

\$~1

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 23.10.2019

Pronounced on: 04.12.2019

+ CRL.M.C. 4192/2019

KARTAR SINGH & ANR

..... Petitioners

Through: Mr.Mahipal Singh Drall, Adv.

versus

THE STATE (GOVT. OF NCT OF DELHI) & ORS

..... Respondents

Through: Mr.K.K. Ghai, APP for State.
Insp.Sunil Kumar, SHO/Alipur.
Mr.Atul Guleria, Adv. with
Mr.Gautam Mann, Adv. for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, the petitioner seeks direction thereby to set aside/quash impugned order dated 06.02.2019 passed by learned ASJ, (North) District Courts, Rohini Courts Delhi in the interest of justice and equity.

2. Brief facts of the case are that in the intervening night of 29/30.08.2018 at about 1:00 AM, petitioner No.1 was informed by Mr. Vikas, friend of Mr. Ashish Kumar s/o petitioner No.1, that Ashish Kumar

has been arrested by the local police and taken to Police Station, Alipur, Delhi. Petitioner No.1, at about 1:46 AM, contacted Police Station, Alipur at landline No.011-27202265 asking whereabouts of his son. The Duty Officer informed petitioner No.1 that no person named Ashish Kumar has been arrested or detained in Police Station, Alipur, Delhi.

3. Thereafter, petitioner No.1 contacted said Mr. Vikas on his mobile and shared with him information supplied by the Duty Officer qua Ashish Kumar. However, said Mr. Vikas reiterated his information qua arrest of Ashish Kumar and told petitioner that he was waiting for petitioner no.1 outside the police station.

4. Thereafter, petitioner No.1 along with his wife went to Police Station Alipur and met said Mr. Vikas outside the police station. Petitioner No.1 then went inside the police station and inquired from the Duty Officer again, whether his son has been brought by the police in PS Alipur. The Duty Officer again replied that he has not received any information of the arrest of Ashish Kumar and asked the petitioner No.1 to search for him in IO Rooms. The petitioner No.1 went to the IO Room and found his son Ashish Kumar and his two friends namely Rajat S/o R.N.Singh, Vishal S/o Sh. S.K. Jangid in the room of S.I. Manoj (respondent No.2), where constable Dipesh,

Const. Jaideep and H.C. Amarjeet Singh were also present. At that time S.I. Manoj Kumar was sleeping in his room on a bed. The petitioner No.1 asked S.I. Manoj (respondent no.2) on what grounds his son has been arrested. SI Manoj told the petitioner No.1 that he has handed over the matter of his son to S.I. Sandeep(respondent no.3) and sent his son in the room of S.I. Sandeep (respondent no.3). In the police station Ashish Kumar stated to the petitioner No.1 that he has been beaten by the police without any reason and stated the names of the police officials to the petitioner no.1.

5. The petitioner No.1 stated to S.I.Sandeep (respondent no.3) that Ashish Kumar is his son, and he is an Advocate by profession and requested S.I. Sandeep (respondent No.3) to release his son Ashish Kumar on bail but S.I. Sandeep (respondent no. 3) refused to do so and he misbehaved and manhandled and used abusive language against the petitioner No.1. When Ashish Kumar objected to this S.I. Sandeep ordered H.C. Dinesh Kumar to beat Ashish Kumar and at the instance of S.I. Sandeep, H.C. Dinesh Kumar started beating Ashish Kumar in his presence without registering any case against him. Then S.I. Sandeep (respondent No. 3) ordered a person who was in civil dress to prepare search memo and arrest memo of Ashish Kumar

and Const. Dipesh and Jaideep illegally and unlawfully snatched Rs.2,800/- from him and beat him mercilessly.

