

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WP(CRL) No.139/2015**

Reserved on: 07.12.2015

Date of Decision: 18.12.2015

STATE

..... Petitioner

Through: Mr.Avninder Singh, ASC.
SI Manoj Kumar PS Bhalswa Dairy.

versus

YOGENDER SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J.

1. A complaint was made by one Smt.Shiela on 25.08.2011 vide diary no.7257 in the office of DCP (North-West) District against one Yogender Singh. Smt.Shiela had also filed an application under Section 156(3) of the Code of Criminal Procedure before the Metropolitan Magistrate, Delhi who had ordered for registration of the FIR. Consequently, FIR No.121/2014 was registered in police station Bhalswa Dairy for offences under Sections 420/468/471 & 34 of the IPC against the respondent Yogender Singh.

2. The respondent was arrested on 04.06.2014 and his bail application came to be rejected by the learned Metropolitan Magistrate. Yogender Singh (respondent) preferred an application for bail before the Court of learned Addl. Sessions Judge, Rohini Courts, Delhi vide Bail Application No.5490/RC.

3. The learned Addl. Sessions Judge, Rohini Courts rejected the prayer of bail of the respondent by order dated 28.06.2014.

4. While rejecting the prayer of the respondent as referred to above, the Court of the Addl. Sessions Judge commented on the conduct of the investigating agency, the SHO of Bhalswa Dairy and the DCP (North West) as well.

5. It was observed by the Court that the perusal of the police file revealed that the complainant Smt. Shiela had lodged a complaint in the office of DCP, North-West vide diary No.7257 dated 25.08.2011 but no action was taken on the said complaint by the concerned SHO for the reasons best known to him. Thereafter on an application under Section 156(3) of the Cr.P.C filed by Smt. Shela, the Metropolitan Magistrate had called for a report from the police authorities. It was only thereafter that necessary permission/approval was sought by the SHO of P.S.Bhalswa Dairy. Even though DCP, North-West granted approval for registration of FIR on 30.01.2014 but the FIR was registered only on 13.01.2014 and no explanation was put forth for such delayed lodging of the first information report. The DCP, North West had also issued directions, while granting approval for registration of the FIR, to send forth report recommending departmental action against those responsible for not registering case on 30.01.2014 only but there was nothing on record to show that such direction of the DCP/North West was carried out.

6. The Court, with a sense of pain, observed that the DCP North West also did not take care to follow up the matter so that his directions could have been complied with in letter and spirit.

7. After having recorded its displeasure over the functioning of the police, the Court also took note of the fact that the late registration of

the FIR clearly violated the directions issued by the Supreme Court in ***Lalita Kumari vs. Govt. of U.P, 2014 (2) SCC page 1.*** A direction was issued by the Court to the DCP, North West to monitor the investigation of the case either himself or through a responsible police officer not below the rank of an ACP so as to ensure that proper, fair and independent investigation is carried out and at the same time the investigation is concluded at the earliest.

8. So far so good.

9. While concluding, the Court directed a copy of the order to be sent to the Commissioner of Police with a direction to take appropriate action against erring police officials including the concerned SHO of P.S.Bhalswa Dairy within two weeks from the date of receipt of a copy of the order and to submit action taken report (ATR). The case was directed to be listed on a particular date before the same Court.

10. The present petition seeks deletion of the aforesaid paragraph from the order rejecting the bail of the respondent Yogender Singh which contained the direction to send the copy of the order to the Commissioner of Police for taking action against erring police officials and to submit the ATR by the Commissioner of police before the same Court.

11. Learned counsel for the petitioner/State submitted that the Court below was perfectly justified in rejecting the prayer for bail but by directing the Commissioner of Police to take action against the erring police officials and submit an ATR, the Court has overstepped its jurisdiction.

12. It has been submitted that after the prayer for bail of an accused

was rejected, the Court, so far as that petition was concerned, became functus officio. Such observations regarding investigation though may be justified but it amounts to arrogating to itself the function of monitoring the investigation in a particular case which is neither warranted nor permissible.

13. A grievance was especially raised with respect to the direction to the Commissioner of Police to take action against the erring police officials and submit an ATR. Once a Court of law holds that a particular functionary of the State or a person has flouted any provision of law, it amounts to conviction. Times without number, the Supreme Court as well as the High Courts have cautioned that judicial orders are respected for the reason that those are couched in legal terms, and they take note of legal provisions and are in conformity with law. There can be no gainsaying the fact that one of the basic principles governing any action is that nobody can be condemned unheard. The officials of the concerned police station and the DCP North West were not afforded any opportunity of explaining cause as to why there was a delayed registration of the FIR. In a case where there is a dispute with regard to ownership and possession of property, police functionaries have to adopt a cautious approach. Unless, in the first instance, it is found out that a criminal case has been made out, there could be no hurried registration of the FIR. A preliminary enquiry, though with urgent dispatch, is required to be made. The Court below did not have the occasion to hear the view point of the investigating agency or the SHO of the concerned police station or the DCP, North West.

14. From the order passed by the Trial Court one can make out that the DCP, North West ordered for the registration of the FIR and also directed for sending in a report, fixing the responsibility on the erring police official at whose instance there was a delayed registration of the FIR. What happened thereafter was not known to the learned Addl. Sessions Judge for him to comment on the functioning of the DCP, North West.

15. While administering justice, a Judge is expected to be acting judicially without being deterred by any consideration. While doing so, he has the liberty of expressing his views about the conduct of the investigating agency or other organs of the Government but has to be careful about not overstepping its jurisdiction. An order or a judgment is a privileged document and a Judge has always to remind himself that the immunity which he enjoys in writing an order or a judgment carries with it the duty of circumspection.

16. If the learned Addl. Sessions Judge was not happy with the way in which the investigation was being carried out, it was enough to record his displeasure. That has been done aptly by the learned Addl. Sessions Judge. What is not approved of is his direction to send his order to the Commissioner of Police for taking action against the erring police officials and submission of action taken report to him. This cannot be taken kindly to on two scores. By saying so, the learned Judge has pre-judged the action/inaction of the investigating agency and other police officers without affording any opportunity to explain the circumstances for delayed lodging of the first information report; and the Court, by seeking action taken report has in a way,

encroached upon the administrative functions of the police administration and thereby has begun monitoring not the investigation of the case but the process of taking disciplinary action against the police officials. The Commissioner of Police, is left with no choice, once a Court of law holds that law has been flouted and, therefore, action be taken against the concerned persons. The disciplinary enquiry, therefore, would only be on paper when the offence is held by the court to have been committed.

17. The observations of the Court with regard to the failure of the investigating agency in taking prompt action is justified and is not being interfered with. What is unnecessary and unwarranted is the direction to the Commissioner of Police for taking action against erring police officials and submission of ATR in that regard. Such directions cannot be countenanced in the eyes of law.

18. The direction of sending the order of the learned Addl. Sessions Judge to the Commissioner of Police for taking action and submission of ATR is, therefore, deleted and expunged from the order.

19. The petition is allowed.

Crl.M.A Nos.830/2015 & 3014/2015

1. In view of the main petition having been allowed, these applications have become infructuous.

2. Applications are disposed of accordingly.

(ASHUTOSH KUMAR)
Judge

DECEMBER 18, 2015

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