
(2013) 09 DEL CK 0015

In the Delhi High Court

Case No : Criminal M.C. 2240 of 2013 and Criminal M.A. 8696 of 2013

Ravindra Kumar

APPELLANT

Vs

State (Govt. of NCT of Delhi) and Another

RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(3), 200, 482
Penal Code, 1860 (IPC) — Section 120B, 392, 403, 408, 451

Citation : (2013) 8 AD 403 : (2013) 4 JCC 2505

Hon'ble Judges : S.P. Garg, J

Bench : Single Bench

Advocate : Pradeep Kumar Arya and Mr. Pradeep Kr. Saini, for the Appellant;
M.N. Dudeja, APP., for the Respondent

Final Decision : Dismissed

Judgement

S.P. Garg, J.—Present petition has been preferred u/s 482 Cr.P.C. to set aside order dated 14.05.2013 of learned Additional Sessions Judge whereby Revision Petition to challenge order dated 04.03.2013 of learned Metropolitan Magistrate declining to get the matter investigated u/s 156(3) Cr.P.C. was dismissed. I have heard the learned counsel for the petitioner and have examined the record. It reveals that the petitioner filed complaint case against the respondent No. 2 (Piyush Saxena) for committing offences punishable under Sections 392/403/408/451/468/506/120B IPC. Application u/s 156(3) Cr.P.C. was also filed for issuing appropriate directions for registration of FIR and for conducting investigation through police. The petitioner averred in the complaint that the respondent No. 2 (Piyush Saxena) was appointed as Senior Manager (Marketing and Sales) in SNG Developers Pvt. Ltd. on 08.08.2008. Currently, he was designated AGM (Marketing and Sales). At the time of appointment, he was provided laptop, pen-drive and CDs etc. in order to facilitate the work of the company. On 21.02.2012, officials of the company at Ferozabad office handed over Rs. 4.45 lacs to him to deposit in Delhi office of the company. However, the respondent No. 2 did not deposit the amount. When he was asked to deposit the

amount he misbehaved with the Managing Director of the company. The company terminated his services and asked him to return the articles. His entry in the office premises was banned. On 24.02.2012 at 02.00 P.M. he (respondent No. 2) along with his three associates forcibly entered the office premises and left after collecting files, documents and a white envelope containing some material. It further revealed that cash of Rs. 1 lac and some blank cheques lying in the office were also taken away.

2. By an order dated 04.03.2013, the learned Metropolitan Magistrate, after considering the contentions of the petitioner and relying upon the judgments cited therein, declined to give directions u/s 156(3) Cr.P.C. to the police to investigate the case and took cognizance himself. The complainant was given opportunity to prove his contentions by leading evidence and the case was adjourned for recording statements of the witnesses. The petitioner went in revision and by the impugned judgment dated 14.05.2003 the learned Additional Sessions Judge did not accept it and with detailed reasons dismissed the Revision Petition.

3. It is well settled that when a complaint case is filed u/s 200 Cr.P.C. before a Magistrate, he has two options either to get the matter investigated through police u/s 156(3) Cr.P.C. or to proceed u/s 200 Cr.P.C. When the Magistrate proceeds u/s 156(3) of the Code, he passes order without taking cognizance of the offence. If he wishes to proceed u/s 200 of the Code then, he has to take cognizance of the matter and follow the procedure prescribed under chapter-XV. It is an alternative procedure which the Magistrate "may" or "may not" adopt at the stage when he is examining the complainant u/s 156(3) of the Code. u/s 200 Cr.P.C., the Magistrate has a duty to record evidence led by the complainant and also to examine his witnesses and if necessary even to call for a police report and then to decide as to whether he has to proceed under chapter-XV or has to dismiss the complaint. Section 156(3) empowers the Magistrate to refer and direct the police to investigate the cognizable offence. It is however not necessary to refer every complaint filed u/s 200 to the police for investigation u/s 156(3) Cr.P.C. In "Skipper Beverages Pvt. Ltd. vs. State", 2001(92) DCT 217 SC, while relying upon " Suresh Chand Jain Vs. State of Madhya Pradesh and Another, Supreme Court held:

7. It is true that Section 156(3) of the Code empowers a Magistrate to direct the police to register a case and initiate investigations but this power has to be exercised judiciously on proper grounds and not in a mechanical manner. In those cases where the allegations are not very serious and the complainant himself is in possession of evidence to prove his allegations there should be no need to pass orders u/s 156(3) of the Code. The discretion ought to be exercised after proper application of mind and only in those cases where the Magistrate is of the view that the nature of the allegations is such that the complainant himself may not be in a position to collect and produce evidence before the Court and interests of justice demand that the police should step in to hold the

complainant. -----

10. Section 156(3) of the Code aims at curtailing and controlling the arbitrariness on the part of the police authorities in the matter of registration of FIRs and taking up investigations, even in those cases where the same are warranted. The Section empowers the Magistrate to issue directions in this regard but this provision should not be permitted to be misused by the complainants to get police cases registered even in those cases which are not very serious in nature and the Magistrate himself can hold enquiry under Chapter XV and proceed against the accused if required. Therefore the Magistrate, must apply his mind before passing an order u/s 156(3) of the Code and must not pass these orders mechanically on the mere asking by the complainant. These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of complainant or custodial interrogation appears to be necessary for some recovery of article or discovery of fact.

