

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 179/2008

R.P.SINGLA

..... Petitioner

Through Mr. Jugal Wadhwa, Advocate

versus

C.K.KAPUR & ORS

..... Respondents

Through Mr. Ritesh Agarwal, Advocate
for Respondent No.2.

Ms. Aakanksha Munjhal, Advocate for
Respondents 1,4,5,10,12-15 ,17-18.

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

ORDER
02.03.2009

1. The challenge in this petition under Section 482 of the Code of Criminal Procedure, 1973 (CrPC) is to an order dated 30th November 2007 passed by the learned Metropolitan Magistrate (MM), New Delhi in the criminal complaint being C.C. No. 2190/1 titled “***R.P. Singla v. C.K. Kapur etc.***” whereby the learned MM rejected the application filed by the petitioner under Section 156 (3) CrPC and directed the complainant to lead pre-summoning evidence.

2. The aforementioned complaint was filed by the petitioner alleging commission of offences by respondents 2 to 18 in relation to the

management of a registered trust by the name of “Guruji Ka Ashram” which was settled and founded by Shri Nirmalji, known otherwise as “Guruji” by a registered Trust Deed dated 14th May 1999. It is alleged that on 25th August 2007 the respondents decided to take law into their own hands after they were unable to stop the functioning of the trust administration through civil litigation in the form of CS (OS) No. 1478 of 2007 in the High Court. It was alleged that along with their cronies they manhandled the security guards and forcibly entered into the “Shiv Mandir” at Bhatti Mines, Mehrauli, New Delhi which was one of the trust properties, and started raising unauthorised construction near the Samadhi of Guruji. When their action was resisted by the trustees, the respondents indulged in brick-bating, entered into the office, threw away the important records and threatened to kill the complainant by calling him names. It is alleged that on the next day, i.e., 26th August 2007, when the trust administration approached the police to check the illegal construction work, only one head constable along with constable came to the temple premises and requested the respondents to stop the illegal construction. However, they did not heed this request. It is submitted that a D.D. No. 16 dated 26th August 2007 PP Bhatti Mines was recorded. However, no action consequent thereto was taken. Accordingly, a complaint under Section 200 CrPC along with an application under Section 156 (3) CrPC filed in the Court of the learned ACMM.

3. On 10th September 2007, the learned MM passed the following order:-

“Fresh complaint received by way of assignment. It be checked and registered.

Present : Complainant in person with counsel Sh. Jugal Wadhwa.

Ld. Counsel for the complainant submits that the complainant has given complaint to the SHO Police Station Mehrauli and other superior officers.

In view of this, issue notice to the SHO Police Station Mehrauli regarding what action has been taken on the complaint of the complainant in the present case. Copy of the complaint and the documents be filed with the Ahlmed against receipt.

Put up for status report on 21/09/2007.”

4. Pursuant thereto a status report was filed by the police on 20th September 2007 which reads as under:-

“Status Report : Complaint of Sh. R.P. Singla.

Hon’ble Sir,

It is submitted that there is a trust in the name of “Guruji Ka Ashram” which was founded by Shri Nirmalji known as Guruji. One Shiv Mandir is situated in Bhati Mines near Radha Swami which is with the trust of Guruji where devotees used to visit this temple on different occasions as well as regularly. After the death of Shri Nirmalji (Guruji), Sh. Mast Ram the father of Guruji the lone trustee made Sh. Deepak Kumar cousin of late Guruji as another trustee. Thereafter a dispute among two groups

of devotees arised (*sic* arose) one supporting the father of Guruji and other against the trust members appointed by father of Guruji Sh. Mast Ram. Both parties have moved civil writs in the Hon'ble Delhi High Court which are sub judiced in the Hon'ble Delhi High Court and next date of hearing i.e. 25.09.07. After death of Shri Nirmalji (Guruji) one Samadhi was constructed within the Shiv Temple situated at Bhati Mines near Radha Swami as this Samadhi was with bricks. Devotees wanted it to be covered with marble stones. One group of devotees who claim themselves members of advisory committee covered this Samadhi with marble stones & parikrama around this Samadhi in full public view. Nothing unauthorized was constructed within the temple except covering this Samadhi with marble stones and making Parikarama around this Samadhi. This temple being a public place, there is no restriction to any one visiting temple premises, therefore, offence of trespass is not made out. Regarding Para No.4 enquiry conducted revealed that no one came there with deadly weapons or manhandled anyone there. One day there was PCR Call regarding taking out of money from the temple's Daan Patra and SHO as well as ACP/Hauz Khas visited the temple and conducted enquiry and found it to be a civil matter within the members of this trust and devotees. Both parties are making allegation and counter allegation against each other on trivial issues which are totally civil in nature, where indulgence of local police is not made out. It seems to be a civil dispute between the parties to show their rights over this temple and trust.

