

(2013) 03 DEL CK 0048

In the Delhi High Court

Case No : Writ Petition (Criminal) 1396 of 2012

Swatantar Devi and Another

APPELLANT

Vs

Commissioner of Police and Others

RESPONDENT

Date of Decision : 14-03-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(3), 156(1), 156(3), 190

Penal Code, 1860 (IPC) — Section 120B, 34, 406, 420, 468

Citation : (2013) 03 DEL CK 0048

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Ashwati, for the Appellant; Saleem Ahmed, ASC with Ms. Charu Dalal, Advocate for the Respondents No. 1 to 3, for the Respondent

Judgement

G.P. Mittal, J.

Crl. M.A. 3317/2013

1. The Petitioner wants to urge an additional ground that on the basis of the complaint dated 09.03.2013, the police has failed to register a case under Sections 420, 406, 468, 420 IPC read with Section 34 and 120B IPC. The Petitioner is permitted to urge the additional ground.

2. The Application is disposed of.

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3. By virtue of this Petition under Article 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure(Code), the Petitioner prays for protection of his life and liberty and protection from any threat of blackmail or physical assault at the hands of the Respondents No. 4 and 5. Respondents No. 1 to 3 are the Commissioner of Police, S.H.O., P.S. Nangloi and Deputy Commissioner of Police, (West) respectively.

4. As per the allegations made in the Petition, the Petitioners had advanced a loan of Rs. 25,00,000/- to Respondent No. 4. The Respondent No. 4 issued four cheques drawn on Corporation Bank in discharge of his liability. The Respondent No. 4 also gave an undertaking to repay the amount as agreed, failing which the Petitioner No. 1 was entitled to take action against him as permissible under the law. It is the case of the Petitioners that the Petitioner No. 1 wrote a letter dated 13.01.2012 asking the Respondent No. 4 to return the money advanced. He was further informed that his brother (Respondent No. 5) was also extending threat to kill him and his family members. A report dated 24.02.2012 was allegedly made to the SHO, P.S. Nangloi and a letter dated 16.04.2012 was also written to the Commissioner of Police in this regard. Thereafter, another letter dated 06.09.2012 was written to the SHO seeking protection to the life and liberty of the Petitioners and their family members. The Petitioners grievance is that the police has failed to provide necessary protection.

5. A status report has been filed by the SHO, P.S. Nangloi. It is reported that Respondent No. 4 (Ram Prakash Yadav) suffered losses in his business, so he failed to pay the instalment in time and requested some more time to pay the same. It has further been reported that the Respondent No. 5 (Shankar Yadav) is brother of the Respondent No. 4. He has no concern with the transaction in question and that no threat has been extended by Respondent No. 5. It has been reported that the Petitioner No. 2 wants to get the money recovered through police and that is the reason for making complaints to the police. It is stated that no evidence of threat has been found and the Respondents No. 4 and 5 have a clean track record. Suffice it to say that the Respondents No. 1 to 3 are duty bound and under obligation to provide necessary protection with regard to the Petitioners' life and liberty and so also with regard to life and liberty of their family members.

6. As regards extending any threat by the Respondents No. 4 and 5 and non-taking of any action by the SHO of the Police Station, I may say that this Court in its writ jurisdiction cannot make any inquiry as to the veracity of the threats alleged or otherwise of the same. If the Respondents No. 4 and 5 have really extended any threat and the officer in-charge of the Police Station has not taken any action, the Petitioners are at liberty to approach the learned Metropolitan Magistrate concerned with an Application u/s 156(3) of the Code of Criminal Procedure or otherwise they are at liberty to make a complaint u/s 200 of the Code. In this connection a reference may be made to a report of the Supreme Court in *Sakiri Vasu Vs. State of U.P. and Others*, wherein it was laid down as under:

11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR u/s 154 CrPC, then he can approach the Superintendent of Police u/s 154(3) CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it

is open to the aggrieved person to file an application u/s 156(3) CrPC before the learned Magistrate concerned. If such an application u/s 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation. 12. Thus in Mohd. Yousuf Vs. Smt. Afaq Jahan and Another, this Court observed: (SCC p. 631, para 11)

11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation u/s 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation u/s 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.

13. The same view was taken by this Court in Dilawar Singh Vs. State of Delhi, We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate u/s 156(3) CrPC, and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order(s) as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys u/s 156(3) CrPC.

14. Section 156(3) states:

156. (3) Any Magistrate empowered u/s 190 may order such an investigation as abovementioned.

The words "as abovementioned" obviously refer to Section 156(1), which contemplates investigation by the officer in charge of the police station.

15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII CrPC. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

x x x x x

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police u/s 154(3) CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate u/s 156(3) CrPC instead of rushing to the High Court by way of a writ petition or a petition u/s 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint u/s 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

7. In this view of the matter, the Petitioner shall be at liberty to approach the concerned Metropolitan Magistrate with an Application u/s 156(3) of the Code or through a criminal complaint u/s 200 of the Code for taking appropriate action against Respondents No. 4 and 5. The Petition is disposed of in above terms. It goes without saying that the Petitioners and their family members shall be provided with necessary protection in respect of their life and liberty by the SHO concerned.