

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

Reserved on :28.08.2014

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Pronounced on :02.09.2014

+ W.P.(CRL) 1966/2013

RIMA GULSHAN

..... Petitioner

Through : Mr.D.S.Chadha, Adv.

versus

STATE OF NCT OF DELHI

..... Respondent

Through : Mr.Rajesh Mahajan, ASC for the
State with SI Nirbhay Singh and ASI
Om Prakash, PS Hauz Khas.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

W.P.(Crl.) No.1332/2014

1. The Petitioner has invoked the jurisdiction of this Court under Articles 226 & 227 of Constitution of India and under Section 482 CrPC with the following prayers :-

(i) to set aside and quash the impugned order dated 23.04.2013 passed by learned MM in CC No.27/01 of 2013 whereby her application filed under Section 156(3) Cr.P.C. has been dismissed and Petitioner (Complainant) has been called for leading Complainant' evidence (pre-summoning); and

(ii) to issue a writ of mandamus, or pass any other appropriate writ, direction or order directing the SHO, Police Station, Hauz Khas to register a case against the accused Vishal Saluja and Mohinder Pal Singh under Sections 380/453/454/506/120-B IPC and conduct a thorough and fair

investigation in the case and submit a chargesheet before learned Trial Court.

2. The grievance of the Petitioner is that in the Complaint Case No.27/01 filed by her, she also filed an application under Section 156(3) CrPC praying that as the allegations made in the complaint disclosed commission of cognizable offences, the concerned Police Station be directed to register an FIR and investigate.

3. On behalf of Petitioner, written submissions have been filed. Mr.D.S.Chadha, Advocate for the Petitioner has also made oral submissions.

4. Learned counsel for the Petitioner submitted that the impugned order is liable to be set aside as the reasoning and the finding by learned MM are against the settled legal position. Learned counsel for the Petitioner has referred the decision of the Constitution Bench of the Supreme Court in ***Lalita Kumari vs. Govt. of U.P. & Ors. AIR 2014 SC 187*** wherein after considering the entire case law on the subject, it was held that provisions of Section 154 CrPC are mandatory and the police officer is duty bound to register the case without looking into the reasonableness and credibility of the said information. He further submitted that the Supreme Court also held that when the information received does not disclose the commission of a cognizable offence, only then the preliminary inquiry can be conducted limited only to the extent of ascertaining whether the information reveals commission of any cognizable offence and not to verify the veracity or otherwise of the information received.

5. Learned counsel for the Petitioner further submitted that the police has miserably failed to fulfil its duty by not registering the FIR in the matter and conducting investigation into the offence complained of. He further

submitted that the ATR called for by learned Trial Court was not mandatory, rather under the garb of ATR, the Investigating Officer was allowed to conduct full scaled investigation in the camouflage of preliminary inquiry. Further the Investigating Officer exceeded his jurisdiction by expressing his opinion on the nature of dispute.

6. Mr.D.S.Chadha, Advocate for the Petitioner further submitted that even if the case required any preliminary inquiry, its scope should have been limited to ascertain whether the information revealed commission of any cognizable offence and not its veracity or credibility. Learned Trial Court also failed to appreciate that identity of the person who conspired with the brother of the Petitioner and the person who made the duplicate key, was required to be ascertained by the Police and this part of evidence is not within power and possession of the Complainant. Learned counsel for the Petitioner submitted that in view of the above, the impugned order is liable to be set aside and directions are required to be issued to the police to register an FIR and conduct investigation in the matter instead of calling the Complainant to lead evidence. Learned counsel for the Petitioner has relied upon *Lalita Kumari v. Govt. of U.P. & Ors. AIR 2014 SC 187*, *Suresh Chand Jain v. State of M.P. & Anr. (2001) 2 SCC 628*, *Ramesh Kumari v. State (NCT of Delhi) & Ors. (2006) 2 SCC 677*, *Mona Pawar v. High Court of Judicature of Allahabad through its Registrar & Ors. (2001) 3 SCC 496*, *Laxminarayan Gupta v. Commissioner of Police 130 (2006) DLT 490*, *Abhay Nath Dubey v. State & Ors. 99 (2002) DLT 114 (DB)* and *Amit Khera v. Govt. of NCT of Delhi & Ors. 171 (2010) DLT 607*. in support of his contentions.

7. I have considered the submission made by learned counsel for the

Petitioner and carefully gone through the record.

8. Perusal of record reveals that after calling for the Action Taken Report (ATR), learned Trial Court was of the view that the dispute pertained to the property alleged to be inherited by the Petitioner and her brother on the death of their parents. Learned MM was of the considered view that in view of the decision of this Court in *M/s Skipper Beverages Pvt. Ltd. v. State 2001 IV AD (Delhi)* and *Subhkaran Laharuka & Anr. v. State & Anr. (2010) ILR 6 Delhi 495*, it was a case where the powers under Section 156(3) CrPC for direction to the concerned Police Station to register an FIR was not required to be exercised in favour of the Petitioner. Observing that the evidence was well within the reach of the Complainant, accused persons known to the Complainant and no scientific evidence is needed in the case, learned MM directed the Complainant to lead pre-summoning evidence. Learned MM while dismissing the application under Section 156(3) CrPC, also observed that if any investigation at all is required to be done, that can be done under Section 202 CrPC after the evidence of the Complainant is recorded under Section 200 CrPC.

