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RAJINDER SINGH KATOCH

v.

CHANDIGARH ADMINISTRATION & ORS.

OCTOBER 12, 2007

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[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

*Code of Criminal Procedure, 1973—s.154—FIR—Registration of—When—Held: Though competent officer is legally bound to register
C FIR, but after preliminary enquiry the authorities find the allegations not to be correct, they are not bound to register such FIR.*

*Remedy—Civil remedy—Criminal proceedings—Recourse to—
D For enforcement of right of co-sharer to enjoy joint family property—Held: Such right being civil in nature, has to be enforced by taking recourse to remedies under Civil law and not by taking recourse to criminal proceedings.*

**Appellant was denied access to joint family property by the co-sharer (respondent No. 4). His FIR was not registered. He filed an
E application u/s 482 Cr.P.C. seeking direction to the authorities to register the case against respondent No. 4 and the same was dismissed. Hence the present appeal.**

Dismissing the appeal, the Court

**F HELD : 1. Although the officer in charge of a police station is legally bound to register a First Information Report in terms of Section 154 Cr. P.C., if the allegations made by them give rise to an offence which can be investigated without obtaining any permission from the Magistrate concerned, the same by itself, however, does
G not take away the right of the competent officer to make a preliminary enquiry, in a given case, in order to find out as to whether the first information sought to be lodged had any substance or not. In this case, the authorities has made investigations into the matter. In fact, the Superintendent of police himself has, pursuant to the directions**

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issued by the High Court, investigated into the matter and visited the spot in order to find out the truth in the complaint of the petitioner from the neighbours. It was found that the complaint made by the appellant was false and the same had been filed with an ulterior motive to take illegal possession of the first floor of the house. In a case of this nature where the authorities bound by law have already in investigated into the matter and found that the allegations made by the appellant against respondent No. 4 were not correct, it would not be proper for this Court to issue any direction to lodge a First Information Report. [Paras 8 and 10] [249-A, B, C, E]

2. Right of a co-sharer to enjoy the joint family property is a civil right. Such a right, if denied by the other co-sharers for one reason or the other, must be enforced by taking recourse to the remedies available under the civil laws. Criminal proceedings, cannot be taken recourse to for enforcing such a civil right.

[Paras 9 and 10] [249-D, E]

Shashikant v. Central Bureau of Investigation and Ors., (2006) 11 SCALE 272, relied on.

Ramesh Kumari v. State (NCT of Delhi) and Ors., [2006] 2 SCC 677, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1432 of 2007.

From the Judgment and final order dated 12.12.2005 of the High Court of Punjab and Haryana at Chandigarh in CrI. Misc. No. 2206-M of 2005.

Asha Jain Madan, Mukesh Jain and Dushyant Parashar for the Appellant.

Romesh Gautam, Geetanjali Shanker, Dr. Kailash Chand and Kamini Jaiswal for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

A 2. Appellant and respondent No.4 herein are brothers and co-sharers. They jointly possess some properties. Appellant herein allegedly came to Chandigarh to reside in the family house sometimes in 2001. He allegedly kept his belongings there and came back to Delhi.

B 3. In 2002, he, when came to Chandigarh, was allegedly restrained by his brother from entering into the house. His complaint to the Police Station went unheeded. First Information Report, according to him, was not registered despite the fact that it disclosed a cognizable offence.

C 4. He filed an application under Section 482 of the Code of Criminal Procedure before the Punjab and Haryana High Court. The said application was dismissed by reason of the impugned judgment, stating :

D “The petitioner has filed this petition under Section 482 of the Cr.P.C. for issuing directions to respondents No.2 and 3 to register a case against respondent No.4 for house trespass and theft.

E Respondent No.4 is the real brother of the petitioner. The said house in question is a joint property of seven legal heirs. After the death of father of the petitioner, the same has been inherited by seven persons. In the reply, it has been stated that the petitioner was not residing in the aforesaid house and the allegations leveled by him found to be false being family dispute.”

5. Appellant, is, thus, before us.

F 6. Ms. Asha Jain Madan, learned counsel appearing on behalf of the appellant, in support of this appeal, would submit that despite the fact that the property was a joint property, having regard to the provisions contained in Section 339 of the Indian Penal Code, the respondent could not have wrongfully restrained the appellant from occupying the first floor of the property and have access to his belongings. It was urged that in terms of Section 154 of the Code of Criminal Procedure, the Police Officers had a duty to register the first information report once the allegations disclosed commission of a cognizable offence.

G 7. Ms. Kamini Jaiswal, learned counsel appearing on behalf of the respondent and Mr. Ramesh Gautam, learned counsel appearing on behalf of respondent No.4, however, supported the judgment.

8. Although the officer in charge of a police station is legally bound to register a first information report in terms of Section 154 of the Code of Criminal Procedure, if the allegations made by them gives rise to an offence which can be investigated without obtaining any permission from the Magistrate concerned; the same by itself, however, does not take away the right of the competent officer to make a preliminary enquiry, in a given case, in order to find out as to whether the first information sought to be lodged had any substance or not. In this case, the authorities had made investigations into the matter. In fact, the Superintendent of Police himself has, pursuant to the directions issued by the High Court, investigated into the matter and visited the spot in order to find out the truth in the complaint of the petitioner from the neighbours. It was found that the complaint made by the appellant was false and the same had been filed with an ulterior motive to take illegal possession of the first floor of the house.

9. Ms. Madan contended that the right of the appellant to live in the joint family cannot be taken away. Right of a co-sharer to enjoy the joint family property is a civil right. Such a right, if denied by the other co-sharers for one reason or the other, must be enforced by taking recourse to the remedies available under the civil laws.

10. Criminal proceedings, in our opinion, cannot be taken recourse to for enforcing such a civil right. In any event, in a case of this nature where the authorities bound by law have already investigated into the matter and found that the allegations made by the appellant against respondent No.4 were not correct, it would not be proper for us to issue any direction to the respondent Nos.1 to 3 to lodge a first information report.

11. We are not oblivious to the decision of this Court in *Ramesh Kumari v. State (NCT of Delhi) & Ors.*, [2006] 2 SCC 677 wherein such a statutory duty has been found in the Police Officer. But, as indicated hereinbefore, in an appropriate case, the Police Officers also have a duty to make a preliminary enquiry so as to find out as to whether allegations made had any substance or not.

In *Shashikant v. Central Bureau of Investigation & Ors.*, (2006) 11. SCALE 272, this Court stated :

- A “Only an anonymous complaint was made in June 2004. Evidently it was within the province of the first respondent to commence a preliminary inquiry. The procedure laid down in the CBI Manual and in particular when it was required to inquire into the allegation of the corruption on the part of some public servants, recourse to the provisions of the Manual cannot be said to be unfair. It did not find any reason to convert the preliminary inquiry into a regular case. Pursuant to or in furtherance of the recommendations made by the first respondent, which had received the imprimatur by the Central Vigilance Commission, departmental proceedings were initiated. The Central vigilance Commission advised the Railway Board to initiate minor penalty proceedings against the delinquent officers by a letter dated 04.08.2005.”
- B
- C

There is no merit in the appeal. It is dismissed accordingly.

D K.K.T.

Appeal dismissed.