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

Judgment delivered on: 21st July, 2015

+ CRL.M.C. 1937/2015

ANIL SHARMA

..... Petitioner

Represented by: Mr. Sameer Chandra,
Mr. Kuldeep Singh, Mr. Rajesh Kaushik
and Mr. Zubair Raza, Advts.

Versus

STATE (NCT OF DELHI) & ORS

..... Respondents

Represented by: Mr. Ravi Nayak, APP for
State with SI Krishan Gopal, PS-Palam
Village.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl.M.A.No.6910/2015 (exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

+ **CRL.M.C. 1937/2015**

1. Vide the present petition, petitioner seeks directions thereby quashing the impugned order dated 31.01.2015 passed by Id. MM-01, Dwarka Courts, New Delhi in the case titled as Anil Sharma v. Kapil Sharma and Anr. thereby dismissing the application of the

petitioner filed under Section 156 (3) Cr.P.C. and directed him to lead pre-summoning evidence in the case.

2. The facts of the case are that on 15.09.2014, when the petitioner / complainant returned back after meeting his tenant, who are residing at WZ-10, Gali No. 16, Sadh Nagar, Palam Colony, New Delhi, he noticed that the seal of the five electricity meters installed at each floor of his house were broken. Then he watched the CCTV footage and found that on 05.09.2014 at about 14:52 hrs. respondents nos. 2 and 3 forcibly entered his house, broken the seals of all the five electricity meters and tried to take away the same forcibly.

3. Thereafter, complainant filed a complaint vide DD No. 58 B on 16.09.2014 against the aforesaid respondents with PS-Palam Village. However, the said Police Station did not register the case on the ground that respondent nos. 2 and 3 committed offence punishable under Section 427 of IPC which is not cognizable.

4. Being aggrieved, the petitioner filed an application under Section 156 (3) Cr.P.C. However, the same was dismissed on the ground that complainant / petitioner is in possession of the evidence and the investigation by the Police is not required. Accordingly, the petitioner was directed to lead the evidence.

5. Ld. Counsel for the petitioner submits that if any cognizable offence is made out, the Police is bound to register a case.

6. To strengthen his arguments, Id. Counsel has relied upon a case of ***Lalita Kumari v. Government of Uttar Pradesh and Ors.*** **1014 1 SCC (Cri) 524** wherein held as under:

“49. Consequently, the condition that is sine qua non for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognizable offence. If any information disclosing a cognizable offence is led before an officer in charge of the police station satisfying the requirement of Section 154(1), the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. The provision of Section 154 of the Code is mandatory and the concerned officer is duty bound to register the case on the basis of information disclosing a cognizable offence. Thus, the plain words of Section 154(1) of the Code have to be given their literal meaning.

'Shall'

*50. The use of the word "**shall**" in Section 154(1) of the Code clearly shows the legislative intent that it is mandatory to register an FIR if the information given to the police discloses the commission of a cognizable offence.*

*51. In **Khub Chand** (supra), this Court observed as under:*

6...The term "shall" in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature, to be collected from other parts of the Act.

The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations....

52. It is relevant to mention that the object of using the word "shall" in the context of Section 154(1) of the Code is to ensure that all information relating to all cognizable offences is promptly registered by the police and investigated in accordance with the provisions of law.

53. Investigation of offences and prosecution of offenders are the duties of the State. For "cognizable offences", a duty has been cast upon the police to register FIR and to conduct investigation except as otherwise permitted specifically under Section 157 of the Code. If a discretion, option or latitude is allowed to the police in the matter of registration of FIRs, it can have serious consequences on the public order situation and can also adversely affect the rights of the victims including violating their fundamental right to equality."

7. Ld. APP for the State on instructions from SI Kishan Gopal, PS-Palam Village submits that no case of cognizable nature was made out against respondent nos. 2 and 3. Therefore, the police did not register the case. Moreover, the application moved by the petitioner has been decided by the Id. MM and the said Court was of the opinion that the evidence is required to be placed on record. Accordingly, Id. MM dismissed the application moved by the petitioner.

8. In view of the facts recorded above, dismissing the application under Section 156 (3) Cr.P.C. does not close the right of the petitioner. Moreover, if the petitioner has any evidence in his possession, he has to lead and place the same on record and establish his case. Thus, in this manner, no prejudice is caused to the petitioner. The case of *Lalita Kumari (Supra)* is not relevant in the facts and circumstances of this case.

9. In view of above, I find no discrepancy in the order passed by the ld. MM.

10. Accordingly, the petition is dismissed.

SURESH KAIT, J

JULY 21, 2015

jg