

I~30

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

Date of Decision : 30th October, 2014

+ W.P.(CRL) 1528/2014 & CrI.M.A. No.11503/2014

BALDEV SINGH SOLANKI

..... Petitioner

Through : Petitioner in person.

versus

STATE & ORS

..... Respondents

Through : Mr.Manoj Bhandari, Adv. for
Mr.Sanjeev Bhandari, ASC for the
State/R-1.
Mr.Sumit Chaudhary, Adv. for R-3.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (ORAL)

1. The Petitioner, who is also an Advocate by profession, has filed this writ petition invoking the writ jurisdiction of this Court with the following prayers :-

(i) to quash/set aside the judgment/order dated 26.04.2014 passed by learned Addl. Session Judge in CR Nos.16/14 and 17/14.

(ii) to direct the State, Govt. of NCT of Delhi to compensate the Petitioner/victim because his property has been grabbed by the gundas due to not taking the legal action against the trespassers.

2. In nutshell, the case of the Petitioner is that his father was owner of a plot measuring 200 sq.yards bearing No.F-42 in Khasra No.74/1 in the revenue estate of Village Pooth Kalan, Delhi. After the death of his father

on 27.05.1982, mutation of the said land was done by the Tehsildar on 16.06.1982 in the name of the Petitioner and his brother.

3. One Bhagwati Devi and her associates conspired to grab the said plot of land and on the basis of forged documents, sold the same to one Praveen Kumar.

4. It is further the case of the Petitioner that on 08.09.1998, some goons armed with weapons committed trespass on the said plot and demolished the room built there and started raising illegal construction. When the Petitioner tried to stop them, he was threatened with dire consequences. Pursuant to the call made to the PCR, nobody turned up till 6.38 pm thereby compelling the Petitioner to personally visit PS Sultan Puri. After about an hour, HC Prahalad Singh accompanied by one Constable reached the spot vide DD No.75-B.

5. The main grievance of the Petitioner is that the concerned SHO did not take any action in the matter. He also made complaint on 15.09.1998 to DCP (North-West District), Ashok Vihar but despite that no legal action was taken against the trespassers. The Petitioner also made a written complaint to DCP (Outer District) on 13.01.2010 regarding this incident.

6. On failure of the police authorities to take necessary action against the trespassers, Petitioner filed a complaint case before learned MM alongwith an application under Section 156(3) Cr.P.C. After the dismissal of his application under Section 156(3) Cr.P.C., he led pre-summoning evidence. On the basis of pre-summoning evidence, the learned MM, apart from other accused persons, also summoned Respondent No.2 Satyender Garg, the then DCP (North-West District) and Respondent No.3 Jagbir Singh Malik, the then SHO, PS Sultan Puri for committing the offence under Sections 120-B

IPC and 442/34 IPC.

7. Respondents No.2 and 3 herein filed separate criminal revision petitions bearing No.17/14 and 16/14 respectively impugning the order dated 08.12.2011 passed by learned MM vide which they were summoned as accused persons.

8. Notices of the criminal revision petitions were sent to the Writ Petitioner, who was impleaded as Respondent No.2 (Respondent No.1 being State) in the aforesaid revision petitions.

9. After hearing learned counsel for the Revisionists (Respondent No.2 and 3 before this Court) and Respondent No.2 (writ Petitioner before this Court), both the revision petitions were allowed by learned Addl. Sessions Judge observing that summoning of an accused in a criminal case is a serious matter. The allegations made in the Complaint and in the testimony of Respondent No.2/writ Petitioner, at the most, made out a case of non-action on the part of the police for which the present proceedings were not the remedy. Even as per the complaint, the accusations against the Revisionists were for committing the offence punishable under Section 216 IPC but they have been summoned for committing the offence under Section 120-B IPC and 442/34 IPC without there being any evidence to that effect. After examining the case of the Revisionists as per the settled legal position, the learned Addl. Session Judge arrived at the conclusion that when it was not even the case of Complainant/Respondent No.2 (writ Petitioner before this Court) that the Revisionists entered into any criminal conspiracy in furtherance of which Complainant/Respondent No.2 was dispossessed from the property in question, they could not have been summoned for committing the offences under Section 120-B IPC and 442/34 IPC.

10. The application under Section 340 CrPC filed by the Complainant/Respondent No.2 before learned Addl. Session Judge was also dismissed by learned Addl. Session Judge observing that the manner in which the summon was sent without mentioning that Jagbir Singh, the then SHO, PS Sultan Puri was summoned as an accused and the number of processes being received by the then SHO at the Police Station could not have been construed to be a summon received by him in his personal capacity. In the given facts and circumstances, the learned Addl. Session Judge formed an opinion that it was not expedient in the interest of justice to conduct an inquiry into the allegations made in the application under Section 340 Cr.P.C. and the same was also dismissed.

