

IN THE HIGH COURT OF DELHI AT NEW DELHI

Crl.M.C. No.3249/2009

Judgment delivered on: November 05, 2009

Mr. Kulvinder Singh Petitioner.
Through: Mr. S.S. Chhillar, Adv.

versus

State & Ors. Respondents
Through: Mr. Sanjay Lao, APP for the State.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

KAILASH GAMBHIR, J. Oral:

1. By way of the present petition filed under Section 482 Cr.P.C. the petitioner seeks to challenge the order dated 13.1.2009 passed by the Court of Metropolitan Magistrate and the order dated 4.7.2009 passed

by the revisional Court.

2. The brief facts relevant for deciding the present petition are as under:-

Appellant is a permanent resident of Village Katewara, Delhi, residing with his family. Appellant is doing the business of Auto Parts in Maya Puri. On 09.06.2008, when he was returning to his house, respondents no. 4 & 5 grappled with him without any provocation from his side and starting beating and abusing and snatched amount of Rs.10,000/-. After freeing himself he entered his house and locked it from inside. Then respondents no. 2 to 6 started throwing stones etc. in window panes and in the process the petitioner and his daughter aged 10 years Kumari Deepanshi received injuries.

3. A police call was made. The respondents already fled by that time. SHO ordered for the medical examination of the petitioner and his daughter at Maharishi Balmiki Hospital, Pooth Khurd, Delhi. On the assurance that the police would come to their place to record statements the petitioner went back to his home. On 10.06.2008, appellant and his father went to police station to enquire about the registration of case. The SHO Bhawana refused to register the

compliant against the respondents no. 2 to 6. He then approached ACP Bhawana but same thing happened as he refused to register an FIR. Then appellant filed an application under Section 156(3) of Cr.P.C against the respondents no. 2 to 6 on 26.06.2008. These very respondents are already facing a criminal trial under Section 425/324/34 IPC vide FIR No. 179/1998 which is pending in the Court of Sh. Sudhanshu Kaushik, M.M, Rohini.

4 . That the motive of respondent Nos. 2 to 6 was to terrorize the appellant to compromise the FIR No. 179/1998 but instead appellant went ahead to seek his legal remedy by filing a complaint case along with application under Section 156(3).

5. The learned M.M vide order dated 13.01.2009 based on the status report filed by the police came to the conclusion that there was no ground for directing registration of FIR or for further investigation under Section 156 (3) of Cr.P.C. and granted liberty to the petitioner to lead evidence.

6. Aggrieved with the said order of Ld. M.M. the petitioner preferred a revision petition. After going through the entire material

on record and order dated 13.01.2009, the Revisional Court upheld the order dated 13.01.2009 passed by learned MM. Feeling aggrieved with the said order the petitioner has filed the instant petition.

7. Mr. S.S. Chhillar, counsel appearing for the petitioner submits that the learned Metropolitan Magistrate in a most illegal manner directed the appellant to lead evidence instead of directing the police to investigate the matter under Section 156(3) of the Code of Criminal Procedure. Counsel further submits that even the learned Revisional Court without properly appreciating the facts of the case and the settled legal position upheld the order passed by the learned Magistrate. Counsel further submits that on 9th June, 2008 the petitioner vide DD No. 22A had lodged a complaint to the PCR when the accused persons had attacked the petitioner and his family and broken down the windows of their property and had also stolen an amount of Rs. 10,000/-. Counsel further submits that the petitioner and his daughter had received injuries in the said incident and their MLC's were got done by the police themselves. Counsel thus submits that instead of registering an FIR the police in active connivance with the accused persons did not take any action on the said complaint of the

petitioner compelling the petitioner to file a complaint under Section 200 Cr.P.C. Counsel further submits that the matter was required to be investigated by the police as there is a clear case of robbery, criminal trespass and of causing grievous/simple injuries against the accused persons. Counsel further submits that respondents have not yet been summoned by the Court and, therefore, they are not required to be heard in the present petition.

8. Present petition is opposed by Mr. Sanjay Lao, APP for the State. He submits that the learned Magistrate has only taken the cognizance of the offence and has directed the petitioner to lead the evidence. Counsel further submits that instead of adducing the evidence the petitioner has challenged the order of Metropolitan Magistrate and that of the revisional Court by way of the present petition. Counsel thus states that the petitioner is shirking from giving his evidence knowing fully well that he would not be able to establish his case before the said Court. Counsel further submits that there are inter se disputes between both the parties and even a report was lodged by the other party against the petitioner. Counsel also submits that the medical examination of Arun S/o Shri Rajbir Singh was also done and he was also found to have received simple injuries in the same incident,

complaint of which was lodged by the petitioner.

9. I have heard learned counsel for the parties.

10. In the status report filed by the State before this Court stand has been taken that Arun S/o Shri Rajbir Singh has alleged that he was attacked by present petitioner and his family when he was going to his field for tying the buffalo while the present petitioner has alleged that Arun Kumar, Amit, Rajbir Singh and Samay Singh had entered his house, beat him and snatched away a sum of Rs. 10,000/- from his pocket. The status report further states that the medical examination of Arun, Rajbir Singh, Kulvinder Singh and Kumari Deepanshi were conducted at M.B. Hospital Pooth Khurad, Delhi and the nature of injury in each MLC was given as simple blunt. Status report further states that primarily it is a property dispute between both the parties, who are related to each other.

11. Taking into consideration the aforesaid, I am of the view that this is a fit case where the learned Metropolitan Magistrate ought to have exercised power under Section 156(3) to direct investigation in the matter. To better appreciate the issue involved, Section **156 Cr.P.C** is reproduced as below:-

“156

1. Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
2. No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one, which such officer was not empowered under this section to investigate.
3. Any Magistrate empowered under Section 190 may order such an investigation as above mentioned.”

12. The petitioner in his complaint has alleged that the accused persons not only trespassed into the property of the petitioner but they also had snatched an amount of Rs. 10,000/- from the petitioner. In the face of these allegations at least prima facie one finds that cognizable offence has been committed by the other party. No doubt there is a complaint by the other party as well against the present petitioner and, therefore, in such like cases without waiting for the parties to have approached the Court, the police should have acted right at the very threshold by taking appropriate action in the matter to hold an investigation into such complaints lodged by both the parties.

13. In the matter of **Brahm Prakash Gupta vs State 2008(9) AD**

(Delhi) 21, it has been held that Section 156(3) curtails and controls arbitrariness on part of police authorities in matter of registration of FIR's and not taking up investigation in those cases where same are warranted. Magistrates can hold and direct investigation where the complaint is of serious nature.

14. In **Skipper Beverages Ltd. vs State 2001(4) AD (Delhi) 625** it was held by this court that the power under Section 156(3) of Cr.P.C. ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of complainant or interrogation appears to be necessary for some recovery of article or discovery of fact.

15. In the instant case, both the parties had sustained injuries. In the status report, the State has clearly stated that the medical examination of the petitioner, his daughter as well as of Arun was got done and it was found that both the parties had received simple injuries.

16. In view of the above position, I set aside the order passed by the revisional Court dated 4.7.2009 and that of the Metropolitan Magistrate dated 13.1.2009 and direct the police to investigate the

case under Section 156(3) Cr.P.C. After the investigation the police shall submit a report before the concerned Trial Court and then appropriate order shall be passed by the Magistrate.

With these directions the present petition is disposed of.

Dasti.

November 05, 2009
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KAILASH GAMBHIR,J