
(2022) 05 DEL CK 0183

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 2241 Of 2020, Criminal
Miscellaneous Application No. 15932 Of 2020

Rajan Pal Singh & Anr

APPELLANT

Vs

State (Nct Of Delhi) & Ors

RESPONDENT

Date of Decision : 27-05-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 420, 464, 468, 471

Code Of Criminal Procedure, 1973 — Section 156(3), 204, 482

Citation : (2022) 05 DEL CK 0183

Hon'ble Judges : Asha Menon, J

Bench : Single Bench

Advocate : Abhinav Sharma, Manjeet Arya, Abhik Kumar, Syed Sajjad Ali

Final Decision : Dismissed

Judgement

Asha Menon, J

1. This petition under Section 482 of the Cr.P.C. has been filed by the petitioners who are accused in FIR No.1220/2014, registered under Sections 420/468/471 read with 34 IPC, at Police Station Nand Nagri, Delhi, seeking quashing of the said FIR and all proceedings emanating therefrom.

2. The contention of Mr. Abhinav Sharma, learned counsel for the petitioners, is that the dispute between the parties, namely, the petitioners and the complainant/respondent No.3 was fundamentally a civil dispute and as held in Paramjeet Batra Vs. State of Uttarakhand and Ors., (2013) 11 SCC 673, when a civil remedy was available, the court ought to quash the criminal proceedings to prevent abuse of process of court. It is further submitted that the FIR has been belatedly registered after a delay of seven years. Reliance in this regard has been placed on the judgement of the Gujarat High Court in Madhubhai Virjibhai Patel Vs. State of Gujarat & others [Order dated 27th September, 2019 in R/ Criminal Misc. Application No.7023/2009]. It is stated that a civil suit filed by the petitioners against the complainant/respondent no. 3 was already pending before

the learned Additional District Judge, Tis Hazari Courts, Delhi. It is also submitted by the learned counsel for the petitioners that the law did not permit a second complaint on the same facts and therefore, the FIR registered against the petitioners was liable to be quashed. Reliance in this regard has been placed on the judgement of the Calcutta High Court in *Anwarul Islam v. State of West Bengal*, 1996 SCC OnLine Cal 111.

3. Relying on the judgment of the Supreme Court in *Lalita Kumari Vs. Govt. of U.P. & others*, (2014) 2 SCC 1, it was argued by the learned counsel for the petitioners that on account of the delay in filing the complaint and this being the second complaint, a preliminary inquiry had to be conducted by the police before the FIR was registered and the police had failed to conduct this preliminary inquiry, thus, vitiating the registration of the FIR.

4. According to the learned counsel for the petitioners, this was only a malicious attempt to arm-twist the petitioners to succumb to the pressure of the complainant/respondent No.3 and give up their civil claims against him. The civil suit was being dragged on by the complainant/respondent No.3 and costs have also been imposed on him. It was submitted that till date, no charge-sheet has been filed and as the plea of intoxication at the time of appending signatures, after the lapse of so many years is unverifiable, the plea of the complainant/respondent No.3 that the petitioners had taken signatures on blank papers was a wishy-washy claim. Reliance has been placed on the judgements of the Supreme Court in *R.K. Vijayasathy v. Sudha Seetharam*, (2019) 16 SCC 739, *Mitesh Kumar J. Sha v. State of Karnataka*, 2021 SCC OnLine SC 976 and *Chennadi Jalapathi Reddy v. Baddam Pratapa Reddy*, (2019) 14 SCC 220. It was also contended that the promotion of the petitioner No.1 was hanging in the balance and a departmental inquiry was also pending. Hence it was submitted that the pendency of this FIR was causing grave prejudice to the petitioners and, therefore, the same be quashed.

5. Mr. Abhik Kumar, learned counsel for the complainant/respondent No.3, on the other hand, relying on the judgment in *Mahesh Chand Vs. B. Janardhan Reddy & others* (2003) 1 SCC 734, submitted that there was no bar to the second complaint on which the FIR had been registered. It was submitted that there was no adjudication on the first complaint filed by the complainant/respondent No.3 as no action seems to have been taken thereon by the police. Therefore, there was no ground to seek dismissal of the second complaint filed by the complainant/respondent No.3, on the basis of which, the present FIR has been registered.