Submitted please.

SI Sanjeev Solanki
I/O PP Bhati Mines
Dt/ 20.09.07”

5. After receipt of the said status report the following order was passed by the learned MM on 30th November 2007:-

“R.P. Single Vs. C.K. Kapur etc.

C.C. 2190/1

30/11/07

Present : Complainant in person.

Arguments on the application u/s. 156 (3) CrPC were heard, wherein the complainant has prayed for issuance of direction to SHO to investigate the matter u/s. 156 (3) CrPC. I have carefully perused the complaint, annexed documents and also perused the status report and the copies of the authorities filed on behalf of the complainant.

In the present case all the facts and circumstances of the case are within the knowledge of the complainant. The identity of the accused is also known to the complainant. In the facts and circumstances of the case there is no requirement of collection of evidence by the police at this stage as the complainant can lead his evidence. In view of this, present application u/s 156(3) CrPC is dismissed. Complainant to lead pre summoning evidence. List of witnesses, if any, be filed.

Put up for examination of the complainant and his witnesses, if any, u/s 200 CrPC for 17/03/08.”

6. The contention of the learned counsel for the petitioner is that in application under Section 156(3) CrPC, the learned MM, if satisfied with the case made out by the applicant, was bound to direct the police

to register an FIR. No investigation could be carried out by the police without registering an FIR. It is further submitted that once the status report was called for from the police in an application under Section 156 (3) CrPC, it was not open to the learned MM to revert to the stage of recording the complainant's evidence by ignoring the status report filed by the police. The learned MM was bound to state whether he was accepting the report or not. If he was not accepting the report he had to give the reasons for taking cognizance of the offence and directing the complainant to lead evidence. In doing neither, the learned MM had committed a material illegality by way of impugned order dated 30th November 2007. Considerable reliance is placed by the learned counsel for the petitioner on the judgments of the Supreme Court in ***Madhu Bala v. Suresh Kumar (1997) 8 SCC 476*** and ***Mohd. Yousuf v. Afaq Jahan (2006) 1 SCC 627***.

7. The submissions of learned counsel for the petitioner have been considered. The facts are really not in dispute. It is plain that in the first instance by the order dated 10th September 2007 the learned MM in the application under Section 156(3) CrPC called for a status report from the police. The contention that in the facts and circumstances no investigation was in fact undertaken by the police and that the status report filed without registering any FIR was without authority of law is based on an incorrect appreciation of the legal position.

8. In *Mohd. Yousuf v. Afaq Jahan* it was explained by the Supreme Court in paras 8, 9, 10 and 11 as under (SCC pp. 463-464):

8. The various steps to be adopted for investigation under Section 156 of the Code have been elaborated in Chapter XII of the Code. Such investigation would start with making the entry in a book to be kept by the officer in charge of a police station, of the substance of the information relating to the commission of a cognizable offence. The investigation started thereafter can end up only with the report filed by the police as indicated in Section 173 of the Code. The investigation contemplated in that chapter can be commenced by the police even without the order of a Magistrate. But that does not mean that when a Magistrate orders an investigation under Section 156(3) it would be a different kind of investigation. Such investigation must also end up only with the report contemplated in Section 173 of the Code. But the significant point to be noticed is, when a Magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence.

9. But a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code. A reading of Section 202(1) of the Code makes the position clear that the investigation referred to therein is of a limited nature. The Magistrate can direct such an investigation to be made either by a police officer or by

any other person. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. This can be discerned from the culminating words in Section 202(1) i.e. "or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding".

10. This is because he has already taken cognizance of the offence disclosed in the complaint, and the domain of the case would thereafter vest with him.

11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 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 Page 195 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 under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge or the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps

contemplated in Chapter XII of the Code only thereafter.”

9. A careful examination of the above judgment only shows that even if a Magistrate does not say in so many words while directing investigation under Section 156(3) CrPC 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. However, it does not mean that if investigation is undertaken without registering an FIR, the investigation report gets wiped out as a nullity.

10. Likewise, in *Madhu Bala v. Suresh Kumar* it was explained by the Supreme Court that when an order for investigation under Section 156(3) CrPC is to be made, the proper direction to the police would be “to register a case at the police station treating the complaint as the first information report and investigate into the same”. A reference in the said judgment in *Madhu Bala v. Suresh Kumar* was made to Rule 24.5 of the Punjab Police Rules, 1934 which according to the learned counsel for the petitioner equally applies in the instant case. While the learned counsel for the petitioner may be right in submitting that the record in the present case does not show that the police had in fact registered any FIR, the status report filed by them pursuant to the direction issued by

the learned MM on 10th September 2007 does indicate that an inquiry was made. This is apparent from the following sentence:-

“Regarding para No.4 enquiry conducted revealed that no one came there with deadly weapons or manhandled anyone there”.

