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

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Reserved on : 22.05.2013

Pronounced on : 24.05.2013

+ W.P.(CRL) 837/2013

DILSHAD

..... Petitioner

Through: Mr.Lal Bahadur Pandey, Advocate.

versus

S R SUNDARAM & ORS

..... Respondents

Through: Mr.Pawan Sharma, Standing Counsel
(Crl.) with Mr.Sahil Mongia, Advocate.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

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PRATIBHA RANI, J.

1. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner aggrieved by the order dated 28.06.2012 passed by the learned M.M., Delhi in Complaint Case No.56/1/2011 titled Dilshad vs. S.R.Sundaram and Ors. whereby application under Section 156(3) Cr.P.C. filed by the petitioner was dismissed by the Court and directions were given to the petitioner to lead pre-summoning evidence. The petitioner is also aggrieved by the order dated 04.12.2012 (mentioned in the petition as 04.12.2013) passed by the learned Addl. Sessions Judge, Delhi affirming the order of learned M.M. Prayer made in the present petition is for issuance of direction to the concerned authorities to register FIR on the basis of

complaint made by the petitioner titled as Dilshad vs. S.R.Sundaram & others and take appropriate legal action against the respondents i.e. (1) Mr.S.R.Sundaram, I.P.S. (under training) posted at North-East District, Delhi, (2) Constable Ram Kumar posted with respondent No.1 S.R.Sundaram, (3) Narender Singh Rana, SHO, P.S. Nand Nagri, Delhi. State has been impleaded as respondent No.4 in this petition.

2. The case of the petitioner is that he is the owner of commercial vehicles i.e. EICHER bearing No.DL-1PG-6452 & DL-1LP-3052 and he has already paid the road tax and parking tax to the concerned authorities for his above said both vehicles.

3. The respondents No.1 & 2 and their associates used to demand bribe from the petitioner for parking his vehicles on the corner of the road. On refusal of the petitioner to pay the bribe, respondent No.2 harassed and humiliated the petitioner extending threat that his vehicles would be taken away.

4. As per the complaint filed before the learned M.M, in the night of 14.06.2011 at about 8:15 p.m, the petitioner parked his both the vehicles at corner of the road and his father was sitting there to guard the vehicles. The petitioner had gone to nearby Mosque for Namaz. At that time, respondents No.1 & 2 along with their associates came there and enquired about the owner of the vehicle. When father of the petitioner informed that he is father of the owner of the two vehicles, respondent No.1 asked the respondent No.2 and other associates "Isne Mahina Diya Ya Nahin Diya". Father of the petitioner opposed this illegal demand resulting into damage being caused to the vehicle by respondents No.1 to 3 with iron rods, lathi and bricks etc. Father of the petitioner was also pushed and humiliated and when public

persons gathered there and petitioner also returned after Namaz, he also opposed the illegal acts of respondents No.1 to 3. The petitioner was also given beatings. In the meantime, the petitioner's brother also reached there.

5. It is further the case of petitioner that several calls were made at No.100 to the police, but initially there was no response and at about 9:30 p.m PCR came, but refused to take action in the matter saying that they cannot do anything against an IPS Officer. The petitioner along with public persons went to the Police Station Nand Nagri, but SHO refused to take action in the matter. Complaint was also sent to Joint Commissioner of Police (Vigilance), but of no avail.

6. Ultimately, the petitioner filed a complaint under Section 200 Cr.P.C. with application under Section 156(3) Cr.P.C. However, the learned M.M dismissed the application under Section 156(3) Cr.P.C. Revision filed against the said order was also dismissed. Now, the petitioner has approached this Court invoking the writ jurisdiction of this Court with prayer to direct the police to register FIR on the basis of complaint pending in the Court of learned M.M., North-East Distt. (Shahdara Distt.).

7. On behalf of petitioner, Mr.Lal Bahadur Pandey, Advocate has submitted that in every complaint filed by him, his application under Section 156(3) Cr.P.C. is being dismissed by the Court. He submits that when a cognizable offence has been disclosed in the complaint, the learned M.M. should have issued directions to the police to investigate the case and the police should have acted upon his complaint, taking action against the accused persons. Counsel for the petitioner has relied upon (i) *State of Haryana vs. Bhajan Lal & Ors. 1999 Supp (1) SCC 335* and (ii) *Laxmi Narain Gupta vs. Commissioner of Police ILR (2006) II, Delhi 175* in

support of his contention that police is under statutory obligation to register the FIR whenever commission of cognizable offence is disclosed. Further reliance placed by the petitioner on *State of Haryana vs. Bhajan Lal* (Supra) wherein it was held that once an information is laid before a police officer in compliance with the requirements of Section 154, the police officer is obliged to enter it in prescribed form and register the case. He cannot refuse to do so on the ground that it is not reasonable or credible information.

