

\$~2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29.11.2019

+ CRL.M.C. 5933/2019 & Crl.M.A.40833/2019

KIRTI VASHISHT Petitioner
Through Mr. Satish Sharma, Adv.

versus

STATE & ORS. Respondents
Through Mr.Panna Lal Sharma, APP for State.
SI Pankaj, Insp. Gajender Singh, PS
Kapashera, SI Raghbir, PS
Najafgarh, SI Surender Singh, BHD
Nagar

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

JUDGMENT (ORAL)

1. Vide the present petition, the petitioner seeks direction thereby directing the respondent no 2 to 4 to close the enquiry initiated vide notices dated 23.08.2019 and 26.08.2019 on complaint dated 26.07.2019 made by respondent no.7 pending before respondent no.3 and 4 i.e. P.S. Kapashera, New Delhi.

2. Brief facts of the case are that the respondent no.7/Babita Sharma filed a complaint dated 10.04.2017 bearing D.D No. 65B (hereinafter referred to as 'The First Complaint') against the petitioner alleging forgery

before the respondent no.5/S.H.O. P.S. Najafgarh in regard to one plot bearing no. A-108/1, Ragbir Enclave, Virendra Market, Najafgarh, New Delhi- 110043, measuring 100 Sq.Yrds. and on the said complaint, detailed enquiry was conducted by the respondent no.5/S.H.O. P.S. Najafgarh, during which the petitioner was thoroughly enquired and after the said enquiry, the above mentioned complaint was finally closed by the respondent no.5/S.H.O. P.S. Najafgarh vide enquiry report dated 26.03.2018 submitted by concerned I.O. of respondent no. 5/S.H.O. P.S. Najafgarh. The conclusion of the first complaint was never challenged by the Respondent No. 7/Babita Sharma before any court of law or any higher authority till date.

3. Further case of the petitioner is that again Respondent No.7/Babita Sharma for the second time filed an exactly same complaint dated 04.08.2018 bearing DD No. 41B (Hereinafter referred to as 'The Second Complaint') alleging the same facts (as alleged in the first complaint) before respondent no.6/S.H.O. P.S. Baba Haridas Nagar, Najafgarh against the petitioner with regard to the same plot. On receipt of the second complaint, the petitioner was duly called for enquiry by the concerned I.O. of respondent no.6/ S.H.O. P.S. Baba Haridas Nagar, Najafgarh, wherein the

petitioner explained/informed the I.O. concerned about the closure of the similar complaint(first complaint) on the same set of facts filed by respondent no.7/Babita Sharma before P.S. Najafgarh i.e. respondent no.5 on 26.03.2018. The petitioner, thereafter, was never called for any further enquiry by the concerned I.O of the respondent no.6/S.H.O. P.S. Baba Haridas Nagar, till date.

4. Again third time, Respondent No.7/Babita Sharma for the third time, filed an exactly same complaint dated 03.06.2019 bearing DD No. 36B (Hereinafter referred to as 'The Third Complaint') alleging the same facts (as alleged in the first complaint and the second complaint) before respondent no.5/S.H.O. P.S. Najafgarh, against the petitioner in regard to the same plot. The petitioner was again called for the third time, for enquiry by the concerned I.O. of respondent no.5/ S.H.O. P.S. Najafgarh, during which the petitioner again explained/informed the I.O. concerned about the closure of the similar two complaints mentioned above. The petitioner, thereafter, was never called for any further enquiry by the I.O. concerned of respondent no.5/S.H.O. P.S. Najafgarh till date.

5. Again Respondent No.7/Babita Sharma for the fourth time filed an exactly same complaint dated 26.07.2019 (Hereinafter referred to as The

Fourth Complaint') alleging the same facts in the above three complaints.

6. The grievance of the petitioner is that respondent no.4/I.O. S.I. Manish Kumar P.S. Kapashera, vide impugned complaint issued notice of inquiry dated 23.08.2019 and 26.08.2019 and called the petitioner for joining enquiry on the fourth complaint of the respondent no.7/Babita Sharma. The petitioner duly explained to the respondent no.4/IO SI Manish Kumar, PS Kapashera, that similar complaints on exactly same set of facts (i.e. as alleged in first complaint, second complaint and third complaint) were filed by respondent no.7/Babita Sharma and informed him about the fate and stage of the said complaints, but the respondent no.4/IO Manish Kumar, P.S. Kapashera, malafidely did not pay any heed to the information given by the petitioner and in turn, threatened the petitioner in most inhuman way to face serious consequences if the petitioner failed to meet the demands of money as bribe by respondent no.7.

7. Moreover, the petitioner on 23.08.2019 and 26.08.2019 was made to sit in the police station from 05:30 pm to 11:00 pm and was subjected to unnecessary questions by the S.H.O. P.S. Kapashera. His conduct was rude towards the petitioner and he used abusive language while addressing him. The respondent no.7/Babita Sharma and her brother Gyan Sharma, were

made to sit in the office of the S.H.O. as well during this time.

