

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

Judgment reserved on: August 12, 2010
Judgment delivered on: August 20, 2010

+ **CRIMINAL M.C. NO.2455/2009**

NANDINI SHARMA

....PETITIONER

Through: Mr. R.V. Sinha, Advocate

Versus

GOVT. OF NCT OF DELHI STATE & ANR

.....RESPONDENTS

Through: Mr. Pawan K. Bahl, APP

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

AJIT BHARIHOKE, J.

1. Ms.Nandini Sharma, the petitioner herein, vide this petition under Section 482 Cr.P.C. read with Article 227 of the Constitution of India is seeking quashing of the impugned order dated 22nd May 2009 of the Metropolitan Magistrate whereby he declined to direct the police under Section 156(3) Cr.P.C. to register an FIR on the complaint of the petitioner and instead decided to conduct the inquiry contemplated under Section 200 of the Code of Criminal

Procedure (hereinafter referred to as the "Code") as well as direction to respondent No.2 to register an FIR against the accused Sanjeev Kumar.

2. Briefly stated, the facts leading to the instant petition are that the petitioner was married to one Vijay Anand Sharma on 9th March 1999. After her marriage, she came to be acquainted with one Sanjeev Kumar, a school mate and friend of her husband. Sanjeev Kumar had been working and residing in USA.

3. Sanjeev Kumar used to visit Delhi in connection with his office trips and his divorce case, pending in Tis Hazari Courts, Delhi. During his visits to Delhi, Sanjeev Kumar used to stay with the petitioner and her husband. In April 2008 also, during his visit Sanjeev Kumar stayed with them. It is alleged that on 2nd May 2008, when the husband of petitioner was away to Muradabad, Sanjeev Kumar raped her despite of her protest. Thereafter, he threatened that if she dared to tell about the incident to her husband, he would not believe her and in the bargain she would lose her husband as well as her honour and prestige in the society. Thus, out of fear and shame, she did not tell her husband about the incident. Thereafter, the accused got encouraged and started blackmailing her by forcing her to call him time and again and have erotic conversation with him

over the phone and also to indulge in sex with him as and when they got an opportunity, while he was in Delhi.

4. Petitioner further alleged that in June 2008, her husband got suspicious about her relationship with Sanjeev Kumar and pressed her to tell him about whatever was going on between her and Sanjeev Kumar. On this, she rang up Sanjeev Kumar and told him that her husband was suspicious about their relationship. On this, Sanjeev Kumar advised her to lodge a complaint of misbehaviour, cruelty and threat to life against her husband with the local police and also at the higher levels. He also suggested that petitioner should take steps to get divorce from her husband. Since the petitioner was under tremendous pressure, she followed the advice of the accused and after the said incident the accused stopped taking her calls and did not even come to collect his bag containing his clothes.

5. Petitioner also claims that initially because of fear of humiliation and shame, she did not report the matter to the police. However, after realising that accused Sanjeev Kumar had cheated and sexually abused her and ruined her harmonious relationship with her husband and son, she preferred a written complaint dated 05.10.2008 with police station Malviya Nagar, New Delhi which was recorded at the police station as DD No. 16B. Pursuant to the said

complaint, one SI Pratibha Sharma, P.S. Malviya Nagar visited the house of the petitioner and enquired from her about the facts relating to the complaint. The petitioner along with her husband again visited said police station. On 13.10.2008, when Inspector Harpal Singh, SHO Malviya Nagar arranged a counselling for the petitioner and her husband with Dr. (Mrs.) Rajat Mitra at Vasant Kunj, who advised that she will have to go to hospital for medical examination but the SI did not take her for medical examination though the petitioner was ready.

6. Since the police did not take any action on her written complaint, the petitioner preferred a complaint under Section 376/506/306 IPC against the accused Sanjeev Kumar in the court of Additional Chief Metropolitan Magistrate wherein, she requested for direction under Section 156 (3) Cr.P.C. to the SHO, P.S. Malviya Nagar to register an FIR on the basis of her complaint and investigate the matter. Said complaint was marked to the concerned Metropolitan Magistrate, who on consideration of the complaint under Section 156 Cr.P.C. for registration of the case vide order dated 22.05.2009, took it upon himself to conduct an inquiry under Section 200 of the Code of Criminal Procedure and observed thus:

“The complainant has two versions, on one side she stated that respondent has committed rape and on other side she stated that her husband wants to implicate the proposed accused

Sanjeev Kumar Chopra in false rape case. It is pertinent that the complainant filed complaint against her husband on 09.06.2008 much after 02.05.08 the alleged incident of rape and in the same she stated that her husband was also letting her to write false rape against the proposed accused.