6. At the time of preparing the arrest memo, S.I. Sandeep stated to the petitioner No.1 that he has registered a case against Ashish Kumar U/s 186/353/506 IPC. Upon being asked to supply a copy of the FIR S.I. Sandeep (respondent no. 3) said that copy of the FIR will be supplied at 06:30 AM in morning in the presence of SHO. Ashish Kumar informed him that S.I. Manoj (respondent No.2), Ct. Dipesh Malik and Ct. Jaideep had beaten him mercilessly. When the petitioner No.1 requested to release his son on bail, then S.I. Sandeep (respondent no.3) told that Ashish Kumar will be released at 06:30 in morning before the SHO and he used filthy and abusive language against the petitioner No.1. Thereafter, H.C. Dinesh Kumar and HC Dipesh Malik started scuffle with the petitioner No.1 and started beating Ashish Kumar. At that time S.I. Sandeep (respondent no.3) was laughing at the petitioner No.1 before the constables and said that *“Aaise Vakeel kitne aate hai esko yaha se bhagao aur bola ke ye thana hai yaha vakeel bhi hum aur judge bhi hai. Kaun se court mein practice karta hai”?* (in Hindi)

7. On 30.08.2018 at about 6:00 AM in the morning the petitioner No.1 called (from his mobile no.9899526581) his nephew Sh. Ravinder Kumar, Advocate, Petitioner No. 2 herein (on his mobile phone 9205486760) stating that his son, Ashish Kumar has been illegally and unlawfully arrested by the Alipur Police Station. Consequently, the petitioner No.1 asked his nephew to accompany him to the Police Station Alipur, Delhi. Accordingly, at about 6:30 AM the petitioner No.1 and 2 entered in Police Station, Alipur, Delhi-110036. The petitioner No.2 went straight in the room of S.I. Sandeep (respondent no.3) where he saw that his cousin brother namely Ashish Kumar was in handcuffs. The petitioner No.2 asked SI Manoj (respondent no.2) why he had handcuffed Ashish Kumar. The respondent No.2 threatened petitioner No. 2 that he will register a case under section 186/353 IPC against Ashish Kumar and that he was empowered to handcuff any person at any point of time. Thereafter, SI Manoj (respondent no.2) went to his room from the room of the SI Sandeep (respondent no.3) and the petitioner No.2 clicked a handcuffed photograph of Ashish Kumar who was detained in the police station unlawfully without registration of any FIR against him.

8. On 30.08.2018 at about 7:00 AM the petitioner No.1 went in the room of the S.I. Sandeep (respondent no.3) and heard the scream of petitioner No.2 i.e. Advocate Ravinder Kumar. At that time the door of the S.I. Sandeep was closed from inside. The petitioner No.1 pushed the door and S.I. Manoj Kumar opened the door and the petitioner No.1 saw that respondent no.3 and other police officials were beating the petitioner No. 2 mercilessly. The respondent no. 2 did not allow the petitioner No.1 to enter the room of S.I. Sandeep and pushed the petitioner No.1 outside the room. Thereafter, respondent no.2 locked the petitioner No.1 in his room and again started beating of petitioner No. 2 in the room of S.I. Sandeep (respondent No.3).

9. Thereafter, on 30.08.2018 at 6:37 and 6:41 AM the petitioner No. 1 called at 100 number and stated that his son was detained without registration of any FIR. The police gave complaint no.130087 but did not come to the police station however a message was sent on the mobile of the petitioner No.1 that Delhi Police will be reaching him shortly. On 09.09.2018 the petitioner No.1 received SMS message on his mobile with reference no.89590041800892 regarding SHO PS Alipur, Delhi phone

number 011-25435550, 011-2543555 but no action has yet been taken against the accused police officials.

10. Thereafter, at 6:43 AM the petitioner No.1 rang the publisher of a news paper namely Davinder Tomar stating that his son has been illegally detained and Advocate (petitioner No.2) has been beaten by the police officials in PS Alipur. Then, Devinder Tomar informed the reporter of 'Aaj Tak News Channel' and has given his mobile No. 9711206795 to the petitioner No.1 and advised to talk to him directly. Thereafter, at about 6:53 AM, the petitioner No.1 called on the mobile of SHO, PS Alipur, Delhi. At about 7:15 AM the reporter of 'Aaj Tak News Channel' rang on mobile of petitioner No.1 and, gave the mobile number of DCP (No.9818099051) to the petitioner no.1. The petitioner No.1 called on the mobile of the DCP twice/thrice but no one responded the said phone calls.