8. Learned counsel appearing on behalf of the petitioner submits that the harassment meted out to the petitioner at the hands of respondent no 3, 4 and 7 was duly reported by the petitioner to the respondent no. 2/ Commissioner of Police vide written complaint dated 28.08.2019 submitted on 29.08.2019, but no action has been taken by the respondent no 2 on the grievances of the petitioner, till date. However, threat of the respondent no. 3 & 4 still continues because the petitioner was not heard properly and was not allowed to explain the conduct of the respondent no. 7, who filed three false complaints before different Police Stations on exactly same set of facts. The petitioner was fearing of his liberty, at the hands of respondent no. 4/ I.O. S.I. Manish Kumar P.S. Kapashera, the petitioner on 13.10.2019, as an abundant precaution, went to respondent no. 4/ I.O. S.I. Manish Kumar with his written reply dated 10.10.2019, but the said respondent blatantly refused to accept and receive the same and once again threatened the petitioner with serious consequences. The petitioner, left with no other option, sent the written reply to the respondent no. 4/ I.O. S.I. Manish Kumar P.S. Kapashera through speed post dated 14.10.2019 which has been duly served on the respondent no. 4.

9. Learned counsel further submits that the petitioner had also filed a complaint dated 30.10.2019 bearing DD No. 60B before P.S. Najafgarh & higher authorities against Respondent no.7/Babita Sharma and Others for threatening, extortion of money and for defamation caused/subjected on the petitioner and the same is pending enquiry before P.S. Najafgarh. The filing of the fourth complaint dated 26.07.2019 and its enquiry by the respondent no. 3 & 4/P.S. Kapashera is an abuse of process of law and against the principles of natural justice and further against the constitutional rights of the petitioner.

10. Whereas, the case of the respondent no.7/complainant is that the petitioner was known to her since many years and he runs a business of sale and purchase of properties. At the end of January, 2013, in his office, i.e. Westend Plaza, LG-15A, Kapashera, New Delhi-110027, she discussed with the petitioner about the sale of a plot to which he replied positively, hence, she gave photocopy of documents along with complete chain of the documents to the petitioner. After three days, the petitioner asked the complainant to give original papers for arranging a suitable buyer. Believing him and his words, the complainant gave original papers of the property in question to the petitioner. Thereafter, the complainant asked the

petitioner to return the original papers of said property but no positive response was received from the petitioner on repeated requests. He told her that the same have been misplaced somewhere. But as stated by Respondent no.7 that the petitioner had misused and sold her property without her consent and not paid any amount to her.

11. In the status report filed by the State, it is stated that since the abovementioned complaint was entrusted to SI Manish Kumar, PS Kapashera for necessary action, SI Manish Kumar conducted an inquiry. During the course of inquiry, the inquiry officer served notices to the petitioner to join the inquiry on 23.08.2019, 26.08.2019 and 04.09.2019. On receiving the notice, the petitioner joined inquiry and submitted his written reply dated 26.08.2019 and 15.10.2019, whereby he stated that he is doing business of property dealer and is known to the complainant since 20/25 years. The complainant had filed the same complaint with Police Station Najafgarh and Police Station Baba Haridas Nagar on 10.04.2017 and 04.08.2018 respectively in connection with property bearing No.A-108/1, Raghbir Enclave, Najafgarh. He also stated that no original documents were handed over to him by the complainant and the petitioner sought some more time for a detailed reply.

12. The status report further states that during the course of inquiry, notice was served to Naresh Batra R/o H.No. 10/17, Mandir Wali Gali, Ward No.27, Bahadurgarh, Haryana to join inquiry. During the enquiry, his statement was recorded wherein he stated that he had once facilitated, as a free-lance property dealer, in regard to sale purchase dealing of plot bearing no.A-108/1, Raghbir Enclave, Virendra Market, Najafgarh, Delhi-43, between the seller and the buyer on commission basis about 6 years ago. He further stated that petitioner had sold the property in question and he did not know the complainant Babita Sharma. He was also a witness to the sale documents executed between seller and the buyer. The above said plot does not belong to him and he was never the owner of the said plot at any point of time nor he purchased the said plot from anyone. He further stated that he did not remember where the buyer was residing due to lapse of time.

13. During inquiry, notice was served to Notary Public (Ms.Rajbala Mishra, Advocate, Registration No.766) to join the inquiry and she submitted her written reply wherein stated that the documents executed by Smt. Tribani Devi W/o Shri Umed Singh Pandit R/O VPO Dhansa, New Delhi, in favour of Babita Sharma D/o Dilip Singh on 21.12.2012 and the same was attested by her vide entry No.32201 to 32206, made in her notarial

Register. Thus, contradiction found in the statement of petitioner and Sh. Naresh Batra as the petitioner told the inquiry officer that complainant never handed over original property documents to him while Naresh Batra revealed that the said property/plot was sold by the petitioner to a person and he was witness of that deal. However, neither petitioner nor Naresh Batra provided any documentary proof in support of their version. It is further stated in the inquiry report that the petitioner is not cooperating in the inquiry.

14. Learned APP appearing on behalf of the State submits that the petitioner as well as witnesses were called to join the inquiry, as per provisions mentioned in Cr.P.C. He was never harassed during inquiry by inquiry officer and the inquiry in this matter is still in progress.

