



2024:DHC:5980



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

% *Date of Decision: 23rd July, 2024*

+ **CRL.REV.P. 765/2023 & CRL.M.A. 19283/2023**

MADAN LAL SURYAWANSHI Petitioner

Through: Mr. Ashutosh Kaushik and
Mr. Naveen K. Sarswat,
Advocates.

versus

THE STATE (GOVT. OF NCT OF DELHI) AND
OTHERS

.....Respondents

Through: Mr. Rajkumar, APP for
the State.

+ **CRL.REV.P. 806/2023, CRL.M.A. 20223/2023 &
CRL.M.A. 20224/2023**

MADAN LAL SURYAWANSHI Petitioner

Through: Mr. Ashutosh Kaushik and
Mr. Naveen K. Sarswat,
Advocates.

versus

THE STATE (GOVT. OF NCT OF DELHI) AND
OTHERS

.....Respondents

Through: Mr. Rajkumar, APP for
the State.

+ **CRL.REV.P. 810/2023, CRL.M.A. 20429/2023 &
CRL.M.A. 20487/2023**

MADAN LAL SURYAWANSHI Petitioner

Through: Mr. Ashutosh Kaushik and
Mr. Naveen K. Sarswat,
Advocates.

versus

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THE STATE (GOVT. OF NCT OF DELHI) AND
OTHERS

.....Respondents

Through: Mr. Rajkumar, APP for
the State.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J.

1. The present petitions are filed under Section 401 of the Code of Criminal Procedure ('CrPC') assailing the orders dated 12.07.2022 (hereafter '**the impugned orders**') passed by the learned Additional Sessions Judge ('ASJ')-05, Patiala House Courts, Delhi in CC Nos. 33/2020, 34/2020, 35/2020 titled '*Madan Lal Suryavanshi Vs Kapil Shokeen & Ors*', dismissing the applications filed by the petitioner under Section 156(3) of the CrPC.

Brief Facts

2. The complainant, namely, Madan Lal Suryavanshi, filed a criminal complaint under Sections 156(3), 190(1)(a)/191/200/202/204 of the CrPC seeking registration of FIR against the accused persons under Sections 120B/141/193/195/195A/200/201/210/307/310/323/328/341/342/352/354/380/406/409/415/420/427/441/442/445/451/452/463/467/468/469/499/500/504/506(II)/509/511/34 of the Indian Penal Code ('IPC') and under Sections 3/4/10 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereafter '**SC/ST Act**').

2.1. The complainant alleges that his wife paid a sum of ₹3 lakhs to accused no. 1(Kapil Shokeen) and accused no. 2 (Rajesh

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Pehlwan), and had taken the possession of the property bearing No. RZ-661, Upper Ground/First Floor, Naseer Pur Road, New Delhi (hereafter '**the subject property**') in 2014/2015. It is alleged that accused Nos. 1-2 and accused No. 3- Sandeep Shokeen are land grabbers who grabbed the subject property which allegedly belonged to the government land/DDA, and they in connivance with the police officials, MCD and DDA, sold the subject property to the complainant and his wife.

2.2. It is alleged that the complainant and his wife had purchased the subject property for a sum of ₹ 6,50,000/-, out of which the complainant paid a sum of ₹3,00,000/- and was ready and willing to pay the balance amount of ₹ 3,50,000/- to accused nos. 1 and 2. The complainant alleged that he had an agreement with accused Nos. 1 and 2 that after the payment of full and final consideration, the title documents of the said property would be transferred in his name.

2.3. It is further alleged that when the complainant's wife was about to pay the outstanding sale consideration of ₹3,50,000/- to accused Nos. 1 and 2, the complainant, through some persons, learnt that the subject property belonged to the Government/DDA and that accused Nos. 1 and 2 and their associates, took illegal possession of the subject property and constructed buildings. Thereafter, the complainant requested accused Nos. 1 and 2 to refund the sum of ₹3,00,000/- paid as consideration, however, the same was refused by the accused persons who stated that the said amount had been adjusted in the rent of the subject property.

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2.4. It is alleged that a quarrel occurred between the accused persons and the complainant whereafter, the complainant and his family were regularly pressured to vacate the subject property. Furthermore, the accused persons, in pursuit of their goal, damaged household items, a scooter, a motorcycle, and other items, while also making caste-based remarks.

3. The learned ASJ *vide* order dated 12.07.2022 in CC No. 33/2020, dismissed the complaint under Section 156(3) of the CrPC praying for registration of FIR for the complaint dated 06.06.2018, and observed as under:

“In the complaint dated 06.05.2018 there is no allegations for commission of offence under provision of SC/ST (POA) Act. The complaint dated 06.06.2018 was lodged by Smt. Sushila, however, after filing of the complaint with police she has fails to approach this court for excising the jurisdiction u/s 156(3) Cr.PC.

