 500

Citation : (2019) 05 DEL CK 0158

Hon'ble Judges : Anu Malhotra, J

Bench : Single Bench

Advocate : Yash Anand, Raghuvinder Varma

Judgement

Anu Malhotra, J

1. The petitioner vide this petition under Article 227 of the Constitution r/w Section 482 of the Cr. PC, 1973 seeking quashing of the order dated 09.10.2017 of the learned ASJ-03, PHC, New Delhi in CR No.100/2017 vide which the order dated 20.12.2016 of the learned MM-05, PHC, New Delhi in CC No.1589/1/2016 was upheld vide which the complaint under Section 156(3) of the Cr.PC, 1973 filed by the petitioner herein as complainant i.e. the petitioner herein of the said case was dismissed, which ought to read as application under Section 156(3) of the Cr.P.C., 1973.

2. The averments made in the application under Section 156(3) of the Cr.P.C., 1973 filed forming part of the complaint under Section 200 of the Cr.P.C., 1973 r/w Section 190 of the Cr.P.C., 1973 as filed by the petitioner herein as complainant i.e. the petitioner herein thereof against the accused persons and their associates for investigation by the competent authority in the case, lodged to the effect that she, the complainant i.e. the petitioner herein was working as the Personal Assistant to the Deputy General Manager-I (DGM-I), Food

Corporation of India (FCI), Regional Office, Raipur, Chhattisgarh from 2013 and had good co-ordination with all the staff and seniors in her Department till the time, the accused no.2 in connivance with accused nos.3 & 4 allegedly for their personal gain used the name of the complainant i.e. the petitioner herein and sent a pseudonymous complaint to the Headquarters, FCI of sexual harassment of the petitioner by the DGM of the FCI with further allegations that another lady was also being sexually harassed by the DGM. The said pseudonymous complaint further submitted that due to the harassment meted out to the present petitioner, she was on the verge of committing suicide. The said complaint had been filed in a fake name of the Dipasha Sharma and it was alleged in the complaint that the DGM had called the complainant i.e. the petitioner herein Dipasha Sharma from different numbers at odd hours and the said Dipasha Sharma was also as per the allegations in the complaint claimed to be a friend of the present petitioner and was stated to be living nearby the colony where the DGM stayed and the said Dipasha Sharma was a college-going student.

3. As per the pseudonymous complaint, it was alleged that the petitioner had been used physically by the DGM with the promise that he would marry her but he later refused to do so when she spoke about the marriage.

4. According to the petitioner all the said allegations in the pseudonymous complaint were fabricated, false and malafide with intent to put pressure on her and to get her transferred and that the said pseudonymous complaint was first seeking to approach the petitioner's character.

5. Inter alia the petitioner submitted that she had never met any person by the name of Dipasha Sharma nor did she know her and on investigation conducted by her Department, it was discovered that there was no person by the name of Dipasha Sharma. The petitioner has further stated in her complaint that previously also there was a history of the FCI having transferred officers on the basis of complaints made by persons as pseudonymous complaints which had been made for their own gains. The complainant i.e. the petitioner herein i.e. the petitioner further stated the FCI Headquarters forwarded that complaint to the concerned RO for investigation and on the same day, the complainant i.e. the petitioner herein wrote a representation before the CMD, FCI Headquarters for indulgence in as much as the purported complaint was unnecessarily dragging the complainant i.e. the petitioner herein as well as the DGM and ruining her reputation in public. As per the complainant i.e. the petitioner herein, likewise the other lady AG-II, RO, FCI, Raipur whose name had been used in the purported complaint also filed a representation dated 07.03.2016 to the CMD, FCI Headquarters.

