

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

Judgment delivered on: July 25, 2011

+ **CRL.M.C.NO. 3422/2010**

GEETA GUPTA

....PETITIONER

Through: Mr.N.K.Gupta, Advocate.

Versus

SAVITA RANI, DEO & ANR.

....RESPONDENTS

Through: Mr.Mukesh Gupta, Advocate with Ms.Sunita Rani, DDE (MCD) in person.

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.(ORAL)

1. Geeta Gupta, the petitioner herein vide instant petition under Section 482/483 of the Code of Criminal Procedure (Cr.P.C) read with Article 227 of the Constitution of India has prayed for setting aside of the impugned order dated 13.9.2010 of learned Metropolitan Magistrate whereby he dismissed the request of the petitioner to issue directions to the police under Section 156(3) Cr.P.C. for registration of FIR against the respondents on the complaint of the petitioner and decided to conduct preliminary inquiry and fixed the matter for recording of the complainant's evidence.

2. It is the case of the complainant that she had filed complaint case No.99/CM/10 against respondent No.1 Savita Rani, DEO, City Zone, MCD,

Delhi and Others with the prayer to summon the accused persons to appear and undergo trial for the offences punishable under Section 203/219 read with Section 119/120A and 120B IPC as also under Sections 387/447/34 IPC. The petitioner also moved an application under Section 156(3) Cr.P.C. seeking direction to SHO, P.S. Chandni Mahal to register an FIR on the basis of the complaint under Sections 119/120A/120B/203/219/387/447/34 IPC against the accused persons.

3. Learned M.M. called for the report from SHO, P.S. Chandni Mahal and on the basis of the report, he rejected the prayer of the petitioner under Section 156(3) Cr.P.C. and fixed the case for recording of preliminary evidence on 28.2.2011. The impugned order dated 13.9.2010 is re-produced thus:-

“Status report filed in lieu of the application U/s 156(3) Cr.P.C. received and perused. From the material on record it appears that the evidence required to show prima facie commission of the offences by the accused is within the reach of the complainant whereby no police investigation is made out, more so, when nothing has been placed on record which either necessitates the custodial interrogation of the accused or any recovery of the case property. Accordingly the application U/s 156(3) Cr.P.C. is rejected. To come up for PSE on 28.02.2011”

4. Learned counsel for the petitioner has submitted that above noted order of learned M.M. is bad in law because it is a well settled principle of law that once a complaint disclosing 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 under Section 156(3) Cr.P.C. who shall direct the SHO to register a formal FIR on the basis of said complaint.

Learned counsel for the petitioner further submitted that the learned Magistrate, while rejecting the prayer under Section 156(3) Cr.P.C. totally ignored the fact that there is a long drawn dispute between late father of the petitioner and the respondent/MCD regarding the rights in respect of the property in question. He contended that even a civil suit for injunction was filed by late father of the petitioner which was decreed in his favour in the year 1967. In view of the said decree, it is submitted that learned M.M. ought to have exercised his discretion under Section 156(3) Cr.P.C. to direct the SHO to register the case.

5. Learned counsel for the respondent, on the other hand, has defended the impugned order. He has submitted that Chapter XII of the Cr.P.C. contains provisions relating to information to the police and their power to investigate, whereas Chapter XV of the Cr.P.C. deals with the procedure to be followed by the Magistrate when a complaint is filed before him. Learned counsel contended that once a complaint disclosing commission of offence is filed before the Magistrate, he has two options: (a) either to direct the officer in-charge of the police station to register a case on the basis of the complaint and proceed with the investigation or (b) he can adopt the procedure provided in Chapter XV of the Cr.P.C. Learned counsel argued that in the instant case, learned Magistrate has opted for second option to conduct a preliminary inquiry which is in accordance with law and cannot be faulted, particularly when the complainant himself, besides the application under Section 156(3) Cr.P.C., has filed a complaint under Section 200 Cr.P.C. praying that the accused persons be summoned and tried in accordance with law.

6. In the matter of **Dilawar Singh Vs. State of Delhi, JT 2007 (10) SC 585** while analysing the provisions of the Cr.P.C. 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".

7. From the above enunciation of various provisions of the Cr.P.C., 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 Cr.P.C. 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 Cr.P.C.

8. In the case in hand, perusal of the record shows that apart from the applications under Section 156(3) Cr.P.C., the petitioner has filed a complaint under Section 200 Cr.P.C. with the prayer for summoning of the named accused persons to undergo trial in accordance with law. The learned Magistrate, acting on the complaint, instead of resorting to Section 156(3) of the Cr.P.C., has opted to follow the procedure provided for the complaint cases under Chapter XV of the Cr.P.C. and has listed the case for recording of the evidence of the complainant. The approach taken by the Magistrate cannot be faulted.

9. In view of the above, I find no infirmity or illegality in the impugned order of learned Magistrate which may call for interference by this Court under Section 482 Cr.P.C. Accordingly, the petition is dismissed.

(AJIT BHARIHOKE)
JUDGE

JULY 25, 2011

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