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

+ **W.P.(CRL) 836/2013**

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Judgment dated 27.11.2013

SONU GAUTAM @ AMIT KUMAR

..... Petitioner

Through : Mr.Lal Bahadur Pandey, Adv. along with
petitioner.

versus

PRASAD SAHEB & ORS

..... Respondents

Through : Ms.Deepa Kathpalia, Adv. for
respondents no.1 to 4.

Mr.Saleem Ahmed, ASC for the State.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. By the present petition, the petitioner seeks setting aside of the order dated 17.11.2011 whereby the application/complaint of the petitioner, being Complaint Case No.12412/2011, made under Section 156(3) of Cr.P.C. was dismissed by the learned Metropolitan Magistrate, North-East District, Delhi. The petitioner also seeks setting aside of the order dated 27.8.2012 passed by learned Additional Sessions Judge-03 (NE), whereby Revision Petition No.2/2012 filed by the petitioner against the order dated 17.11.2011, was dismissed.
2. It may be noticed that in this case the petitioner has impleaded Mr.Prasad Saheb as respondent no.1; Mr.Ashu as respondent no.2; Mr.Khanna as respondent no.3; Mr.Sanjay Kaul as respondent no.4; Unknown Person as respondent no.5; and an unknown driver of TSR bearing No.DL-1RF-

0702 as respondent no.6.

3. The brief facts of the case, as noticed by the learned Metropolitan Magistrate and as stated by counsel for the petitioner, are that since 13.10.2010 the petitioner was employed with M/s Impact Communication as a Supervisor for a salary of Rs.5,000/-, per month. The petitioner had gone to Kolkata for an official tour for a period of one month. On 24.12.2010, the petitioner returned to Delhi from Kolkata. During the said tour, petitioner incurred expenses of approximately Rs.15,000/-, and salary for one and a half month was also due and payable. Thus the petitioner had a claim of Rs.22,500/-.
4. It is the case of the petitioner that on 18.1.2011 at about 5 p.m., the petitioner visited the office of his employer and he was confined in a room by respondent no.1 upto 8.00 p.m. Thereafter respondents no.1 to 5 began to beat the petitioners with fist and legs as a result of which he became unconscious and when he regained consciousness, on threat to kill him, he was forcibly made to sign two papers and was given a cheque of Rs.22,000/-. Thereafter the petitioner was forcibly put in a three wheeler in which an unknown person was already sitting on the rear side. The person sitting in the said three wheeler had assaulted him on account of which he became unconscious. The petitioner regained consciousness at 6.00 a.m. on the next day, when he found himself lying in Ramlila ground behind the petrol pump, G.T.B. Enclave. The petitioner thereafter approached Police Station Mansarovar Park (now P.S. G.T.B. Enclave) but he was not entertained by respondents no.8 and 9. Resultantly, the petitioner made a complaint under Section 156(3) of Cr.P.C. The learned Metropolitan Magistrate called for an action taken report. After taking into consideration the objections to the report, the Metropolitan Magistrate reached a conclusion that the complaint did not require any

investigation from the Police and the petitioner could adduce evidence in support of his allegations. The petitioner thereafter preferred a revision petition against the order dated 17.11.2011, which stands dismissed on 27.8.2012, which led to the filing of the present petition.

5. While learned counsel for the petitioner submits that a bare reading of the complaint made by the petitioner under Section 156(3) of Cr.P.C. would show that a cognizable offence is made out and, thus, an FIR should have been lodged, counsel for the State, while referring to the counter affidavit filed by Additional Deputy Commissioner of Police, submits that neither did the petitioner approach the officials of Police Station G.T.B. Enclave nor had he submitted any complaint. Counsel further submits that the petitioner made a complaint directly to the Police Headquarters, which was entrusted to P.G. Cell/NE for enquiry. During enquiry, Office of Inspector P.G.Cell/NE issued a notice to the complainant to join the enquiry but he did not do so, however, the petitioner sent a letter, in reply, stating that there was no use in his joining the enquiry. The complaint was thereafter forwarded to the East District vide letter no.1428/Complt.(DA-III)/NE, dated 5.3.2011 for necessary action as the area was under the jurisdiction of Police Station Preet Vihar, East Distt., wherefrom the concerned ASI also issued a notice to the complainant (petitioner herein) to join the enquiry but he did not do so citing the same reasons. During enquiry, employees of the alleged company and the auto driver of the said TSR were interrogated, their submissions were recorded, the allegations were found to be not true and the complaint was filed accordingly.
6. Learned counsel for the State further contends that pursuant to the complaint filed by the petitioner under Section 156 (3) Cr.P.C. on 3.8.2011 before Metropolitan Magistrate, another enquiry was conducted, wherein the petitioner was again requested to join the enquiry. Counsel