6. It has been stated further in the complaint that on the basis of the said false complaint, the interested officers in connivance ignored the FCI rules and circulated the same to the Headquarters and various connected department to achieve their goals. The complainant i.e. the petitioner herein has further submitted that these pressure tactics are utilized by persons to de-settle others

in higher position. As per the complainant i.e. the petitioner herein on 28.03.2016, the accused nos.3 & 4 once again forwarded a letter to the Regional Office, Raipur stating that the representation of the complainant i.e. the petitioner herein as well as that of the other lady be also investigated with reference to the earlier Office letter dated 07.03.2016.

7. The complainant i.e. the petitioner herein further asserted that despite her endeavour by sending representations to the Headquarters and RO of the FCI stating that the purported/pseudonymous complaints were totally false and mala fide and pre-planned with the modus to tarnish the reputation and character of a person and that there was no sexual harassment case made out, but that without following the rules of the CVC order Circular dated 07.11.2014 and 25.11.2014, which were to the effect that no action be taken on anonymous/ pseudonymous complaints, the accused nos.3 & 4 Ms. Shraddha Sharma (DGM) and Shri Ranjeet Jeenagar (AGM) in order to tarnish the reputation and to assassinate the character of the complainant i.e. the petitioner herein and of the other lady and of the DGM (I), FCI, RO, Raipur had circulated the complaint to various other departments and initiated an enquiry.

8. The complainant i.e. the petitioner herein has further stated through the complaint that on the representation given by her and by the other lady, the Presiding Officer of the ICC, FCI, RO, Raipur called for an expert opinion on the signature on the last page of the purported compliant and letter addressed to office and that the expert opinion was obtained wherein the handwriting expert clearly opined that the signature was not that as signed by Dipasha Sharma and that it was signed by Mr. Avinash Kumar Dubey, arrayed as accused no.2 to the complaint, as the patten of writing was the same as that of Mr. Avinash Kumar Dubey. The copy of the handwriting expert opinion had been annexed to the complaint as Annexure A-5 and that handwriting expert has opined that the writer of the questioned signature, marked as Q1(A-A) in English as Dipasha as appears to be the same person, who wrote N1 to N6 (B-B)- N9(C-C), N12(A-A)(B-B) AND N13-N14(B-B) namely as Avinash Kunar Dubey and even the Hindi formations qua the questioned signatures were opined by the handwriting expert to be that of Avinash Kumar Dubey.

9. The complainant i.e. the petitioner herein thus submitted through her complaint that the purported complaint had been drafted by some officials of the FCI by fabricating and concocting a false story and by using a girl's name they were camouflaging as if the complaint was genuine complaint.

10. The petitioner thus submitted through her complaint that there was a scam in which some of the officials of the FCI were trying to malign and tarnish the reputation of the complainant i.e. the petitioner herein as well as of the other lady and DGM of the FCI, Raipur and that the said pseudonymous and anonymous complaints had been filed only to take revenge and to remove the DGM from the Department for no reason. The complainant i.e. the petitioner herein thus stated through the compliant that after gathering enough evidence

against the accused Avinash Kumar Dubey, Manager (Movement), Sharddha Sharma, DGM (IR-S) and Ranjeet Kumar Jeenagar, AGM (IR-S) and their associates, since the purported complaint was addressed to the Headquarters, FCI situated at New Delhi, the complainant i.e. the petitioner herein approached the concerned SHO, PS Barakhamba with her written complaint dated 04.05.2016 and also personally visited and requested the concerned SHO to lodge the FIR under Sections 182, 192, 193, 465, 469, 354, 120-B of IPC against the accused persons and also to take cognizance and register a complaint for defamation under Sections 499, 500 of the IPC and that instead of lodging the FIR, a DD No.40(B) was registered. Since there was no response received from the PS nor from the IO in relation to the complaint, the complainant on 13.05.2016 wrote a reminder/written complaint to the DCP, New Delhi for taking necessary action but there was no response received.