11. The Petitioner, who has conducted his case in person, has raised following contentions before this Court :

- (i) The complaint made by the writ Petitioner before the police disclosed commission of a cognizable offence and required registration of FIR.
- (ii) Despite the complaint being made to the then DCP (North-West District) – Respondent No.2 herein, the then SHO, PS Sultan Puri – Respondent No.3 herein failed to register an FIR in the matter as a result of which the writ Petitioner was deprived of the plot owned by him.
- (iii) By not registering the FIR against the trespassers, Respondents No.2 and 3 both had committed the offence punishable under Sections 216/217 IPC i.e. for harbouring the offenders.
- (iv) It was the duty of Respondents No.2 and 3 to take action against the offenders, which they have failed to discharge and harbouring of offenders does not form part of discharge of duty so as to require obtaining of sanction for their prosecution under Section 197 Cr.P.C. or under Section 140 of

D.P.Act.

(v) The Application under Section 340 Cr.P.C. filed by him for the reasons that Respondent No.3 had received the summons well in advance for the date of hearing before learned MM on 23.03.2012 but he deliberately failed to appear before the Court on 05.05.2012. When bailable warrants were issued against Respondent No.3 – Jagbir Singh Malik, the then SHO, PS Sultan Puri and HC Prahalad Singh for the next date of hearing i.e. 14.05.2012, Respondent No.3 sent a request that he was going out of station which could not have been done by him and he also filed written affidavit in respect of the wrong calculations of the days while filing the revision petition.

12. The Petitioner has relied upon ***Dr.Subramanian Swamy vs. Director, Central Bureau of Investigation & Anr. 2014 (6) SCLE 146*** and ***Insp. Bal Krishan vs. State of Delhi 2000 Cri.L.J. 1217*** and submitted that in the given facts and circumstances, in view of the decision of Supreme Court in the above reports, no sanction is required to be obtained for prosecution of Respondents No.2 and 3. Petitioner has also placed reliance on ***Ramesh Kumari vs. State (NCT of Delhi) 2002 Cri.L.J. 1322*** in support of his contention that the police is duty bound to register a case on the basis of information disclosing cognizable offence.

13. I have carefully considered the submissions made by the Petitioner and also gone through the record.

14. First of all, this Court has to consider the scope of interference by this Court in writ jurisdiction in respect of the order passed by learned Addl. Session Judge in exercise of revisional jurisdiction. In the case of ***Surya Dev Rai vs. Ram Chander Rai & Ors. AIR 2003 SC 3044***, it was held as

under :

9. Article 226 of the Constitution of India preserves to the High Court power to issue writ of certiorari amongst others. The principles on which the writ of certiorari is issued are well-settled. It would suffice for our purpose to quote from the 7-Judge Bench decision of this Court in **Hari Vishnu Kamath v. Ahmad Ishaque and Ors.** - MANU/SC/0095/1954 : [1955]1SCR1104 . The four propositions laid down therein were summarized by the Constitution Bench in **The Custodian of Evacuee Property Bangalore v. Khan Saheb Abdul Shukoor etc.** - MANU/SC/0297/1961 : [1961]3SCR855 as under:-

".....the High Court was not justified in looking into the order of December 2, 1952, as an appellate court, though it would be justified in scrutinizing that order as if it was brought before it under Article 226 of the Constitution of issue of a writ of certiorari. The limit of the jurisdiction of the High Court in issuing writs of certiorari was considered by this Court in **Hari Vishnu Kamath v. Ahmad Ishaque** 1955-I S 1104 : MANU/SC/0095/1954 : [1955]1SCR1104 and the following four propositions were laid down:-

"(1) Certiorari will be issued for correcting errors of jurisdiction;

(2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice;

(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous.

(4) An error in the decision or determination itself may also be amendable to a writ of certiorari if it is a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of

the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision."

15. The facts narrated in the writ petition as well as mentioned in the complaint reflect the grievance of the Petitioner limited to the extent that despite information being given to the police in respect of the alleged commission of a cognizable offence, FIR was not registered by the police. As per the petitioner, this amounts to commission of offence punishable under Sections 216/217 IPC.

16. In view of the legal position on the subject as laid down in the case of ***Sakiri Vasu vs. State of U.P. and Ors. (2008) 2 SCC 409***, this plea of the Petitioner is liable to be rejected. The Supreme Court while mentioning the remedy available to a person in case of non-registration of FIR by the police, in paragraphs 26 & 27 of the report observed as under:-

"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 officer 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 concerned police officers, 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 Section 482 Cr.P.C.”

17. It is Petitioner's own case that he had availed the remedy as per the law by first informing the DCP (North-West) about his grievance and then filing a complaint case before the Court having jurisdiction over the matter.

18. The Petitioner has relied upon ***Ramesh Kumari vs. State (NCT of Delhi)*** (Supra) wherein the observations were made by the Supreme Court to the effect that if allegations are made against police personnel, interest of justice would be better served if investigation is conducted by an independent investigating agency like CBI. Thus, it has no application to the facts of the present case.

