

CC No. 7724/19

PS: Patel Nagar

Manish Chandra Jain Vs. Saloni Kumari

The matter has been taken up for pronouncement of order by way of video conferencing (CISCO Webex Meetings) on account of lockdown due to COVID-19. The counsel was already intimated by Ahlmad/ Asst. Ahlmad regarding the date and time of pronouncement of order.

14.05.2020

Present: Sh. Vikrant Chaudhary, Ld. Counsel for the complainant.

Vide this order, I shall decide application u/s. 156(3) Cr.P.C filed on behalf of the complainant seeking registration of FIR.

It is stated in the application that around 2015, the accused was introduced to the complainant through one friend namely Mr. Anuj Shrivastava. Around 2017, the accused informed the complainant that she has started doing business of import of electronic goods e.g. mobiles, headphones and laptops etc. The accused had approached the complainant several times for selling the electronic goods. In January 2019, the accused visited complainant's house and tried to sell products. The complainant got manipulated and placed an order of Iphone X, Iphone XS total amounting to Rs. 3,00,000/- on 11.03.2019. The accused had asked to make the complete payment in advance. Thereafter the complainant transferred a sum of Rs. 3,00,000/- (Rupees Three Lakhs Only) in the account of the accused on 13.03.2019 via RTGS.

It is further stated that the complainant requested the accused many

times for the electronic items. She was not able to get the electronic articles and she issued a cheque bearing no. 182662 drawn on ICICI Bank but the said cheque got dishoured. Now the accused is avoiding to meet him. The complainant made a written complaint on 24.06.2019 and 31.07.2019 respectively before PS Shadipur vide DD no. 98 and DD no. 80A. Complaint was also sent to ACP and DCP. However, no action was taken. Therefore, the application has been filed before this Court.

Alongwith the application, the complainant has filed copy of watsapp conversations with the accused, copy of bank statement, copy of cheque issued by the accused, cheque return memo and copy of complaint lodged with the police.

ATR was called. In the ATR, it is stated that complaint revealed dispute over transaction of money.

Ld. Counsel for the complainant would argue that the complaint of the complainant disclosed commission of cognizable offence. Therefore, directions may be issued for registration of FIR.

I have heard the submissions and perused the material on record.

It has been settled that the order of registration of an FIR can not be passed mechanically. Hon'ble High Court of Delhi in Crl M.C. No. 6122-23 & 6133-34 of 2005 titled as **Sh. Subhakaran Loharuka & Anr Vs State (Govt. of NCT of Delhi) & Anr.**, after extensive discussion of the relevant law and various judgments on the subject has held as under:

“52....

*“(ii) The magistrate should then form his own opinion whether the facts mentioned in the complaint disclose commission of the cognizable offences by the accused persons arrayed in the Complaint which can be tried in his jurisdiction. **He should also***

satisfy himself about the need for investigation by the Police in the matter. A preliminary enquiry as this is such enquiry has been done by the SHO, then it is all the more necessary for the Magistrate to consider all these factors. For that purpose, the Magistrate must apply his mind and such application of mind should be reflected in the Order passed by him. Upon a preliminary satisfaction, unless there are exceptional circumstances to be recorded in writing, a status report by the police is to be called for before passing final orders.”

Hon'ble Supreme Court of India in case titled as **Mrs. Priyanka Srivastava & Anr. Vs State of U.P & Ors. Crl Appeal No. 781 of 2012 dated 19.03.2015** has held that the allegations made in the complaint should not be taken on the face of it and to curb the tendency of making false and baseless allegations in the complaint, one detailed affidavit should also be taken from the complainants in support of allegations made therein. It was also observed by the Hon'ble Supreme Court that the Magistrate should exercise the discretion u/s 156(3) Cr.P.C. in a wise manner and should apply his judicial mind before directing any police investigation in the matter.

In the present case, the complainant has alleged that he has made payment of Rs. 3,00,000/- to the accused against purchase of some electronic items. However, later the accused did not hand over the items and issued one cheque of Rs. 3,00,000/- which was dishonored. Briefly, the allegations of the complainant are dishonor of a cheque issued towards discharge of liability. Admittedly, the accused was having friendly relationship with the complainant. All the facts and circumstances of the case are within the knowledge of the complainant. No investigation by the

police appears to be required. There is no requirement of collection of evidence by the police as the complainant can lead his evidence. The court may issue summons to any relevant witness/person/authority at the instance of Complainant for bringing full fact and material pertaining to the allegations made in the complaint. Therefore, the present application u/s. 156(3) Cr.P.C. is dismissed. The complainant can lead his pre summoning evidence on his complaint under Section 200, Cr. P.C.