11. The complainant i.e. the petitioner herein thus alleged that the accused persons in a pre-planned conspiracy had committed an act of forgery for the purpose of harming her reputation and defaming the complainant i.e. the petitioner herein and the other lady and DGM (I), RO, Raipur and that the same could not be ascertained without in-depth investigation. The complainant i.e. the petitioner herein thus stated that despite lodging of a criminal complaint to the police and despite repeated reminders, the police did not register the criminal case nor did they get any investigation conducted in the matter despite the judgment of the Hon'ble Supreme Court in Lalita Kumari vs. Govt. of UP and Ors. AIR 2014 SC 187. Reliance was thus placed on behalf of the complainant i.e. the petitioner herein i.e. the present petitioner on the observations of the Hon'ble Supreme Court in the said case whereby the directions issued were to the effect:

111) In view of the aforesaid discussion, we hold:

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of

the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant i.e. the petitioner herein, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

12. The petitioner i.e. the complainant i.e. the petitioner herein thus had submitted through her complaint that the accused no.2 having given an illegal complaint impersonated as a lady and the accused nos.3 & 4 in connivance having illegally passed orders against rules, the complainant i.e. the petitioner herein had sought that the investigating agency be directed to register the case against accused nos.2 to 4 for the offence punishable under Sections 182, 192, 193, 465, 469, 354 and 120-B of the IPC and Sections 499, 500 of the IPC and sought that directions be issued to the police to further investigate into the matter and submit report to the Court.

13. The learned trial Court vide the order dated 14.07.2016 called for the action taken report from the concerned Police Station. The said ATR i.e. the status report submitted by ASI Praveen Kumar, PS Barakhamba Road indicates that during the course of enquiry conducted a letter was sent to the FCI Headquarters for taking complete enquiry report but the FCI replied that after receipt of the complaint of Ms. Dipasha Sharma (i.e. allegedly fake person), the same was

forwarded to Executive Director (West), FCI Zonal Office, Mumbai for necessary action and it was further stated through the said enquiry report to the effect:

"However, an enquiry report which was held by the Committee of Regional Office Raipur will be shared only after it is properly examined and considered by the Disciplinary Authority."

14. It is also indicated that during the course of the enquiry, the accused no.2 Mr. Avinash Kumar Dubey, Manager (Movement) joined the enquiry and denied all the allegations levelled against him.

As per the report of the PS Barakhamba Road, a request had been made for more time to complete enquiry and it was stated that after receipt of the complete enquiry report from the FCI, Headquarters, the enquiry would be expedited and the final report would be submitted before the Court.

15. Apparently, no such complete enquiry report was called for by the learned trial Court.

16. Rather the learned trial Court vide order dated 20.12.2016 observed to the effect:

"The fact of the matter is that a pseudonymous letter was received by HQ of FCI. Complainant i.e. the petitioner herein suspect that same is done by accused no. 2, 3 & 4. Complainant i.e. the petitioner herein is in receipt of expert report on hand writing and as per the complainant i.e. the petitioner herein same indicate that the signatures on the last page of the complaint pertains to Sh. Avinash Kumar Dubey due to similarity of pattern of hand writing. As per the complaint, complainant i.e. the petitioner herein is Personal Assistance of DGM, FCI having Regional Office at Raipur. She is resident of H.No.301, Vinayak Enclave, Anand Nagar, Raipur, Chhattisgarh. HQ of FCI at Barakhamba Road and the purported complaint was received at HQ of FCI. Internal enquiry is being conducted by the Department concerned as per the report of the IO.

Accordingly, in the considered view of this Court, field investigation by the police is not required as complainant i.e. the petitioner herein is in reach of evidence which includes the purported complaint and also the expert report. Accordingly, complaint u/s 156(3) CrPC is dismissed. Complainant i.e. the petitioner herein is given a chance to prove his case by leadings PSE.

I take cognizance for the offences.

Put up for CE on 06.06.2017."

17. In the circumstances, in as much as only the State was represented on 06.02.2018, notice of the petition is directed to be issued to the respondent nos.2, 3 & 4 on taking of steps by the petitioner with the process being returnable for the date 20.08.2019 before the Roster Bench.