
(2009) 04 DEL CK 0093
In the Delhi High Court
Case No : Criminal M.C. 2020 of 2005

Neeraj Sharma

APPELLANT

Vs

NCT of Delhi and Others

RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Citation : (2009) 04 DEL CK 0093

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : Shanmuga Patro, for the Appellant; Arvind Kumar Gupta, APP, for the Respondent

Judgement

Mool Chand Garg, J.—The short point involved in this case is as to "whether the order dated 27.04.2005 which has been passed by the learned District Judge on an application moved by Smt. Kamla Dhingra and Sh. Gaurav Chopra on 09.02.2008 instead of holding a preliminary inquiry and directing registration of FIR by the SHO Subzi Mandi instead of making an inquiry himself is justified and sustainable in law."

2. Before dealing with the facts of this case, it would be appropriate to take note of Section 340 of the Code of Criminal Procedure (Cr.P.C.) which reads as under:

340 - Procedure in cases mentioned in Section 195: (1) When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in Clause (b) of Sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

- (b) make a complaint thereof in writing;
- (c) send it to a Magistrate of the first class having jurisdiction;
- (d) take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do send the accused in custody to such Magistrate; and
- (e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by Sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under Sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of Sub-section (4) of Section 195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

[(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.]

(4) In this section, "Court" has the same meaning as in Section 195.

3. A bare reading of the aforesaid provision goes to show that whenever in relation to any offence committed in the Course of any judicial proceedings where provisions of Section 195 are attracted and an application is filed u/s 340, the Court is competent to take appropriate action. However, for that purpose the Court is required to hold an inquiry and to record a finding that prima facie a case is made out. It is only then he can make a complaint thereof in writing send it to a Magistrate of First Class having jurisdiction, take sufficient security for the appearance of the accused before such magistrate, and/or bind over any person to appear and give evidence before such Magistrate.

4. The provision contained u/s 340(1) does not authorize the concerned Court to refer the matter to the police or to direct registration of an FIR for the purpose of holding a preliminary inquiry as has been done in this case while passing the impugned order by the learned District Judge.

5. The impugned order which has been assailed in this petition is reproduced hereunder for the sake of reference:

27.4.2005 Present: Counsel for the petitioner/applicant Sh. R.K. Bindal, adv. on behalf of respondent No. 4. This is an application u/s 340 Cr.P.C. probate was granted by this Court in respect of property No. 25, East of Kailash, New Delhi on the basis of alleged will of Raj Prakash. After grant of probate, the petitioner/applicant came to know about this grant of probate and made an application for cancellation of probate on the ground that this will was forged will. When the notice of application was served upon respondent, the respondent Shreshth

Kumar appeared in the Court and told the Court that he was made to sign documents as a tenancy document and he was not aware as to what he was being made to sign. He later on came to know that he was under the influence of other respondents and had become party to a forged will and consequently grant of probate on the basis of forged document. He told the Court that the probate granted by the Court may be cancelled.

The probate was cancelled and the present application u/s 340 Cr.P.C. for taking action against the forgerers is pending. I consider that this matter requires thorough investigation by the police. Court is not having paraphernalia and machinery to the investigation of criminal offences as the matter involves forgery and criminal offence of other nature connected with the forgery .A copy of the application u/s 340 Cr.P.C. made by the petitioner be sent to PS Subzi Mandi for registration of the FIR and record statement of complainant/petitioner and proceeding further with the investigation. SHO of PS Subzi Mandi is directed to mark the investigation to some competent official, who shall complete the investigation within a period of three months and report to the Court. If necessary, the persons involved in the forgery may be arrested and action as per law be taken.

Put up this case on 01.09.2005.

6. Learned Counsel appearing for the petitioner has submitted that the procedure followed by the learned District Judge in this case is contrary to law. He has relied upon a judgment delivered by the Apex Court in the case of B.K. Gupta Vs. Damodar H. Bajaj and Others, which mentions about the conditions one has to fulfill before exercising jurisdiction u/s 340 Cr.P.C. and dealing with the provisions contained u/s 340(1)(b) Cr.P.C. it has been held:

2. Learned Counsel appearing for the appellant urged that there is nothing on record to show that the High Court while making an enquiry u/s 340 CrPC applied its mind whether it was expedient in the interest of justice that a complaint be filed against the appellant. u/s 340 CrPC, if the court is of the opinion that it is expedient in the interest of justice that an enquiry should be made into an offence referred to in Clause (b) of Sub-section (1) of Section 195 CrPC in relation to any proceeding in that court, the court after such preliminary enquiry may direct for filing a complaint before the appropriate court against such person.

