

Krishnana Manchanda Vs State and Others

Court: Delhi High Court

Date of Decision: March 15, 2012

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 156(3), 202, 482, 483

Hon'ble Judges: Mukta Gupta, J

Bench: Single Bench

Advocate: Vijay Aggarwal, Mr. Gurpreet Singh, Mr. Chayan Sarkar, for the Appellant; Manoj Ohri, APP for State Mr. Vikram Panwar, for R-2, for the Respondent

Final Decision: Dismissed

Judgement

Hon"ble Ms. Justice Mukta Gupta

1. By this petition the Petitioner challenges the order dated 10th July, 2009 passed by the learned Metropolitan Magistrate dismissing the

application of the Petitioner filed u/s 156(3) Cr.P.C. for registration of FIR and granting liberty to the Petitioner to examine herself and thus

proceed as a complaint case.

2. Learned counsel for the Petitioner contends that the complaint of the Petitioner was against unknown persons and items were also required to

be recovered. Thus, the finding of the learned Trial Court that the offence was within the reach of the Petitioner was incorrect. According to him, in

case direction for registration of FIR is not given, the Petitioner will have to undergo a long drawn process, which would be detrimental to her. It is

contended that the Police had no power to conduct the preliminary enquiry. Only in cases of property disputes or cheating, forgery etc., the Police

could enter into an enquiry and in serious offences like robbery, as alleged by the Petitioner, the Police should register FIR as they are duty bound

to do so in terms of the decision of the Hon"ble Supreme Court in Lalita Kumari Vs. Govt. of U.P. and Others, . Relying on Radha Vs. State, it is

contended that the legal position is well settled and the Police cannot proceed in the matter without registration of FIR. Relying upon Priya Gupta

v. The State 2007 (2) JCC 1330 it is contended that in a complaint of this nature the SHO is duty bound to register the FIR. In view of the

decision in Sunil Mehdiratta Vs. Union of India (2002) JCC 247, it is stated that the discretion means use of private and independent thought and

not just acting in an arbitrary manner. It is further stated that there are bound to be variations in the complaint as no person can give the same facts

over and over again and at this stage this Court will not sift and weigh the evidence in exercise of its power u/s 482/483 and should direct

registration of FIR.

3. Learned counsel for the Respondent No. 2 on the other hand contends that there is no illegality in the order of the learned Metropolitan

Magistrate directing not to register the FIR and proceeding as the complaint case. Relying upon Subhkaran Luharuka S/o Late K.P. Luharuka and

Shree Ram Mills Ltd.Vs. State (Govt. of NCT of Delhi) and Utility Premises Pvt. Ltd. Crl. M.C. Nos. 6122-23/2005 and 6133-34/2005 decided

on 09.07.2010 it is contended that no prejudice is caused to the Petitioner in case the Magistrate himself holds an enquiry into the matter. The first

complaint made by the Petitioner does not disclose any offence and a perusal of the subsequent complaint filed by the Petitioner and her other sons

whom she is siding with would show that improvements have been made so as to make out a case for registration of FIR and allegations of

robbery have been introduced. The impugned order passed by the learned Metropolitan Magistrate gave option to the Petitioner to proceed as a

complaint case, however the complainant did not examine herself and pursued the matter. Finally the complaint was dismissed for non-prosecution

on the 28th July, 2010. Reliance is placed on Raghu Raj Singh Rousha Vs. M/s. Shivam Sundaram Promoters (P) Ltd. & Anr. 2009 (1) JCC 405

(SC); Ram Swarup Vs. Mohd. Javed Razack & Anr. 2005 (1) JCC 454 and Rashmi Malhotra Vs. SHO & Anr. 2002 (2) JCC 933 (Del).

4. I have heard learned counsel for the parties. Briefly the facts of the case are that there is a dispute between the sons of the Petitioner. The

Petitioner, the mother of Respondent No. 2 filed a detailed complaint to the SHO Rajender Nagar, Delhi which was duly received on 18th June,

2008. The complaint is a detailed one wherein she alleges that her husband died in the year 1977 leaving behind three sons Vijay Manchanda,

Ashok Manchanda and Rajesh Manchanda. Her elder son Vijay Manchanda started a firm of manufacturing plastic containers and her second son

Ashok Manchanda was made a sleeping partner as he was working as a clerk in Centaur hotel. Her third son Rajesh Manchanda started an export

firm where also Ashok Manchanda was made a sleeping partner. According to her, she sold her jewellery and flat for the investment in the

business and her three sons were doing well. It was decided that Rajesh Manchanda will look after marketing of products, Vijay Manchanda will

look after production and Ashok Manchanda will look after accounts and other paper works. According to her, Ashok Manchanda with ill

intentions changed partnership deeds making all the three partners as equal partners. At the relevant time Ashok and Vijay were living together in

a double storey house at New Rajender Nagar. Since Vijay Manchanda and Rajesh Manchanda had faith in Ashok Manchanda, they signed all

documents. However, Ashok Manchanda took undue advantage and fabricated books of accounts, forged signatures on the cheques, put dates

therein in his own hand-writing and mentioned the figure of Rs. 85 lakhs, notwithstanding that the cheques belonged to the saving bank account of

