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

+ **W.P.(CRL) 624/2015**

Judgment reserved on 1st December, 2016

Judgment pronounced on 16th December, 2016

POOJA TANEJA

..... Petitioner

Through :Mr. Vikas Pahwa, Sr. Advocate with
Ms. Chandrani Prasad, Ms. Mitari
Thakkar, Mr. Kinnori Ghosh and Mr.
Aditya Dogra, Advs.

versus

THE STATE OF NCT OF DELHI & ORS

..... Respondents

Through : Mr. R.S. Kundu, ASC with Mr.
Ankit Kumar Gulia, Adv. & SI
Deepak Kumar, P.S. Rajouri Garden,
Delhi for the State
Mr. Dayanan Krishnan, Sr. Advocate
with Mr. Baldev Raj, Mr. Shikha
Tyagi and Mr. Sumit Sandeep Tyagi,
Advs. for respondent no. 5

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.

W.P.(CRL) 624/2015

1. Aggrieved by the judgment dated 21st January, 2015, passed by the
learned Additional Sessions Judge, Delhi in Crl. Revision Petition no.

83/1/14, petitioner has filed this petition under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (“the Code”, for short). By placing reliance on *Radhey Shyam & Anr. Vs. Chabbi Nath*, (2015) 5 SCC 423, learned Senior Counsel for the respondent no. 5 has challenged the maintainability of the writ petition under Article 226 of the Constitution of India, against the judicial order passed by the learned Additional Sessions Judge, Delhi. It is further contended that petition under Article 227 of the Constitution of India has to be treated as an application and not the writ petition. Reliance has been placed on *Shalini Shayam Shetty & Anr. Vs. Rajendra Shankiar Patil*, (2010) 8 SCC 329.

2. Vide order dated 12th August, 2016, my learned Predecessor called upon the learned counsel for the petitioner to satisfy the Court with regard to maintainability of writ petition against the judicial order and also for seeking registration of the FIR, after having availed the alternate remedies.

3. During the course of hearing, learned Senior Counsel for the petitioner has contended that present petition be treated under Section 482 of the Code read with Article 227 of the Constitution of India. Ordered

accordingly. Registry to re-number this petition as a Criminal Miscellaneous Case.

Crl. M.C. No. _____/2016 (to be numbered)

4. Petitioner filed a complaint under Section 200 of the Code before the learned Metropolitan Magistrate against the respondent no. 5, alleging therein that respondent no. 5 had committed offences punishable under Sections 307/312/325/341/342/354/376(c)/493/494/495/496/503/509 IPC and that he be punished for the said offences. An application under Section 156(3) of the Code was also filed, which was dismissed by the learned Metropolitan Magistrate, