

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

Reserved on :28.07.2014

% *Pronounced on :05.08.2014*

+ W.P.(CRL) 1026/2014

MEENU

..... Petitioner

Through: Mr. Dinesh Kumar, Advocate

versus

STATE & ANR

..... Respondents

Through: Mr. Saleem Ahmed, St. Counsel
(Crl.) for State with Ms. Charu Dalal,
Mr. Ajay Pratap & Mr. Ajay Kumar
Singh, Advocates along with I.O. SI
Jagdish PS Saket

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. The Petitioner is invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to direct the Respondent No.1 to register First Information Report against Respondent No.2, who is her brother-in-law (jeth), on the basis of her complaint dated 04.02.2014 and investigate the matter as per the law.

2. A perusal of the complaint dated 04.02.2014 filed by the present Petitioner shows that she was residing at House No.F-114, Lado Sarai, New Delhi which belonged to her father-in-law Bhagwan Singh. Her father-in-law was under heavy debt, which was taken by him for construction of the house and marriages of his children, and due to this reason, he remained

disturbed and wanted to sell his property. Sh. Bhagwan Singh apprised everyone about his desire to sell his property. It is mentioned in the complaint that she purchased ground and first floor of the said house out of her own resources by paying the agreed amount to her father-in-law partly in cash and remaining by cheque. The remaining floors of the said property were sold to one Pradeep Khatri, resident of Narela. Out of the sale consideration, her father-in-law paid some amount to Respondent No.2 and remaining amount was used to repay the loan.

3. Since the Petitioner had purchased the ground and first floor of the said property from her father-in-law after paying sale consideration, the Respondent No.2 was not happy and was nursing grudge against the Petitioner, her husband and father-in-law. Respondent No.2 threatened her father-in-law either to pay him more money or he will implicate them in a false case. Respondent No.2 also trespassed on half portion of the floor purchased by Pradeep Khatri for which Pradeep Khatri had instituted a case against Respondent No.2.

4. It is further mentioned in the complaint that on 03.12.2013 at about 10.00 pm, Respondent No.2, who is in Delhi Police, and his wife returned home and pressed the door bell. When her father-in-law opened the door, Respondent No.2 started abusing him and manhandled him. On hearing the noise, when she came down stairs and tried to pacify Respondent No.2, he abused her, pressed her breast and slapped on her back. When she tried to save herself, Respondent No.2 also fractured her finger. On hearing her screams, her husband came down stairs and saved her from Respondent No.2. Thereafter PCR was informed. Police came at the spot. As she was in extreme pain due to fracture in finger, her husband took her to Trauma

Centre. Next day, when the Petitioner and her husband went to the Police Station and asked the police to register the complaint, the police refused to register the complaint as Respondent No.2 was employed in Delhi Police.

5. Thereafter the Petitioner filed a complaint under Section 200 CrPC before the learned MM. Alongwith the complaint, an application under Section 156(3) CrPC was also filed with the prayer that SHO, PS Saket may be directed to register an FIR and investigate the matter as per the provisions of law.

6. The learned MM, vide order dated 29.03.2014, while declining the prayer of the Petitioner to get the matter investigated through police by giving directions under Section 156(3) CrPC, came to the conclusion :

“14. In the facts of the present case, material averments/allegation against accused for constituting offences alleged in the complaint are within the personal knowledge of complainant and documents, viz. MLC can be summoned in court. The evidence regarding alleged offence(s) being available with the complainant which can be produced during her examination u/s 200 Cr.P.C., there is no requirement of any field investigation or custodial interrogation to be conducted by police.

15. Application U/s 156(3) Cr.P.C. filed by complainant for registration of FIR is hence dismissed as no investigation by police is required in this case.’

7. The legal position on the subject as to under what circumstances, the Magistrate can exercise its power under Section 156(3) CrPC has been dealt with by this Court in **Vikrant Kapoor vs. The State & Ors.**, 187(2012)DLT 241, wherein 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.”

8. In the case of *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. MANU/DE/1646/2010*, the 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.

9. The Petitioner/Complainant has approached this Court with a prayer to exercise the power under Article 226 of the Constitution of India. No doubt, the powers vested in High Court under Article 226 of the Constitution of India are very wide and the very plenitude of the power requires great

caution while exercising the same. In *Santosh De and Anr. vs. Archana Guha and Ors. 1994 (1) SCALE 423*, the Apex Court observed that unless a grave illegality is committed the superior Courts should not interfere and they should allow the Court which is seized up with the matter to go on with it.

10. 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 matter does not required investigation by the Police thereby directing the Complainant to lead evidence.

11. The impugned order when examined in the light of legal position referred to above, I find that the case of the Petitioner is not such which is not within the power and possession of the Complainant. The impugned order does not suffer from any illegality or infirmity calling for any interference by this Court in writ jurisdiction.

12. The petition is hereby dismissed.

PRATIBHA RANI, J

AUGUST 05, 2014

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