

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

+ **CRL. M.C. No.3587/2013**

Reserved on: 24th April, 2014

% **Date of Decision: 29th May, 2014**

B.S. RANA

..... Petitioner

Through: Mr. Arun Bhardwaj, Sr. Adv. with
Mr. Vikram Singh Panwar & Mr.
Shivam Batra, Adv.

versus

GOVT OF NCT OF DELHI & ANR.

.... Respondents

Through: Mr.O.P. Saxena, APP for the State.
Ms. Heena Shah, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. This is a petition under Section 482 of the Code of Criminal Procedure filed by the petitioner, B.S. Rana assailing the order dated 1.8.2013 passed by learned Additional Sessions Judge-02, South-East, Saket Courts, New Delhi whereby the revision petition filed by respondent no. 2 was allowed.

2. The brief facts giving rise to the present petition are that respondent no. 2 herein filed a complaint under Section 200 Cr.P.C. along with an application under Section 156(3) Cr.P.C., on the allegations, inter alia, that on 7.1.2012 she was posted as a D.D. writer at P.S. Kalkaji and the duty hours were 12 a.m. to 8 a.m. At about 1 am one duty officer informed her that SHO was calling her. When she

went to the SHO, he started talking to her generally. The complainant told him that she was posted as a DD Writer. The petitioner asked her to go to his rest room after ten minutes. As the complainant was walking towards the rest room, on the way she saw the petitioner standing near the stairs. She got scared but still continued to walk towards the rest room as she did not want to disobey the instructions of her superior and demean his authority. It is alleged by the complainant that on reaching the rest room, she stood at the door and without entering the room, asked the petitioner if he wanted anything. The petitioner asked her whether Bhajan Singh has told her anything. Thereafter, he walked towards the second room of the rest room and switched off the light where the complainant and petitioner were standing. The complainant immediately stepped back saying that she was sorry if she had offended him in any way. On this, the petitioner quickly moved towards the complainant and touched her cheek and tried to hold her hand. When the complainant protested, the petitioner tried to stop her with one hand, while with the other hand tried to shut the door of the second room. Somehow, the complainant managed to free herself and ran out of the rest room. She did not say anything to anyone as she was scared and felt humiliated and ashamed. After few minutes, the petitioner came in the D.O. Room and asked the complainant as to why she ran away. On this, the complainant told him that he was wrong and thereafter the petitioner walked out of the room.

3. The complainant alleged that she gave a written complaint to DCP, South East on 7.1.2012 but no action was taken. She also tried to lodge a complaint with the department, but to no avail. The complainant also alleged that instead of taking action on her complaint

made to the Commissioner of Police on 11.1.2012, the complainant was transferred to P.S. Sarita Vihar. It was also alleged that after few days of the incident, people/friends of the respondent no. 2 started asking her to compromise the matter or else she would meet the same fate as that of Bhanwari Devi of Rajasthan. They also took out call details of the complainant with the intention to show her in poor light and protect the respondent No.2. It was also alleged that instead of registering the FIR, the Department only initiated departmental proceedings against respondent no. 2.

4. The complainant filed a writ petition bearing WP (CrI.) No.1438/2012 before this court. Vide order dated 18.2.2013, the said petition was dismissed as withdrawn with liberty to file an application under Section 156(3) of the Cr.P.C.

5. Vide order dated 27.6.2013, learned Metropolitan Magistrate, Saket Courts, Delhi disposed of the application under Section 156(3) Cr.P.C. and directed the petitioner to lead pre-summoning evidence.

6. Against the order dated 27.6.2013, the respondent no. 2/complainant filed Criminal Rev. No.63/2013. Vide impugned order dated 01.8.2013, the said revision petition was allowed and SHO was directed to register an FIR.

7. Feeling aggrieved by the said order dated 01.8.2013 passed by learned Additional Sessions Judge, South East, Saket Courts, Delhi, the petitioner has preferred the present petition.

8. Learned Senior Counsel for the petitioner contended that as per the direction of Commissioner of Police, South East District, Vigilance inquiry was ordered to be conducted. Vide order No. 4415-40/ P/. Cell/ Vig (P-III) dated 18.4.2012 Joint Commissioner of Police, South

East Range, Delhi ordered for a regular departmental inquiry on the complaint made by respondent no. 2. The departmental inquiry was conducted by Mr. Sanjay Kumar Jain, IPS, DCP. During inquiry twelve prosecution witnesses were examined and the petitioner examined 17 witnesses in defence.

9. The Enquiry Officer submitted an Enquiry report dated 24.12.2012. In the enquiry report, the Enquiry Officer concluded that the allegations leveled against the delinquent is not established. There are various holes in the version and opposite and contrary testimony to the allegations. Under present circumstances, there is no corroborative or supportive proof to substantiate the allegations. The Enquiry Officer observed that there is no reason to disbelieve the version of PW-3 and DW's No.2, 6, 7 and 13 that the keys of that rest room were lying with Chitta Munshi. The Enquiry Officer concluded that the charges framed against the delinquent Inspector B.S. Rana (the petitioner herein) is not proved. The said enquiry report was confirmed with the slight modification by the Joint Commissioner of Police (Security), New Delhi vide order dated 19.3.2013. The Joint Commissioner of Police observed that the charges against the delinquent Inspector was not proved during the course of departmental inquiry but the behavior of the delinquent was not up to the mark, therefore, punishment of censure was awarded to the petitioner.

