

(2000) 02 DEL CK 0095

In the Delhi High Court

Case No : Criminal Writ Petition No. 645 of 1998

Satish Kumar Goel

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 04-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 2 AD 841 : (2000) CriLJ 2177 : (2000) 84 DLT 199 : (2000) 52 DRJ 823 : (2001) 1 RCR(Criminal) 25

Hon'ble Judges : R.S. Sodhi, J;A.D. Singh, J

Bench : Division Bench

Advocate : Mr. K.T.S. Tulsi and Mr. R.K. Saini, for the Appellant; Mr. K.C. Mittal, Standing Counsel, Mr. P.N. Lekhi and Mr. Sanjeev Kumar, for the Respondent

Judgement

Anil Dev Singh, J.—This is a writ petition whereby the petitioner seeks a direction to the respondents to register an FIR in terms of the report/complaint made by the petitioner and for direction to respondents to pay a suitable compensation to the petitioner for the agony, harassment and torture suffered by him at the hands of the respondents.

2. The petitioner claims that Head Constable Suresh Chand of Police Station Maya Puri came to his shop located at Maya Puri Phase-II, Delhi and demanded a monthly payment of Rs. 500/- from him which the other shopkeepers of the area were regularly paying to the police. On the refusal of the petitioner to pay the amount, the Head Constable threatened him of dire consequences. Again on May 12, 1998 at about 7 p.m. Head Constable Suresh accompanied with three other Constables of Police Station Maya Puri visited his shop and forcibly took away his younger brother Shri Pramod Goel and his servant to Police Station Maya Puri for ulterior motive of extorting money. Thereupon Pramod Goel called up one of his friend Balraj, a Constable in the Delhi Police on telephone. Pursuant to the call Balraj came to the Police Station and enquired from SHO A.K. Sapra and Addl. SHO Manu Sharma, the reason for bringing Pramod to the Police Station. It is

claimed that he was told that Pramod was brought to the Police Station in order to compel Satish to come to the Police Station. He was allegedly told that Pramod will be released after the petitioner comes to the Police Station. Thereafter at the instance of Balraj, who spoke to the petitioner on telephone he came to the Police Station along with his friend Bajrang. The petitioner was taken to the SHO by the Head Constable. It is alleged that the SHO became furious and started calling names to the petitioner and directed one of the Constables to handcuff him. The SHO also took out a country made pistol from the drawer of his table and asked the Constable to register a case against the petitioner for keeping a country made pistol. A demand of Rs. 50,000/- was made by the SHO for releasing the petitioner. It is further alleged that the petitioner, while in handcuffs, was made to sit for two hours on the floor of the Police Station. He was man-handled and abusive language was used against him. Ultimately the petitioner was released on payment of Rs. 15,000/- to SHO A.K. Sapra who in turn handed over the same to Addl. SHO Manu Sharma.

3. The petitioner reported the matter to the Addl. Commissioner of Police Shri S.K. Jain on the morning of May 13, 1998 by means of a complaint. On May 19, 1998 Head Constable Suresh again visited the shop of the petitioner and threatened him of dire consequences if he failed to withdraw the complaint. He also threatened him at the instance of SHO A.K. Sapra that in case the complaint is not withdrawn, he shall be involved in false cases in the State of Haryana and Punjab. The petitioner thereafter sent a representation to the Lt. Governor of Delhi regarding the incident for May 12, 1998 and the threats extended to him by the SHO etc. The grievance of the petitioner is that despite the passage of time, FIR has not been registered by the police.

4. In the reply-affidavit affirmed by Shri K.D. Singh, Officiating Deputy Commissioner of Police, Vigilance, on September 1, 1998, it is stated that on receipt of the complaint from the petitioner the same was forwarded on May 19, 1998 to Inspector Jai Kishan for enquiry, which enquiry was ultimately concluded by Inspector S.P. Kaushik. It is also asserted that during enquiry the allegations of demand of Rs. 50,000/- and acceptance of Rs.15,000/- were not substantiated. It is also averred that the allegations made against the Additional S.H.O. and HC Suresh Chand seem to be motivated and were not substantiated in the enquiry. It is, however, admitted that the enquiry officer did not rule out the possibility of the petitioner being handcuffed and abused. In the further affidavit affirmed by Shri Arvind Deep, Deputy Commissioner of Police, Vigilance, on September 19, 1998, it is stated that the enquiry conducted by Inspector S.P. Kaushik disclosed that one Sunil Kumar was apprehended along with a country made revolver of .32 bore. An FIR No. 153/98 was registered against him u/s 25 of the Arms Act. During interrogation Sunil Kumar revealed that he had purchased the country made revolver from a shop. In pursuance of his disclosure he led the police party to the shop of the petitioner. At that time the petitioner was not present at his shop. In order to ascertain the source of revolver Shri Pramod Kumar Goel, petitioner's brother, and an employee Shri Dhananjay were

