

(2009) 12 DEL CK 0375

In the Delhi High Court

Case No : Criminal Rev. P. No. 146 of 2008

Sh. Ram Avtar Tyagi

APPELLANT

Vs

State (NCT) of Delhi and Others

RESPONDENT

Date of Decision : 15-12-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 190, 203, 482
Penal Code, 1860 (IPC) — Section 120B, 406, 409, 415, 420

Citation : (2009) 12 DEL CK 0375

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : B.S. Chowdhary, for the Appellant; Pawan Bahl, APP, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—This is a criminal revision filed by the petitioner against the order dated 11.2.2008 passed by the learned MM, Delhi in Criminal Complaint No. 05/01 titled as Ram Avtar Tyagi v. Narinder Singh and Ors. By virtue of the aforesaid order, the learned Magistrate dismissed the application of the petitioner u/s 156(3) of Cr.P.C. for referring the matter to the local police for the purpose of registration of an FIR for an offence of breach of trust and for conduct of the investigation.

2. Briefly stated the facts of the case are that present petitioner filed a complaint against the respondents who are five in number making allegations that they had committed offences u/s 406/409/415/420/468/471/506/120B IPC. It was alleged that on 14.8.1996, an agreement to sell was executed by respondent No. 1 and his brother as a consequence of which both of them received a sum of Rs. 4 lacs in cash. It is alleged that the complainant was to pay a balance amount within 18 months from the date of agreement to sell and respondent No. 1 was to perfect the title of the petitioner. As a consequence of this agreement, the respondent No. 1 and his brother Rajender Singh are alleged to have executed documents

like General Power of Attorney, Will, Receipt etc. in favour of the complainant. It is further alleged that respondent No. 1 in conspiracy with respondent Nos. 2 to 5 cancelled the General Power of attorney on 8.1.97 to grab the land in question. It is alleged that the complainant received a notice from respondent No. 1 on 10.10.2007 stating that respondent No. 1 has cancelled the power of attorney. On the basis of these facts, the complainant has filed an application for registration of the aforesaid offences against all the five respondents.

3. The learned Magistrate on receipt of complaint called for the report of the SHO of the concerned police station. The SHO of P.S. Swaroop Nagar gave a report to the effect that the aforesaid facts did not disclose the commission of any cognizable offence and on the contrary, it was a pure case of civil nature which was sought to be converted into a criminal case.

4. The learned Magistrate has referred to the judgment of the Apex Court titled as S.W. Palanitkar and others Vs. State of Bihar and another, in which it has been observed that every breach of trust does not result in commission of a penal offence of criminal breach of trust, unless and until there is an evidence of a mental act of fraudulent misappropriation.

5. Based on the said judgment, the learned MM dismissed the application of the petitioner for passing a direction to the local police for registration of an FIR u/s 156(3) of the Cr.P.C. and to investigate into the matter.

6. The complainant/petitioner feeling aggrieved by the said rejection order has accordingly preferred the present revision petition.

7. I have heard the learned Counsel for the petitioner as well as learned APP.

8. The contention of the learned Counsel for the petitioner is that the facts under a given set of situation may give rise to a cause of action for initiating civil action as well as it may result in commission of criminal offence.

9. In the instant case, it is alleged that the respondent No. 1 firstly by agreeing to sell his piece of land to the petitioner and having received a sum of Rs. 4 lacs turned dishonest and did not transfer the title of the land in question to the petitioner but on the contrary, cancelled his power of attorney which was obviously done at the instigation of respondents 2 to 5 one of whom happens to be the brother of respondent No. 1. It is alleged by the petitioner that the other respondents were witnesses to the various documents executed between the parties.

10. The learned Counsel for the petitioner has also relied upon the following cases in support of his judgment

i) Kamaladevi Agarwal Vs. State of West Bengal and Others,

(ii) Indian Oil Corporation v. NEPC India Ltd. and Ors. (2006) 3 SCC (Cri.) 188

(iii) Pratibha Vs. Rameshwari Devi and Others,

(iv) Vitoori Pradeep Kumar Vs. Kaisula Dharmaiah and Others, .

