

Satyender Tewari Vs. State and ors.

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Court : Delhi

Decided On : Dec-20-2010

Judge : Shiv Narayan Dhingra, J.

Acts : [Constitution of India](#) - Article 226; Code of Criminal Procedure (CrPC) (Cr.P.C) - Sections 482, 156(3), 190; Indian Penal Code,(IPC) - Sections 166/167/343/466, 471

Appeal No. : W.P.(Crl.) No. 1233/2010

Appellant : Satyender Tewari

Respondent : State and ors.

Advocate for Def. : Mr. Akshay Bipin, Adv.

Advocate for Pet/Ap. : Mr. Ajay Rai, Adv.

Judgement :

By this petition under Article 226 of the [Constitution of India](#) read with Section 482 Cr.P.C. the petitioner has prayed this Court to issue a writ of mandamus directing respondents no. 1 & 2 to register a case against respondents no. 3 to 8 and has also prayed for setting aside order dated 21 st June, 2010 passed by the learned Additional Sessions Judge Shri J.P.Aryan in Criminal Revision No. 39/2009.

2. Brief facts relevant for the purpose of deciding this petition are that petitioner filed an application under Section 156(3) Cr.P.C. before the learned Metropolitan

Magistrate for getting an FIR registered against respondents No. 3 to 8. The learned MM vide his order dated 27 th November, 2009 declined to send the complaint of petitioner for registration of FIR and instead asked the petitioner to lead evidence before him. Against this order, the petitioner preferred a revision petition which was dismissed by the learned ASJ vide order dated 21st June, 2010 and the learned ASJ observed that under Section 156(3) Cr.P.C. the Magistrate has not to act in a mechanical manner and send every complaint made before him to police for registration of FIR and this power has to be exercised judiciously by the learned MM and in those cases where allegations are not such that there should be necessity of police investigation and the complainant was in possession of the evidence to prove his allegations, the Magistrate can ask him to examine his witnesses before him. The learned ASJ observed that in the case of petitioner he could examine himself on oath and could examine supporting evidence which he desired to adduce. He therefore declined to interfere with the order passed by the learned MM.

3. The contention of the petitioner is that once petitioner filed a complaint before the SHO, SHO is bound to register an FIR irrespective of the fact that whether the allegations made in the complaint were truthful or false and he (SHO) is bound to start investigation after registration of FIR. Similarly, when a person makes an application under Section 156(3) Cr.P.C. before MM, MM has no option but to refer complaint to SHO for registration of FIR. He submitted that in this case he initially filed a complaint before the learned MM under Section 156(3) Cr.P.C., this complaint was dismissed on the ground that he had not even approached the police for registration of FIR. He then approached police for registration of FIR. FIR was not registered. He again approached learned MM and learned MM instead of sending his complaint for registration of FIR asked him to lead evidence. He submitted that the learned MM should have directed for registration of FIR.

4. The purpose of giving powers to Metropolitan Magistrate under Section 156(3) Cr.P.C. is not to convert MM into a post office for sending complaints to police for registration of FIRs. Section 156(3) Cr.P.C. gives powers to the MM that he may order an investigation to be done by in-charge of police station in a case, where he was empowered under Section 190 Cr.P.C to take cognizance. Section 190

Cr.P.C gives powers to Magistrate upon receiving a complaint of facts which constitute offence to take cognizance of the offence. Thus, it is only in those cases, where MM can take cognizance of the offence on a complaint, that he may order investigation of the complaint by SHO. If the learned MM cannot take cognizance of the offence mentioned in the complaint, he cannot order registration of FIR also. Undisputedly, in this case the alleged incident about which FIR was sought to be registered had taken place in 2005 & March, 2006. Complaint was made to learned MM in 2009. The offence alleged by the petitioner was under Section 166/167/343/466 & 471 IPC. Section 166 IPC is a non-cognizable offence and the punishment is simple imprisonment up to one year thus the limitation for taking cognizance for this offence is one year. Under Section 167 IPC, the maximum sentence is up to three years with fine again issue of limitation would arise and since the limitation for taking cognizance for this offence is three years. Under Section 343 IPC the maximum imprisonment is for two years again issue of limitation would arise. Section 466 and Section 467 IPC invite imprisonment up to seven years and 10 years respectively however, the allegations made in this case are about bringing accused in Crl.MC No.1233/2010 Page 3 of 4 Rajdhani Express on a ticket of someone else and forging official documents to show that the accused was arrested on some other day than the date of his actual arrest. All these allegations have been made by the petitioner after three years of commission of offence and I consider that the learned MM had discretion either to refer the matter to police for investigation or to entertain the complaint and ask the petitioner to lead evidence.

5. It cannot be said that the only course available to the Magistrate was to send the complaint for investigation to the police/SHO and get an FIR registered. The plea taken by the petitioner that Magistrate is bound to send every complaint for registration of FIR is not tenable. I find no force in this petition. The petition is hereby dismissed.