8. I have heard learned counsel for the petitioner and considered the submissions made by him and also gone through the record.

9. Perusal of copy of the order passed by learned M.M. reveals that the case of the complainant was examined by learned M.M in view of the guidelines laid down in *Subhkaran Luharuka s/o Late K.P.Luharuka and Shree Ram Mills Ltd. vs. State (Govt. of NCT of Delhi) and Utility Premises Pvt. Ltd. (2010) ILR 6 Delhi 495*. The complaint was also examined from the perspective that the complaint is against a police officer and to remove any misapprehension on the part of the complainant with regard to the impartiality the enquiry should not be referred to another police officer. Thereafter, the learned M.M., looking into the aspect that the accused persons are known to the complainant and evidence was within the reach of the complainant, dismissed the application under Section 156(3) Cr.P.C. The learned Addl. Sessions Judge also dismissed the revision petition observing that the learned M.M has given sufficient reasons for not issuing directions for registration of the FIR and no interference was called for in exercise of revisional jurisdiction.

10. In the instant case, the grievance of the petitioner is that the

respondents are harassing him for the reason that he is parking his commercial vehicles at the corner of the road and has refused to pay monthly (Mahina) to the police officers. The incident dated 14.06.2011 as narrated in the complaint is required to be proved by the petitioner on the basis of his own statement as well as that of his father by summoning the record from the PCR or the complaint made to other police authorities.

11. The legal position is well settled that in cases where the accused and his address is known to the complainant, witnesses are also known to the complainant, no scientific evidence is required to be collected by the police and all the facts are required to be proved by the complainant are in his knowledge, no direction under Section 156(3) Cr.P.C is required to be given by the learned M.M. for registration of FIR.

12. In ***Vikrant Kapoor vs. The State & Ors., 187(2012)DLT 241***, this Court has dealt with the circumstances under which the Magistrate can exercise his powers under Section 156(3) Cr.P.C. Noting that this power has to be exercised judicially, it was observed :-

“9. In Meenakshi Anand Sootha Vs. State, 2007 (4) JCC 3230 Delhi, the learned M.M. dismissed the application under Section 156(3) Cr.P.C for giving direction to SHO to investigate the matter and instead took cognizance of the case and proceeded with the complaint case of the complainant. On facts the following observations were made by this Court:

“10. It is well settled that under Section 156(3), Cr.P.C, the Magistrate has not to pass the order mechanically and has to apply his judicial mind. On this point, decision of this Court, M/s. Skipper Beverages Pvt. Ltd. v. State 2001 IV AD (Del) 625, may be referred to in which it was held:

It is true that Section 156(3) of the Code empowers to Magistrate to direct the police to register a case and initiate investigation but this power has to be exercised judiciously on proper grounds and not in a mechanical manner. In those cases where the allegations are not very serious and the complainant himself is in possession of evidence to prove his allegations there should be no need to pass order under Section 156(3) of the Code.”

13. In the case ***Subhkaran Luharuka s/o Late K.P.Luharuka and Shree Ram Mills Ltd. vs. State (Govt. of NCT of Delhi) and Utility Premises Pvt. Ltd.*** (Supra), guidelines were laid by this Court wherein it was specifically mentioned that the Magistrate, when approached with a complaint under Section 200 CrPC, should invariably proceed under Chapter XV by taking cognizance of the complaint, recording evidence and then deciding the question of issuance of process to the accused.

14. In the complaint case filed by the petitioner, the learned Magistrate while passing the impugned order has considered the case of the complainant in detail before arriving at the conclusion that the case does not require any field investigation nor scientific evidence is required to be collected, and that the evidence was in the power and possession of the complainant.

15. In ***Sakiri Vasu vs. State of U.P. and Ors. (2008) 2 SCC 409***, the Apex Court has dealt with the remedies available to a person feeling aggrieved by non-registration of FIR by the local police. In paragraphs 26 & 27 of the Report, the Supreme Court has observed as under:-

“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.”*

16. The impugned order does not suffer from any illegality or infirmity requiring any interference by this court under Article 226 of the Constitution of India.

17. The petition is hereby dismissed.

18. No costs.

**PRATIBHA RANI
(JUDGE)**

MAY 22, 2013
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