

CASE NO.:
Appeal (crl.) 1432 of 2007

PETITIONER:
Rajinder Singh Katoch

RESPONDENT:
Chandigarh Administration & Ors

DATE OF JUDGMENT: 12/10/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Crl.) NO.3360 of 2006)

S.B. Sinha, J.

1. Leave granted.
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.
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.
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 :
"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. 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.
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.
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.

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.

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.

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 :

\023Only 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.\024

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