

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

Judgment reserved on: July 21, 2011
Judgment delivered on: July 25, 2011

+ **W.P.(CRL.)No.204/2009**

RAKESH KUMAR & ANOTHER PETITIONERS

Through: Ms.Nandita Rao, Advocate

Versus

THE STATE & ANOTHER RESPONDENTS

Through: Ms.Meera Bhatia, ASC for respondent No.1.

**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. Rakesh Kumar and Prakasho Devi, the petitioners herein have sought following prayer:-

“direct the police to register an FIR and investigate expeditiously for commission of cognizable offences under Section 327/452/506/34 of IPC against the accused persons and any other offence that may be made out”

2. Briefly stated, facts relevant for this petition are that the petitioners filed a complaint under Section 156(3) of the Code of Criminal Procedure read with Sections 327/452/506/34 IPC against 8 respondents, including

in-charge Police Post Rani Bagh and respondent No.2 with a prayer for direction to the SHO, P.S. Sarita Vihar to register a case on the basis of said complaint and investigate the matter.

3. Learned Metropolitan Magistrate, on consideration of the petition, instead of issuing directions for registration of FIR under Section 156(3) Cr.P.C. decided to conduct inquiry into the allegations and adjourned the matter for recording of preliminary evidence of the petitioners.

4. Feeling aggrieved by the aforesaid order, the petitioners preferred a revision petition against the said order. Revision petition was dismissed by learned Additional Sessions Judge, vide order dated 7.1.2009 with following observations:-

“The grievance of the revisionist is that the respondents committed certain offences by entering into his house. I have inquired from the Id. Counsel if any recovery is to be effected to prove the case. Ld. Counsel submitted that according to the complaint, no recovery is to be effected. According to the Code of Criminal Procedure if a complaint is filed in a court, the court has discretion either to proceed under Section 156(3) Cr.P.C. directing the police to register FIR and investigate or take cognizance u/s 190 Cr.P.C. Though the code gives absolute discretion but it has to be exercised judiciously. The broad guidelines are that if the recovery is to be effected requiring search and seizure which an ordinary person cannot do and police has special power then ordinarily the court should go in favour of registration of case, but if the entire evidence is available with the complainant, then it is advisable that court shall not go for

registration of FIR instead take cognizance and proceed according to law. In the present case as discussed above, no recovery has to be effected. The entire evidence if with the complainant, in my view Ld. Trial court has rightly exercised its jurisdiction by not resorting to Section 156(3) Cr.P.C.”

5. Learned counsel for the petitioners has contended that learned M.M. as well as the revision court has committed a grave error in law in not directing the police to register the FIR on the basis of the complaint under Section 156(3) Cr.P.C. filed by the petitioners. It is contended that the courts below have failed to appreciate that there was a long history of dispute between the parties resulting in several cases, namely FIR No.891/07 under Section 498A/406/34 IPC, P.S. Saraswati Vihar, complaint under Domestic Violence Act under Sections 12/13/14/15/18/20 and 21 pending in the court of M.M. Patiala House, Kalandara under Section 107/151 Cr.P.C. dated 2nd May, 2007, another Kalandara under Sections 107/151 dated 14th January, 2008 indicating propensity on the part of the named accused persons in the court to take law in their hands. It is further contended that the complaint disclosed commission of offence by the accused persons, therefore, it was obligatory under Section 154 Cr.P.C. on the part of the Investigating Officer to register the FIR and investigate the matter. Ignoring aforesaid provisions of law, learned Metropolitan Magistrate, instead of referring the complaint to the police for investigation, decided to conduct his own preliminary inquiry which is not the intent of law. Learned counsel further submitted that even learned Additional Sessions Judge while hearing the revision petition has

ignored aforesaid aspects of the case. Thus, she has urged that directions be issued to the concerned police station to register an FIR on the complaint of the petitioners and investigate it expeditiously.

6. 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 ASC 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 fixed the matter for complainants' evidence. Learned ASC submitted that there is nothing illegal or unwarranted in the aforesaid procedure adopted by learned Metropolitan Magistrate.

7. In the matter of ***Dilawar Singh Vs. State of Delhi JT 2007(10) SC 585***, 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.

.....

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".

8. 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 as no recovery was to be effected from the accused and the entire evidence was available with the complainants, the Magistrate instead of resorting to Section 156(3) Cr.P.C. has opted to follow the procedures provided for the complaint cases under Chapter XV of the Cr.P.C. and has listed the case for recording of evidence of the complainant.

9. In view of the above, I find no infirmity in the impugned order of learned Metropolitan Magistrate dated 20th May, 2007 as also the order of the revision court dated 7th January, 2009 whereby the revision petition was dismissed.

10. The petition is accordingly dismissed.

(AJIT BHARIHOKE)
JUDGE

JULY 25, 2011
ks