CASE NO.:
Appeal (crl.) 1229 of 2002

PETITIONER:
Ramesh Kumari

RESPONDENT:
State (N.C.T. of Delhi) and Ors.

DATE OF JUDGMENT: 21/02/2006

BENCH:
H.K. Sema & Dr. AR. Lakshmanan

JUDGMENT:
JUDGMENT

SEMA, J.

The challenge in this appeal is to the order dated 24.1.2002 passed by the Division Bench of the Delhi High Court. The controversy in this appeal is confined to the non-registration of the case by the police pursuant to a complaint dated 9.9.1997 and 13.9.1997 filed by the appellant. It is stated that the appellant was in possession of the land. The stay order was granted by the High Court protecting the possession of the appellant on 14.8.1997 and it was extended by another order dated 10.9.1997, in the presence of the other side. However, the respondent Nos. 4 to 9 broke open the lock and removed various articles on 9.9.1997 and 10.9.1997. We make it clear that we are not entering into the merits of the case.

The grievance of the appellant is that an information of a cognizable offence has been filed by the appellant before the Station House Officer (SHO), Kapashera on 9.9.1997 and 13.9.1997. However, no case was registered by the concerned SHO. Thereafter, the matter was brought to the notice of the Police Commissioner, without any result. This has led the appellant to approach the High Court by filing Criminal Writ Petition No. 108 of 1998. By the impugned order the High Court was of the view that the appellant has filed a Contempt Petition CCP No. 307/1997 and that is pending before the High Court. The High Court found it difficult to direct to register a case on the basis of the information filed by the appellant. The High Court was also of the view that the appellant was alternative remedy available to her, albeit, without indication what is the alternative remedy available to the appellant. The High Court ultimately also observed that should respondent Nos. 1 and 2 be seized of petitioner’s complaint or representation, they shall also examine and pass appropriate orders within three months.

Mr. Vikas Singh, learned Additional Solicitor General, at the outset, invites our attention to the counter-affidavit filed by the respondent and submits that pursuant to the aforesaid observation of the High Court the complaint/representation has been subsequently examined by the respondent and found to genuine case was established. We are not convinced by this submission because the sole grievance of the appellant is that no case has been registered in terms of the mandatory provisions of Section 154(1) of the Criminal Procedure Code. Genuineness or otherwise of the information can only be considered after registration of the case. Genuineness or credibility of the information is not a condition precedent for registration of a case. We are also clearly of the view that the High Court erred in law in dismissing the petition solely on the ground that the contempt petition was pending and the appellant had an alternative remedy. The ground of alternative remedy nor pending of the contempt petition would be no substitute in law not to register a case when a citizen makes a complaint of a cognizable offence against the Police Officer.

That the Police Officer mandatorily registers a case on a complaint of a cognizable offence by the citizen under Section 154 of the Code are no more res integra. The point of law has been set at rest by this Court in the case of State of Haryana and Ors. v. Bhajan Lal and Ors., [1992] Supp. 1 SCC 335. This Court after examining the whole gamut and intricacies of the mandatory nature of Section 154 of the Code has arrived at the finding in paras 31 and 32 of the judgment as under:

''31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157. (As we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the ambit of Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present context). In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who is satisfied that the information forwarded to him discloses a colonizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 of the Code.''

''32. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression ''information'' without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, ''reasonable complaint'' and ''credible information'' are used. Evidently, the non-qualification of the word ''information'' in Section 154(1) unlike in Section 41(1)(a) and (g) of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case. A comparison of the present Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word ''information'' without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India read that 'every complaint or information' preferred to an officer in charge of a police station should be reduced into writing which provision was subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that 'every complaint' preferred to an officer in charge of a police station shall be reduced in writing. The word 'complaint' which occurred in previous two Codes of 1861 and 1872 was deleted and in that place the word 'information' was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and 189(c) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for recording a first information report is that there must be an information and that information must disclose a cognizable offence.''

Finally, this Court in para 33 said :

''33. It is, therefore, manifestly clear that if any information disclosing

a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.''

The views expressed by this Court in paragraphs 31, 32 and 33 as quoted above leave no manners of doubt that the provision of Section 154 of the Code is mandatory and the concerned officer is duty bound to register the case on the basis of such an information disclosing cognizable offence.

Undisputedly, in the present case no case was registerd pursuant to the complaint dated 9.9.1997 and 13.9.1997 filed by the appellant. It is also not disputed that the Contempt Petition CCP No. 307/1997 filed by the appellant is also pending disposal before the High Court. It is, however, stated by the respondent that the non-disposal of the contempt petition is due to the non-prosecution by the appellant. Be that as it may, we are of the view that the contempt petition has been pending since 1997 and as such petition should be disposed of with a sense of urgency otherwise the petition itself will loose all its force and the purpose for which the contempt is initiated would be defeated.

In this casee, admittedly, the complaint ws filed against the Police Officer. Learned counsel for the parties are not at variance that in such a situation the interest of justice would be better served if this Court directs the CBI to register the case and investigate the mater.

Mr. Vikas Singh, leanrd Additional Solicitor Generla although vehemently opposed registration of the case but he fairly concedes that if at all the case be registered and investigation is to be carried out, the CBI would be an appropriate authority to register a case and investigate. We are also of the view that since there is allegation against the police personnel, the interest of justice would be better served if the case is registerd and investigated by an independent agency like the CBI.

We, accordingly, direct that the CBI shall now register a case and investigate of the complaint filed by the appellant on 9.9.1997 and 13.9.1997. The CBI can collect the complaint from the SHO, Police Station, Kapashera dated 9.9.1997 and 13.9.1997. The complainant will also provide photocopies of the complaint dated 9.9.1997 and 13.9.1997 in case of original complaint is not traceable in the Police Station. Since, the mater is pending from 1997 the CBI is directed to register the case and complete investigation within a period of three months from today. We further clarify that by the aforesaid directions we are not entering into the merits of the controversy of the case nor casting aspersions on anybody including the local police.

We also request the Delhi High Court to expedite the disposal of Contempt Petition CCP 307/1997 in any event not later than three months from today for which parties shall give co-operation. The Registry shall despatch copies of this order to the CBI and Delhi High Court forthwith.

With the aforesaid direction the appeal is disposed of.