9. In the impugned order, learned MM had taken pain to note the facts of the case as referred to in the complaint and the legal principles governing the exercise of discretion under Section 156(3) Cr.P.C. Learned MM has also noted that the power under Section 156(3) CrPC is not to be exercised mechanically and only in those cases where the Magistrate is of the view that the nature of the allegations is such that the Complainant himself may not be in a position to collect and produce evidence before the Court and interest of justice demands that the police should step in to help the Complainant.

10. Learned MM has also referred to the decision in the case of ***Subhkaran Laharuka & Anr. v. State & Anr.*** (Supra) wherein in para 52(a) of the report, this Court has laid down a procedure for guidance of the subordinate courts while dealing with an application under Section 156(3) CrPC. Applying the legal principles and the procedure laid down for subordinate Courts, learned MM formed an opinion that the matter did not require investigation by the police.

11. It is the legality of this order which has been challenged before this Court by the Petitioner, who is Complainant in CC No.27/01. Learned counsel for the Petitioner has placed reliance on ***Lalita Kumari vs. Govt. of U.P. & Ors.*** (Supra) but that decision is of no help to the writ Petitioner for the reason that in the concluding paragraphs, while issuing directions, a category of exceptions has been carved out wherein in respect of registration of FIR, preliminary inquiry is to be conducted and the category of cases in which it can be done are referred to as (a) Matrimonial disputes/family disputes, (b) Commercial offences, (c) Medical negligence cases, (d) Corruption cases, and (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over three months delay in reporting the matter without satisfactorily explaining the reasons for delay.

12. The Petitioner has also placed reliance upon ***Mona Pawar v. High Court of Judicature of Allahabad through its Registrar & Ors.*** (Supra) wherein also the power of Magistrate under Section 156(3)/200/202 CrPC and the courses available to the Magistrate have been discussed and it has been held that the Magistrate has mainly two options available on such complaint i.e. (i) to pass an order as contemplated by Section 156(3) Cr.P.C. and (ii) to direct examination of Complainant upon oath and witnesses

present, if any, as mentioned in Section 200 and proceed further with matter as provided under Section 202 Cr.P.C.

13. One of the grievances of the Petitioner is that learned MM should not have called for the ATR or that the Investigating Officer had no jurisdiction to investigate the matter in the garb of preliminary inquiry to submit the ATR and give his opinion about the nature of the dispute, I am of the opinion that the ATR has been called for by learned MM in terms of the guidelines laid down by this court in in terms of guidelines laid down in the decision 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.**

14. In the case of ***Minu Kumari and Another Vs. State of Bihar and Others***, **MANU/SC/8098/2006 : (2006) 4 SCC 359**, the Supreme Court has dealt with the aspect as to how the Magistrate can proceed when the police fails to take action on the complaint made. It was observed :

‘When the information is laid with the Police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in All India Institute of Medical Sciences Employees' Union (Reg.) through its

President v. Union of India and others MANU/SC/1769/1996 : 1996 (11) SCC 582. It was specifically observed that a writ petition in such cases is not to be entertained.”

15. The Supreme Court has deprecated the practice of the High Courts issuing directions for registration of FIR. Reliance can be placed on **Sakiri Vasu vs. State of U.P. & Ors. (2008) 2 SCC 409**, wherein the Apex court, in paras 26 to 28, has observed that :

‘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.’

16. The grievance of the Petitioner that entire evidence is not within her knowledge as identity of the lady who accompanied her brother or the key maker is not known to her, is no ground to interfere with the impugned order for the reason that learned Trial Court had already observed that if any investigation at all is required to be done, that can be done under Section 202 CrPC after the evidence of the Complainant is recorded under Section 200 CrPC.

17. Learned MM in the impugned order has rightly come to the conclusion that all the facts and circumstances of the case are within the knowledge of the complainant requiring no investigation by the police. In the light of judicial pronouncements as discussed in the impugned order, learned MM cannot be said to have committed any illegality by rejecting the application under Section 156(3) Cr.P.C. filed by the Petitioner for registration of the FIR.

18. Reliance placed by learned counsel for the Petitioner on other cases i.e. *Suresh Chand Jain v. State of M.P. & Anr.* (Supra), *Ramesh Kumari v. State (NCT of Delhi) & Ors* (Supra), *Laxminarayan Gupta v. Commissioner of Police* (Supra), *Abhay Nath Dubey v. State & Ors* (Supra). and *Amit Khera v. Govt. of NCT of Delhi & Ors.*(Supra) is of no help to the Petitioner in view of the legal position discussed above.

19. The complainant has approached this Court for exercise of the power under Articles 226/227 of the Constitution of India and under Section 482 Cr.P.C. No doubt, the powers vested in High Court Articles 226/227 of the Constitution of India and under Section 482 Cr.P.C. 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.

20. There is no merit in the writ petition and the same is hereby dismissed.

Crl.M.A.No.17970/2013 (Stay)

Since the writ petition has been dismissed, the present application has become infructuous and the same is accordingly dismissed.

PRATIBHA RANI, J

SEPTEMBER 02, 2014

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