

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. M.C. 3575/2008**

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Date of decision: 10.02.2009

PAWAN VERMA

...PETITIONER

*Through: Mr. L.K.Verma and Mr. Subhash,
advocates*

Versus

S.H.O. P.S. MODEL TOWN & ORS

...RESPONDENT

Through: Mr. Navin Sharma, APP for State

CORAM:

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be
reported in the Digest? | YES |

MOOL CHAND GARG, J.(Oral)

1. In this case the petitioner entered into an agreement with one Mr. Rajnish Verma and Dalip Kapoor for the purchase of property bearing no. B-184/1, Derewal Nager, Delhi consisting of first floor and second floor with roof right. It was to be purchased for a sum of Rs. 1,15,00,100/- and in this connection the petitioner says that he also paid sum of Rs. 14,00,100/- to those persons. It is also his case that the aforesaid person failed to execute a sale deed in his favour despite appearing before the Sub-Registrar on 30.06.2008. Thereafter the petitioner instead of

filing a suit for recovery decided to file a complaint under Section 200 Cr.P.C. along with an application under Section 156 (3) Cr.P.C. seeking registration of a FIR against the two accused persons, namely, Rajnish Verma and Dalip Kapoor under Section 420/468/467/471/506/120-B/34 IPC on the allegations that these persons were not willing to execute the sale deed in their favour and in fact the documents which were shown by them to the petitioner were also not genuine.

2. The Learned Metropolitan Magistrate after hearing the petitioner refused to direct the Police to register a case under Section 156 (3) and ordered that the petitioner may lead his evidence vide order dated 25.09.2008. The said order is reproduced for the sake of reference.

“25.09.2008

C.C.No.2554/008

Arguments heard on application under application u/s 156(3) Cr.P.C. for sending the case to the area police for investigation.

It is submitted by counsel for the complaint that the accused persons had agreed to sell first floor and second floor of property bearing No. B-184/1, Derewal Nagar, Delhi by showing a General Power of Attorney executed in favour of the accused No.1 by his mother which were later found to be fake and forged and in this way the accused person cheated the complainant.

I have given my thoughtful consideration to the submissions made on behalf of the complainant.

From the facts and circumstances of the case and the documents produced by the complainant, I am of the opinion that the documents sought to be produced by the complainant and the identity of the accused persons are ascertained. No technical investigation is required to be conducted by the police. The evidence regarding complaint can be conveniently taken in the Court itself and there is no need for sending the case to the area

police for investigation. The assistance of the police will be taken under Section 202(1) Cr.P.C. if need be.

The application is dismissed.

Put up for pre-summoning evidence and further proceedings on 20.11.2008.”

3. Learned counsel for the petitioner submits that this order suffers from infirmity inasmuch as in the facts of this case there was a necessity for custodian interrogation of the two accused persons with a view to find out the correctness of their claim to have entered into an agreement with the petitioner for sale of the property in question and having deprived the petitioner with the sum of Rs. 14,00,000/- despite having no capacity to sell property in question.

4. Perusal of the facts as stated by the petitioner goes to show that in this case the disputes raised by the petitioner with the accused persons are in the nature of civil disputes and it is a matter of investigation, if any, criminal element is involved which petitioner can establish by examining himself and by leading such other evidence as he may feel proper as also by approaching the Magistrate to summon the relevant documents under Section 91 Cr.P.C. This is precisely what the Magistrate has asked the petitioner to do by the impugned order.

5. However, the petitioner does not want to exercise his power which is available to him to lead evidence under Section 200 Cr.P.C. which enables the petitioner to set out his case against the accused persons and to lead evidence which is in his power of

possession for the purpose of enabling the Magistrate to form an opinion as to whether it is a fit case to proceed against the accused persons for the offences alleged by him. It may be that if the Court feels at some stage that there is a necessity to ask for a Police report the Court is not deprived of exercising such powers even at any stage under Section 200 Cr.P.C. i.e. after recording the evidence of the petitioner under Section 202. The procedure which has been mentioned in Chapter 15 is very clear. It lays down a proper procedure for enabling the Magistrate to take cognizance of an offence on the basis of a complaint filed by the aggrieved party. But initially the Court has to record the evidence of the complainant under Section 200 Cr.P.C. and, thereafter being satisfied with the evidence so recorded and may be seeking help of the Police to obtain further investigation report to issue a process there and then or after the report is received. The relevant provisions of Cr.P.C. are reproduced for the sake of reference.

"200 - Examination of complainant:- A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

201 - Procedure by Magistrate not competent to take cognizance of the case : If the complaint is made to a Magistrate who is not competent to take cognizance of the offence he shall,—

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper Court.

202 - Postponement of issue of process

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192 , may, if he thinks fit¹[and shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction], postpone the issue of process against the accused, and either inquire into the case himself 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:

Provided that no such direction for investigation shall be made—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200 .

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

203 - Dismissal of complaint :-If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

204 - Issue of process :-(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87."

6. It is not that in every case merely on the asking of the petitioner the Court must direct registration of an FIR unless the Court is satisfied with the preliminary evidence which is to be submitted by the complainant with an FIR must be registered. In fact this matter has also been gone into by the Apex Court in the case of Sakiri Vasu Vs. State of Uttar Pradesh and Others (2008)

2 SCC 409 where it has been held:

“25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the Police station and/or a proper investigation is not being done by the police, he rushed to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters and relegate the petitioner to his alternating remedy, first under Section 154(3) and Section 36 Cr.P.C. before the police officers concerned, and if that is of no avail, by approaching the Magistrate concerned under Section 156(3).

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 under Section 154(3) Cr.P.C or other police office referred to in Section 36 Cr.P.C. 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 under Section 156(3) Cr.P.C instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover, he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the police officers concerned, and if that is of no avail, under Section 156(3) Cr.P.C before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C and not by filing a writ petition or a petition under 482 Cr.P.C”

7. In view of the aforesaid it is not a case where any illegality has been committed by the Magistrate which calls for any interference by this Court by invoking its power under Section 482 of the Cr.P.C.

8. As such the petition is dismissed with the liberty which is always granted to him by the Learned magistrate.

9. He may appear before the Magistrate on the date already fixed. A copy of the order be sent to the Magistrate.

Dasti.

MOOL CHAND GARG,J

FEBRUARY 10, 2009

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