

Devender Kumar Vs. State (Govt of Nct of Delhi) and ors.

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Court : Delhi

Decided On : Oct-28-2014

Judge : V.P.Vaish

Appellant : Devender Kumar

Respondent : State (Govt of Nct of Delhi) and ors.

Advocate for Def. : Mr. Parveen Bhati, Mr. N. Hariharan, Mr. Ankit Kalu

Advocate for Pet/Ap. : Mr. Lalit Naryan Singh

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 2116/2013 Date of decision:

28. h October, 2014 DEVENDER KUMAR Through: Petitioner Mr. Lalit Naryan Singh, Adv. versus STATE (GOVT OF NCT OF DELHI) & Ors. Respondents Through: Mr. Parveen Bhati, APP for the State Mr. N. Hariharan, Sr. Advocate with Mr. Ankit Kalu, Adv. for Respondents No.2 to 5 CORAM: HON'BLE MR. JUSTICE VED PRAKASH VAISH VED PRAKASH VAISH, J.

(ORAL) CRL.M.A. 8242/2013 The application is allowed subject to just exceptions. The application stands disposed of. CRL.M.C. 2116/2013 1. By way of the present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C. for short) the petitioner Devender Kumar has challenged the

order dated 12.4.2013 passed by learned Additional Sessions Judge, Saket Court, New Delhi whereby criminal revision filed by the petitioner against the CrI.M.C. No.2116/2034 page 1 of 6 order dated 04.02.2013 passed by learned Metropolitan Magistrate in Case No.206/1 was dismissed.

2. Brief facts of the case as borne out from the present petition are that the petitioner filed a complaint under Section 200 Cr.P.C. for the offences under Sections 406/420/468/471/506/34 IPC. In the complaint, the petitioner stated that on the assurance of respondent No.3/ HDFC Bank, respondent No.4/ Sunit Singh obtained the signature of the complainant on some policy assuring the complainant that he is required to pay a premium of Rs.25,000/- (Rupees twenty five thousand) per annum for three years and on maturity, the complainant would receive an amount of Rs.1,25,000/- (Rupees one lakh and twenty five thousand). The petitioner, accordingly, paid a sum of Rs.75,000/- (Rupees seventy five thousand) to respondent No.2. After completion of three years of insurance policy in the year 2009, the petitioner approached the Manager of HDFC Bank namely Ms. Kulpreet Kaur who told the complainant that he should approach M/s Aviva Life Insurance Company (respondent no.2). When the petitioner went to collect the aforementioned sum the said company flatly refused and further stated that he is entitled for a sum of Rs.31,238/(Rupees thirty one thousand and two hundred and thirty eight). After discussion with respondent No.2, the petitioner came to know that respondent No.2 has deducted more than 73% of the amount under different heads.

3. Along with the complaint, an application under Section 156(3) Cr.P.C. was also filed. On this application learned Metropolitan Magistrate called for the status report. CrI.M.C. No.2116/2034 The police filed the status page 2 of 6 report stating that no cognizable offence was made out as the matter is of civil nature. Vide order dated 04.02.2013, learned Metropolitan Magistrate, after considering the averments made in the complaint, dismissed the application under Section 156(3) Cr.P.C. and directed the petitioner to lead pre-summoning evidence.

4. Against the said order of learned Metropolitan Magistrate, the petitioner filed Criminal Revision No.15/2013 which was dismissed by learned Additional

Sessions Judge-02 (South East), Saket Courts, New Delhi vide impugned order dated 12.04.2013.

5. Feeling aggrieved by the impugned order, the petitioner has preferred the present petition.

6. Learned counsel for the petitioner contended that the petitioner is having Savings Account number SB-11038152 with HDFC Bank, previously known as Centurion Bank of Punjab Ltd.. The said bank merged with HDFC and is presently functioning in the name of HDFC Bank. He further submits that in reply to the consumer complaint, the policy document filed by the respondent No.2 bearing No.WTG1332351 was not the same as the policy document supplied to the petitioner by the insurance company and it contained different terms and conditions. He therefore, submits that the police is bound to register the FIR.

7. I have given my thoughtful consideration to the submissions made by learned counsels for the parties and pursued the material placed on record. CrI.M.C. No.2116/2034 page 3 of 6 8. It is a 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 course are open to the Magistrate. He may chose 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.

9. 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 requiring thorough investigation by the police, an FIR should be ordered to be registered.

10. In another case Gulab Chand Upadhyay vs. State (2002) CrI.L.J.

2907, it was held that the use of the word `may in Section 156(3) Cr.P.C. in contradistinction to the word `shall in Section 154 Cr.P.C. clearly indicates that the Magistrate has the discretion to refuse registration of FIR. CrI.M.C. No.2116/2034 page 4 of 6 11. 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.

12. In Aleque Padamsee vs. Union of India, 2007 CrI. L.J.

3729 (SC), the Honble Supreme Court of India 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 of Criminal Procedure 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.

13. In the instant case, the evidence on which the petitioner relies is within his knowledge and if need were to arise for investigation, such possibility is not precluded as learned trial court has entered upon the inquiry under Sections 200 and 202 Cr.P.C. Proviso to Section 202 Cr.P.C. permit such investigation to be ordered at an appropriate stage of the proceedings. CrI.M.C. No.2116/2034 page 5 of 6 14. In view of the aforesaid discussion, I do not find any illegality or infirmity in the impugned order dated 12.04.2013 passed by learned Additional Sessions Judge-02, South East, Saket Courts, New Delhi. The petition deserves to be dismissed and the same is hereby dismissed.

15. Accordingly, the petition stands disposed of. (VED PRAKASH VAISH) JUDGE
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