

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

Judgment reserved on: March 03, 2011
Judgment delivered on: March 30, 2011

+ **W.P.(CRL.)No.300/2011**

ANURADHA GOYAL

....PETITIONER

Through: Mr. R.P.S. Bhatti, Advocate

Versus

STATE OF DELHI & ORS.

.....RESPONDENTS

Through: Mr. Akshay Bipin, ASC

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

AJIT BHARIHOKE, J.

1. Anuradha Goyal, the petitioner herein vide instant Writ Petition under Article 226 of the Constitution of India read with Section 482 Cr.P.C. is seeking direction to the SHO P.S. Nand Nagri to include the offences under Sections 392/452/506 IPC in the FIR No.153/2010 registered at P.S. Nand Nagri under Sections 324/379/366/34 IPC on the complaint of Pawan Goyal.

2. Learned counsel for the petitioner has submitted that FIR No.153/2010 was registered at P.S. Nand Nagri under Sections 366/324/379/34 IPC on the complaint of Pawan Goyal. It is argued that the officers of P.S. Nand Nagri has committed violation of mandate of Section 154 Cr.P.C. by not including the offences under Sections 392/452/506 IPC in the FIR, though the complaint made by the complainant Pawan Goyal clearly disclose the commission of said offences. In this regard, he has referred to the FIR which was registered on the complaint of Pawan Goyal wherein he has categorically stated that in the morning at about 5:30 am, he awoke on hearing the alarm raised by his niece Ayushi. He noticed that 3-4 persons aged between 24-26 had trespassed into their house and were forcibly abducting his niece Ayushi. When he tried to rescue Ayushi, they inflicted a knife wound on his right shoulder resulting in injury. He followed them downstairs and noticed that one of the culprits were wearing police uniform and those persons abducted Ayushi in a green colour Maruti Zen. Complainant also alleged that those persons also robbed him of ₹2,000/- by removing the money from his pocket and while leaving and they threatened to kill his brothers Amit and Manish. Learned counsel argued that from the aforesaid statement, prima facie, commission of offence of robbery punishable under Section 392 IPC, house trespass after preparation for causing hurt or wrongful restraint punishable under Section 452 IPC and criminal intimidation punishable under Section 506 IPC is disclosed. Despite that the officials of P.S.

Nand Nagri did not include those offences in the FIR which is against the law. Thus, he has urged for direction to the police to include aforesaid Sections in the FIR.

3. Learned ASC appearing for the respondent/State submitted that the FIR in this case has been registered promptly on the statement of the complainant. The matter is still under investigation and if the investigation reveals commission of the offence under Section 392/452/506 IPC, the police obviously would file charge sheet against the accused persons including those Sections also.

4. I have considered the rival contentions and perused the material on record. The Supreme Court in ***State of Haryana & Ors. Vs. Bhajan Lal & Ors., 1992 (Supp.) 1 SCC 335*** had an occasion to consider the law relating to Section 154 of Code of Criminal Procedure and held 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 to register a case on the ground that the information is not reliable or credible. On the other hand, the officer incharge 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 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-extensor in the present context). In case, an officer incharge of a police station refuses to exercise the jurisdiction vested on 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 if satisfied that the information forwarded to him discloses a cognizable

offence, should 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 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 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 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 CrPC of 1861 (Act XXV of 1861) passed by the Legislative Council of India read that 'every complaint or information' preferred to an officer incharge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act X of 1872) which thereafter read that 'every complaint' preferred to an officer incharge 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 190(c) of the present Code of 1973(Act II 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.

33. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer incharge of a police station satisfying the requirements of Section 154(1) of the Code, the 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."

5. Similar issue came up before the Division Bench of this Court in **Abhey Nath Dubey Vs. State of Delhi and Ors., 2002 VI AD (Delhi) 528** and the Division Bench of this Court succinctly dealt with the mandate of Section 154(1) of the Code as under:

"13.....The position that emerges and which is reiterated is that Section 154(1) casts a statutory obligation on an officer to enter substance of

information laid before him disclosing commission of cognizable offence in the prescribed form/book and to register an FIR. He may conduct some enquiry if he finds the information and allegations contained in the complaint/report indefinite, uncertain and vague raising doubts on the commission of cognizable offence. But where such offence was, prima facie, disclosed, he had no option to embark on full-fledged enquiry to ascertain the genuineness or reliability of such information and allegations and draw his conclusions and render the investigation redundant and to refuse registration of FIR. He would be breaching the mandate of Section 154(1), thereby. Looking at it from the other angle, refusal to register an FIR is loaded with some serious consequences for informant/complaint. It seals the fate of his complaint for good and deprives him of participation in investigation in which he could substantiate his allegations. It also deprives him of a second opportunity to support his case before Magistrate in the event Police Officer files a closure report in the FIR in which he is entitled to a notice and to oppose such closure report. The officer is neither empowered nor could he be allowed to assume the role of investigator before registration of FIR. His role begins with registering the FIR and ends with presenting charge sheet or challan before the competent court on the alleged offence.”

6. The complainant Pawan Goyal in the FIR has specifically alleged that the accused persons trespassed into their house and forcibly abducted his niece Ayushi. When he resisted and tried to rescue Ayushi, he was stabbed with a knife and was also robbed ₹2000/- by those persons. He has further alleged that while leaving, the accused persons threatened to kill his brothers Anil and Manish. Aforesaid allegations in the FIR, prima facie, disclosed the commission of offence under Sections 392/452/506 IPC. Thus, in view of the settled legal position and the mandate of Section 154 Cr.P.C., the police was under statutory obligation to register the case under aforesaid sections also and investigate in accordance with law. Thus, the local police apart from the other offences ought to have included offence under Sections 392/452/506 IPC in the FIR.

7. In view of the above, writ petition is allowed. Respondents are directed to include offences under Sections 392/452/506 IPC in the FIR and investigate the case fairly and expeditiously in accordance with law.

8. Writ petition stands disposed of.

(AJIT BHARIHOKE)
JUDGE

MARCH 30, 2011
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