Be put up for pre-summoning evidence on 20.06.2020.

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CC no. 6920/2017
Gajesh Kumar vs Sumer Singh & ors.
PS Ranjit Nagar

The matter has been taken up for pronouncement of order by way of video conferencing (CISCO Webex Meetings) on account of lockdown due to COVID-19. The counsel was already intimated by Ahlmad/ Asst. Ahlmad regarding the date and time of pronouncement of order.

14.05.2020

Present: Sh. Dushyant Ahlwat and Sh. Mahinder, Ld. Counsels for the complainant.

The matter is fixed for order on summoning of the accused persons.

During course arguments on the summoning of the accused persons on 02.03.2020, Learned counsel for the complainant stated that the complainant did not want to proceed against police official SI Manmeet and separate proceedings would be initiated against him.

This Court has considered the submissions of Learned counsel for the complainant and carefully perused the material on record.

The complainant has examined himself as CW-1 in pre-summoning evidence. He has stated that on 23.10.2017, he was present at his house along with his parents. One Mrs. Smita from Delhi Mahila Ayog came with Mukta, Monika, Minakshi, Kunal, Sumer Singh and Chaman

Devi. When he opened the door, Smita slapped him and all of them forcibly entered his house. His parents came to intervene and all those persons including Smita started assaulting him and his parents. They were carrying danda and Iron rod. His elder brother Rakesh, living on third floor, also came downstairs hearing the noise. He intervened and he was also assaulted by the aforesaid persons. One neighbour called PCR but no PCR came. Thereafter, he along with his brother and father went to the police station. The aforesaid persons also came to the police station. He gave his complaint to the police official namely Manmeet Singh but he did not receive it. Manmeet Singh was talking to the accused persons. He had also taken money from the accused persons. After taking money, he prepared false Kalandra U/s. 107/151 Cr.P.C. against him and his brother. When he asked Manmeet Singh to get his MLC prepared, it was got done on 24.10.2017 at 5:00 am. He had also put handcuff in his hands and hands of his brother while taking them to the Court of SEM and the handcuffs were removed before production in the court of SEM.

The brother of the complainant was examined as CW-2. He has also made same allegations in his evidence as made by the complainant.

The complaint has been filed alleging offences punishable U/s. 323/341/452/506/188/34 IPC. The complainant and his brother have made specific allegation that they were assaulted by one Smita of Delhi Mahila Ayog and in-laws of the complainant. The allegations prima facie show that accused no. 1 to 7, in furtherance of their common intention, forcibly entered the house of the complainant after having made preparation of

assault and they also caused hurt to the complainant and his brother. ***The allegations are therefore sufficient to summon the accused no.1 to 7 for offences punishable under section 452/323/34 IPC.***

There is no allegation of wrongful restraint by any of the accused. There is nothing to show that the complainant or any of his family members were proceeding in any direction and the accused persons restrained them. ***Hence, the accused persons are not summoned for offence punishable under section 341 IPC.***

In the entire pre-summoning evidence, the complainant or his brother has not stated that any of the accused had threatened them during the incident. ***Hence, the accused persons are not summoned for offence punishable under section 506 IPC.***

The complainant has also alleged offence punishable under section 188 IPC. In this case, the complainant has not filed the complaint in his official capacity but the same has been filed in personal capacity. Further there is nothing to show that any order of public servant was disobeyed. ***There is no material to summon the accused for offence punishable under section 188 IPC.***

Let the accused no. 1 to 7 be summoned for offences punishable under sections 323/452/34 IPC on filing of PF and complete set of documents for 04.07.2020.

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CC No. 13659/2018

M/s. Kudos Laboratories India Ltd. vs. M/s. Bharti Airtel Ltd.

PS Patel Nagar

The matter has been taken up for pronouncement of order by way of video conferencing (CISCO Webex Meetings) on account of lockdown due to COVID-19. The counsel was already intimated by Ahlmad/ Asst. Ahlmad regarding the date and time of pronouncement of order.

14.05.2020

Present: Sh. Rajesh Kumar Aggarwal, Ld. Counsel for the complainant.

Vide this order, I shall decide whether this Court has territorial jurisdiction to pass appropriate directions in the present case.

