

Brijendra and anr Vs State

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Court : Delhi

Decided On : Sep-29-2010

Judge : Mr. Sanjiv Khanna. J

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Section 50 ;
[Indian Penal Code \(IPC\), 1860](#) - Sections 186,353,332,34

Appeal No. : W.P.(CRL) 1313/2007 ; W.P.(CRL) 1568/2007

Appellant : Brijendra and anr.

Respondent : State.

Advocate for Def. : Mr. Sanjeev Bhandari, Adv.

Advocate for Pet/Ap. : Mr. V.K. Shukla ; Mr. K.K. Verma, Adv.

Judgement :

ORDER.

1. I have heard the counsel for the parties. The respondent Delhi Police has filed status reports as well as reply affidavit.

2. As per the respondents, on 17th September, 2007 on the basis of secret information, nakabandi was done and at about 9.15 P.M. and two persons were seen coming from D Block, Nand Nagri. The informer pointed out and identified the said two persons. They were stopped and were asked to identify themselves.

They gave their names as Om Prakash and Bijender. As it was suspected that they were carrying narcotics, a written notice under Section 50 of the [Narcotic Drugs and Psychotropic Substances Act, 1985](#) (NDPS Act for short) was served on Om Prakash. In the meanwhile persons from nearby gathered at the spot and started obstructing and pelting stone at the policemen. Bijender ran away from the spot but Om Prakash was apprehended. The allegation of the prosecution is that on search of Om Prakash, a transparent polythene bag containing brownish material was recovered from the right side pocket of his shirt. It is alleged that ASI Devender had suffered injuries because of stone pelting and was taken to GTB Hospital. Two other police officers ASI Rishiram and Head Constable Bijender had also sustained injuries and required medical attention. The transparent polythene bag recovered from Om Prakash was found to be weighing 300 Grams. It is alleged that this powder is smack. FIR No.802/2007 under Sections 186/353/332/34 Indian Penal Code, 1860 (IPC for short) and Sections 21/61/85 NDPS Act, police station Nand Nagri was registered.

3. It is the prosecution case that Om Prakash was interrogated and he had made a disclosure statement that he along with Bijender were going to supply smack to one Tilak Raj of Mangol Puri. Om Prakash had stated that relatives of Bijender had pelted stone and helped Bijender in escaping from the spot.

4. As per the affidavit filed by Delhi Police, Om Prakash had identified the house where they use to prepare smack by mixing chemicals. On search of the said house, utensils for preparing smack powder were recovered and it is alleged that the utensils were smudged with the smack powder. The said house, it is stated, is owned by the wife of Om Prakash. It is stated that Bijender is a bad character as per police records and is involved in 12 cases out of which 3 cases are under NDPS Act. Petitioner Meeta Devi is wife of Bijende and there are as many as 7 FIRs registered against her including 2 FIRs under the NDPS Act.

5. The allegation made by the petitioners, namely, Bijender and Meeta in these writ petitions is that they are residing at D-2/376-388, Nand Nagri, Delhi-93 with their family. They had kept gold ornaments weighing 4 Kilograms and Rs. 8 lacs in cash at their residence for the purpose of marriage in their family. It is stated that

the petitioners belong to Sansi caste and this caste was earlier infamous for dealing in liquor and drug trade and therefore they are easy prey for the police. It is further alleged that Head Constable Dilawar Singh, Crime Branch, Chanakya Puri along with other police officers use to extract money from the petitioners. It is averred that Head Constable Dilawar Singh somehow came to know that the aforesaid 4 kilograms of gold and Rs. 8 lacs cash were lying in the house of the petitioners and he along with 8-9 police officers in plain clothes forcibly entered into the house of the petitioners on 17th September, 2007 and had given a beating to the two petitioners. It is alleged that Head Constable Dilawar Singh had kept a pistol at the head of Bijender and forcibly took the keys of the almirah and the entire cash of Rs. 8 lacs and 4 kilograms gold jewellery ornaments was taken away in 2-3 bags, which they were carrying with them. It is alleged that the petitioners made a call to police control room at 100 and thereafter have been writing letters to various authorities but FIR has not been registered. Counsel for the petitioners submits that the allegations made by the petitioners disclose commission of a cognizable offence and therefore FIR should have been registered and investigation should be conducted by the police/CBI. The petitioners rely upon several affidavits which have been filed with the writ petitions.

6. Pursuant to directions given by the Court, the respondent Delhi Police has also filed status report dated 28th May, 2010 with regard to daily diary entries and the records maintained by them. It is stated in the status report that on 17th September, 2007 two calls were received but the audio recording is no longer available as it is maintained only for 365 days. It is further stated that as per the investigation made by the police, DD entry 31A was recorded at 9.50 p.m. on 17th September, 2007 and DD entry 35A was recorded at 10.20 p.m. on 17th September, 2007. A call was made to PCR from mobile telephone number 9911603147 at 10.11 p.m. As per the information provided by the service provider, this mobile telephone was at that time in Ashok Nagar in East Delhi and not at the location i.e. D-2/376- 388, Nand Nagri, Delhi-93 where the alleged incident had happened. There is another DD entry 17A dated 18th September, 2007 at 4.05 a.m. This records that a team of Crime Branch, Chanakya Puri consisting of ASI Devender Kumar, ASI Rishiraj, Head Constable Vijender, SI Akshay Kumar and Inspector Jitender Singh Kundu had raided the place of Meeta at Nand Nagri as

they are criminals or persons of bad character, who had obstructed the police officers in discharge of their duties.

7. Keeping in view the allegations and counter allegations, I do not see any concrete or definite opinion can be given about the allegations made by the petitioners. Rather there are gaps and counter allegations against the petitioners. However, no case is made out for quashing of FIR No. 802/2007, Police Station Nand Nagri under Sections 21 and 29 of the NDPS Act and Section 186/353/332/34 of the IPC, 1860. Defence of the accused will be examined in the trial. I do not think it is a fit case or an exceptional case, which requires investigation by CBI. In case the petitioners want, they are at liberty to file a private complaint before the Metropolitan Magistrate in terms of Section 190 read with Section 200 of the Criminal Procedure Code, 1973 (Cr.P.C. for short). They can also file an application under Section 156(3) Cr.P.C. In this regard, it will be appropriate to reproduce the following observations of the Supreme Court in Sakiri Vasu versus State of U.P. and Others, AIR 2008 SC 907: "11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Cr PC, then he can approach the Superintendent of Police under Section 154(3) Cr PC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) Cr PC before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

12. Thus in Mohd. Yousuf v. Afaq Jahan this Court observed: (SCC p. 631, para 11) "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."

13. The same view was taken by this Court in *Dilawar Singh v. State of Delhi* (JT vide para 17). We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156(3) Cr PC, and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order(s) as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) Cr PC.

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr PC or other police officer referred to in Section 36 Cr PC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr PC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr PC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 Cr PC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation and for this purpose he can monitor the investigation to ensure that the investigation is done

properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr PC simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the police officers concerned, and if that is of no avail, under Section 156(3) Cr PC before the Magistrate or by filing a criminal complaint under Section 200 Cr PC and not by filing a writ petition or a petition under Section 482 Cr PC." With the aforesaid observations, the writ petitions are disposed of.

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