3. From the above, it follows that there are two conditions on fulfilment of which a complaint can be filed against a person who has given a false affidavit or evidence in a proceeding before a court. The first condition being that a person has given a false affidavit in a proceeding before the court and, secondly, in the opinion of the court it is expedient in the interest of justice to make an enquiry against such a person in relation to the offence committed by him. It is no doubt true that the High Court has recorded a finding that the appellant has made a false statement on oath and has also used evidence known to be false and

fabricated. On a perusal of the record we do not find any material on record to show that there was any application of mind by the Court that it was expedient in the interest of justice to make an enquiry and file a complaint against the appellant. We have also perused the judgment in Writ Petition No. 1442 of 1983 and the judgment does not show that the Court applied its mind regarding the second condition as to whether it is expedient in the interest of justice to make an enquiry into the false evidence given by the appellant and a complaint is to be filed. In the absence of application of mind in regard to expediency for filing complaint against the appellant, the order passed by the High Court directing the Prothonotary and Senior Master of the High Court to file a complaint against the appellant was vitiated.

4. On this short ground, this appeal deserves to be allowed. We accordingly set aside the order under challenge. The appeal is accordingly allowed. There shall be no order as to costs.

7. It would also be appropriate to take note of another judgment delivered by the Supreme Court in the case of State of Punjab Vs. Raj Singh and Another, where it has been held:

1. Leave granted. Heard the learned Counsel for the parties.

2. We are unable to sustain the impugned order of the High Court quashing the F.I.R. lodged against the respondents alleging commission of offences under Sections 419, 420, 467 and 468, I.P.C. by them in course of the proceeding of a civil suit, on the ground that Section 195 (1) (b) (ii), Cr. P. C. prohibited entertainment of and investigation into the same by the police. From a plain reading of Section 195, Cr. P. C. it is manifest that it comes into operation at the stage when the Court intends to take cognizance of an offence u/s 190 (1), Cr. P. C.; and it has nothing to do with the statutory power of the police to investigate into an F.I.R. which discloses a cognisable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceeding in Court. In other words, the statutory power of the Police to investigate under the Code is not in any way controlled or circumscribed by Section 195, Cr. P. C. It is of course true that upon the charge-sheet (challan), if any, filed on completion of the investigation into such an offence the Court would not be competent to take cognizance thereof in view of the embargo of Section 195(1) (b), Cr. P. C., but nothing therein deters the Court from filing a complaint for the offence on the basis of the F.I.R. (filed by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in Section 340, Cr. P. C. The judgment of this Court in Gopalakrishna Menon and Another Vs. D. Raja Reddy and Another, , on which the High Court relied, has no manner of application to the facts of the instant case for there cognizance was taken on a private complaint even though the offence of forgery was committed in respect of a money receipt produced in the Civil Court and hence it was held that the Court could not take cognizance on such a complaint in view of Section 195, Cr.

P. C.

3. For the foregoing reasons, we allow this appeal and set aside the impugned order.

8. In view of the aforesaid, while the learned District Judge was competent to have made a complaint to a subordinate Court for the purpose of trying the offences alleged against the accused persons but it could have been done by the District Judge only after recording a finding that there are grounds to proceed against the accused persons u/s 340 Cr.P.C. However, apparently in the present case no such finding has been recorded by the learned District Judge as can be seen from the order quoted above. Instead he chose to direct P.S. Subzi Mandi to register an FIR and to undertake further inquiry which is not the Course upon for the learned District Judge.

9. The Court could have made a complaint after recording a prima facie finding of his opinion that a prima facie case was made out against the accused persons and then could have filed a complaint before the Metropolitan Magistrate concerned. While trying the said complaint the Magistrate was competent to have directed the SHO to hold an enquiry by exercising the powers u/s 156(3) Cr.P.C. whereafter the Magistrate might have either taken cognizance on the basis of police report or could have proceeded with the complaint in accordance with Chapter XXV of Cr.P.C. However, the said procedure has not been adopted but a different procedure that directing the police to register an FIR and then to record evidence and then to take appropriate steps including sending a report to the District Judge has been adopted which in view of the judgments cited above cannot be sustained. Accordingly, the order dated 27.04.2005 passed by the District Judge, impugned in this petition is set aside. Consequently the FIR registered on the basis of the said order, i.e., FIR No. 163/2005 dated 04.05.2005 at P.S. Subzi Mandi is also quashed.

10. However, the matter is remanded back to the learned District Judge to proceed further in accordance with law, i.e., u/s 340 Cr.P.C. on the basis of the complaint filed by the respondents No. 3 and 4.

11. One of the submissions made by the petitioner is that he was only acting as an advocate for the Official Liquidator and has filed the documents which were handed over by his clients in the Court and therefore the petitioner had not committed any crime. This aspect can also be looked into by the District Judge while recording a finding if any case is made out against the accused persons.

12. The parties to appear before the District Judge on 04.05.2009.