11. On 30.08.2018 at about 7:30 AM S.I. Manoj Kumar (respondent no.2) typed Kalandra U/s 107/151 Cr.P.C. on his laptop in his room and before the petitioner No.1, talking to him, stating to the petitioner No.1 that respondent No. 2 is not registering case U/s 186/353 IPC against Ashish Kumar. The petitioner No.1 then requested SI Manoj to release his son on bail but he told

that there is no provision in the section 107/151 IPC to release a person on bail and told that ACP Rohini sector-3 has power to release.

12. The respondents no.2 and 3 (SI Sandeep and SI Manoj) warned petitioner No.1 not to take any action against them failing which they shall teach a lesson again and extended threat to kill the petitioner No.1 and his son through criminals. Thus, neither respondent no.2 nor respondent no.3 nor any other police officials gave information to the petitioner No.1 and his family members regarding illegal and unlawful arrest of his son though they were duty bound to do so.

13. Further case of the petitioner is that on 30.08.2018 Suresh Kumar SHO was not present in his office therefore, the petitioner No.1 rang on his mobile phone no.8750870325 thrice from the police station asking about the illegal detention/arrest and beating of his son and about misbehaving and beating of his nephew i.e. petitioner No.2. The SHO informed the petitioner No.1 that he had also arrested petitioner No.2 along with his son u/s 107/151 Cr.P.C. Thereafter, the petitioner No.1 called at 100 number police stating that his nephew, petitioner No.2 has been beaten by the police and has been illegally arrested by the police. Thereafter, SI. Manoj respondent No. 2

released Ravinder Kumar at 8:30 AM after detaining him for about two hours.

14. On 30.08.2018 at about 10:00 AM the petitioner No.1 and 2 met the officer bearer of the Rohini Bar Association and thereafter, the office bearers of Rohini Bar approached the District Judge, Rohini Court, Delhi complaining against this incident and the petitioner No.2 gave written complaint to the District Judge. On the same day the District Judge called the DCP Rohini and at about 3.30 PM the DCP District Rohini came to the District Judge office. The petitioner No. 2 told the whole incident to the DCP. Thereafter, in presence of the office bearers of the Rohini Bar Association and District Judge, the DCP Distt. Rohini gave assurance that an appropriate action will be taken against the erring police officials within two days. However, the DCP did not take any action against the said police officials.

15. Accordingly, on 31.8.2018, the petitioner No.1 approached Tis Hazari Court Bar Association and told the whole story of misbehaving, beating and unlawful detention of his son namely Ashish Kumar by the police officials of PS Alipur and gave written complaint to the President of Tis Courts Bar Association, Delhi. The President assured the petitioner No.1 that the Bar

committee shall take appropriate action against the police officials but no action was taken. However, on 31.08.2018 the petitioner No.1 sent the complaint to the Commissioner of Police, DCP and SHO Police Station Alipur. On 13.09.2018, sent complaint to the Addl. C.P. Vigilance and on 19.09.2018 sent the same complaint to Joint C.P. Vigilance. On 31.08.2018, sent the complaint to the Lieutenant Governor of Delhi for seeking permission to prosecute the accused police officials but to no avail. On 31.09.2018, he sent a complaint to Public Grievance Commission. On 10.09.2018 the petitioner No.1 appeared before R.K. Meena, Deputy Secretary, Grievance Cell, who advised the petitioner No.1 to pursue his case before the DCP and special Commissioner concerned and further advised to move the case before the court. Also, on 31.08.2018, sent complaint to the National Human Rights Commission. The NHRC has received the complaint vide diary no.1 152371/CR/2018 but no action has been taken even by the Commission.

16. On 01.09.2018 the petitioner No.2 was compelled to seek treatment from Aruna Asaf Ali, Govt. Hospital, Tis Hazari, Delhi because the petitioner no. 2 suffered from severe pain in his tooth and swelling on his face which was caused by injuries inflicted by erring police officials.

