
(2007) 04 DEL CK 0115

In the Delhi High Court

Case No : Criminal Rev. P.: 726-727 of 2005

Niti Munjal and Another

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 26-04-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 2(h), 202, 203, 217, 218

Citation : (2007) 2 ILR Delhi 569

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : K.K. Sareen, for the Appellant; V.K Malik, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—This revision is directed against an order by which the learned Metropolitan Magistrate (hereafter referred to as "the trial court") dismissed the complaint preferred by the petitioner. The petitioner had complained alleging commission of offences punishable under Sections 217-220/307/341/354/376/452/511/506/34 IPC against the accused, one Harpal Singh, who was Sub-Inspector of P.S. Shri Niwas Puri and the SHO at the relevant time. It was alleged that in an incident which occurred on 4.12.2002 the mother of the complainant, had threatened that as she had contacts with local policemen she would teach the petitioner/complainant a lesson and had later in the incident, the accused persons had assaulted her. The complaint was filed sometime on 16.12.2002. Six witnesses were cited in support of the complaint

2. The trial court considered the evidence led on behalf of the complainant/petitioner. It also proceeded to consider certain other materials including the deposition/evidence of CW 5-CW 9, who had not been cited by the complainant/petitioner. It also took into consideration, the record of other judicial proceedings. By its impugned order dated 16.8.2005, it concluded on the basis of such material that no case for issuing process was made and rejected the complaint.

3. Mr. K.K. Sareen, learned counsel took serious exception to the procedure adopted by the trial court and urged that the court could not have taken into account any material except what was placed before it by the complainant. He relied upon Section 203 as well as the decision of the Supreme Court in Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, to say that the trial court has an extremely limited and circumscribed jurisdiction at the stage of considering the complaint and the appropriate order to be made. At the stage of issuing process it cannot consider the possible defences of the accused which has to be done at a later stage. It was also contended that the procedure adopted by the court in calling for the records of a disposed off case, seeing them and forming an opinion was alien to law.

4. Learned counsel for the respondent State supported the impugned order and urged that the procedure adopted is perfectly in consonance with Section 202 which enables the Magistrate to enquire into the material allegations and decide whether or not the process could be issued. He submitted that the accused in the complaint i.e. the police officers had lodged an FIR against the complainant and that as a result of it the Magistrate acted within his jurisdiction to call for that and consider the same at the stage of issuing process.

5. I have considered the impugned order and the materials on record. The two expressions "inquiry" and "investigation" referred to u/s 203 in my opinion cannot extend to an enquiry into the merits of the defence to complaint or the evidence in its support. The expression "investigation", u/s 2(h) expressly exclude proceedings before a Magistrate. The enquiry referred to under Sections 202 and 203 therefore necessarily would mean enquiry into the material before the court on the basis of a complaint, which would be the averments, documentary and pre-summoning evidence. In these circumstances the Magistrate in my opinion exceeded his jurisdiction in considering the records of another case and also the evidence of the accused. It virtually amounted to considering the defence in advance, without issuance to a summoning order, a course of action impermissible, and unsupported by any authority shown during the hearing. In the above circumstances the petition is entitled to succeed. It is accordingly, allowed; the impugned order is hereby set aside. The matter is remitted back to the trial court for re-consideration in accordance with merits keeping in mind the above observations.

Order dasti.