4. Remedy u/s 156(3) Cr.P.C. is a discretionary one as the provision proceeds with the word "may". The Magistrate is required to exercise his mind while doing so and pass orders only if he is satisfied that the information reveals commission of cognizable offence/offences and also about necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without the assistance of the police. The complainant, as a matter of right, cannot insist that the complaint case filed by him/her should be directed in every eventuality to the police for investigation. In "Mohd. Salim vs. State" (CrI.M.C. 3601/2009) decided on 10.03.2010, this Court held:

11. The use of the expression "may" in Sub-section (3) of Section 156 of the Code leaves no doubt that the power conferred upon the Magistrate is discretionary and he is not bound to direct investigation by the Police even if the allegations made in the complaint disclose commission of a cognizable offence. In the facts and circumstances of a given case, the Magistrate may feel that the matter does not require investigation by the Police and can be proved by the complainant himself, without any assistance from the Police. In that case, he may, instead of directing investigation by the Police, straightaway take cognizance of the alleged offence and proceed u/s 200 of the Code by examining the complainant and his witnesses, if any. In fact, the Magistrate ought to direct investigation by the Police only where the assistance of the Investigating Agency is necessary and the Court feels that the cause of justice is likely to suffer in the absence of investigation by the Police. The Magistrate is not expected to mechanically direct investigation by the Police without first examining whether in the facts and circumstances of the case, investigation by the State machinery is actually required or not. If the allegations made in the complaint are simple, where the Court can straightaway proceed to conduct the trial, the Magistrate is expected to record evidence and proceed further in the matter, instead of passing the buck to the Police u/s 156(3) of the Code. Of course, if the allegations made in the complaint require complex and complicated investigation

of which cannot be undertaken without active assistance and expertise of the State machinery, it would only be appropriate for the Magistrate to direct investigation by the Police. The Magistrate is, therefore, not supposed to act merely as a Post Office and needs to adopt a judicial approach while considering an application seeking investigation by the Police.

5. In the instant case, for the detailed reasons in the orders, the Trial Court did not deem it fit to order investigation u/s 156(3) Cr.P.C. I find no illegality or irregularity in the impugned orders to interfere with. The dispute between the company and the respondent No. 2 (Piyush Saxena) is primarily an employer-employee dispute. The respondent No. 2 (Piyush Saxena) was admittedly working as AGM (Marketing and Sales). Prior to that there was no complaint regarding his conduct and behaviour. There are allegations that he did not deposit Rs. 4.45 lacs in Delhi office entrusted to him from Ferozabad office. There are allegations that he did not handover laptop, pen-drive and CDs etc. made available to him at the time of appointment to facilitate the office work. For all these grievances, investigation by police is not at all required. The Trial Court had called status report. The concerned Police Officer in the status report revealed that enquiry was conducted with the staff of the complainant company; the alleged person Piyush Saxena and his brother. Some dispute arose between them pertaining to salary and other dues. On 24.02.2012, Piyush Saxena along with three people visited Indraprakash Building, Barakhamba Road, New Delhi. The CCTV footage was examined and Piyush Saxena was found carrying one envelope in his hand while going outside the building. Piyush Saxena revealed that there was salary dispute and the documents taken by him were his personal documents. Since the dispute was between employer and employee, FIR was not registered.

6. From the above discussion, it reveals that petitioner's case is based upon documentary evidence which is available with him regarding entrustment of Rs. 4.45 lacs and other articles like laptop, pen-drive and CDs etc. The petitioner can seek assistance of the Court to examine relevant witnesses and summon the relevant record to prove his contentions before the Trial Court. In my considered view, assistance of the police is not required to collect evidence on this aspect. Moreover, status report filed by the police was taken into consideration while declining investigation u/s 156(3) Cr.P.C. The discretion has been exercised diligently and petitioner's right to pursue the case has not been foreclosed. I find no infirmity or impropriety in the orders under challenge. The petition is unmerited and is dismissed. Pending application also stands disposed of. It is however made clear that observations in the impugned orders and this order will have no impact upon the merits of the case.