

(2000) 10 SHI CK 0004
In the High Court Of Himachal Pradesh
Case No : Criminal M.M.O. No. 52 of 2000

Sada Nand Chauhan

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 06-10-2000

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 112, 139, 154, 154(1), 154(3)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 354
Police Rules — Rule 24(4)

Citation : (2000) 3 ShimLC 389

Hon'ble Judges : M.R. Verma, J

Bench : Single Bench

Advocate : M.S. Chandel, for the Appellant; Ashok Sharma, Assistant A.G., for the Respondent

Final Decision : Allowed

Judgement

M.R. Verma, J.—This is a petition u/s 182 of the Code of Criminal Procedure (here-after referred to as the "Code") and Article 227 of the Constitution of India praying for directing the Respondents to register a case under Sections 448, 449, 450, 452, 455, 307 and 506 of the Indian Penal Code and also under the appropriate Section of the Indian Arms Act and to investigate the same. It has further been prayed that since the local police is very much mixed up with the other side and is working under their influence, therefore, the investigation may be directed to be conducted by the CBI so that independent investigation is ensured.

2. The case of the Petitioner as made out in the petition is that he is a resident of Snow View Estate located at Cart Road, Kaithu Shimla. On the night intervening 21st/22nd of July, 2000 when he along with his son Nitin Chauhan and others was sleeping in his residential premises, at about 2.25 a.m. one Anil Soni, who is living in a residential set in the same premises along with Sukhdeep Singh Dhaliwal, Babbal Dhaliwal and Rakesh Sharma forced their entry into the

residential premises of the Petitioner by breaking upon the door. The said persons were heavily drunk and were armed with lethal weapons including iron rod and revolver. After unlawful entry into the residential premises of the Petitioner, the said persons used abusive language and advanced threats to the lives of the Petitioner and his son. The Petitioner and his son raised hue and cry for help whereupon said Anil Soni fired shots from his revolver on them but luckily they escaped. In the meanwhile, hearing the cries, other persons, who were sleeping in the adjoining rooms, came on the spot, saved the lives of the Petitioner and his son by snatching the lethal weapons including the revolver from the hands of the said assailants. It led to a scuffle between the assailants on one hand and the assailed and their companions on the other. Finally, the assailants bolted away by jumping through the windows. Immediately thereafter, the Petitioner at about 2.30 a.m. rang up the Police Control Room but there was no response. After about ten minutes he again rang up the Police Control Room when his call was received and he narrated the incident to the official who received the call. The Petitioner reported the matter to the Superintendent of Police, Shimla at about 2.45 a.m. Thereafter a police party reached the spot on the same night and the incident was narrated by the Petitioner to the Officer-in-charge, Police Station, Sadar (here-after referred to as "Respondent No. 3") and then to the Superintendent of Police (hereafter referred to as the "Respondent No. 2") who had also visited the spot. Despite the information about the occurrence having been given to Respondents No. 2 and 3, no case on the basis of such information was registered. On the contrary, a case under Sections 147, 148, 149, 307 and 506 of the Indian Penal Code was registered against the Petitioner, his son and his guests who were sleeping in the premises on the relevant night. In the said case the Petitioner, his son and his guests were arrested by the police and were in police custody at the time of presentation of this petition. Since no case was registered on the report as made by the Petitioner by Respondent No. 3, therefore, the Petitioner submitted written report Annexure P-1 u/s 154(3) of the Code to the Superintendent of Police and copies thereof were endorsed to the Director General of Police, H.P. and the Respondents No. 2 and 3 through speed post vide combined receipt Annexure P-2 on July 24, 2000 at 10.51 a.m. However, despite the fact that the conduct of the assailants as reported disclose the commission of cognizable offence, no case was registered by the police nor any investigation on the information given by the Petitioner was carried out. The inaction of the police in the matter has resulted into complete miscarriage of justice and has led the Petitioner to feel that no law enforcing agency exists in Shimla. It is further averred that the action of the Respondents in not registering a case and investigating the same on the information given by the Petitioner is contrary to the mandatory provisions of law and the Petitioner is completely in a state of helplessness and has no other efficacious alternative remedy except to seek redress of his grievances regarding injustice done to him by approaching this Court u/s 482 of the Code. It is also claimed that the Petitioner is prosecuting one Pradeep Kumar, Assistant Inspector General of Police, Headquarter at Shimla by filing a private complaint against

