
(2014) 02 DEL CK 0265
In the Delhi High Court
Case No : Criminal M.C. No. 923 of 2014

Satpal Sirohi

APPELLANT

Vs

State (NCT of Delhi) and Others

RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154 154(3) 156(3) 173 190
Penal Code, 1860 (IPC) — Section 120B 302 306 34

Citation : (2014) 3 AD 577 : (2014) 2 JCC 1156

Hon'ble Judges : Ved Prakash Vaish, J

Bench : Single Bench

Advocate : B.S. Chaudhary, for the Appellant; Karan Singh, APP for State, for the Respondent

Final Decision : Dismissed

Judgement

Ved Prakash Vaish, J.

CrI.M.A. No. 3125/2014

Allowed subject to just exceptions.

CrI.M.C. No. 923/2014

1. By way of the present petition u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C."), the petitioner Satpal Sirohi seeks quashing of impugned order dated 9.7.2013 passed by learned Metropolitan Magistrate, Karkardooma Courts, Delhi in Complaint Case No. 23/1 of 2012 titled Satpal Sirohi vs. Smt. Geeta & Ors. whereby the application u/s 156(3) Cr.P.C. filed by the petitioner was dismissed. The facts giving rise to the present petition are that the petitioner filed a complaint along with an application u/s 156(3) Cr.P.C. for the offence punishable u/s 302/306/120B/34 IPC.

2. The facts as set out by the complainant are that son of the petitioner namely Arun Sirohi got married with respondent No. 2 herein, respondents No. 3 to 7

herein were not happy with the marriage. After about one year of marriage Arun Sirohi started living separately with respondent No. 2 due to consistent pressure. The petitioner has alleged that on 6.7.2011, respondent No. 2 left the company of Arun Sirohi, son of the petitioner when he was ailing under a severe condition for which a complaint was given by his son to SHO, P.S. Bhajanpura, Delhi. It is also alleged that on 14.2.2012 son of the petitioner telephonically informed that his wife called him at her parental home for negotiations in the presence of respondents No. 3 to 7. On the same day at about 11.45 p.m., respondent No. 3 Suresh Chand Sharma informed the petitioner that his son had immolated outside his house and is being shifted to GTB Hospital by PCR Van. On hearing the same, at about 12.30 a.m. the petitioner along with his two sons and one nephew reached at GTB Hospital where his son was in conscious condition. The doctors of GTB Hospital referred his son to Safdarjung Hospital where the son of the petitioner expired on 15.2.2012. The petitioner raised the doubt for burning of his son by respondents No. 2 to 7. The petitioner moved an application to SHO, P.S. Jaffrabad on 16.2.2012 but no action was taken by the police. The complainant also sent various complaints to the higher authorities but no FIR has been registered.

3. On the prayer u/s 156(3) Cr.P.C., learned Metropolitan Magistrate, Karkardooma Courts, Delhi called Action Taken Report (ATR). The police filed the status report. As per the status report, the deceased at the time of incident used to stay at his parental house, nothing has come to notice that the deceased used to talk with his in-laws frequently. Consequently, there is nothing to suggest that in-laws of deceased Arun Sirohi has provoked him to take such an extreme step.

4. I.O. also mentioned that the MLCs and the inquiry made at the place of occurrence suggest that the incident was a suicidal attempt and no one tried to kill the deceased.

5. Learned counsel for the petitioner contends that the allegations made in the complaint disclosed a cognizable offence and the police is bound to register a case.

6. I have heard counsel for the petitioner and also given my thoughtful consideration to the contention raised by counsel for the petitioner in the light of the facts and circumstances of the case.

7. It is well settled that when the criminal complaint is filed before the Magistrate and upon perusal it is found to disclose a cognizable offence having been committed, two courses are open to the Magistrate. He may chose to inquire into the complaint by taking cognizance in exercise of his powers u/s 190 Cr.P.C. and proceed to inquire into it in accordance with the procedure laid down in Sections 200 and 202 Cr.P.C. In the alternative, he may refer the complaint to police u/s 156(3) Cr.P.C. for investigation. In the later case, the Magistrate having given such direction would stay his hand till report u/s 173 Cr.P.C. is submitted by the police, on which further process of law would follow.