In the application/complaint, it is stated that the complainant company is engaged in business of manufacturing and sale of ayurvedic medicines and cosmetic products. During regular course of business, the complainant Company opted the services of Bharti Airtel Ltd. and got some PRI/lease Lines and Mobile Numbers in the name of the company. At the time of taking the services, the officials of Bharti Airtel had taken the signatures of the AR of the complainant Company on various blank papers. It was assured that the copy would be sent very soon but nothing was supplied. At the time of taking the services of Bharti Airtel, the officials of Bharti Airtel asked the complainant Company to provide a mobile number and eMail ID for the purpose of entering the same in the record of Bharti Airtel and assured that all the information will be sent on the registered mobile number and eMail ID. In the first week of August, 2018, the complainant came to know from one official of Bharti Airtel namely Rajni that one Sachin, an

employee of the complainant Company, had asked for copy of customized Bills and he has also provided new eMail ID and mobile number which was changed by the Customer Care of Bharti Airtel without the permission and without informing the complainant. The customised bills were also sent to the said eMail ID provided by Sachin and thus, the clients data of the complainant company, their numbers and contact details were shared with some stranger by Bharti Airtel without consent of the complainant Company. The complainant Company suffered huge loss in the market but in order to avoid any unnecessary litigation, the complainant Company sent eMail dated 08.08.2018 to Bharti Airtel and requested them to look into the matter. While replying to that eMail, Bharti Airtel stated that the registered mobile number and eMail ID will not be changed without approval from the complainant's side. Believing the assurances of Bharti Airtel, the complainant did not lodge any complaint. However, the complainant Company again got shocked when the similar act was being done in September 2018. The complainant again sent eMail to Bharti Airtel informing that the details of the clients of the complainant Company by way of ebill has been sent to some stranger through eMail. It was also pointed out that once again the customer Care of Bharti Airtel had changed the registered mobile number and email without the permission of the complainant. The complainant again told them that the registered mobile number and eMail are the same since the inception of services. However, Bharti Airtel did not pay any heed towards the submission of the complainant. In the eMail dated 10.09.2018, it was confirmed by Bharti Airtel that ebill was sent to different email Id and not to the registered eMail Id of the

complainant. The complainant made request to Bharti Airtel that the bills may be sent in hard copies instead of sending through eMail but Bharti Airtel did not appreciate the request. The complainant Company was shocked and surprised after receiving SMS on the registered mobile number on 25.10.2018 that the ebills have been sent at some eMail which was not the registered email. The said eMail Id did not belong to the complainant Company and it was never provided by the complainant to Bharti Airtel. The complainant Company had never made any request for change of their registered eMail Id. Since July 2018 till November 2018, 157 clients/ customers of the complainant company informed that they were approached by some strangers under the name of Kudos and those strangers used to send duplicate products. The complainant Company has suffered business loss of approx One Crore due to wrongful act on behalf of Bharti Airtel. The complainant lodged a complaint dated 26.10.2018 with the SHO, PS Patel Nagar and copy of the complaint was also sent to DCP and ACP, but no action was taken. Hence, the application before this Court.

Alongwith the application, the complainant has filed Certificate of Incorporation with true copy of Board Resolution; copy of eMail conversations; print out of SMS, copy of the sale detail of relevant period to show business loss and copy of complaints.

ATR was called. In the ATR, it is stated that during inquiry, letter was sent to the Nodal Officer, Bharti Airtel for proving the CAF, CDR of those mobile numbers and certified copy of eBills sent to unregistered eMail Id but Bharti Airtel did not provide the same so far. Letter was also sent to Director Google to provide certified copy of the

addresses of eMail holders but no information was received. It is stated that as per the complaint, someone made request in Bharti Airtel Ltd for change of registered mobile number and eMail Id of the complainant and Bharti Airtel Ltd changed it without consent of the complainant. There has been forgery and cheating with Bharti Airtel and the offence has been committed within jurisdiction of PS OIA.

This Court has considered the submissions of Learned Counsel of the complainant and perused the record.

The complainant company has its office within jurisdiction of PS Patel Nagar. Allegedly client's data of the complainant company has been stolen by some unknown persons by getting registered email of the complainant changed. The change has been made by Bharti Airtel without consent of the complainant company and despite specific communication from the complainant not to do so. The circumstances suggest that some official of Bharti Airtel is also involved in this theft of client's data and cheating with the complainant. The complainant has received SMS on its registered mobile number that the ebill was sent on some unknown email Id.

Section 182(1) Cr.P.C provides that any offence which includes cheating may, if the deception is practised by means of letters or telecommunication messages, be inquired into or tried by any Court within whose local jurisdiction such letters or messages were sent or were received.

During course of arguments on the point of territorial jurisdiction, Learned counsel for the complainant has submitted that all the communication from Bharti Airtel has been received by the

complainant within jurisdiction of PS Patel Nagar. In these facts and circumstances, this Court is of the view that part of the offence has been committed within jurisdiction of PS Patel Nagar.