brought to the police station. Pramod Kumar at the instance of the police called his brother Satish Kumar to the police station who was interrogated by the S.H.O. and the Additional S.H.O., but nothing came out of the interrogation as Sunil Kumar was not able to identify the petitioner. Accordingly, the petitioner was released after recording his statement. The affidavit goes on to state that along with Sunil Kumar, three other persons, namely, Guddu, Trilok Nath and Naresh Kumar, were also apprehended and they did not support the version of the petitioner regarding demand of money by the police or regarding any beating being administered to him. Relevant record, on our direction, was produced before us by Mr. Mittal. This also included the report of Inspector Kaushik. In para 7 of his report Inspector Kaushik has referred to the version of S/Shri Guddu, Trilok Nath and Naresh Kumar. It will be convenient to extract the said para :-

"7. Sh. Guddu, Tirlok Nath and Naresh Kumar who were apprehended along with accused Sunil Kumar have supported police version. They combinedly stated that during interrogation police have used some harsh words. None of them have stated about beating or demand of Rs. 50,000/- and later on accepting Rs.15,000/- by SHO/Addl. SHO Mayapuri. Even Guddu, Naresh have denied the allegation of handcuffing as alleged by Satish Kumar. However, Sh. Tirlok Chand has stated that one person was handcuffed only for two minutes. It is a fact that three persons named above had remained present at the police station through out (from 6.30 pm to 11.00 pm) and Sh. Satish Kumar etc. had been released by local police in their presence."

5. From the record it also appears that the matter was placed before the D.C.P., Vigilance, who in his note dated June 11, 1998 stated that the petitioner was being guided by Constable Balraj who was working as the personal orderly of Inspector Sumer Singh. Noticing the claim of Constable Balraj to have witnessed the entire transaction, he opined that it was unlikely that the demand and acceptance of money would have taken place in front of a police constable. According to him, Constable Balraj was a partner in the business being conducted by the complainant. After the report was examined by D.C.P., Vigilance, the papers were placed before Shri Amod K. Kanth, Joint Commissioner of Police, who by his order dated August 14, 1998 directed that Inspector Arun Kumar Sapra, Inspector Manu Sharma, SI Mehar Singh and HC Suresh Kumar be dealt with departmentally under the Delhi Police (Punishment and Appeal) Rules, 1980, "on day-to-day basis by Shri R.P. Upadhaya, Additional D.C.P., South-West District". It appears that he did not agree with the D.C.P. His order reads as follows:-

"While posted at P.S. Maya Puri it is alleged against Inspr. Arun Sapra, D-I/687, Inspr. Manu Sharma, D-I/704, SI Mehar Singh, D/1084 and HC Suresh Kumar, 449/SW that on 7.5.98 HC Suresh Kumar visited the shop of Sh. Satish Kumar Goel at D-I/188-185, Maya Puri and asked for monthly payment of Rs.500/-. On his refusal, the HC threatened him of dire consequences. Again on 12.5.98 at

7.00 PM HC Suresh Kumar visited the above shop along with SI Mahar Singh, D/1084 and 3/4 policemen where Sh. Pramod Goel, brother of Satish Goel was present. They took Pramod Goel along with his servant to PS Maya Puri illegally without any complaint against them and produced before SHO/Addl. SHO/Maya Puri for ulterior motive in order to extort money. Inspr. Arun Sapra, No. D-I/687 SHO/P.S. Maya Puri also called for Satish Kumar Goel through Ct. Balraj, on reaching at the police Station gate, Sh. Satish Goel met HC Suresh Kumar, 449/SW who produced him before Inspr. Arun Sapra, SHO complaining that he refuses to pay monthly payment. Both the SHO and Addl. SHO threatened Sh. Satish Kumar Goel to be handcuffed and involved in a false recovery of Katta. Sh. Satish Kumar Goel, Parmod Goel and their servant were allowed to leave the police station only after paying Rs. 15,000/-.

The above act on the part of Inspr. Arun Kumar Sapra, D-I/687, Inspr. Manu Sharma, D-I/704, SI Mehar Singh, D/1084 and HC Suresh Kumar, 449/SW amounts to grave misconduct and indulgence of a police officer, which render them liable to dealt with departmentally u/s 21 of Delhi Police Act, 1978.

I, Amod K. Kanth, Jt. Commissioner of Police, Southern Range, New Delhi, hereby order that Inspr. Arun Kumar Sapra, D-I/687. Inspr. Manu Sharma, D-I/704, SI Mehar Singh, D/1084 and HC Suresh Kumar, 449/SW may be dealt with departmentally under the Delhi Police (Punishment and Appeal) Rules, 1980 on day to day basis by Sh. R.P. Upadhaya, Addl. DCP/SW Distt. and findings be submitted to the under signed expeditiously."