A reference is also made in the status report to the enquiry conducted by the SHO as well as ACP/Hauz Khas who visited the temple and found the dispute to be a “civil matter within the members of this trust and devotees”. Therefore, the contention of the learned counsel for the petitioner that no investigation took place by the police pursuant to the direction issued by the learned MM on 10th September 2007, is incorrect.

11. In the present case, the learned MM entertained the application under Section 156(3) CrPC and gave a direction to the police to file a status report. The police complied with this direction by making an inquiry and filing a status report on 29th April 2007. Therefore, the requirement of the law as explained by the Supreme Court in the aforementioned judgments should be taken to have been satisfied in the instant case.

12. The impugned order dated 30th November 2007 of the learned MM shows that the learned MM perused the status report. Therefore, the learned MM was perhaps not right in rejecting the application under Section 156(3) CrPC. In effect, the relief granted in that application had

worked itself out. The direction already issued therein on 10th September 2007 had resulted in a status report by the police. The question to be considered is what should the learned MM have done after receiving the status report of the police? The said report was in the nature of a 'cancellation report' since according to the police no ground was made out for registering a criminal case for the commission of any offence.

13. According to the learned counsel for the petitioner only two courses were open to the learned MM. One was to accept the status report and close the case. The second was to order a further investigation. It is submitted that there was no third course available under the CrPC.

14. This Court does not find this submission to be correct. It has been held by the Supreme Court in *H.S. Bains v. State* AIR 1980 SC 1883 that there are three courses open to the learned MM. In para 6 of the judgment in *H.S. Bains* it was explained thus (AIR SC @ 1885):

“6. It is seen from the provisions to which we have referred in the preceding paragraphs that on receipt of a complaint a Magistrate has several courses open to him. He may take cognizance of the offence and proceed to record the statements of the complainant and the witnesses present under Section 200. Thereafter, if in his opinion there is no sufficient ground for proceeding he may dismiss the complaint under Section 203. If in his opinion there is sufficient ground for proceeding he may issue

process under Section 204. However, if he thinks fit, he may postpone the issue of process and either enquire into the case himself or direct an investigation to be made by a Police Officer or such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. He may then issue process if in his opinion there is sufficient ground for proceeding or dismiss the complaint if there is no sufficient ground for proceeding. On the other hand, in the first instance, on receipt of a complaint, the Magistrate may, instead of taking cognizance of the offence, order an investigation under Section 156(3). The police will then investigate and submit a report under Section 173(1). On receiving the police report the Magistrate may take cognizance of the offence under Section 190(1)(b) and straightaway issue process. This he may do irrespective of the view expressed by the police in their report whether an offence has been made out or not. The Police report under Section 173 will contain the facts discovered or unearthed by the police and the conclusions drawn by the police therefrom. The Magistrate is not bound by the conclusions drawn by the Police and he may decide to issue process even if the Police recommend that there is no sufficient ground for proceeding further. The Magistrate after receiving the Police report, may, without issuing process or dropping the proceeding decide to take cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record

the statements upon oath of the complainant and the witnesses present under Section 200 Criminal Procedure Code and thereafter decide whether to dismiss the complaint or issue process. The mere fact that he had earlier ordered an investigation under Section 156(3) and received a report under Section 173 will not have the effect of total effacement of the complaint and therefore the Magistrate will not be barred from proceeding under Sections 200, 203 and 204. Thus, a Magistrate who on receipt of a complaint, orders an investigation under Section 156(3) and receives a police report under Section 173(1), may, thereafter, do one of three things : (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence under Section 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report : (3) he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. If he adopts the third alternative, he may hold or direct an inquiry under Section 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be.”

15. In fact in the instant case, the learned MM has opted for the third

alternative as highlighted by the Supreme Court in *H.S. Bains*. He has taken cognizance of the offence on the basis of the complaint in terms of Section 190(1)(a) CrPC. He has then called upon the complainant to examine himself and his witnesses. In view of the clear position of the law as explained by the Supreme Court in *H.S. Bains*, this Court finds no illegality in the impugned order dated 30th November 2007 passed by the learned MM.

16. There is no merit in this petition and it is accordingly dismissed with no orders as to costs.

S. MURALIDHAR, J.

MARCH 02, 2009
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