

(2010) 03 DEL CK 0153

In the Delhi High Court

Case No : Writ Petition (Criminal) 1674 of 2009

Rakesh Kumar

APPELLANT

Vs

State of Delhi

RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Penal Code, 1860 (IPC) — Section 201, 328, 380, 395, 452

Citation : (2010) 03 DEL CK 0153

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : M.A. Rehman, for the Appellant; Sanjeev Bhandari, ASC, SI Suraj Prakash and P.S. Aman Vihar, for the Respondent

Judgement

V.K. Jain, J.—This is a petition under Article 226/227 of the Constitution seeking the following reliefs:

(i) Issue a writ in the nature of mandamus or other suitable writ/writs order and directions against the respondent No. 2 and 3 to register a case against the accused persons mentioned in Annexure P-2, u/s 395/452 and 328 IPC and investigate the case of the petitioner and arrest the accused persons and punish them under the law.

(ii) Issue appropriate writ/writs orders and directs against the respondent No. 1 and 2 to transfer the case of the petitioner to crime branch, Delhi for fair investigation.

(iii) Issue appropriate writ/writs orders and directions against the respondent No. 2 to change the I.O.

(iv) Issue an appropriate writ/writs order and directions against the respondent No. 1 to register a case u/s 201 IPC against the respondent No. 3 and 4 (SHO of Aman Vihar and Chowki Incharge) for saving the accused persons from the legal punishment.

(v) Issue appropriate writ/writs directions and orders against the respondent No. 2 to provide protection to the petitioner and his witnesses.

2. The case of the petitioner is that he had gone to Paharganj, Delhi on 27th October 2009 and handed over the key of his house to one Bhagwan Dass, who was requested to take care of the house. It has been further alleged that in the night of 30th November 2009, accused Sandeep and Deepu came to house of the petitioner and met Bhagwan Dass. They gave some tobacco to him, on chewing which, Bhagwan Dass became unconscious. Thereafter, Sandeep, Deepu, Sonu, Bunty and Shekhar looted the household articles, jewellery, etc. from the house of the petitioner.

3. A perusal of the status report filed by the State would show that FIR No. 345/2009 u/s 380 of IPC has already been registered and investigation has already been taken up. Statements of witnesses, including that of Bhagwan Dass, have also been recorded. It has also been stated in the status report that Sandeep and Deepu were interrogated at length but, nothing incriminating came out against them. As regards Sonu, Bunty and Shekhar, it has been stated in the status report that Bunty and Shekhar were interrogated but, nothing incriminating was found during their interrogation. The third person Sonu could not be found at his house and efforts are being made to trace him and then interrogate him.

4. The police cannot be directed to arrest anyone without there being sufficient evidence against him and without there being any necessity of arresting him. No one can be arrested merely because the complainant suspects him to be involved in the theft of his articles. In fact, arrest is not necessary even for charge sheeting an accused. Arrest being a serious matter, which takes away effect of the liberty of a person, it needs to be made only where it is found necessary for the purpose of investigation of the case. As regards Sonu, police can interrogate him only after he becomes available to the police. Of course, serious efforts need to be made by the Investigating Officer, to locate and then interrogate him.

5. The investigation cannot be transferred to Crime Branch, merely because the complainant so desires. Unless it is shown that there has been some misconduct or negligence on the part of the Area Police, transfer of investigation will not be justified and may result in demoralising the local police.

6. Taking into consideration all the facts and circumstances of the case, including the investigation carried out so far, there is no good ground for transferring the investigation of the case to the Crime Branch. It is, however, directed that efforts will be made to locate Sonu and interrogate him at the earliest. Further investigation will be carried out under the supervision of the concerned Assistant Commissioner of Police and on concluding investigation, the report will be produced before the concerned DCP, for approval, before it is submitted to the Court.

W.P.(Crl.) 1674/2009 stands disposed of with these directions.