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

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*Reserved on: June 03, 2013*

*Date of Decision: June 05, 2013*

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**W.P.(CRL) No. 710/2013**

NIKHIL MEHTA & ANR.

..... Appellants

Through: Mr. Aman Lekhi, Sr. Advocate with  
Mr. Sunil Malhotra and Mr. Rajat  
Wadhwa, Advocates.

versus

COMMISSIONER OF POLICE & ORS.

... Respondents

Through: Mr. Pawan Sharma, Standing  
Counsel for State with Ms. Priyanka  
Kapoor, Advocate.  
Mr. P.K. Sharma, Standing Counsel  
for CBI with Mr. Anil Kumar Singh,  
Advocate.  
Mr. Saleem Ahmed, ASC.  
SI Rajender, P.S. Geeta Colony.

**CORAM:**

**MR. JUSTICE R.V. EASWAR**

**JUDGMENT**

**R.V. EASWAR, J.:**

1. This writ petition has been filed by two advocates of this Court under Article 226 of the Constitution of India read with Section 482 of the Cr.P.C.

2. The events giving rise to the filing of the present writ petition are somewhat gloomy and unfortunate. It would appear that on the intervening night of 1<sup>st</sup> and 2<sup>nd</sup> May, 2013, the petitioners had returned after attending some function and had parked their car in front of the house of one of the petitioners in Geeta Colony. They were sitting in the car and talking. At that time, a police gypsy van came that side and a constable got down from the van and approached the parked car in which the petitioners were sitting and apparently wanted to know why they were sitting there at that time. Some arguments appear to have taken place. The constable pulled out one of the petitioners from the car and is alleged to have used some force in doing so. Noticing this, the other petitioner got down from the car. The other constable sitting in the police van also appears to have used some force in pushing him towards the police van and in the melee, the gold chain of the petitioner fell down. It was picked up by one of the police constables, who is alleged not to have returned the same to the petitioner to whom it belongs. The SHO, who was also present in the gypsy van, came out and is alleged to have used unreasonable force on the petitioners. Eventually, both the petitioners were taken to the Geeta Colony Police Station and were kept there till about 6.00 a.m. in the morning. Some advocates/friends of the petitioners came to the police station early in the morning and the petitioners were let off after a warning.

3. On the same day, the petitioner filed a complaint against the SHO and the police personnel accompanying him at the time of the incident and it was requested that the FIR be registered and the matter be investigated and the police officers concerned be suspended. A CD containing the CCTV footage depicting the incident was enclosed to the complaint. No action appear to have been taken by the police till now.

4. The petitioners are agitated over the police action which, according to them, is highly objectionable inasmuch as they had used undue and unreasonable force on the petitioners and had even beaten them while putting them into the police van. It is also stated by the petitioners that the S.H.O., who also got down from the police van and supported the action of the constables, was under the influence of liquor. They have accordingly filed the present writ petition seeking protection for the petitioners and their family members from the SHO and also for taking appropriate action against him and for directing the investigation to be handed over to the Central Bureau of Investigation. A prayer has also been made for compensating the petitioners and for ordering an inquiry under the control and supervision of the District Judge, East, to fix the responsibility for the delinquent acts of the respondent No.2 (SHO) and his subordinates.

5. On 03.05.2013, this Court (Sunil Gaur, J.) directed the DCP (East District) to conduct an inquiry into the complaint of the petitioner and submit

a report within two weeks. In the meantime, the DCP was directed to ensure that necessary protection was provided to the petitioners. The reports were filed, as directed. The petitioners thereafter wanted to file their response to the status report as well as to the inquiry report which was filed by the respondents. Time was granted. Accordingly, the petitioners have filed their short response.

6. I have heard the learned senior counsel for the petitioners as well as the learned standing counsel for the State at length. It is certainly unfortunate that an incident of this type had taken place. I have also gone through the status report and the inquiry report on which the status report was based. I have also perused the complaint dated 02.05.2013 filed by the petitioners with the DCP, East District, Patpatganj, Delhi.

7. The learned counsel for the petitioners took me through the status report as well as the inquiry report and sought to point out what, according to him, were crucial contradictions which threw considerable doubts as to the credibility of the status report. He complained that the status report as also the inquiry report were efforts to cover up the police excess and that there was no proper examination into the allegation of the petitioners that one of the constables had picked up the gold chain belonging to one of the petitioners and did not return it, and thus, committed theft.