17. Learned counsel for the petitioners submitted that the police official registered false Kalandra U/s 107/151 Cr.P.C. vide DD No. 03A and DD No.103B in police station Alipur, Delhi-110036 against the son of petitioner No.1 and his friends in the presence of petitioners without conducting any investigation by the respondent No.1. On 26.09.2018 the petitioner No.1 and 2 filed complaint case U/s 190, 200 R/w Section 156(3) Cr.P.C. against Suresh Kumar (SHO), the respondent no.3 (Sandeep), the respondent no. 2 (SI Manoj), Jaideep (Const.), Dipesh (Const.) and Dinesh (H.Const.) before Ld. CMM, Rohini Courts, Delhi. On 15.12.2018, vide common order of Ld. CMM, Rohini, allowed the application U/s 156(3) Cr.P.C. and ordered to register the FIR within 1 day against the aforesaid police officials. However, on 19.12.2018 the Hon'ble Court of Sh. Sanjeev Aggarwal Ld. ASJ, Rohini Courts, Delhi, stayed the order dated 15.12.2018 till the next date of hearing i.e. 09.01.2019 and on 06.02.2019, Ld. ASJ set aside the order dated 15.12.2018 filed by two respondents namely SI Manoj and SI Sandeep.

18. Learned counsel further submitted that on 14.02.2019 the Ld. SEM Rohini dropped the Kalandra proceeding u/s 107/151 Cr.P.C. against Rajat, Vishal and Ashish Kumar son of the petitioner no. 1 due to non-appearance

of delinquent police officials as witnesses and after finding it to be a false case.

19. Learned counsel for the petitioners has vehemently argued that the impugned order dated 06.02.2019 has been passed by the Revisional Court without application of judicious mind and without considering the facts and circumstances of the case. The Revision Court wrongly relied upon order dated 20.12.2018 passed in WP(Crl) 3901/18 titled as Rajat & Ors. passed by this Court. Also failed to appreciate the fact that the present case is different from the facts in WP (Crl) 3901/18 titled as Rajat & Ors. Moreover, the petitioners were not parties in the said petition.

20. To strengthen his arguments, learned counsel for the petitioner has relied upon the case of ***Lalita Kumar Vs. Govt. of U.P. & Ors 2014 (1) JCC 1***, whereby the Constitution Bench of Hon'ble Supreme Court held as under:-

“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.”

21. Also relied upon the case of Priyanka Srivastava & Anr. Vs State of Uttar Pradesh & Ors (2015) 6 SCC 287 or AIR 2015 SC 1758, relevant paras of which are reproduced as under.-

“20. In Dilawar Singh Vs. State of Delhi (2007) 12 SCC 496, this Court ruled thus:

" 18.... 11. The Clear position therefore is that any Judicial Magistrate before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter."

21. In CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd. (2005) 7SCC 467, the Court while dealing with the

power of Magistrate taking cognizance of the offences, has opined that having considered the complaint, the Magistrate may consider it appropriate to send the complaint to the police for investigation under Section 156(3) of the Code of Criminal Procedure. And again:

" When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the Commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself.

As said earlier, in the case of complaint regarding the commission of cognizable offence, the power under Section 156(3) can be Invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3)."

22. Recently, in Ramdev Food Products Private Limited V. State of Gujarat Criminal Appeal No.600 of 2007 decided on 16.03.2015, while dealing with the exercise of power under Section 156(3) Cr.P.C by the learned Magistrate, a three-Judge Bench has held that:

".....the direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where On account of credibility of information available, or

weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed."

22. The fact remains that proceedings initiated under Section 107/51 Cr.P.C. vide DD No.3A and 103B dated 30.08.2018 at Police Station Alipur was challenged before this Court in W.P. (Crl.) 3901/2018 and the same was dismissed vide order dated 20.12.2018. Thus, it cannot be said that the aforementioned proceedings initiated by the respondents were false. The alleged incident is of dated 30.08.2018 at 06:15 pm as per the PCR calls details produced during the argument by the respondents which is not in dispute. As per the PCR calls made by Kartar Singh/ petitioner no. 1 from the mobile number 9899526581 stating therein that his son and two other boys were detained in a police station without any case. But there is no allegation against the respondents that the petitioners were manhandled by police officers of PS Alipur. Moreover, as per MLC of Ravinder Kumar (petitioner No.2 herein) issued by Aruna Asaf Ali Government Hospital, Govt.of NCT of Delhi, Rajpur Road, Delhi there is no injury or mention of any assault by the respondents.