The complainant has filed an application under section 156(3) Cr.P.C seeking registration of FIR. In the ATR itself, the IO has stated that forgery and cheating has been committed.

There are specific allegations of the complainant company that without the consent of the AR / complainant company, the registered email ID was changed by Bharti Airtel Ltd. and due to this, the company suffered business loss. The documents prima facie show that Bharti Airtel changed registered email ID of the complainant company on receiving communication from some unknown person and not an authorized person of the complainant company and this change in the details caused wrongful loss to the complainant company. The clients data has been stolen by some strangers by getting the customized bills of the complainant company.

The allegations prima facie disclose commission of cognizable offences of theft, cheating and breach of trust. The provisions of Information Technology Act have also been violated. In these circumstances, SHO PS Patel is directed to register an FIR under relevant provisions of law. Copy of order be sent electronically (via email) to the SHO concerned for registration of FIR. Compliance report be called for 17.07.2020.

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CC No. 4506/2018
Sangeeta vs. Shailesh
PS Patel Nagar

The matter has been taken up for pronouncement of order by way of video conferencing (CISCO Webex Meetings) on account of lockdown due to COVID-19. The counsel was already intimated by Ahlmad/ Asst. Ahlmad regarding the date and time of pronouncement of order.

14.05.2020

Present: Sh. J. N. Pathak, Ld. Counsel for the complainant.

Vide this order, I shall decide an application u/s. 156(3) Cr.P.C. filed on behalf of the complainant.

It is stated in the application that Shailesh and Sanjay are the brother in laws (*jijaji*) of the complainant and they were in greed over a piece of land situated at the front of the house of the complainant. The accused persons had threatened the husband of the complainant to give them that piece of the land or face dire consequences. On 19.10.2017 at about 10.30 PM, the accused persons came to the house of the complainant and called her husband at the roof of the house. They also started using abusive language for the husband of the complainant and threatened to throw him from the roof. When the husband of the complainant objected, the accused persons pushed him from the roof, due to which he sustained injury and consequently died. Due to threats given by the accused persons that they would harm the complainant and her children, the complainant did not tell about the incident to anyone and even when the police officials asked her, she told that her husband had fallen down from the roof. On the date of incident, the accused

persons had also threatened the brother in law (*dewar*) of the complainant that they would kill him. After 5 days of the incident, the complainant gained some courage to lodge a complaint. Complaint was lodged on 26.10.2017 with SHO, PS Patel Nagar. No action was taken by the police. Hence, it is prayed that the police may be directed to register an FIR.

Alongwith the application, the complainant had filed copy of Post Mortem Report of the deceased and the copy of the complaint lodged with the SHO.

ATR was called. In the ATR, it is stated that on 20.10.2017, information was received at PS Patel Nagar that one Subhash Paswan was admitted at Acharya Bikshu Hospital after falling from roof of his house. During treatment, he died in the hospital. Post Mortem of the body was got conducted and the doctor opined that the cause of death was Coma due to head injury consequent upon blunt surface impact. All the injuries were *ante mortem* in nature. Proceedings u/s. 174 Cr.P.C. was conducted vide DD No 6A dated 20.10.17. Copy of the report u/s. 174 Cr.P.C is also filed. Perusal of the inquest proceedings u/s. 174 Cr.P.C. would show that the report contains copy of the statement given by complainant Sangeeta Devi and Manoj/ brother of deceased wherein they have stated that the husband of the complainant fell from the roof while he was calling the children, who were playing in the gali.

Learned counsel for the complainant has argued that such statements were given to the police because the accused persons had threatened the complainant and her brother-in-law. It is also argued that the allegations in the complaint disclose commission of cognizable

offences and therefore, the SHO may be directed to register an FIR under the relevant provisions of law.

This Court has considered the submissions of Learned Counsel and perused the record.

There is specific allegation of the complainant that the accused persons had thrown her husband from the roof because of which he sustained injury and subsequently died. No doubt, in the statement given to the police during inquiry U/s. 174 Cr.P.C., the complainant and her brother-in-law have stated that the husband of the complainant had fallen from the roof while calling the children. However, in the complaint to police as well as in application under section 156(3) Cr.P.C, the complainant has specifically stated that threats were extended to her and her brother in law because of which they made such statement during inquiry U/s. 174 Cr.P.C.

The allegations made by the complainant prima facie disclose commission of cognizable offences. In these circumstances, SHO PS Patel is directed to register an FIR under section 302/506 IPC. Copy of order be sent electronically (via email) to the SHO concerned for registration of FIR. Compliance report be called for 24.06.2020.

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