

Delhi High Court

Sh. Parminder Singh Son Of Sh. ... vs Sh. G.S. Bhatia, Proprietor Of ... on 4 December, 2007

Equivalent citations: I (2008) BC 501

Author: V Gupta

Bench: V Gupta

JUDGMENT V.B. Gupta, J.

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of the order dated 18th January, 2007 passed by Dr. Shahabuddin, Metropolitan Magistrate, Delhi.

2. The petitioner filed a complaint under Section 200 Cr.P.C. before the Magistrate in which it was prayed that police be directed to register the FIR and investigate the matter under Section 156(3) Cr.P.C.

3. The learned Magistrate after examined the record held that:

He is of the considered opinion that it is not a fit case to be sent for police investigation at this stage under Section 156(3) Cr.P.C.

4. However, he took the cognizance of the offence mentioned in the complaint and adjourned the matter to 27th June, 2007 for recording the pre-summoning evidence of the complainant and his witnesses, under Section 200 Cr.P.C.

5. It is contended by learned Counsel for the petitioner that while passing the impugned order, the Magistrate failed to take into consideration the allegations made by the petitioner in his complaint against respondent No. 1 which clearly bring forth the serious offences of forgery, fabrication and manipulation. Moreover, the said documents were filed by respondent No. 1 during the course of judicial proceedings in a false complaint filed by him under Section 138 of the Negotiable Instruments Act (for short as 'Act') and under these circumstances Magistrate ought to have directed the police to conduct investigation into the allegations made by the petitioner in his complaint.

6. Admittedly, respondent No. 1 has filed a complaint case under Section 138 of Act against the present petitioner, in which the petitioner has been summoned as an accused. According to the allegations made by the petitioner, he has issued a post dated cheque dated 10th March, 2004 in the name of M/s. Chirag Sanitary Products and respondent No. 1 is the proprietor of this concern. However, at the time of his relieving from the services in the capacity of an Agent, the respondent No. 1, with malafide intention, did not return the aforesaid cheque to the petitioner. On the contrary, respondent No. 1 fraudulently manipulated/tampered the date of the cheque by changing it from the 10th March, 2004 to 10th August, 2004 and on the basis of that cheque, respondent No. 1 has filed a complaint case under Section 138 of Act against the petitioner. According to the petitioner, respondent has committed forgery on that cheque and that is why a complaint under Section 200 Cr.P.C. has been filed against respondent No. 1 before the Magistrate in which the impugned order has been passed.

7. So, apparently it is clear that the present complaint filed under Section 200 Cr.P.C. is a counter blast to the complaint case filed under Section 138 of the Act by respondent No. 1 against the present petitioner. Whether the cheque in question is a forged one or not, this is the defense of the present petitioner in those proceedings and in order to circumvent the law and avoid payment in that case, petitioner has filed this counter complaint against respondent No. 1.

8. It is well settled that powers under Section 156 Cr.P.C. are to be exercised judiciously and not in a mechanical manner. This Court in Skipper Beverages P. Ltd. v. State 2002 Crl. L J NOC 333 (Delhi) held that:

Section 156 empowers Magistrate to direct police to register case and initiate investigation but this power has to be exercised judiciously and not in mechanical manner. Those cases, where allegations are not very serious and complainant himself is in possession of evidence to prove allegations, there should be no need to pass order under Section 156 but in a case, where Magistrate is of the view that nature of allegations is such that complainant himself may not be in position to collect and produce evidence before court, and interest of justice demand that police should step into to held complainant, police assistance can be taken.

9. So, prima-facie, it is clear that the present petition is nothing but an abuse of process of law and has been filed just to delay the proceedings of the complaint case filed under Section 138 of Act against the present petitioner and the Magistrate rightly did not order for investigation under Section 156(3) Cr.P.C.

10. Nevertheless, Magistrate has given full opportunity to the petitioner to examine his evidence under Section 200 Cr.P.C. The record shows that the petitioner is not producing his pre-summoning evidence before the trial court.

11. Under these circumstances, I do not find any illegality or infirmity in the impugned order and the present petition is not maintainable and the same is hereby dismissed with costs of Rs. 5,000/-.

12. Petitioner is directed to deposit this costs of Rs. 5,000/- with trial court within a period of one month, failing which the trial court shall recover the same in accordance with law.