

RAMESH KUMARI
v.
STATE (N.C.T. OF DELHI) AND ORS.

A

FEBRUARY 21, 2006

[H.K. SEMA AND DR. AR. LAKSHMANAN, JJ.]

B

Code of Criminal Procedure, 1973:

S.154—Refusal by police to register complaint—Pending a civil litigation one side breaking open lock and removing articles from suit premises—Complaint by other side—Not registered—Writ Petition—High Court holding that since contempt petition was pending and alternative remedy was available, it could not direct registration of complaint—Held, pendency of contempt petition or alternative remedy no ground not to register the complaint—Since complaint filed against a police officer, CBI would register the complaint and investigate the matter.

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In a property dispute the High Court granted stay order protecting possession of the appellant. However, respondents No. 2 and 3 were said to have broken open the lock and removed various articles from the suit premises. The appellant filed a complaint in the Police Station concerned, but no case was registered. The appellant filed a writ petition before the High Court, which held that as the petitioner had filed a contempt petition and there was an alternative remedy available, it could not direct to register a case. Aggrieved, the writ petitioner filed the present appeal.

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Allowing the appeal, the Court

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HELD: 1.1. The High Court erred in law in dismissing the petition solely on the ground that the contempt petition was pending and the appellant had an alternative remedy. Alternative remedy or pendency of contempt petition would be no ground in law not to register a case when a citizen makes a complaint of a cognizable offence against a Police Officer. The provision of s.154 of the Code of Criminal Procedure, 1973, is mandatory and the police officer concerned is duty bound to register the case on the basis of an information disclosing cognizable offence.

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[405-D-E; 407-E]

1.2. In the instant case, the complaint was filed against the Police

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A Officer. Counsel for the parties are not at variance that in such a situation the interest of justice would be better served if this Court directs the CBI to register the case and investigate the matter. Ordered accordingly.

[407-G-H]

B 2. It is also not disputed that the contempt petition filed by the appellant is also pending disposal before the High Court since 1997. The petition should be disposed of with a sense of urgency otherwise the petition itself will loose all its force and the purpose for which the contempt is initiated would be defeated. [407-F-G]

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1229 of 2002.

From the Judgment and Order dated 24.12.2002 of the Delhi High Court in Criminal Writ Petition No. 108/1998.

D Ms. Indu Malhotra for the Appellant.

Vikas Singh, ASG, S. Wasim A. Qadri Mrs. Anil Katiyar and D.S. Mahra for the Respondent.

The Judgment of the Court was delivered by

E SEMA, J. The challenge in this appeal is to the order dated 24.1.2002 passed by the Division Bench of the Delhi High Court. The controversy in this appeal is confined to the non-registration of the case by the police pursuant to a complaint dated 9.9.1997 and 13.9.1997 filed by the appellant. It is stated that the appellant was in possession of the land. The stay order was granted by the High Court protecting the possession of the appellant on 14.8.1997 and it was extended by another order dated 10.9.1997, in the presence of the other side. However, the respondent Nos. 4 to 9 broke open the lock and removed various articles on 9.9.1997 and 10.9.1997. We make it clear that we are not entering into the merits of the case.

G The grievance of the appellant is that an information of a cognizable offence has been filed by the appellant before the Station House Officer (SHO), Kapashera on 9.9.1997 and 13.9.1997. However, no case was registered by the concerned SHO. Thereafter, the matter was brought to the notice of the Police Commissioner, without any result. This has led the appellant to approach the High Court by filing Criminal Writ Petition No. 108 of 1998.

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By the impugned order the High Court was of the view that the appellant has filed a Contempt Petition CCP No. 307/1997 and that is pending before the High Court. The High Court found it difficult to direct to register a case on the basis of the information filed by the appellant. The High Court was also of the view that the appellant was alternative remedy available to her, albeit, without indication what is the alternative remedy available to the appellant. The High Court ultimately also observed that should respondent Nos. 1 and 2 be seized of petitioner's complaint or representation, they shall also examine and pass appropriate orders within three months.