6. On facts, it was contended by the learned counsel for the complainant/respondent No.3 that when he had filed the first complaint, he had no documents with him, and his complaint was that the petitioners had stolen his original title deeds. He had filed the first complaint dated 5th June, 2007 with the Police Station Nand Nagari, Delhi, alleging that the petitioners had befriended him on a business proposition of commencing a security agency in partnership with them

and under intoxication of the complainant/respondent No.3, they had got him to sign blank papers, and that later he discovered that the original title deeds of the property bearing No.74-75, N Block, Sunder Nagar, Delhi which stood in his wife's name had gone missing. But no action was taken on that complaint.

7. According to him, certain fabricated documents had been produced before the local police at that time by the petitioners to claim that they had purchased the property from the complainant/respondent No.3. He, therefore, sought the attested true copies of the same, but the police refused to provide the attested photocopies of those documents. He filed an RTI application in 2007 itself but still the documents were not supplied. Thereafter, he filed a first appeal, but the Appellate Authority also did not provide the requisite attested photocopies. Finally, he filed a second appeal before the Central Information Commission, which by its order dated 28th December, 2010, directed the police authority to supply the attested copies of the documents and these were ultimately furnished to him in January, 2011.

8. In the meantime, the petitioner No.1 had filed a suit for specific performance which is pending before the learned ADJ, Tis Hazari Courts, where the complainant/respondent No.3 was impleaded as the defendant and he had filed a written statement disclosing all the true facts. He had also moved an application for comparison of the signatures on 28th September, 2015 which was allowed by the learned Civil Court and it was clearly opined that the signatures on the documents are forged.

9. It is submitted that he gave his second complaint in 2014, as no steps were taken by the police on the first complaint. He was also able to add further facts in view of the contradictions in the documents filed before the police by the petitioners and those filed in the civil suit but till date, there has been no serious investigation of the case. It is further stated that when he filed an application under Section 156(3) Cr.P.C. dated 5th June, 2018, a vague Status Report was filed.

10. In these circumstances, it was submitted by the learned counsel for the complainant/respondent No.3 that it was not the fault of the complainant/respondent No.3 that much time had elapsed and the petitioners could not be given benefit of delay.

11. It was submitted that the alleged witness to the execution of the document has filed an affidavit, which is placed at page no. 154 of the e-file as Annexure R/3-B, having witnessed neither the execution of the said document nor payment of any consideration. Thus, when there were questions of facts to be determined only during trial, there was no scope of quashing the petition in exercise of powers under Section 482 Cr.P.C.

12. The primary argument urged on behalf of the petitioners are that:

(a) the dispute between the parties is a civil dispute and is covered by the

judgment in Paramjeet Batra (supra);

(b) the second complaint was not maintainable and the FIR registered on the basis of the second complaint was flawed; and,

(c) there was great delay in the filing of the said second complaint leading to the registration of the FIR and such delay was sufficient to quash the FIR.

These contentions are untenable for the reasons given in the following paragraphs.

13. The complainant/respondent No.3 had in 2007 complained to the police that certain papers had been got signed from him in blank by the petitioners when he was under intoxication. Though the police had apparently initiated an inquiry and the petitioners had submitted some papers to the police in support of their claim of transfer of title, no action was taken on that complaint. In order to ascertain the nature of the documents supplied by the petitioners to the police, the complainant/respondent No.3 had to face a number of hurdles as the police refused to give the copies. He had to approach the CIC which directed the release of the documents on 28th December, 2010. Whereafter on 6th January, 2011, the documents were supplied.

14. In the case of Madhubhai Virjibhai Patel (supra), relied upon by the petitioners, there was a delay of 17 years, and in the background of the facts of that case, the delay was considered to be an abuse of process of law. Here, the complainant/respondent No.3 has had to struggle for years on end for some kind of redressal which is still denied to him. The first complaint never saw the light of day. The first complaint submitted to the police soon after the commission of the alleged offence, was for making of a false document within the meaning of Section 464 IPC. When the first complaint was so conveniently buried by the police and the complainant/respondent No.3 chose to approach the police again, in 2014, delay cannot be pleaded.