In view of the above discussion, I am of considered opinion that the application seeking direction for police investigation is not entertainable as custodial interrogation of proposed accused is not required. Accordingly application of the complainant U/s 156(3) Cr.P.C. is dismissed”.

7. Learned counsel for the petitioner has submitted that the aforesaid order of the learned M.M. is bad in law because it is settled principle of law that once a complaint disclosing the commission of a cognizable offence is submitted at the police station, the SHO concerned is under legal obligation to register an FIR and if he fails to do so, the complainant can always approach the Magistrate concerned, who shall pass an order under Section 156(3) of the Code of Criminal Procedure directing the SHO to register a formal FIR on the basis of said complaint. In support of this contention, learned counsel for the petitioner has relied upon the judgment of Supreme Court in the matter of **Dharmeshbhai Vasudev bhai & Ors. Vs. State of Gujarat & Ors.**, 2009(7) SCALE 214 & **Dilawar Singh Vs. State of Delhi**, JT 2007 (10) SC 585.

8. Learned counsel for the respondent, on the other hand, has defended the impugned order. He submits that as per the scheme of the Code of Criminal Procedure (Code), Chapter XII of the Code

contains provisions relating to information to the police and their power to investigate, whereas Chapter XV of the Code deals with the procedure to be followed by the Magistrate when a complaint is filed before him. Learned APP further contended that once a complaint disclosing commission of an offence is filed before the Magistrate, he has two options i.e. either to direct the officer in-charge of the police station to register a case on the basis of a complaint and proceed with the investigation or he can adopt the procedure provided in Chapter XV of the Code. In the instant case, perusal of the impugned order would show that the learned Magistrate, instead of exercising his option to direct investigation of the case under Section 156(3) Cr.P.C. has opted to conduct a preliminary enquiry and listed the case for recording of the statement of the complainant under Section 200 Cr.P.C. Learned APP submitted that there is nothing illegal or unwarranted in the aforesaid procedures adopted by learned Magistrate, particularly when, as per her own showing, the complainant reported the matter to the police after a delay of five months and also because of the fact that the version detailed in her complaint is not prima facie trustworthy.

9. In the matter of Dilawar Singh (supra) relied upon by the petitioner, while analysing the provisions of the Code in Chapter XII and XV, Supreme Court has, inter alia, observed thus:

"10. When information is given at the police station, normally two courses are open. A station diary entry can be made or the FIR registered. In case there is any deviation, recourse to Section 154(3) has to be made. If that does not yield any result a complaint can be filed.

11. Section 156 reads as follows:

156. Police officer's power to investigate cognizable cases. -
(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. Section 156 falling within Chapter XII, deals with powers of police officers to investigate cognizable offences. Investigation envisaged in Section 202 contained in Chapter XV is different from the investigation contemplated under Section 156 of the Cr.P.C.

13. Chapter XII of the Cr.P.C. contains provisions relating to "information to the police and their powers to investigate", whereas Chapter XV, which contains Section 202, deals with provisions relating to the steps which a Magistrate has to adopt while and after taking cognizance of any offence on a complaint. Provisions of the above two chapters deal with two different facets altogether, though there could be a common factor i.e. complaint filed by a person. Section 156, falling within Chapter XII deals with powers of the police officers to investigate cognizable offences. True, Section 202, which falls under Chapter XV, also refers to the power of a Magistrate to "direct an investigation by a police officer". But the investigation envisaged in Section 202 is different from the investigation contemplated in Section 156 of the Cr.P.C.

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15. But a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes

cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Cr.P.C. A reading of Section 202(1) of the Cr.P.C. makes the position clear that the investigation referred to therein is of a limited nature. The Magistrate can direct such an investigation to be made either by a police officer or by any other person. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. This can be discerned from the culminating words in Section 202(1) i.e. "or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding".

10. From the above enunciation of various provisions of the Code, the clear position which emerges is that when on the refusal of police to register an FIR, a complaint is filed in the court, the Magistrate has two options available to him i.e. either to refer the matter under Section 156(3) of the Code for investigation by the police, which course the Magistrate can adopt only before taking cognizance of the offence or if the Magistrate proposes to take cognizance of the offence, he can proceed in accordance with provisions of Chapter XV of the Code. In the instant case, from the impugned order it is apparent that because of some inherent contradictions in the stand taken by the complainant in the complaint, the Magistrate instead of resorting to Section 156(3) of the Code has opted to follow the procedures provided for the complaint cases under Chapter XV of the Code and has listed the case for recording of the statement of the complainant.

11. I find no infirmity in the aforesaid course adopted by the learned Magistrate. Accordingly, the petition is dismissed.

(AJIT BHARIHOKE)
JUDGE

AUGUST 20, 2010
ks/pst