
(2014) 08 MAN CK 0001
In the Manipur High Court
Case No : W.P. (C). No. 512 of 2014

Ningtam Zinkhai	Vs	APPELLANT
The State of Manipur		RESPONDENT

Date of Decision : 29-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 154

Citation : (2014) 08 MAN CK 0001

Hon'ble Judges : Laxmi Kanta Mohapatra, C.J

Bench : Single Bench

Advocate : A. Romenkumar, Advocate for the Appellant; Devendra Nath Guburdhan, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Laxmi Kanta Mohapatra, C.J.—Petitioner, in this writ application, prays for a direction to the respondents-1, 2 and 3 to register the information given by him under Annexure-A/3 as the First Information Report and take up investigation. Under Annexure-A/3 the petitioner has submitted an application on 23.6.2014 before the S.P. (Vig), Manipur along with a copy of an enquiry report alleged to have been submitted by a Committee comprising of 10 Members with Shri Fillson Y. Lunghar as the Chairman thereof and this report is sought to be treated as an information for registration of First Information Report.

2. In course of hearing, 3 (three) issues were raised for consideration by the Court such as-(i) whether this writ application is in the nature of Public Interest Litigation, (ii) whether writ petition is maintainable in view of availability of an alternative remedy by filing a complaint before a Magistrate competent to entertain the complaint and (iii) Though Section 154 of the CPC makes it mandatory for registration of the first information report in the event of disclosure of a cognizable offence, whether an enquiry, prior to registration of the FIR, is necessary in the facts and circumstances of the case.

3. I have heard Shri A. Romenkumar, learned counsel appearing for the petitioner and Shri Devendra Nath Guburdhan, learned counsel appearing for the State respondents.

4. Shri A. Romenkumar, learned counsel for the petitioner, in relation to the above three issues, has given a written note of submission in which a reference has been made to several decisions. However, in course of hearing the decisions relied upon by the learned counsel for the parties are only taken note of in this judgment.

5. The case of the petitioner is that he is a public spirited villager of Awang Kasom/Ngahui village, Chingai Sub Division, Ukhrul District and is actively involved in many social works for the development of the villages of Awang Kasom and other villages of Ukhrul district. It is alleged in the writ petition that while the petitioner was concentrating in developmental works in certain areas, he came to know that the Autonomous District Council of Ukhrul district in Oct./2013 had adopted a resolution to constitute a Committee comprising of 10 members with Shri Fillson Y. Lunghar as its Chairman. The said Committee was to conduct an enquiry into the implementation of MH: 8449 and 13th Finance Commission awarded works in favour of the Autonomous District Council Ukhrul. The scope of enquiry covered management and implementation of the above schemes. The Committee, after conducting the enquiry, submitted a report on 2.3.2014 highlighting major financial irregularities committed in course of the implementation of the scheme resulting in misappropriation of public money to the extent of Rs. 47,79,579/-. According to the petitioner, the committee took note of several purchases made for implementation of the scheme and in course of making such purchases; the above amount has been misappropriated. Thereafter, he submitted an application along with copy of the report before the S.P. (Vig) on 23.6.2014 to treat the information contained in the report as a First Information Report and undertake investigation. Since no action was taken on the said information, this writ petition has been filed for the relief as stated earlier.

6. Shri D.N. Guburdhan, learned counsel for the State respondents, referring to para 2 of the writ petition, submitted that the writ application is in the nature of a Public Interest Litigation and therefore such prayer cannot be entertained in a Public Interest Litigation.

I have carefully read the entire writ petition. Only in paragraph 2 of the writ petition, the petitioner has described himself as a public spirited villager of Awang Kasom in the district of Ukhrul and has further stated that he is actively involved in many social works for the development of the village of Awang Kasom as well as other villages of Ukhrul district. It is also stated in the writ petition that the petitioner is a student activist. Apart from the above, rest of the averments made in the writ petition relate to the alleged financial irregularities committed by some persons while implementing the schemes. It is the petitioner, who submitted an application before the S.P. (Vig) to treat the report of the

enquiry committee as an information and register the same as a First Information Report. Merely because the petitioner has described himself as a public spirited villager or that he claims to be involved in many social works, does not by itself make the writ petition a public interest litigation. To find out as to whether a writ petition is in the nature of Public Interest Litigation or not, the entire writ application has to be read as a whole and one or two sentences cannot be picked up. There is no dispute that it is the petitioner who has submitted an application before the S.P. (Vig) along with the copy of the report of the enquiry committee and therefore under no stretch of imagination, this writ petition can be said to be a public interest litigation.

7 Shri D.N. Guburdhan, learned counsel for the State respondents in relation to the second issue, submitted that if the petitioner has submitted an application before the S.P. (Vig) to treat the report of the Committee as an information for the purpose of registering the FIR, he can approach the Magistrate by filing a complaint if no action is taken by the S.P. (Vig). It is further submitted by Mr. Guburdhan that an alternative remedy being available to the petitioner by filing a complaint before the Magistrate competent to entertain such complaint, writ application should not be entertained. Reliance was placed by the learned counsel for the respondents on two decisions of the Supreme Court in this regard.