15. Admittedly, on the first complaint, there was no action taken. That being the case, when the complainant/respondent No.3 submitted his complaint in the year 2014, it cannot be treated as a second complaint. The judgment of Anwarul Islam (supra), can be distinguished on facts, as it was with reference to the filing of a complaint case before the Magistrate, when the complaint to the police was pending. The first complaint was sent to the police to be treated as an FIR. The complaint filed before the Magistrate was also sent to the police to be treated as an FIR. The court only held that the Magistrate ought to have called for a report on action taken on the first FIR rather than direct registration of another FIR.

16. The judgment of the Supreme Court in Mahesh Chand (supra) is more apposite, where it was held as below:

"19. Keeping in view the settled legal principles, we are of the opinion that the High Court was not correct in holding that the second complaint was completely barred. It is settled law that there is no statutory bar in filing a second complaint

on the same facts. In a case where a previous complaint is dismissed without assigning any reasons, the Magistrate under Section 204 CrPC may take cognizance of an offence and issue process if there is sufficient ground for proceeding. As held in *Pramatha Nath Talukdar* case [AIR 1962 SC 876 : 1962 Supp (2) SCR 297 : (1962) 1 Cri LJ 770] second complaint could be dismissed after a decision has been given against the complainant in previous matter upon a full consideration of his case. Further, second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced. In the facts and circumstances of this case, the matter, therefore, should have been remitted back to the learned Magistrate for the purpose of arriving at a finding as to whether any case for cognizance of the alleged offence had been made out or not.”

(emphasis added)

17. In the opinion of this Court, the complaint presented to the police in 2014 cannot be considered as a second complaint when the first one was not acted upon. Even if the complaint of 2014 is to be treated as a second complaint, since no final report had been submitted on the previous complaint after completing investigations, there is no bar to the subsequent complaint, on the basis of which, at least an FIR has been registered.

18. Unfortunately, despite the complainant in 2014, nothing happened and he then had to move an application under Section 156(3) Cr.P.C. before the learned MM, as was advised in the case *Anwarul Islam* (supra) when an FIR has been registered. A vague report was filed by the police, for which the complainant/respondent No.3 cannot be held responsible. No charge-sheet has been filed till date even after the lapse of 8 years. How can an ordinary citizen of this country, be blamed for the wilful inaction of the police? Can his rights to legal remedy be so defeated? Every citizen of this country is entitled to the protection of law. It appears that because the petitioner No. 1 is himself a police man, he has succeeded in stalling the investigations and preventing prosecution. Now he seeks to benefit from such wanton interference with the course of justice. That cannot be permitted.

19. Significantly, after the first complaint to the police, the civil suit for specific performance was preferred by the petitioners. That suit cannot suffice to convert the dispute into an exclusively civil one. As observed by the Supreme Court in *Pratibha Rani v. Suraj Kumar and Another*, (1985) 2 SCC 370, many times a cause may have both civil and criminal remedies. These remedies are not mutually exclusive. In the present case, when forgery is repeatedly alleged by the complainant/respondent No.3, the FIR has been rightly registered. This Court is thus satisfied that this is not a case where a civil dispute has been given a cloak of criminal nature.

20. The decisions of the Supreme Court in R.K. Vijayasathy (supra) and Mitesh Kumar J. Sha (supra), as relied upon by the petitioners, would not be applicable in the facts of the present case, since here, the ingredients required to constitute the criminal offence of forgery and making of a forged document is made out as the complainant/respondent No.3 has stated that he had been under intoxication when his signatures had been taken by the petitioners. Moreover, the signatures on the receipt filed before the Civil Court, have also been opined now to be forged by the expert.

18. The judgment of Chennadi Jalapathi Reddy (supra), relied upon by the petitioners, is in an appeal from a final judgment. Here, not even the charge-sheet has been filed and, therefore, that judgment can be of no help to the petitioners.

19. In the light of the foregoing discussion, there is no merit in the petition. The same is accordingly dismissed with costs of Rs.10,000/- to be deposited with the 'Delhi High Court Staff Welfare Fund'.

20. The Investigating Officer is directed to file a final report in respect of FIR No.1220/2014, not later than three months from the date of passing of this order.

21. The pending application also stands disposed of.

22. The judgment be uploaded on the website forthwith.