6. The main grievance of the petitioner is that despite the fact his complaint discloses commission of a cognizable offence, FIR has not been registered against Inspectors Arun Kumar Sapra and Manu Sharma and HC Suresh Kumar so far.

7. Learned counsel appearing for the petitioner submitted that the respondents are under a statutory obligation to register a FIR on the basis of complaint of the petitioner as the complaint discloses commission of a cognizable offence. Learned counsel contended that Section 154(1) of the Code of Criminal Procedure, 1973 (for short "the Code") makes it absolutely mandatory for the police to register a FIR where the complaint discloses a commission of a cognizable offence. According to him Section 154 of the Code leaves no discretion with the concerned Station House Officer in such a matter and he is under a statutory duty to register a FIR. In support of his submission, he relied upon the decision of the Supreme Court in State of Haryana and others Vs. Ch. Bhajan Lal and another Shri S.A. Khan, .

8. At this stage it needs to be noticed that Inspectors Arun Kumar Sapra and Manu Sharma moved an application, CrI. M. No. 6216/98, for being arrayed as respondents in the instant petition. By order of a Division Bench dated October 26, 1998 they were made party respondents.

9. Both the learned counsel for the petitioner as well as counsel for Inspectors

Arun Kumar Sapra and Manu Sharma have filed written submission before us.

10. In *State of Haryana and others Vs. Ch. Bhajan Lal and another* *Shri S.A. Khan*, , it has been held that if any information disclosing a cognizable offence is laid before an officer in charge of the police station, the said officer will have no other option except to register a case on the basis of such information. In this regard, the Supreme Court 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 be refused 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 1972 (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."

11. Thus, as per the law laid down by the Supreme Court in *Bhajan Lal's* case (*supra*), if the information to an officer in charge of a police station discloses commission of a cognizable offence, such an officer is required to register an FIR. In case the officer in charge of a police station fails to register an FIR, a statutory duty, u/s 154(3) of the Code, is cast on the concerned Superintendent of Police to either investigate the case himself or direct investigation to be made by any

police officer subordinate to him, provided on receiving the substance of such information in writing from the person aggrieved he is satisfied that such an information discloses the commission of a cognizable offence. It appears that neither the officer in charge of the concerned police station, nor the DCP concerned have carried out their statutory obligations u/s 154 of the Code. They have also failed to appreciate that the summary of allegations issued to HC Suresh Kumar, SI Mehar Singh, Inspectors Arun Sapra and Manu Sharma also contains the allegations of extortion. The summary of allegations reads as follows :-

"It is alleged against you, HC Suresh Kumar No. 449/SW that while posted in PS Maya Puri, You visited the shop of Sh. Satish Kumar Goel at D-I/188-185, Maya Puri on 7.5.98 and asked for monthly payment of Rs.500/- on his refusal, you threatened him of dire consequences. Again on 12.5.98 at 7 p.m., you visited the above shop Along with SI Mehar Singh No.D/1084, and 3/4 policemen where Sh. Parmod Goel was present. You took Parmod Goel Along with his servant to Police Station Maya Puri and produced them before SHO/Addl.SHO/Maya Puri. When Satish Goel came to Police Station on the same day on being summoned by SHO/ Shri Arun Sapra through Constable Balraj, you met Satish Goel at the gate of Maya Puri Police Station and produced him also before SHO Arun Sapra complaining that Satish Goel refuses to pay monthly payment.

It is alleged against you, SI Mehar Singh, No. D/1084 that while posted at PS Maya Puri, you Along with HC Suresh and 3/4 Policemen went to shop No. D-I/188-185, Maya Puri, Phase-II belonging to Satish Kumar Goel. In his absence you brought his younger brother Sh. Parmod Goel Along with his servant to the PS illegally without any complaint and produced before SHO/Addl. SHO of PS Maya Puri.

It is alleged against you, Inspr. Arun Sapra, D-I/687 SHO/PS Maya Puri and Inspr. Manu Sharma D-I/704, Addl. SHO/Maya Puri that while posted in PS Maya Puri both of you were instrumental in calling Sh. Parmod Goel Along with his servant on 12.5.98 at 7. p.m. through SI Mehar Singh and Police Party illegally without any complaint against them for ulterior motive in ordered to extort money. You also called his elder brother Satish Goel through Ct. Balraj to PS. Both of you threatened the said Satish Goel to be hand/cuffed and involved in a false recovery of "Katta". Hence both of you allowed Satish, Parmod and his servant to leave the PS only after extorting Rs.15,000/-.