Mr. Vikas Singh, learned Additional Solicitor General, at the outset, invites our attention to the counter-affidavit filed by the respondent and submits that pursuant to the aforesaid observation of the High Court the complaint/representation has been subsequently examined by the respondent and found to genuine case was established. We are not convinced by this submission because the sole grievance of the appellant is that no case has been registered in terms of the mandatory provisions of Section 154(1) of the Criminal Procedure Code. Genuineness or otherwise of the information can only be considered after registration of the case. Genuineness or credibility of the information is not a condition precedent for registration of a case. We are also clearly of the view that the High Court erred in law in dismissing the petition solely on the ground that the contempt petition was pending and the appellant had an alternative remedy. The ground of alternative remedy nor pending of the contempt petition would be no substitute in law not to register a case when a citizen makes a complaint of a cognizable offence against the Police Officer.

That the Police Officer mandatorily registers a case on a complaint of a cognizable offence by the citizen under Section 154 of the Code are no more res integra. The point of law has been set at rest by this Court in the case of *State of Haryana and Ors. v. Bhajan Lal and Ors.*, [1992] Supp. 1 SCC 335. This Court after examining the whole gamut and intricacies of the mandatory nature of Section 154 of the Code has arrived at the finding in paras 31 and 32 of the judgment as under:

"31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse

A to register a case on the ground that the information is not reliable or
credible. On the other hand, the officer in charge of a police station
is statutorily obliged to register a case and then to proceed with the
investigation if he has reason to suspect the commission of an offence
B which he is empowered under Section 156 of the Code to investigate,
subject to the proviso to Section 157. (As we have proposed to make
a detailed discussion about the power of a police officer in the field
of investigation of a cognizable offence within the ambit of Sections
156 and 157 of the Code in the ensuing part of this judgment, we do
not propose to deal with those sections in extenso in the present
context). In case, an officer in charge of a police station refuses to
C exercise the jurisdiction vested in him and to register a case on the
information of a cognizable offence reported and thereby violates the
statutory duty cast upon him, the person aggrieved by such refusal
can send the substance of the information in writing and by post to
the Superintendent of Police concerned who is satisfied that the
information forwarded to him discloses a colonizable offence, should
D either investigate the case himself or direct an investigation to be
made by any police officer subordinate to him in the manner provided
by sub-section (3) of Section 154 of the Code.”

“32. Be it noted that in Section 154(1) of the Code, the legislature
E 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
F police officer should not refuse 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
G 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
H 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 189(c) of the present Code of 1973 (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."

Finally, this Court in para 33 said :

"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."

The views expressed by this Court in paragraphs 31, 32 and 33 as quoted above leave no manner of doubt that the provision of Section 154 of the Code is mandatory and the concerned officer is duty bound to register the case on the basis of such an information disclosing cognizable offence.

Undisputedly, in the present case no case was registered pursuant to the complaint dated 9.9.1997 and 13.9.1997 filed by the appellant. It is also not disputed that the Contempt Petition CCP No. 307/1997 filed by the appellant is also pending disposal before the High Court. It is, however, stated by the respondent that the non-disposal of the contempt petition is due to the non-prosecution by the appellant. Be that as it may, we are of the view that the contempt petition has been pending since 1997 and as such petition should be disposed of with a sense of urgency otherwise the petition itself will lose all its force and the purpose for which the contempt is initiated would be defeated.

In this case, admittedly, the complaint was filed against the Police Officer. Learned counsel for the parties are not at variance that in such a situation the interest of justice would be better served if this Court directs the CBI to register the case and investigate the matter.

A Mr. Vikas Singh, learned Additional Solicitor General although vehemently opposed registration of the case but he fairly concedes that if at all the case be registered and investigation is to be carried out, the CBI would be an appropriate authority to register a case and investigate. We are also of the view that since there is allegation against the police personnel, the interest of justice would be better served if the case is registered and investigated by an independent agency like the CBI.

B We, accordingly, direct that the CBI shall now register a case and investigate of the complaint filed by the appellant on 9.9.1997 and 13.9.1997. The CBI can collect the complaint from the SHO, Police Station, Kapashera dated 9.9.1997 and 13.9.1997. The complainant will also provide photocopies of the complaint dated 9.9.1997 and 13.9.1997 in case of original complaint is not traceable in the Police Station. Since, the matter is pending from 1997 the CBI is directed to register the case and complete investigation within a period of three months from today. We further clarify that by the aforesaid directions we are not entering into the merits of the controversy of the case nor casting aspersions on anybody including the local police.

C We also request the Delhi High Court to expedite the disposal of Contempt Petition CCP 307/1997 in any event not later than three months from today for which parties shall give co-operation. The Registry shall despatch copies of this order to the CBI and Delhi High Court forthwith.

D With the aforesaid direction the appeal is disposed of.

E R.P.

Appeal allowed.