Shri Romenkumar, learned counsel for the petitioner submitted that availability of an alternative remedy is not a bar for filing a writ application when a public servant does not register an FIR which he is duty bound to do.

In the case of Ramesh Kumari Vs. State (N.C.T. of Delhi) and Others, it was held that availability of an alternative remedy could not be a ground for the High Court to refuse to interfere. In the said reported case, the grievance of the appellant therein was that he had filed information of a cognizable offence before the Station House officer, but no case was registered. Thereafter, the matter was brought to the notice of the Police Commissioner without any result. This led the appellant to approach the High Court by filing a criminal writ petition. The High Court was of the view that the appellant therein had filed Contempt Petition in the matter which was pending and it was difficult to direct to register a case on the basis of the information filed by the said appellant. The High Court was also of the view that the appellant had an alternative remedy available to her. The Supreme Court, in the said judgment, held that refusing to interfere in the writ petition on the ground of availability of alternative remedy was not proper. The two decisions cited by the learned counsel for the petitioner are prior to the above reported decision. A decision of the Division Bench of the Bombay High Court in the case of Mrs. Charu Kishor Mehta and Vs. State of Maharashtra and Another, though did not refer to the above Supreme Court decision, held in the judgment that when there is complaint of serious economic crime, the High Court can insist for recording of an FIR and register the criminal case. Reference can also be made to another decision of the Supreme Court in the case of M.P. State Agro Industries Development Corporation Ltd. and Another Vs. Jahan Khan,

Though the judgment does not relate to any criminal case and relates to service matter, it was held in the said decision that exclusion of writ jurisdiction due to availability of alternative remedy is a rule of discretion and not one of compulsion. Alternative remedy does operate as a bar. Writ jurisdiction can be exercised in certain cases for enforcement of fundamental right or where there is failure of natural justice or where the impugned order or proceeding is wholly without jurisdiction or vires of an Act, is challenged. This is a case where inaction on the part of the S.P. (Vig) in registering the information supplied by the petitioner as a First Information Report is under challenge. Considering what has been decided in the above decisions, I am of the view that even though the petitioner could approach the Magistrate by filing a complaint, availability of the said alternative remedy is not a bar in entertaining the present writ petition specially when the offence alleged relates to corruption.

8. So far as the third issue is concerned, law is well settled that provision contained in Section 154 of the CPC is mandatory in nature. Once an information is furnished, disclosing commission of a non-cognisable offence, the officer in-charge of the concerned police station has no other option except registering the said information as First Information Report. It was held in the case of Ramesh Kumari vs. State (NCT of Delhi) & Ors: (supra) that the provision of Section 154 of the CPC is mandatory and police officer concerned is duty bound to register the case on receiving the information disclosing cognizable offence. It was further held that genuineness or credibility of an information is not a condition precedent for registration of a case and it can only be considered after registration of the case. In the case of Lalita Kumari Vs. Govt. of U.P. and Others, the Constitution Bench of the Supreme Court held that mandatory registration of an FIR on receipt of information disclosing a cognizable offence is the general rule. However, when the information received does not disclose a cognisable offence, a preliminary enquiry may be conducted to ascertain cognizable offence is disclosed or not. It was also held that in matrimonial dispute/family dispute commercial offences, medical negligence, corruption cases, or cases where there are abnormal delay/latches in initiating criminal prosecution, preliminary enquiry may be warranted. In the present case, the question that comes up for consideration is whether Court should direct registration of an FIR or allow the respondents to conduct a preliminary enquiry before registration of the FIR.

9. In the writ petition, in paragraph 3, the petitioner has stated that while concentrating in the developmental works, he came to know that the Autonomous District Council, Ukhrul had constituted a committee comprising of 10 Members, who conducted an enquiry relating to management and implementation of the schemes as stated earlier and submitted a report which discloses misappropriation of fund to the extent of Rs. 47,79,579/- Nowhere in the writ petition, the petitioner has disclosed the source from which he got such information or the source from which he got the copy of the enquiry report. The enquiry report attached along with the application submitted by the petitioner which is annexed to the petition as Annexure-A/1 does not bear signatures of the

Members of the said Committee. Under these circumstances, when the petitioner has failed to disclose source of his knowledge or the source from which he got the copy of the report of the enquiry committee which is not signed by any Member of the Committee, I am of the view that it would be appropriate to conduct a preliminary enquiry to find out as to whether any such report has at all been submitted by any Committee or not. In the event it is found that such a report has been submitted by the Committee before the Autonomous District Council and the report discloses commission of a cognizable offence, certainly the information given by the petitioner has to be registered as a First Information Report. Therefore, in the peculiar facts and circumstances of the case as stated above, I direct the respondent No. 3, i.e. S.P. (Vig), Govt. of Manipur to conduct a preliminary enquiry as to whether any such report has been submitted by any Committee before the Autonomous District Council, Ukhrul. If any such report has been submitted and the report discloses commission of a cognisable offence, the said information supplied by the petitioner shall be registered as First Information Report and investigation shall be undertaken. This exercise be done by the Superintendent of Police (Vigilance), respondent No. 3, within 15 (fifteen) days from the date of communication of this order.

Writ Application is, accordingly, disposed of.