The above act on the part: HC Satish Kumar, No.449/SW, SI Mehar Singh, No. D/1084, Inspr. Arun Sapra, No.D/I/687 & Inspr. Manu Sharma D-I/704, amounts to grave mis-conduct and indulgence in extorting illegal gratification. Thus unbecoming of Police Officer. You are, Therefore, liable to be dealt with departmentally for punishment as envisage in Delhi Police Act as per Delhi Police (Punishment & Appeal) Rules, 1980."

12. A perusal of the order dated August 14, 1998 passed by the Joint

Commissioner of Police and the summary of allegations also shows that there were serious allegations against Inspectors Arun Kumar Sapra, Manu Sharma, SI Mehar Singh and HC Suresh Kumar of extorting illegal gratification. If these were the allegations it has not been explained by the State why the FIR was not registered against them.

13. In *The State of Uttar Pradesh Vs. Bhagwant Kishore Joshi*, , the Supreme Court held that in absence of any provision in the Code, expressed or implied, it is open to a police officer to make preliminary enquiry before registering an offence. Similar view was also expressed by the Supreme Court in *P. Sirajuddin, etc. Vs. State of Madras, etc.*, . It needs to be noticed that in both these judgments the Supreme Court did not hold that the officer in charge of the police station is not statutorily bound to register an FIR in Case the complaint discloses a commission of an offence. A Division Bench of this Court in *Kuldip Singh Vs. State*, , after taking stock of the various judgments held that police has no right to refuse to register a case on information being laid before it regarding commission of a cognizable offence. In this regard it held as follows :-

"35. In our view the legal position is clear that on information being laid before the Police about the commission of a cognizable offence the Police has no option but to register the case and then to proceed with investigation of the case under the provisions of Chapter XII of the Code. The police can also decide not to investigate in terms contemplated by Section 157(1) of the Code. The Police has no right to refuse registration of a case on information being laid before it about commission of cognizable offence and instead proceed with an enquiry and refuse registration as a result of the said enquiry. If it is left to be determined by the Police to decide in which cases of disclosure of commission of cognizable offence it would first hold preliminary enquiry and then decide to register or not to register the case, it would also leave to delay in registration of the crime and in the meantime the material evidence may not be available. The conduct of enquiry itself may entail a long period. There may be then challenge to the said enquiry. The enquiry of the nature suggested by the respondents is not permissible in law."

14. This Court in *S.P. Sharma Vs. National Capital Territory of Delhi and others*, 1991 I AD (Delhi) 121 held on the basis of the allegations made in the complaint, that the police was not justified in not registering an FIR as commission of a cognizable offence was made out there from. It was also held that though there is power of the police to get verification done with regard to the facts stated in the complaint before registration of the case, the scope of such a verification is very limited and it cannot take the place of a regular investigation.

15. Thus, the legal position appears to be that where allegations made in the complaint lodged before the police clearly and specifically disclose commission of a cognizable offence, the officer in charge of the concerned police station is duty bound to register an FIR. However, where the information recorded in the complaint is uncertain, indistinct and not clearly expressed which creates a doubt

as to whether the information laid before the in charge of the police station discloses commission of a cognizable offence there from, some enquiry should proceed before the registration of an FIR.

16. In view of the above discussion, we are of the opinion that the concerned Deputy Commissioner of Police should look into the complaint of the petitioner in the light of the observations made hereinabove and proceed according to law. We order accordingly. The outcome of the determination in consonance with the provisions of Section 154(3) of the Code shall be communicated by the Deputy Commissioner of Police to the petitioner within a period of six weeks from the date of receipt of this order.

17. Before parting with the case we would like to point out that in V.C. Shukla and Others Vs. State (Delhi Administration), , it was held that when a first information report is filed before a police officer, the law does not require that the officer must hear the accused before recording it or submitting a charge sheet to the court. In this regard it was held as follows :-

"..... Similarly, when a first information report is filed before a police officer, the law does not require that the officer must hear the accused before recording it or submitting a charge-sheet to the court. Another instance is to be found where a complaint is filed before a magistrate who chooses to hold an inquiry u/s 202 of the Code of Criminal Procedure before issuing process or summons to the accused. It has been held in several cases that at that stage the accused has got no locus to appear and filed his objections to the inquiry. The right of the accused to be heard comes into existence only when an order summoning the accused is passed by the Magistrate u/s 204 of the Code of Criminal Procedure."

18. To the same effect on the decision of the Supreme Court in K. Veeraswami Vs. Union of India and Others, (1991) 3 SSC 655. Therefore, in view of the legal position, Inspectors Arun Kumar Sapra and Manu Sharma Have no locus standi or any say in the matter at this stage.

19. It may also be pointed out that at this stage we are not concerned with the question whether the allegations made in the complaint are true or false. It is only after the FIR has been registered that the police can make an investigation into the matter & in case it finds that the allegations cannot be supported by evidence; it will file a closure report before the Magistrate.

20. With the above observations and directions, the writ petition is disposed of.