8. The law governing the choice to be exercised from amongst the two options has been settled by this Court in *M/s. Skipper Beverages Pvt. Ltd. Vs. State*, In the said case it was held that a magistrate must apply his mind before passing an order u/s 156(3) Cr.P.C. 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 the complainant or custodial interrogation appears to be necessary for some recovery of articles or discovery of facts.

9. In another case *Gulab Chand Upadhyaya Vs. State of U.P. and Others*, it was held that the use of the word "may" in Section 156(3) Cr.P.C. in contradistinction to the word "shall" in Section 154 Cr.P.C. clearly indicates that the Magistrate has the discretion to refuse registration of FIR.

10. The well settled guidelines are laid down by this Court in respect of invoking provisions of Section 156(3) Cr.P.C. in *Subhakaran Loharuka and Shree Ram Mills Ltd. Vs. State (Govt. of NCT of Delhi) and Utility Premises Pvt. Ltd.*, , in para 52A, the guidelines have been summarized as under:- "52A. For the guidance of subordinate courts, the procedure to be followed while dealing with an application u/s 156(3) of the Code is summarized as under:-

(i) Whenever a Magistrate is called upon to pass orders u/s 156(3) of the Code, at the outset, the Magistrate should ensure that before coming to the Court, the Complainant did approach the police officer in charge of the Police Station having jurisdiction over the area for recording the information available with him disclosing the commission of a cognizable offence by the person/persons arrayed as an accused in the Complaint. It should also be examined what action was taken by the SHO,

(ii) or even by the senior officer of the Police, when approached by the Complainant u/s 154(3) of the Code.

(iii) The Magistrate should then form his own opinion whether the facts mentioned in the complaint disclose commission of cognizable offences by the accused persons arrayed in the Complaint which can be tried in his jurisdiction. He should also satisfy himself about the need for investigation by the Police in the matter. A preliminary enquiry as this is permissible even by an SHO and if no such enquiry has been done by the SHO, then it is all the more necessary for the Magistrate to consider all these factors. For that purpose, the Magistrate must apply his mind and such application of mind should be reflected in the Order passed by him. Upon a preliminary satisfaction, unless there are exceptional circumstances to be recorded in writing", a status report by the police is to be called for before passing final orders.

(iv) The Magistrate, when approached with a Complaint u/s 200 of the Code, should invariably proceed under Chapter XV by taking cognizance of the Complaint, recording evidence and then deciding the question of issuance of process to the accused. In that case also, the Magistrate is fully entitled to

postpone the process if it is felt that there is a necessity to call for a police report u/s 202 of the Code.

(v) Of course, it is open to the Magistrate to proceed under Chapter XII of the Code when an application u/s 156(3) of the Code is also filed along with a Complaint u/s 200 of the Code if the Magistrate decides not to take cognizance of the Complaint. However, in that case, the Magistrate, before passing any order to proceed under Chapter XII, should not only satisfy himself about the pre-requisites as aforesaid, but, additionally, he should also be satisfied that it is necessary to direct Police investigation in the matter for collection of evidence which is neither in the possession of the complainant nor can be produced by the witnesses on being summoned by the Court at the instance of complainant, and the matter is such which calls for investigation by a State agency. The Magistrate must pass an order giving cogent reasons as to why he intends to proceed under Chapter XII instead of Chapter XV of the Code.

11. Thus, the magistrate is not supposed to act mechanically and direct registration of FIR in each and every case in routine and casual manner. Criminal law is not expected to be set in motion on mere asking of a party. There has to be some substance in the complaint filed and it is only if it appears that the allegations are serious enough and establish the commission of cognizable offence which require a thorough investigation by the police, an FIR should be ordered to be registered.

12. In the instant case, the respondents are known to the petitioner and the evidence on which the petitioner relies is within his knowledge and control. It cannot be said that the petitioner has been put to an impossible task. If need were to arise for investigation, such possibility is not precluded as learned trial court has entered upon the inquiry under Sections 200 and 202 Cr.P.C. Proviso to Section 202 Cr.P.C. permit such investigation to be ordered at an appropriate stage of the proceedings. In the result, I do not find any illegality or infirmity in the impugned order dated 9.7.2013 passed by learned Metropolitan Magistrate, Karkardooma Courts, Delhi.

Thus, the petition is hereby dismissed.