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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 14.09.2015

W.P.(CRL) 1844/2015

NARESH KUMAR LAMBA

..... Petitioner

Through: Mr. Prashant Kumar Mittal, Advocate

versus

STATE & ORS

..... Respondents

Through: Ms. Nandita Rao, ASC (Criminal)

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

CRL.M.A.12082/2015 (Exemption)

Exemption granted subject to all just exceptions.

The application is disposed of accordingly.

W.P.(CRL) 1844/2015 & CRL.M.A.12081/2015 (Stay)

1. The present petition was heard on 10.09.2015. However, while dictating the order certain issues arose which warranted clarification from the respective parties. The counsel for the parties have been heard today in this behalf.

2. The present is a petition under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') assailing the order dated 01.07.2015 whereby Criminal Revision Petition No.28/2015 filed on behalf of the petitioner was dismissed by the Sessions Court. The present petition also assails the order dated 07.04.2015 rendered by the concerned Metropolitan Magistrate, Tis Hazari Courts, Delhi whereby the application of the petitioner under section 156(3) of the Code has been dismissed.

3. As is evident, the order dated 01.07.2015 impugned herein was occasioned on account of the dismissal of the application under section 156(3) of the Code filed on behalf of the petitioner.

4. In the landmark decision of a Constitution Bench of the Hon'ble Supreme Court in **Lalita Kumari vs. Government of U.P. & Ors.** reported as **JT 2013 (14) SC 399** it was observed in paragraph 11 as follows:-

“11. 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.”

5. The short question that arises for consideration in the present case is whether a police officer can, upon receiving a complaint, enquire into the veracity or otherwise of the information received or is only permitted to ascertain whether the said information reveals the commission of any cognizable offence, before registering an FIR. The said issue is no longer *res integra*.

6. Admittedly, the present petition arises out of a commercial dispute between brothers over a partnership business. The Hon’ble Supreme Court has clearly delineated that in this factual backdrop, a preliminary enquiry may be conducted by the police.

7. The petitioner being aggrieved by the inaction on the part of the police to register an FIR against his brother, approached the concerned Court by way of an application under section 156(3) of the Code. The concerned Magistrate duly called for a status report from Police Station- Sadar Bazaar, Delhi. The status report filed on behalf of the police reveals that the

petitioner as well as the accused against whom action was sought by the former were brothers carrying on business under the name and style of M/s Vikas Traders since 2008 from a tenanted shop bearing No.5614/1, Gandhi Market, Sadar Bazaar, Delhi. The status report further reveals that the dispute between the parties had been amicably settled in the presence of respectable members of the market but the petitioner subsequently resiled from the said statement and filed a Civil Suit No.74/2011, titled as '*Naresh Kumar Lamba vs. Ashok Kumar Lamba & Sunil Kumar Lamba*', which was dismissed by the Court of Civil Judge, Delhi vide order dated 17.09.2011. The matter was referred to arbitration. The learned Arbitrator appointed for the said purpose passed an order dated 10.09.2012 restraining the petitioner from manufacturing and selling duplicate playing cards with the trademark 'Flex No.11' till final adjudication.

8. A writ petition was preferred by the petitioner assailing the order dated 10.09.2012 passed by the learned Arbitrator, which was dismissed by this Court by way of order dated 02.05.2013 with directions to the petitioner to appear before the learned Arbitrator.

9. After due consideration of the respective stands of the parties, the concerned Magistrate returned a finding that the subject application was the

outcome of a dispute which was civil in nature. Consequently, the application under section 156(3) of the Code was dismissed while preserving liberty to the petitioner to lead evidence in his support.

10. Aggrieved by the decision of the trial court dated 07.04.2015, the petitioner herein preferred a Criminal Revision Petition under section 397 of the Code against the said order dated 07.04.2015. By way of a detailed speaking order dated 01.07.2015, after considering the decision of the Supreme Court in *Lalita Kumari (supra)*, the learned Additional Sessions Judge (Central), Tis Hazari Courts, Delhi has dismissed the revision petition filed on behalf of the petitioner.

11. I have heard learned counsel for the parties and perused the record. In my view, there is no infirmity in the impugned order so as to warrant interference under Article 227 of the Constitution of India. The petition is devoid of merit and is consequently dismissed.

SIDDHARTH MRIDUL, J

SEPTEMBER 14, 2015

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