19. So far as reliance placed by the Petitioner on the case of ***Insp. Bal Krishan vs. State of Delhi*** (Surpa) is concerned, it has no application to the present case as in that case the allegation against the police officer was for pushing the son of the Complainant from the roof for which FIR for committing the offence punishable under Section 325 IPC was registered. In that circumstance it was held by this Court that there was no reasonable nexus between the act committed and the duty attached to his office.

20. The Petitioner has relied upon ***Dr.Subramanian Swamy vs. Director, Central Bureau of Investigation & Anr.*** (Supra) to buttress his submission that there was hardly any requirement to obtain sanction for prosecution of Respondents No.2 and 3 as the act committed by them i.e. non-registration of FIR, cannot be considered to be done in discharge of their official duty. Thus, no sanction was required to be taken for the prosecution of Repsondents No.2 and 3. I am of the view that question before this Court is

whether on the basis of averments made in the complaint case as well in the deposition during pre-summoning evidence in that case, there were sufficient ground to proceed against Respondents No.2 and 3 for the offence under Section 120-B IPC and 442/34 IPC for which they were summoned by learned MM or for harbouring the offence as alleged by the Petitioner.

21. Learned Addl. Session Judge, in exercise of revisional jurisdiction, arrived at the conclusion that it was neither the case of the Complainant that any offence under Section 120-B IPC and 442/34 IPC was committed nor there existed any such evidence requiring summoning of Respondents No.2 and 3 herein for the aforesaid offences. Apart from that, the revisional Court has dealt with the requirement of sanction under Section 197 Cr.P.C. and under Section 140 of D.P. Act. There is hardly any need to look into the aspect of sanction for the reason that grievance of the Petitioner is that despite police being informed about the trespass in his property, FIR was not registered. It is this alleged inaction which was referred to by him in the complaint case.

22. Failure of the police officer to register an FIR on the basis of complaint disclosing commission of cognizable offence has been dealt with by the Supreme Court in the case of ***Lalita Kumari vs. Govt. of U.P. & Ors. in W.P.(Crl.) No.68/2008 decided on 12.11.2013.***

In ***Lalita Kumari's case*** (Supra), the issue deliberated upon was formulated in para 1 of the report as under :

'1. The important issue which arises for consideration in the referred matter is whether "a police officer is bound to register a First Information Report (FIR) upon receiving any information relating to commission of a cognizable offence under Section 154 of the Code of Criminal Procedure 1973 (in short 'the Code') or the police officer has the power to conduct a "preliminary inquiry" in order to

test the veracity of such information before registering the same?’

23. After considering in detail all the aspects of the matter and earlier decision, the Supreme Court has issued following directions:

‘111. In view of the aforesaid discussion, we hold:

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

112. With the above directions, we dispose of the reference made to us. List all the matters before the appropriate Bench for disposal on merits.'

24. Sections 216 and 217 IPC read as under :

'216. Harboursing offender who has escaped from custody or whose apprehension has been ordered – *whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody;*

Or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following that is to say, -

If a capital offence - if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine;

If punishable with imprisonment for life, or with imprisonment - if the offence is punishable with[imprisonment for life], or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine;

And if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

*[“Offence” in this section includes also any act or omission of which a person is alleged to have been guilty out of [India], which, if he had been guilty of it in [India], would have been punishable as an offence, and for which he is under any law relating to extradition, [***] or otherwise, liable to be apprehended or detained in custody in [India]; and every such act or omission shall, for the purpose of this section, be deemed to be punishable as if the accused person had been guilty of it in [India].]*

Exception – This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.’

Section 217 – Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture – *Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend*

to two years, or with fine, or with both. '

25. A bare reading of Section 216 IPC makes it clear that it has no application to the facts of the present case. So far as Section 217 IPC is concerned, in case of failure on the part of the police officer to register an FIR, the Petitioner cannot invoke Section 217 IPC against Respondents No.2 and 3.

26. In the ***Lalita Kumari's case*** (Supra), there is no observation by the Supreme Court to the effect that inaction on the part of the police to register an FIR amounts to commission of an offence punishable under Section 216/217 IPC.

27. It may be noted here that the alleged trespass had taken place in the year 1998 but the complaint case has been filed in the year 2010 i.e. almost after a period of about 12 years. Learned Addl. Session Judge had rightly arrived at the conclusion that on the basis of averment made in the complaint and the pre-summoning evidence, there was hardly any ground to summon Respondents no.2 and 3 for commission of the offence punishable under Sections 120-B IPC and 442/34 IPC. The summoning order being passed without there being any evidence against Respondents No.2 and 3 to summon them as accused persons, has rightly been set aside by learned Addl. Session Judge. Finding no ground to interfere with the impugned order by this Court in exercise of writ jurisdiction, the writ petition is hereby dismissed.

PRATIBHA RANI, J

OCTOBER 30, 2014

'st'