Rajesh Manchanda. Due to the activity of Ashok Manchanda, Rajesh suffered a lot. It is further alleged that Vijay Manchanda and Rajesh

Manchanda were away on their business tour and in their absence Ashok Manchanda came to see the Petitioner Krishna Manchanda on 4th

march, 2011 and asked her to return the original documents relating to different properties owned by the two firms. After Vijay Manchanda and

Rajesh Manchanda returned from business tour on or about 8th April, 2008, the Petitioner informed that in their absence Ashok Manchanda had

visited her on 4th March, 2008 and threatened her of dire consequences if the original documents were not given to him. It may be noted that in

this detailed complaint there is no allegation that on 4th March, 2008 Ashok Manchanda came with the other accused persons and committed

robbery at the house of the Petitioner.

5. On 15th March, 2008 the Petitioner gave a complaint to the police stating that on 4th March, 2008 Ashok Manchanda came to her house, beat

her and took away papers and jewellery and threatened her to withdraw the case filed in Delhi High Court, inter alia, besides other facts.

However, in the subsequent complaints no such facts were alleged as stated above. Thereafter, a complaint case was filed before the learned

Metropolitan Magistrate for registration of FIR u/s 156(3) Cr.P.C. wherein it is alleged that on 5th March, 2008 Ashok Manchanda and unknown

persons trespassed into the complainant's house and demanded the papers of the property. He threatened to kill the complainant and her two

sons. He forcibly pushed and took away the papers of property and 5 sets of jewellery, share certificates and some blank cheques from almirah.

Thus, it may be noted that in each of the complaint, the version of the complainant was different and in the complaint filed before the learned

Metropolitan Magistrate unknown persons were introduced so as to make out a case for registration of FIR.

6. The learned Metropolitan Magistrate after calling for the status report from the Police as directed by this Court in Subhkaran Luharka (supra)

came to the conclusion that no case for registration of FIR is made out. As per the status report, local enquiries were conducted and no such

offence was found to be made out, there were litigations between the parties and primarily the dispute between the parties was for partition of the

property. Learned Metropolitan Magistrate, in view of the status report, passed the impugned order as above.

7. No doubt, this Court in a petition u/s 482 Cr.P.C. would interfere if there is an illegality committed by the learned Trial Court or there is an

abuse of the process of the Court. There is no denial to the fact that once a complaint is filed before the learned Metropolitan Magistrate, the

Magistrate has the option of either directing registration of FIR u/s 156(3) Cr.P.C. or proceeding as a complaint case by examining the

complainant and if the facts so warrant conduct a limited enquiry u/s 202 Cr.P.C. While exercising this discretion the Court has to apply its judicial

mind. As held in Sunil Mehdiratta (supra), discretion means use of private and independent thought. The Division bench of this Court in that case

observed: ""7. Discretion means use of private and independent thought. When anything is left to be done according to one's discretion, the law

intends it to be done with sound discretion and according to law. Discretion is discerning between right and wrong and one who has power to act

at discretion is bound by rule or reason. Discretion must not be arbitrary. Discretion must be exercised honestly and in the spirit of the statute. It is

the power given by a statute to make choice among competing considerations. It implies power to choose between alternative courses of action. It

is not unconfined and vagrant. It is canalized within banks that keep it from overflowing. 8. Discretion is a science of understanding to discern

between falsity and truth, between right and wrong, between shadows and substance, between equity and colourable glosses and pretences, and

not to act according to one's wills and private affections. Discretion necessarily implies good faith in discharging public duty. There is always a

perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or

corruption. Several principles can conveniently be grouped in two main categories: (i) failure to exercise discretion; and (ii) excess or abuse of

discretionary power. The two classes are not, however mutually exclusive. Thus, discretion may be improperly fettered, because irrelevant

considerations have been taken into account.

8. Thus, while exercising the discretion, the Trial Court should not be oblivious to the facts of the case nor should this Court be. In the present

case it is clear from the perusal of all the earlier complaints that though initially only allegations were against Ashok Manchanda, which were not

levelled in the detailed complaint, however in the complaint filed before the learned Metropolitan Magistrate other unknown persons were

introduced so as to make out a case for registration of an FIR. In order to seek exercise of discretion by the Court, the Petitioner cannot be

permitted to manipulate and twist the facts according to his own desire and persuade the Court to exercise its discretion in his favour. In view of

the fact that in the initial complaint the Petitioner had stated that Ashok Manchanda had come and taken away the documents and jewellery, I do

not think that any illegality has been caused by the learned Metropolitan Magistrate in not directing registration of FIR and asking the Petitioner to

proceed as a complaint case, as the evidence is in possession of the Petitioner and in case some inquiry is required to be got conducted, the same

can be got conducted u/s 202 Cr.P.C.

9. I find no infirmity in the impugned order. Petition is dismissed.