The application u/s 156(3) Cr.PC before this court is filed by Sh. Madan Lai who never made any complaint before police authorities for commission of offence u/s SC/ST (POA) Act.

In view of the above, the application u/s 156 (3) Cr.PC moved by the applicant/complainant praying registration of FIR against alleged accused persons is dismissed, however, the complainant has levelled allegation for commission of offence under SC/ST (POA) Act in the complaint filed before this court, hence, it is in the interest of justice to grant him opportunity to prove his allegations by leading pre-summoning evidence.”

4. The learned ASJ *vide* order dated 12.07.2022 in CC No. 34/2020, dismissed the complaint under Section 156(3) of the CrPC praying for registration of FIR for the complaint dated 26.05.2018, and observed as under:

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“The perusal of the complaint dated 26.05.2018 would reveals that it does not contains any whisper/allegations under the provision of SC/ST (Prevention of Atrocities) Act (hereinafter referred as SC/ST (POA.) Act). This court is designated Special Court under SC/ST (POA) Act, therefore, to excise the jurisdiction u/s 156(3) CrPC the existence of commission of offence under the SC/ST (POA) Act is necessary.

In the complaint dated 26.05.2018 there is no allegations for commission of offence under provision of SC/ST (POA) Act. The complaint dated 26.05.2018 was lodged by Smt. Sushila, however, after filing of the complaint with police she has fails to approach this court for excising the jurisdiction u/s 156(3) Cr.PC.

The application u/s 156(3) Cr.PC before this court is filed by Sh. Madan Lal who never made any complaint before police authorities for commission of offence u/s SC/ST (POA) Act.

In view of the above, the application u/s 156 (3) Cr.PC moved by the applicant/complainant praying registration of FIR against alleged accused persons is dismissed, however, the complainant has levelled allegation for commission of offence under SC/ST (POA) Act in the complaint filed before this court, hence, it is in the interest of justice to grant him opportunity to prove his allegations by leading pre-summoning evidence.”

5. The learned ASJ vide order dated 12.07.2022 in CC No. 35/2020, dismissed the complaint under Section 156(3) of the CrPC praying for registration of FIR for the complaint dated 06.05.2018, and observed as under:

“The perusal of the complaint dated 06.05.2018 would reveals that it does not contains any whisper/allegations under the provision of SC/ST (Prevention of Atrocities) Act (hereinafter referred as SC/ST (POA) Act). This court is designated Special Court under S'C/ST (POA) Act, therefore, to excise the jurisdiction u/s 156(3) Cr.PC the existence of commission of offence under the SC/ST (POA) Act is necessary.



In the complaint dated 06.05.2018 there is no allegations for commission of offence under provision of SC/ST (POA) Act. The complaint dated 06.05.2018 was lodged by Smt. Sushila, however, after filing of the complaint with police she has fails to approach this court for excising the jurisdiction u/s 156(3) Cr.PC.

The application u/s 156(3) Cr.PC before this court is filed by Sh. Madan Lal who never made any complaint before police authorities for commission of offence u/s SC/ST (POA) Act.

In view of the above, the application u/s 156 (3) Cr.PC moved by the applicant/complainant praying registration of FIR against alleged accused persons is dismissed, however, the complainant has levelled allegation for commission of offence under SC/ST (POA) Act in the complaint filed before this court, hence, it is in the interest of justice to grant him opportunity to prove his allegations by leading pre-summoning evidence.”

6. The learned counsel for the petitioner submits that the learned ASJ, without application of mind and in utmost casual manner, has dismissed the petitioner’s prayer seeking direction for registration of FIR under appropriate sections of law against the proposed accused persons.

7. He submits that the accused persons are habitual offenders who, due to ongoing enmity at the time, regularly threatened the petitioner with severe consequences and used derogatory SC/ST comments against him.

8. The Learned Additional Public Prosecutor for the State argues that there is no infirmity with the impugned order, and the grounds being raised on behalf of the petitioner at this stage, cannot be adjudicated upon by this Court.



9. This Court has heard the arguments addressed by the counsels for both the parties, and has perused the material on record.

Analysis

10. At the outset, a reference can be made to Section 156 of the CrPC, which reads as under :

“156. Police officer's power to investigate cognizable case.—

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above mentioned.”

