

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

Date of Reserve: 15th July, 2010

Date of Order: August, 11th 2010

+ Writ Petition(Crl.) No.804 of 2008

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Mr. Amit Khera

Through: Mr. Subhash Gulati, Advocate

11.08.2010

...Petitioner

Versus

Govt. of NCT of Delhi & Ors.

Through: Mr. Sunil Sharma, APP for State

Mr. Asim Naeem, Advocate for R-6 to 8

...Respondents

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

JUDGMENT

1. By the present petition, the petitioner has assailed an order passed by learned ASJ dismissing the revision petition of the petitioner against an order of learned MM dismissing an application for the petitioner under Section 156(3) Cr.P.C.

2. Brief facts relevant for purposes of deciding the present petition are that the petitioner made a complaint to SHO that he received threats on his mobile phone from another mobile phone whose phone number petitioner disclosed. The petitioner had recorded the conversation of the caller and himself and gave this conversation to the police and wanted police to initiate action. The police, however, did not register an FIR. The petitioner thereafter approached the learned MM. The learned MM in his order observed that in his opinion the allegations made in the application by the petitioner do

not warrant registration of an FIR as the petitioner had failed to explain why involvement of police machinery was required since no recovery was to be made by the police officials and the allegations of illegal demand of money and giving threats could very well be established before the Court on leading proper evidence. He further observed that no technical or scientific investigation was required, therefore, he refused to give directions under Section 156(3) Cr.P.C for registration of FIR and dismissed the application of the petitioner. He went on observing that since the applicant had not approached the Court with a complaint under Section 200 Cr.P.C and only sought directions for registration of FIR, no further action was needed on his application. He gave liberty to the applicant to file a complaint under Section 200 Cr.P.C. The learned ASJ before whom the revision was preferred observed that though no form of complaint under Section 200 Cr.P.C was prescribed, the application made by the petitioner could not be treated as a complaint under Section 200 Cr.P.C and the petitioner was at liberty to file a regular complaint under Section 200 Cr.P.C. He found no infirmity in the order of trial court.

3. Both the orders above show insensitiveness of the courts to the poor litigants and apathy to the common man. Both the courts below acted in an arbitrary manner contrary to the settled legal position. Section 2(d) Cr.P.C. defines complaint as under:

(d) "Complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation. A report made by a police officer in a case, which discloses, after investigation, the commission of a non-cognizable offence shall be deemed a complaint and the police officer by whom such report is made shall be deemed to be the complainant.

4. Section 200 Cr.P.C requires a Magistrate to take cognizance of an offence on a

complaint. When a complaint is made before the Magistrate, the Magistrate has to examine complainant and other witnesses present, on oath and he has to record substance of such examination and ask the complainant and witnesses to sign the same. However, a complaint can be made before the learned MM orally as well as in writing. Thus, when a complainant approached the Court with an application under Section 156(3) Cr.P.C with specific allegations that his report was not being registered by the police and the police was not acting, the Magistrate could not have sent back the person, unless the Magistrate had come to the conclusion that from the complaint, no cognizable offence was made out. The reasons given by the Court of MM and upheld by the Court of ASJ for not acting on the application of the petitioner are bereft of any logic. On receipt of a complaint, the duty of the police is not only to do scientific investigation and make recoveries, it has to take action against the offenders as per law. The investigation is done by police even by the recording statements of witnesses. Moreover, in the present case, the petitioner was having only phone number of the caller and police had resources to find out the name of the caller and other particulars of the caller by approaching service providers, which the petitioner himself could not have done. I, therefore, consider that the learned MM went wrong in observing that no FIR was required to be registered since no scientific investigation/ recovery needed to be done.

5. The learned MM and learned ASJ both went wrong in observing that a formal complaint was required to be made by the complainant under Section 200 Cr.P.C. Section 200 Cr.P.C does not require making of a written formal written complaint by a complainant. A complainant can just appear before the Court of MM and request the Court to take his oral complaint on record. The Court of MM, under Section 200 Cr.P.C, is obliged to record the statement of complainant and his witness, if any, appearing with him, and the learned MM has to act on such a statement, if commission of a cognizable offence is disclosed. The Court cannot refuse to entertain a complainant who appears in

person before the Court and wants to make an oral complaint. In the present case, the complainant had made an application under Section 156(3) wherein he had made specific allegations against respondent. The Court was duty bound to take cognizance of this complaint as a complaint of the petitioner and was bound to act upon it. The petition is hereby allowed and the order passed by learned MM and learned ASJ both being illegal orders are hereby set aside. The application of the petitioner under Section 156(3) is allowed. The police of police station Delhi Cantt. is hereby directed to register an FIR on the complaint of the petitioner. The concerned SHO shall register a case and bring it to a logical conclusion, after proper investigation.

6. The petition stands allowed.

August 11, 2010
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SHIV NARAYAN DHINGRA J.