23. In addition to above, the respondent no.1 Suresh Kumar, SHO, Alipur station was transferred around one month before the date of incident. This fact has also not been disputed. However, alleged incident is of dated 30.08.2018 and petition under Section 156(3) Cr.P.C. was filed on 26.09.2019, therefore, till then petitioners were not even aware who was the SHO of Police Station Alipur. Even, after coming to know that Suresh Kumar was not the SHO at the time of incident the petitioners did not take steps to rectify that mistake either in the petition under Section 156(3) Cr.P.C. or revision filed by the respondent which was allowed vide order dated 06.02.2019. Moreover, in the present petition, that mistake continued.

24. In view of the dictum of the Hon'ble Supreme Court in the above-cited cases, the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind.

25. In view of the law laid down in the said cited judgement, it is clear that when a Magistrate receives a complaint under Section 200 Cr.P.C. he is not bound to take cognizance if the facts alleged in the complaint do not disclose the commission of offence. The Magistrate has discretion in the matter and if on reading the complaint, he finds that the allegations therein

discloses a cognizable offence and forwarding of the complaint to the police for investigation under Section 156(3) Cr.P.C. will be in the interest of justice and would save the valuable time of the Magistrate from being wasted in enquiring into the matter which is primarily the duty of the police to investigate, he would be fully justified in adopting that course i.e. directing registration of FIR under Section 156(3) Cr.P.C. instead of taking cognizance of the offence as an alternative. The direction under Section 156(3) Cr.P.C. is to be issued only by application of mind by the Magistrate.

26. When the Magistrate does not take cognizance and directs registration of FIR u/S 156(3) Cr.P.C and find it necessary to postpone the issuance of process, the directions under Section 156(3) Cr.P.C may be issued. Where the information is of such a credible nature considering the interest of justice, it would be more appropriate to straightaway direct the investigation, then he would be fully justified in directing for registration of FIR.

27. The issue for consideration in the present petition is that what would be those cases? The cases requiring extensive field investigations which cannot be carried out by the complainant himself, as he cannot be equipped with the wherewithal to carry out such investigations including scientific and forensic investigations.

28. However, in other cases where Magistrate himself takes cognizance and postpones issuance of process, are the cases where the Magistrate has yet to determine the facts i.e. the Magistrate is not sure whether from the complaint any cognizable offence is made out and for which he proceeds to record the statement of witnesses and the evidence in support thereof, to be lead by the complainant, so that the Magistrate determines the existence of sufficient grounds to proceed against the offenders of the offence(s) of which cognizance was taken by him instead of referring the matter u/S 156(3) Cr.P.C.

29. It has been held in case of *Priyanka Srivastava* (supra)

26 "That power under Section 156(3) Cr.P.C. warrants application of judicial mind a court of law is involved. It is not police taking steps u/S. 154 CrPC, a litigant at his own whim cannot invoke the authority of the Magistrate, a principled and really grieved citizen with clean hands must have free access to invoke said power."

In para 27, it was held that in appropriate Cases the Ld. Magistrate would well be advised to verify the truth and also can verify the veracity of allegations.

30. Since, the kalandara u/s. 107/151 CrPC was prepared against the two persons and same was challenged before this Court as discussed above, however, the said petition has been dismissed. Further, the entire evidence

sought to be led is already under the control and possession of the petitioner, thus, no field investigations or collection of evidence including scientific evidence has to be collected by the police. Therefore, in my considered view, the Ld CMM should have taken cognizance of the matter himself and should have proceeded to inquire the matter, as per law.

31. It is not in dispute that learned Magistrate has the discretion in the matter but the discretion has to be exercised, in a reasonable manner. In the present case, the Trial Court seems to have acted in haste by straightaway ordering for registration of FIR without getting the veracity of the allegations verified. Since, such a power involves judicial application of mind, any mistake is likely to cause irreparable loss to reputation, status, well being, comfort and money of concerned person, more so in case of public servants.

32. On perusal of the order passed by the Trial Court, it appears that Court has been swayed by incongruency at the time of arrest etc. which plea has been rejected after consideration and the plea of the petitioners that the same was proper, has been upheld by this Court in the order dated 20.12.2018.

33. In view of above discussion, I find no illegality and perversity in the order dated 06.02.2019 passed by learned Additional Sessions Judge-02, (North), Rohini Courts, Delhi.

34. I find no merit in the present petition and the same is accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 04, 2019
ms/pb

न्यायमेव जयते