11. Thus, while exercising powers under Section 156(3) of the CrPC and directing the registration of an FIR, the Magistrate/Special Court needs to ensure that a cognizable offence is disclosed from the allegations mentioned in the application and the essential elements of the alleged offences, thereof, are *prima facie* satisfied.

12. In ***Lalita Kumari v. Govt. of U.P. : (2014) 2 SCC 1***, the Constitution Bench of the Hon'ble Apex Court held that registration of FIR is mandatory under Section 154 of the CrPC, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. If the information received does not disclose a cognizable offence



but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. It was held as under:

“119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.”

13. It is well established that if the complaint does not *ex facie* disclose the commission of a cognizable offence, the FIR cannot be ordered to be registered. The role of the Magistrate is not that of a postman or a median for the purpose of registration of FIR. He ought to apply his mind to the facts and circumstances of the case and then come to a conclusion as to whether the allegations disclose the commission of a cognizable offence by the suspect which could need further investigation by the police.



14. The Hon'ble Apex Court in the case of ***Usha Chakraborty v. State of West Bengal : 2023 SCC OnLine SC 90***, held that while passing an order for registration of an FIR upon an application filed under Section 156(3) of the CrPC, the Court must satisfy itself that basic ingredients of the alleged offences are fulfilled. The relevant observations in this regard read as under:

“...there cannot be any doubt with respect to the position that in order to cause registration of an F.I.R. and consequential investigation based on the same the petition filed under Section 156 (3), Cr. P.C., must satisfy the essential ingredients to attract the alleged offences. In other words, if such allegations in the petition are vague and are not specific with respect to the alleged offences it cannot be lead to an order for registration of an F.I.R. and investigation on the accusation of commission of the offences alleged...”

(Emphasis supplied)

15. The power under Section 156(3) of the CrPC is to be exercised judiciously and direction for registration of FIR is to be given only after due application of judicial mind. In this regard, this Court, at the outset, takes note of the observations of Hon'ble Apex Court in ***Ramdev Foods Products Pvt. Ltd. v. State of Gujarat : (2015) 6 SCC 439***, wherein it was held as under :

*“22. Thus, we answer the first question by holding that:
22.1. The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone the issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered*



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appropriate to straightaway direct investigation, such a direction is issued...”

(Emphasis supplied)

16. Keeping in perspective the aforesaid observations, this Court has carefully perused and examined the records of the case including the orders impugned before this Court.

17. The Status Report filed by the police before the learned ASJ contained a detailed account of preliminary inquiry conducted by the police and it was noted that :

17.1 No cognizable offence was disclosed from the contents of complaint filed by the petitioner.

17.2 The allegations levelled by the petitioner regarding sarcastic remarks on caste could not be substantiated. Hence the complaint filed by petitioner was disposed of.

17.3 During the course of enquiry, it was revealed that on the statement of the petitioner, three FIR bearing Nos. 261/2017, 629/2017 (E-FIR) and 228/2018 (E-FIR) were already registered at Police Station Sagarpur in view of the incident which took place as stated by petitioner in the present case.

18. The complaints are not annexed in the present petition but have been referenced by the learned ASJ in the impugned orders. This court has perused the said complaints given by the petitioner's wife and *prima facie*, there is absolutely no allegation in the complaint that the respondents humiliated the petitioner or his wife for being a member of Scheduled Caste or Scheduled Tribe during the alleged scuffle. The relevant part of the complaints is set out below:

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“Complaint dated 06.05.2018 in CRL. REV. P. 765/2023

