

(2014) 02 DEL CK 0047
In the Delhi High Court
Case No : Criminal M.C. No. 946 of 2014

Satyamuni Verma

APPELLANT

Vs

State (Govt. NCT of Delhi) and Others

RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 154 154(3) 156(3) 173 190
Penal Code, 1860 (IPC) — Section 34 406 420 468 471

Citation : (2014) 2 JCC 1159

Hon'ble Judges : Ved Prakash Vaish, J

Bench : Single Bench

Advocate : Darshan Paliwal, for the Appellant; Karan Singh, APP for State, for the Respondent

Final Decision : Dismissed

Judgement

Ved Prakash Vaish, J.—The petitioner Satyamuni Verma has filed the present petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") against the impugned order dated 28.1.2014 passed by learned Additional Sessions Judge, New Delhi dismissing the revision petition filed by the petitioner against the order dated 25.10.2013 passed by learned Metropolitan Magistrate dismissing the petitioner's application u/s 156(3) Cr.P.C. In a nutshell, the facts as set out by the petitioner/complainant are that the petitioner filed a complaint u/s 200 Cr.P.C. for the offence punishable under Sections 406/420/468/471 IPC read with Section 34 IPC against the respondents No. 2 to 7 herein. An application u/s 156(3) Cr.P.C. was filed by the petitioner along with the complaint.

2. As per the case of the complainant, father of the complainant and respondent No. 3 Raj Dulari purchased two plots measuring bearing number WZ-430-B and WZ-430-I, Village Naraina, New Delhi by way of registered sale deed in the year 1958 and 1959 respectively. Respondent No. 3 herein being the sister of the

petitioner was allowed to reside in the premises. Respondent No. 3 filed a suit for partition, rendition of accounts and injunction against the petitioner. The deceased father of the petitioner left behind a Will dated 7.12.1960 in favour of the petitioner. The petitioner filed a suit for recovery of possession and damages/mesne profits against respondent No. 3. The petitioner also filed a petition for probate of the Will. But petitioner has alleged that he came to know that respondent No. 3 executed a sale deed in favour of her husband namely Om Prakash Chauhan, respondent No. 2 herein in respect of property bearing number WZ-430/B/2 on 21.3.2002. The petitioner never executed any documents for transfer of the said property in favour of Smt. Raj Dulari. The respondent No. 2 Om Prakash Chauhan obtained loan for Rs. 3.00 crores from Vijaya Bank, Delhi Cantt. Branch, New Delhi by mortgaging the said property. According to the petitioner the police officials failed to register FIR on the complaint made by the complainant.

3. On the prayer u/s 156(3) Cr.P.C., learned Metropolitan Magistrate called for Action Taken Report (ATR). The police filed a status report stating that there are number of civil cases/litigation pending between the parties and, therefore, the complaint is of civil nature.

4. I have given my thoughtful consideration to the contentions raised by the counsel for the petitioner in the light of facts and circumstances of the case.

5. 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.

6. 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.

7. 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.

8. The well settled guidelines are laid down by this Court in respect of invoking

provisions of Section 156(3) Cr.P.C. in Subhkaran Luharuka and Shree Ram Mills Ltd. Vs. State (Govt. of NCT of Delhi) and Utility Premises Pvt. Ltd., , 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.

9. 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 required thorough investigation by the police an FIR should be ordered to be registered.

10. The parties are known to each other. The evidence on which the petitioner relies is within his knowledge and control and 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 view of the aforesaid facts and circumstances of the case, there is no illegality or infirmity in the impugned order dated 28.1.2014 passed by learned Additional Sessions Judge, New Delhi.

Thus, the petition is hereby dismissed.

CrI.M.A. No. 3190/2014

Dismissed as infructuous.