him, the entire Police Department had been exercising pressure on the Petitioner to withdraw the said complaint which he had declined. The Respondents have, therefore, become revengeful against the Petitioner and this is another reason for refusing the registration of the case by the Respondents. Hence the present petition.

3. The Respondents have resisted the petition. In their reply it has been averred that in fact at the relevant time when Anil Soni, his wife Madhu Soni and his friends Babbal Dhaliwal, Sukhdeep Singh Dhaliwal and Rakesh Sharma got down from their vehicle in Snow View Lodge, the Petitioner accompanied by eleven other persons forcibly dragged them inside his house and started beating them and thereby grievous injuries were caused to Anil Soni and Babbal Dhaliwal with iron rods/clubs etc. on their heads. Simple injuries were caused to Sukhdeep Singh Dhaliwal and Rakesh Sharma. Modesty of Madhu Soni was also outraged. The licensed revolver of Anil Soni was snatched by the Petitioner and others and fired upon Anil Soni but the bullet did not hit him and hit the roof of the building. It is, however, admitted that the Petitioner gave a ring to the Police Control Room, The Mall, Shimla at about 2.30 a.m. regarding scuffle in Snow View Lodge. On receipt of this information, the Control Room informed the Police Station, Sadar and other Senior Officers. At 2.30 a.m. Incharge, Police Post Lakkar Bazar was also informed about the incident. However, the Police Control Room had already received a telephonic call from Madhu Soni at 2.25 a.m. narrating the incident and on receipt of such information, a police party, headed by Sub-Inspector Prem Chand, Incharge Police Control Room, The Mall Shimla had immediately rushed to the spot along with other staff. The Additional Station House Officer, Police Station, Sadar also reached the place of occurrence soon thereafter. Receiving of a telephonic call from the Petitioner by Respondent No. 2 at about 2.45 a.m. is admitted and it is averred that Respondent No. 2 assured him that police party had already reached the place of occurrence. The police party on reaching the spot found Anil Soni, Babbal Dhaliwal, Sukhdeep Singh Dhaliwal and Rakesh Sharma in injured condition in a pool of blood and in serious condition in the room of the Petitioner. They were immediately removed to the hospital. Madhu Soni presented a written complaint to Sub-Inspector Gulam Mohd. on the spot and on the basis of this, case FIR No. 241/2000 under Sections 307, 147, 148, 149, 354 and 506 of the Indian Penal Code was registered at Police Station, Sadar. It is, however, admitted that the spot was visited by Respondent No. 2 and the incident was also narrated by the Petitioner to the Additional Station House Officer and Respondent No. 2. However, from the spot inspection, statements of witnesses and investigation, no case was prima facie found having been committed by Anil Soni and his companions. Therefore, no case was registered in the interest of justice. The arrests having been made as averred in the petition, have been admitted but it has been averred that at the time of filing reply the Petitioner and his companions (accused in FIR 241/2000 supra) had been bailed out by competent Courts. Making of the complaint Annexure P-1 by the Petitioner has also been admitted and it has been

averred that the contents of this complaint were recorded in the daily diary vide DD No. 39 dated July 24, 2000 but no case was registered on this complaint in view of the provisions contained in Rule 24.4 of the Police Rules and Section 157 of the Code as the complaint was contrary to the facts. The allegations of helping the other party being influential persons as averred in the petition have been denied. It is though admitted that even the contents of complaint Annexure P-1 disclose the commission of cognizable offence but the non registration of a case has been justified as per the rules and laws and it has been claimed that the present petition is not maintainable.

4. The Petitioner in his rejoinder disputed the pleas as raised in the reply filed by the Respondents and reiterated his version and claim as made out in the petition.