05.05.2018 ko sham 9.10 baje ke karib mere ghar ke niche rehne wall ladki Neha, D/o Rajesh Kumar upar aakar mere gate par bell baji to mai bahar gai, kehne lagi ki aunty kapil shokeen ka phone aaya hai, aap se baat larne ki bol raha hai, baat kar lo, to maine boat kari to usne mujhephone par gaali galoch ki, makan khali kar de abhi isi waqt, agar apne bacchho ko marvana chahti hai to vaise beta de, to maine bola ki aap aa kar baat kar lo, to usne bola ki tu aise nhi manegi, kuch karva kr manegi, ab dekh mai kya karta hu, keh kar phone kaat dia aur veh ladki phone lekar niche chali gai aur fir mai apne ghar mai andar aa gai, uske ek ghante ke andar mere ghar ki light kaat di to maine bahar dekha ki sabki light aa rahi hai aur hamari light nahi aa rahi, usi samay maine niche jaa kar dekna to Kapil Shokeen aur uske aur sehyogi ek safed rang ki car aur ek bike par khade hue the to maine use dekha aur usne mujhe dekha to mai bahut jyada darr gai aur maine usi samay 100 number par call kar di to 100 number PCR ki car aai to unhone kahan ki aap yahin ruko thane se police aa rahi hai to maine apne ghar ke niche hi wait kia ki police aa rahi hai fir uske kuch samay ke baad ek call aai number 8851950388 ke madam hum thane se bol rahe hai, aapko kya pareshani hai, hamein batao to maine unhe saari baat bata di aur unhone fir phone kaat dia, fir kuch samay ke baad maine call ki sir ki aap aaye nahi abhi tak fir unhone mere se Kapil Shokeen ka number manga aur maine number de dia aur unhone kaha ki madam hum Kapil Shokeen ko thane bula rahe hai, fir mai apne ghar ke niche hi baithi rahi aur koi naa phone aaya na hi koi aaya, fir mai kuch samay ke baad apne ghar gai aur hum saare log light, paani ke bagair bailhe rahe aur subah 9.30 baje mai niche gai apne scooty dekhne kailash puri police booth par to maine vaha dekha ki meri scooty bhi tooti hui hai aur mai apni scooty Kailash puri police booth par hi khadi karte hai, jab se hamari gaadiyan tooti hai, darr ke maare ki yeh dobara bhi naa toot jae, mujhe iska darr tha to maine jab se hi apni scooty police booth par hi khadi karti hu tomaine usi samay 100 number par call kar di.”

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Complaint dated 06.06.2018 in CRL. REV. P. 806/2023

“Nivedan yeh hai ki Sushila W/o Madan Lai, mai tabiyat kharab hone ki wajah se Deen Dayal Upadhyay hospital mai apna ilaj karane gai thi ki mere phone par phone aata hai ki apka saaman gali mai faik dia hai. Usi dauran maine apne phone se 100 number par phone kerke soochna di aur Mahila helpline 181 par phone karke soochit kar dia, usi samay jab meri baat 100 number par ho rahi thi to unhone mana kar dia ki hum aapki koi sahayata nahi kar sakte hai. Fir maine dobara 181 mahila helpline par phone kia to unhone 100 number phone kiya aur veh team vahan pahunchi, unhone apne saamne saaman faika hua dekha. Maine bataya ki yeh saaman Rajesh ne faika hai. Rajesh ko aur mujhe (Sushila W/o Madan Lal), Sagar Pur police station le aaye. Ye saare Kapil Shokeen ke Chaukidaar aur Kirayedaar hai. Meera ka ladka Kapil Shokeen ke paas kaam karta hai. Is wajah se mere upar dabav daal kar yeh kehna chahti hai ki yeh sushila ka tala nahi hai. Jiske saare photo ACP sir ko bhej die hai. Jisme saaman fakte dekha hai, use mai zaroorat par pesh kar dungi”.

Complaint dated 26.05.2018 in CRL. REV. P. 810/2023

“Yeh hai ki mai is address par seh parivar rehti hoon aur is makan mai 04 saal se reh rahi hu. Maine is makan mai first floor par 03 kamre aur kitchen lease par le rakhe hai jiska mai kiraya bhi deti hoon, jo kiraya Kapil Shokeen ko deti hoon, kabhi-kabhi Raju kiraya le jata hai, jo hamara patiala court mai case chal raha hai, jo 3-4 din se mai apne ghar/makan par nahi reh rahi hoon, din mai ghar par chakkar laga kar chali jaati hoon, jo raat mai apni behan aur rishtedaaron mai apne bacchhon ko lekar chali jaati hoon. 25.05.2018 ko mai raat mai 10.00 baje apne ghar se apne bacchon ke saaih chali gai thi, jo karol bagh apne bhai ke paas gai thi, jo 26.05.2018 ko mere paas phone par padosi ka phone subah karib 9.34 par aaya ki kuch logo ne tumhara tala tod dia aur kuch

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saaman bikher dia, kuch saaman le gae jo maine vahin se karol bagh se 100 number par phone kia aur Mahila helpline par phone kia, Jo mai Karol Bagh se chal kar apne ghar par karib 10.15 baje pahunchi aur maine 100 number par phone kia, jo maine apne ghar dekha to saaman bikhra pada tha”.

19. It is well-settled that for an insult or intimidation to fall under the provisions of the SC/ST Act, the key ingredient is that such insult or intimidation be made on account of the victim belonging to the Scheduled Caste or the Scheduled Tribe. However, as is apparent from a bare perusal of the complaints, there is nothing in the complaint to indicate that during the alleged scuffle, the respondents either intentionally insulted or intimidated the petitioner or his wife with the intent to humiliate them, for a being a member of Schedule Caste or Scheduled Tribe. The complaints, in the present case, thus do not satisfy the requirements for an offence under the SC/ST Act.