10. Learned Senior Counsel for the petitioner also urged that the Learned Metropolitan Magistrate, Delhi called for status report and in the status report it was mentioned that after conducting enquiry it was found that the alleged incident was between two individuals and there

was no independent witness to prove the allegations. As per the status report, no cognizable offence was made out.

11. Learned Senior Counsel for the petitioner further submitted that no notice of revision petition was served on the petitioner as per provisions of Section 397 of Cr.P.C. He has relied upon judgment in case **Raghu Raj Singh Rousha vs. Shivam Sundaram Promoters (P) Ltd. & Anr.** (2009) 2 SCC 363.

12. Per contra, learned counsel for respondent no. 2 submitted that the allegations against the petitioner disclose cognizable offence, the police is bound to register FIR. He also submits that the Ld. Additional Sessions Judge, New Delhi rightly passed an order for registration of FIR.

13. I have given my thoughtful consideration to the submissions made by learned counsel for both the parties.

14. It is well settled law that when criminal complaint is filed before the Magistrate and upon perusal it is found that it discloses a cognizable offence having been committed, two courses are open to the Magistrate. He may choose to inquire into the complaint by taking cognizance in exercise of his powers under Section 190 Cr.P.C. and proceed to inquire into it in accordance with the procedure laid down in Sections 200 and 202 Cr.P.C. In the alternative, he may refer the complaint to police under Section 156(3) Cr.P.C. for investigation. In the latter case, the Magistrate having given such direction would stay his hand till report under Section 173 Cr.P.C. is submitted by the police, on which further process of law would follow.

15. The Magistrate is not supposed to act mechanically and direct registration of FIR in each and every case in routine and casual

manner. Criminal law is not expected to be set in motion on mere asking of a party. There has to be some substance in the complaint filed and it is only if it appears that the allegations are serious enough and establish the commission of cognizable offence required thorough investigation by the police, an FIR should be ordered to be registered.

16. The law governing the choice to be exercised from amongst the two options has been settled by this Court in **M/s. Skipper Beverages Pvt. Ltd. vs. State, 2001 IV AD (Delhi)**. In the said case it was held that a Magistrate must apply his mind before passing an order under Section 156(3) Cr.P.C. and must not pass these orders mechanically on the mere asking by the complainant. These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of the complainant or custodial interrogation appears to be necessary for some recovery of articles or discovery of facts.

17. In **Aleque Padamsee vs Union of India 2007 CrL. L.J. 3729 (SC)**, the Hon'ble Supreme Court observed that when the information is laid with the police, but no action in that behalf is taken, the complainant can under section 190 read with Section 200 of the Code lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code.

18. Further, in another case **Mona Panwar vs. High Court of Judicature of Allahabad through its Registrar & Ors. (2011) 3 SCC 496** it was held :

“22. The judicial discretion exercised by the appellant was in consonance with the scheme postulated by the Code. There is no material on the record to indicate that

the judicial discretion exercised by the appellant was either arbitrary or perverse. There was no occasion for the learned Single Judge of the High Court to substitute the judicial discretion exercised by the appellant merely because another view is possible. The appellant was the responsible judicial officer on the spot and after assessing the material placed before her she had exercised the judicial discretion. In such circumstances this Court is of the opinion that the High Court had no occasion to interfere with the discretion exercised judiciously in terms of the provisions of the Code.

23. Normally, an order under Section 200 of the Code for examination of the complainant and his witnesses would not be passed because it consumes the valuable time of the Magistrate being vested in inquiring into the matter which primarily is the duty of the police to investigate. However, the practice which has developed over the years is that examination of the complainant and his witnesses under Section 200 of the Code would be directed by the Magistrate only when a case is found to be a serious one and not as a matter of routine course. If on a reading of a complaint the Magistrate finds that the allegations therein disclose a cognizable offence and forwarding of the complaint to the police for investigation under Section 156(3) of the Code will not be conducive to justice, he will be justified in adopting the course suggested in Section 200 of the Code.”

19. In the instant case, the parties are known to each other. The evidence on which respondent no. 2 /complainant relies is within her knowledge and control and if need were to arise for investigation, such possibility is not precluded as the Metropolitan Magistrate entered upon the inquiry under Section 200 and 202 Cr.P.C, proviso to Section 202 Cr.P.C. Proviso to Section 202 Cr.P.C. permits such investigation to be ordered at an appropriate stage of the proceedings.

20. Under these circumstances, learned Metropolitan Magistrate, Delhi had exercised the judicial discretion envisaged under Section 200 of the Cr.P.C. and directed respondent No.2/complainant to lead pre-summoning evidence.

21. In view of the aforesaid discussion, the petition succeeds. The Additional Sessions Judge, South East, Saket, New Delhi had no occasion to interfere with the discretion of Metropolitan Magistrate, Delhi. Thus, the impugned order dated 1.8.2013 passed by learned Additional Sessions Judge, Saket, New Delhi is set aside and the order dated 27.6.2013 passed by learned Metropolitan Magistrate, Delhi is restored.

22. The petition is, accordingly, disposed of.

Crl.M.A. No. 13097/2013

The application is dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

May 29th, 2014
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