5. I have heard the learned Counsel for the Petitioner and the learned Assistant Advocate General for the Respondent-State and have gone through the material placed on record.

6. It was contended by the learned Counsel for the Petitioner that it is admitted in the reply of the Respondents that the Petitioner had narrated the occurrence to them when they reached at the place of occurrence and admittedly the information given by the Petitioner disclosed the commission of cognizable offence. However, the information given by the Petitioner was neither reduced into writing as required u/s 154 of the Code nor investigation was carried out as required u/s 157 of the Code. The Petitioner made a written report to the police vide Annexure P-1 but the police acted in a highly illegal, undesirable and unwarranted manner in still not recording an FIR and carrying investigation into the complaint made by the Petitioner. Therefore, contended the learned Counsel, a direction may be issued to the police to carry out investigation on the basis of Annexure P-1 in accordance with law. It was further contended that since the concerned local police had not acted fairly and impartially, therefore, the matter may be got investigated by the Central Bureau of Investigation.

7. To substantiate his contention that once an information disclosing commission of a cognizable offence is given to the police, they are duty bound to register First Information Report and to investigate the case and registration of case and investigation cannot be refused on fanciful grounds, relied on R.S. Raghunath Vs. State of Karnataka and another,

8. On the other hand, the learned Assistant Advocate General contended that on a written complaint made by one Madhu Soni about the occurrence, case FIR No. 241/2000 under Sections 307, 147, 148, 149, 354 and 506 of the Indian Penal Code was registered at Police Station, Sadar Shimla and on investigation and being satisfied of the commission of these offences by the Petitioner and his co-accused, a charge-sheet has already been submitted to the concerned Court. Since the information given by the Petitioner was found contrary to the facts, therefore, in view of the provisions of Rule 24.4 of the Police Rules and Section 157 of the Code, the case was not registered and no investigation was carried

out. Thus, submitted the learned Assistant Advocate General, the police had acted in accordance with law and the Petitioner has no case.

9. To properly appreciate the controversy, it is expedient to refer to the relevant provisions of law. Section 154 of the Code reads as follows:

154. Information in cognizable cases.--(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant, and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under Sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in Sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

10. It is evident from a bare reading of the above provisions that:

(i) When an information in respect of the commission of a cognizable offence is given to the Officer-in-charge of a Police Station, he has no option but to reduce/cause the same to be reduced in writing.

(ii) The substance of such information and when the information regarding commission of a cognizable offence is given in writing, the substance thereof, shall be entered in a prescribed book, that is to register a case on the basis of such information.

It follows that an Officer In-charge of a Police Station is legally bound to record the information disclosing commission of a cognizable offence and to register a case on the basis of such information. This view is fully fortified by the ratio in Bhajan Lal's case (supra).

11. In Bhajan Lal's case (supra) the Hon'ble Supreme Court while dealing with a similar question as at hand, held as follows:

32. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression "information" without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, "reasonable complaint" and "credible information" are used. Evidently, the non-qualification of the word "information" in Section 154(1) unlike

in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, "reasonableness" or "credibility" of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word "information" without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that "every complaint or information" preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that "every complaint" preferred to an officer in charge of a police station shall be reduced in writing. The word "complaint" which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word "information" was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 190(c) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence.

33. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a Police Station satisfying the requirements of Section 154(1) of the Code, the said Police Officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

12. It is admitted by the Respondents that the Petitioner reported the occurrence to Police Control Room, Shimla at about 2.30 a.m. and to Respondent No. 2 at about 2.40 a.m. However, according to them, Madhu Soni had also telephonically informed the Police Control Room about the occurrence at 2.25 a.m. Thereafter the police visited the spot and Respondent No. 2 also visited the spot. The Petitioner claims that he narrated the occurrence to them and it is admitted by the Respondents in their reply. The relevant portion of the reply filed by the Respondents reads as follows:

It is true that the spot was visited by the Respondent No. 2 and incident was also narrated by the Petitioner to the Additional S.H.O. and Respondent No. 2.