further submits that on 24.8.2011 and 3.9.2011 communications were sent at the address of the petitioner requesting him to join the enquiry but it was found that the petitioner did not reside at the said address and one Sh.Dharam Singh, s/o Sh.Nathu Singh was found present there, who stated that the petitioner used to live as a tenant and now he has shifted to somewhere in Loni, U.P. The petitioner was contacted on his mobile number, however, he refused to join the enquiry and also stated that he would not come to the Police Station but he would meet the Inspector in the Court. It is also pointed out that the cheque issued to the petitioner by the company was verified from the Bank of India, Mayur Vihar Branch, and it is found that the cheque was of Sh.Fateh Singh, bearing Account No.2060, which account already stands closed on 7.8.2007 and, thus, the complaint made by the petitioner that the company had issued a cheque to him was found to be false and further the cheque was not issued by any official of the company. It is also pointed out by counsel for the State that in case the petitioner found himself in an unconscious state at Ramlila Ground on 19.7.2011 neither did he call the PCR or local police, nor did he get himself admitted to the nearest hospital, nor was any MLC conducted and, thus, it seems that the petitioner is making false allegations. In the rejoinder filed by the petitioner the allegations made against him have been refuted.

7. Learned counsel for the petitioner also submits that a labour dispute has been raised by the petitioner which is pending before learned Presiding Officer, Labour Court, Karkardooma.
8. Heard counsel for the parties, considered their rival submissions and also perused the orders dated 17.11.2011 passed by learned Metropolitan Magistrate, Karkardooma, and the order dated 27.8.2012 passed by Additional Sessions Judge-03, North-East District, Karkardooma. It is not

in dispute that the petitioner was granted sufficient opportunities to join the enquiry, however, despite opportunities having been granted, he failed to do so. Taking into consideration the complaint of the petitioner; detailed counter affidavit, which has been filed by the Additional Deputy Commissioner of Police; and the fact that the petitioner has failed to join the investigation himself, I find that there is no infirmity in the order dated 17.11.2011 passed by learned Metropolitan Magistrate and the order dated 27.8.2012 passed by Additional Sessions Judge-03. The petitioner has been granted an opportunity to lead evidence in the matter by learned Metropolitan Magistrate, which would be open for him to comply with in accordance with the aforesaid order.

9. Perusal of the complaint filed by the petitioner under Section 156(3) of Cr.P.C. would show that according to the petitioner he was working with M/s Impact Communication since 13.10.2010 as a Supervisor and drawing a salary of Rs.5,000/-, per month. Further, his employer has refused to pay the expenses incurred by him on a official tour and salary for one and a half months, amounting to Rs.22,500/-.
10. Learned counsel for the petitioner has argued that the learned Metropolitan Magistrate and the Additional Sessions Judge have failed to appreciate that the respondents have committed a serious offence, which is punishable under Indian Penal Code. The Metropolitan Magistrate in his order had noticed the facts of the case and reached a conclusion that after considering the action taken report he was of the view that the matter does not require any investigation from the Police and the complainant can adduce the evidence in support of his allegations. Moreso, the identity of the accused has been established by the complainant and there is no requirement of technical evidence for which investigation is required. The order of Metropolitan Magistrate has been upheld by the Additional

Sessions Judge.

11. In the case of M/s Skipper Beverages Pvt. Ltd. v. State, reported at 2001 AD (Delhi) 625, wherein it has been held as under:

“10. Section 156(3) of the Code aims at curtailing and controlling the arbitrariness on the part of the police authorities in the matter of registration of FIRs and taking up investigations, even in those cases where the same are warranted. The section empowers the Magistrate to issue directions in this regard but this provision should not be permitted to be misused by the complainants to get police cases registered even in those cases which are not very serious in nature and the Magistrate himself can hold enquiry under Chapter XV and proceed against the accused if required. Therefore a Magistrate, must apply his mind before passing an order under Section 156 (3) of the Code and must not pass these order mechanically on the mere asking by the complainant. These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of the complainant or custodial interrogation appears to be necessary for some recovery of article or discovery of fact.”

12. A detailed counter affidavit has been filed by the Additional Deputy Commissioner of Police, as per which, the complainant, despite being requested to cooperate, did not join the enquiry. The deponent has further deposed that the employee of the company and the auto driver were interrogated, their statements were recorded and the allegations made by the petitioner were found to be untrue. The alleged cheque, which was issued to the petitioner by his employer, was also verified from the Bank of India, Mayur Vihar Branch, and it was found that the cheque was from the account of one Mr. Fateh Singh, which account was closed on 7.8.2007 and the said cheque was not issued by any official of the company. Further, as per the counter affidavit, the matter was primarily civil in nature, having arisen on account of pay and allowances of the petitioner and the complaint was found to be false. Without expressing any opinion on the merit of the matter lest any observation made by this Court may

prejudice the rights of the petitioner but considering the submissions made and the counter affidavit having been filed I find there is no infirmity in the order passed by learned Metropolitan Magistrate, which has been upheld by the Additional Sessions Judge.

13. Accordingly, present petition stands dismissed in view of above.

NOVEMBER 27, 2013
msr

G.S.SISTANI, J