15. Learned APP further submits that respondent no.7 was found at the given address i.e. Westend Plaza, LG-15A, Kapashera, New Delhi-110037 and notice has been served to the individual.

16. Learned APP has fairly conceded that as per the contents of the complaint, cognizable offence is made out. Thus, even on the first complaint made to Police Station, Najafgarh, the FIR was supposed to be registered. As per section 154 Cr.P.C., if any information relating to the commission of

a cognizable offence is received by any Police Station, the said Police Station is duty bound to register the FIR. However, if the crime is not occurred in the jurisdiction of the said Police Station, then after registering the ‘*Zero FIR*’, the same has to be transferred to the concerned Police Station for investigation, where the offence has been committed. However, neither this happened in the Police Station Najafgarh nor thereafter in Police Station Baba Hari Das Nagar and also nor in Police Station Kapashera as well.

17. It is not in dispute that the provision of ‘*Zero FIR*’ came up as a recommendation in the Justice Verma Committee Report, in the new Criminal Law (Amendment) Act, 2013 after the heinous ‘*Nirbhaya Case*’ of December, 2012. The provision says: “*A Zero FIR can be filed in any police station by the victim, irrespective of their residence or the place of occurrence of crime.*”

18. It is also not in dispute that the practice of ‘*Zero FIR*’ is prevalent throughout India from the last many years. Thus, the Police Station of Kapashera, Najafgarh and Baba Hari Das Nagar were also aware about the said practice but none of the Police Stations till date have registered the case on the complaint of respondent no.7 whereas admittedly, cognizable offence

has been committed as per the complaint of respondent no.7. Thus, the complainant/respondent no.7 was compelled to run from pillar to post due to inaction of the Police Stations mentioned above.

19. There is clear provision in Section 154 Cr.P.C. for registration of FIR. Case of ***Lalita Kumari vs. Govt. of U.P. & Ors.: AIR 2014 SC 187*** is very relevant in the facts and circumstances of the case in hand, whereby the constitution bench of the Hon'ble Supreme Court has held as under:

“100) The registration of FIR under Section 154 of the Code and arrest of an accused person under Section 41 are two entirely different things. It is not correct to say that just because FIR is registered, the accused person can be arrested immediately. It is the imaginary fear that “merely because FIR has been registered, it would require arrest of the accused and thereby leading to loss of his reputation” and it should not be allowed by this Court to hold that registration of FIR is not mandatory to avoid such inconvenience to some persons. The remedy lies in strictly enforcing the safeguards available against arbitrary arrests made by the police and not in allowing the police to avoid mandatory registration of FIR when the information discloses commission of a cognizable offence.”

20. Accordingly, I hereby direct the Commissioner of Police, Delhi to take action as per law against the then SHO of the aforementioned Police Stations, including the IO's who handled the complaint of respondent no.7. Since the cognizable offence admittedly has been committed by the

petitioner herein, therefore, SHO Baba Hari Das Nagar is directed to take action forthwith on the complaint of respondent no.7.

21. I further make it clear that if any other cognizable offence has been committed by any other person related to the property in question, action shall also be taken against those culprits.

22. It is pertinent to mention here that, as admitted, the Police Station, Nazafgarh has closed the complaints of Respondent No.7, however, there was no communication to the complainant who remained in doubt and confusion regarding her complaints. Thus, she runs from pillar to post to get justice.

23. Accordingly, I hereby direct the Commissioner of Police, Delhi to issue circular/Standing order to all the Police Stations in NCT of Delhi and all concerned that if complaint of cognizable offence is received in a Police Station, and offence occurred in jurisdiction of other Police Station, in that case, the ‘Zero FIR’ shall be lodged by the Police Station which has received the complaint and thereafter shall be transferred to the concerned Police Station.

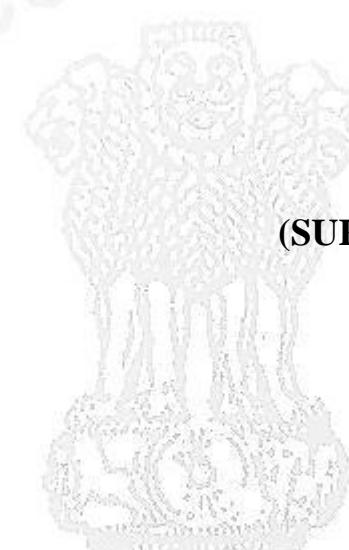
24. I further direct the Commissioner of Police, Delhi to issue circular/standing order that in case, a complaint is to be closed for any

reason, the same shall be closed with reasoned order and the same shall be communicated to the complainant in writing without any delay.

25. In view of above directions, the petition is disposed of.
26. Order *dasti* under the signatures of the Court Master to the parties.
27. Pending application also stands disposed of.
28. A copy of this order shall be transmitted to Commissioner of Police Delhi for compliance.

**(SURESH KUMAR KAIT)
JUDGE**

NOVEMBER 29, 2019
ms/ab



सत्यमेव जयते