11. I have carefully considered the submission of the learned Counsel for the petitioner and gone through the authorities relied upon by the learned Counsel for the petitioner. So far as the judgments which have been relied upon by the learned Counsel are concerned, there is no doubt about the proposition of law which is enunciated by the Apex Court in the said judgments. The Apex Court in the aforesaid judgment has laid down two broad principles (i) that a given set of circumstances may result in commission of a criminal offence as well as give rise to a cause of action which can be a basis for instituting a suit in a civil Court. (ii) The second principle which has been enunciated is that after registration of an FIR, the High Court in exercise of its powers u/s 482 of Cr.P.C. should be loath to quash the said proceedings.

12. The question which arises for consideration is whether every breach of trust which may have allegedly taken place can result in commission of a criminal offence or not. In the instant case, there are allegations with regard not only to the breach of trust but also an offence of cheating. One of the important ingredients for an offence of criminal breach of trust or for the offence of cheating is the existence of dishonest intention in the mind of the accused which happens to be respondent No. 1 in the instant case at the time when the transaction was entered. This dishonest intention should be for the purpose of causing wrongful loss to others or wrongful gain to himself.

13. In the instant case, it cannot be said from the complaint that at the time when the amount of Rs. 4 lacs was handed over by the present petitioner to the respondent No. 1 toward part payment of the entire sale consideration which had been decided between the parties for sale and purchase of a immovable property, the respondent No. 1 had dishonest intention. Therefore, the learned Magistrate was right in not referring the matter to the local police u/s 156(3) of the Cr.P.C. Apart from this, the reference to the local police u/s 156(3) of the Cr.P.C. cannot be claimed by a party as a matter of right. Section 190 of Cr.P.C. lays down three different modes in which criminal justice machinery can be put into motion. These three methods are as under:

- a) by filing a complaint
- b) by way of a police report.
- c) Suo moto cognizance by the judicial officer.

14. In the instant case, the petitioner complainant has chosen to file a private complaint before the learned Magistrate and it seems that along with the complaint, he also filed an application u/s 156(3) of Cr.P.C. It was not incumbent on the part of the learned Magistrate to have referred the matter to the local police for registration of an FIR. It is common knowledge that the effort of every litigant even in civil dispute is to make a complaint and then have the same referred to the local police for registration of an FIR which if registered would

entail serious threat of arrest of the opposite side and consequently force him to settle the matter. This gross misuse of the processes of law if not called abuse is to be controlled by the Magistrate if not stopped by him completely. It is this discretion which has been conferred by the Legislature on the learned magistrate to be exercised judicially. This discretion should not be lightly interfered by the superior courts unless and until there is something seriously amiss.

15. The learned Magistrate in the instant case by a well reasoned order has chosen to dismiss the said application and that does not mean that the petitioner/complainant is foreclosed from adducing evidence before the learned Magistrate and keeping the statements recorded so as to permit the Learned Trial Magistrate to hold an inquiry into the matter. After the inquiry, the learned Magistrate has an option to proceed either u/s 203 of the Cr.P.C. and dismiss the complaint or alternatively in case the complainant is able to make out a prima facie case issue the notice to the accused persons which happens to be the respondent in the instant case.

16. I do not find that there is any illegality, infirmity or incorrectness in the impugned order which has been passed by the learned Trial Judge in dismissing the application of the petitioner for registration of an FIR u/s 156(3) of Cr.P.C. inasmuch as it is essentially for the learned Magistrate to form an opinion and exercise the discretion in a judicial manner. Merely because this Court is a superior Court, it does not mean that if the Court holds a different view, then it is entitled to substitute its views in place of the view taken by the learned Magistrate.

17. For the above reasons, I am of the opinion that the petition which has been filed by the petitioner is totally misconceived and accordingly, the same is dismissed.