The Respondents, however, did not record the information given by the Petitioner and their explanation for not doing so is "that from the spot inspection, statements of witnesses and investigation no prima facie case was found committed by the other party." It is, however, not explained as to how the police tested the version of the Petitioner when they have not maintained any written record of the information given by the Petitioner. It is not the case of the Respondents in their reply that the information given by the Petitioner did not

disclose the commission of any cognizable offence.

13. It may be pointed out here that on failure of the Respondents 2 and 3 to record the version of the Petitioner as orally given on the spot, the Petitioner took recourse to the provisions of Sub-section (3) of Section 154 of the Code and gave written information of the occurrence, amongst others, to Respondent No. 2 vide Annexure P-1 dated July 23, 2000. It was on the basis of Annexure P-1 that report No. 38 was recorded in Daily Diary of Police Station, Sadar at 6.05 p.m. on July 24, 2000. However, as per the contents of "Action taken by the police" part of the report, the registration of a case and undertaking of investigation was declined as the information was found baseless in view of the investigation of the case registered at the instance of the alleged assailants. This course of action is stated to have been taken in view of the provisions of Section 157 of the Code and Rule 24(4) of the Punjab Police Rule as applicable in Himachal Pradesh.

14. In the reply it is admitted by the Respondents that the contents of Annexure P-1 disclose the commission of cognizable offences. It is not their case in the reply nor it is argued that the information as orally given by the Petitioner to Respondents No. 2 and 3 and the information as contained in Annexure P-1 are materially and substantially different. It follows that the information earlier given by the Petitioner and followed up by Annexure P-1, admittedly, discloses commission of cognizable offences. Though the police failed to record the oral version of the Petitioner as given on the spot to Respondents No. 2 and 3, yet it is available in Annexure P-1. A perusal of it makes it evident that it is an information about the commission of cognizable offences and it is so admitted by the Respondents as already stated here-in-above. Therefore, in view of the provisions of Section 154 of the Code, as already discussed in detail, Respondent No. 3 had no option but to register a case on the basis of the information given by the Petitioner Orally on the spot and on his having failed to do so, it was for Respondent No. 3 to do the needful. However, neither of them discharged their legal obligation u/s 154 of the Code.

15. It is well settled by now that to ascertain whether the information given discloses commission of a cognizable offence or not, the concerned police official has to satisfy himself only on the allegations mentioned in the given information. Once it is found that the information given by the Petitioner to Respondents No. 2 and 3 when they visited the spot disclosed commission of a cognizable offence, they were expected to act on such information. Refusal to record the version of the Petitioner which was given almost immediately after the occurrence when the Respondents No. 2 and 3 reached on the spot by any standard was failure to discharge a duty enjoined upon them by law. No record, what-so-ever, has been produced to substantiate the version of the Respondents that the information given by the Petitioner was found to be false nor can such record be expected in existence when the information given itself was not reduced into writing. In any case, without reducing the information into writing and registering a case as disclosed, the investigating agency is not expected to embark upon inquiry to

ascertain genuineness or credibility of the allegations made. Therefore, even if there was any attempt to ascertain the genuineness or credibility of the oral information without recording it in the form of First Information Report, that was not in consonance with law, though making of any such attempt is not supported by the records produced for examination/perusal by the Court. In fact such record does not refer even to the oral information given by the Petitioner on the spot.

16. In view of the above, the action of the Respondents in not registering the case on the basis of the information given by the Petitioner and refusal to investigate without doing so is not justifiable in law.

17. For the reasons stated hereinabove, this petition is allowed. The third Respondent is directed to register a case on the basis of Annexure P-1 and to proceed in the matter in accordance with law. It is further directed that after registration of the case the matter be dealt with by a Police Officer other than and not below the rank of the Police Officer who investigated the case FIR No. 241 of 2000 under Sections 307, 147, 148, 149, 354 and 506 of the Indian Penal Code registered at Police Station Sadar, Shimla.