8. It is contended that the reference to the MLCs in which the doctor at S.D.N. Hospital, Shahdra, expressed the opinion that the petitioners “*smelled of alcohol*” was totally irrelevant and that the medical report was obtained only to defame the petitioners and that there was no allegation by the police that the petitioners were guilty of drunken driving. It was further prayed that strict action should be directed to be taken against the policemen including the SHO of the Geeta Colony Police Station and that the F.I.R filed by the petitioners should be directed to be registered and investigated.

9. The learned standing counsel for the State, on the other hand, submitted that if the petitioners felt aggrieved by the status report/inquiry report or with the alleged reluctance of the police to register the F.I.R., the appropriate remedy available to them was to approach the Superintendent of Police under Section 154(3) of the Cr.P.C. and if that is not effective, to approach the Magistrate under Section 156(3) of the Cr.P.C. and request him to direct an investigation into the incident. He relied on the judgment of the Supreme Court in *Sakiri Vasu vs. State of U.P. and Ors.*, AIR 2008 SC 907, in which it has been held that one should not rush to the High Court to file a writ or a petition under Section 482 of the Cr.P.C without exhausting the alternative remedies available firstly, under Section 154(3) and, secondly, under Section 156(3) of the Cr.P.C. He contended that the petitioners should be directed to avail of these remedies first.

10. On a careful consideration of the rival submissions, I am of the view that though there might be circumstances justifying the apprehensions of the petitioners due to the conduct of the police during the incident, the proper remedy for them, as held in the judgment cited above, is to first approach the Superintendent of Police under Section 154(3) of the Cr.P.C; if that is not effective, the petitioners then have the right to file an application before the Magistrate under Section 156(3) of the Cr.P.C., under which the Magistrate can direct the FIR filed by the petitioners to be registered and can also direct a proper investigation into the incident to be made, if the petitioners feel that no proper investigation was being made. I direct the petitioners accordingly. They may either approach the Superintendent of Police under section 154(3) or the Magistrate under section 156(3) of the Cr.P.C.

11. In *Sakiri Vasu* (supra), the Supreme Court has also deprecated the practice of rushing to the High Court with the grievance that the F.I.R. was not being registered at the police station or a proper investigation was not being done by the police. The Court discouraged the practice of rushing to the Court with a prayer that the case should be investigated by the CBI. According to the Supreme Court, that can be done only in rare and exceptional cases, lest the CBI be flooded with a large number of cases making it impossible for them to properly investigate into the cases.

12. The following observations of the Supreme Court are relevant to the present case:-

*“24. In view of the abovementioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C. to order registration of a criminal offence and /or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C., we are of the opinion that they are implied in the above provision.*

*25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his alternating remedy, firstly under Section 154(3) and Section 36 Cr.P.C. before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156(3).*

*26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C.*

*Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?*

*27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.*

*28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.”*

13. The learned senior counsel expressed the apprehension that such a course – of approaching the Superintendent of Police under Section 154 (3) or the Magistrate under Section 156(3) – would be nothing but making an appeal from Caesar to Caesar and cannot amount to an efficacious alternative remedy. While this apprehension may to some extent carry weight in so far as Section 154(3) is concerned, I do not see how the procedure envisaged by Section 156(3) of the Cr.P.C. can also be branded as an ineffective remedy.

The observations of the Supreme Court in the cited judgment regarding the nature of the powers of the Magistrate under Section 156(3) show that those powers are vast. The Supreme Court has observed that even if the Magistrate does not say so expressly, it is the duty of the officer-in-charge of the police station to register the FIR. The Magistrate can also monitor the investigation to ensure that it is done properly. With such assurances coming from the highest Court of the land regarding the vast powers under Section 156(3), it is not proper to say that invoking that Section would be an ineffective alternative remedy.

14. The writ petition is disposed of with the aforesaid observations and directions. I cannot help observing that with a little more tact from the side of the police, this unpleasant incident could have perhaps been avoided.

Dasti under signature of the Court Master.

**(R.V. EASWAR)**  
**VACATION JUDGE**

**JUNE 05, 2013**  
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