20. The question which, then, falls for the consideration of this Court is whether the Magistrate/ASJ on the application filed under Section 156(3) of the CrPC, has to act and accept mechanically a complaint presented to him and direct registration of FIR or in his discretion, upon the examination of allegations order preliminary enquiry then proceed in the matter. The position of law is fairly well-settled. Recently, the Hon’ble Apex Court in ***Priti Agarwalla v. State (NCT of Delhi) : 2024 SCC OnLine SC 973***, observed as under :

“....14.3 We do not propose to multiply citations on the point and succinctly stated, the Magistrate, under section 156(3) of the CrPC, asks himself a question : whether the complaint, as presented, makes out a case

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for directing the registration of an FIR or calls for inquiry or report from the jurisdictional police station. The inner and outer limit of the exercise of this jurisdiction is on a case-to-case basis dependent on the complaint, nature of allegations and offence set out by such a complaint. Therefore, it is fairly well-settled and axiomatic by the decisions rendered under section 156(3) of the CrPC that the Magistrate does not act mechanically and exercises his discretion judiciously by applying mind to the circumstances complained of and the offence alleged against the accused for taking one or the other step. The case on hand principally concerns deciding whether the discretion is invalidly exercised by the Magistrate while ordering a report from the SHO.

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18. There cannot be two views on the proposition that to cause or register an FIR and consequential investigation based on the same petition filed under section 156(3) of the CrPC, the complaint satisfies the essential ingredients of the offences alleged. In other words, if such allegations in the petition are vague and do not specify the alleged offences, it cannot lead to an order for registration of an FIR and investigation.

18.1 In National Campaign on Dalit Human Rights (supra) and Union of India v. State of Maharashtra (supra), this Court has held that the constitutional goal of equality for all citizens of this country can be achieved only when the rights of members of the Scheduled Castes and Scheduled Tribes are protected. The prosecution machinery and adjudicatory bodies work to achieve this constitutional goal. The FIR registered and investigation must be taken forward subject to the complaint satisfying the requirements of an offence complained under the Act of 1989.... ”

21. The learned ASJ, in the impugned order, rightly noted that the complaints in the impugned orders lacked any allegations under the SC/ST Act. It was further held that since the court is a designated Special Court under the SC/ST Act, the presence of



such allegations is necessary to exercise jurisdiction under Section 156(3) of the CrPC.

22. It is also pertinent to note that the complaint is a trigger of criminal proceedings which can be put into motion by the complainant by filing a complaint duly supported with an affidavit, or in some instances, a complaint can be instituted through a power of attorney.

23. The Hon'ble Apex Court in ***Priyanka Srivastava v. State of U.P. : (2015) 6 SCC 287*** highlighted the importance of verifying the veracity of allegations levelled in a complaint to keep in check the filing of applications under Section 156(3) of the CrPC as a tool to harass people and observed that the Magistrate can look into the veracity of an application under Section 156(3) of the CrPC because ordering inquiry requires the application of judicial mind and held as under :

“30. In our considered opinion, a stage has come in this country where Section 156(3) of the CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the jurisdiction of the Magistrate. That apart, in an appropriate case, the Ld. Magistrate would be well advised to verify the truth and also verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever, only to harass certain persons...”

24. In that light, the learned ASJ has rightly noted that Smt. Sushila, who lodged the original complaint, did not approach the court under Section 156(3) of the CrPC. Instead, the application was filed by Sh. Madan Lal/petitioner, who did not previously report the alleged offence to the police under the SC/ST Act.



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Consequently, the application to register an FIR against the accused persons was dismissed.

25. A *bona fide* complainant cannot be denied a remedy for any injury sustained. However, simultaneously, no individual is entitled to inflict harm upon another by improperly utilizing legal processes. In the present case, this was exemplified by initiating criminal proceedings by way of a complaint and application filed under Section 156(3) of the CrPC, which, upon review and considering the detailed police report, did not reveal the commission of a cognizable offence by the proposed accused persons.

26. The Police, in the present case, has rightly not registered an FIR and in the opinion of this Court, no cognizable offence has been alleged by the complainant thereof. Therefore, an unmeritorious complaint that contains no incriminating material against an accused should not lead to orders for the registration of FIRs, as such actions would constitute an abuse of the criminal legal process.

27. In view of the above, I find no infirmity in the impugned orders passed by the learned ASJ, and the same cannot be faulted with.

28. The petitions are, therefore, dismissed.

29. The pending applications also stand disposed of

30. A copy of this order be placed in all the matters.

AMIT MAHAJAN, J

JULY 23, 2024/UG

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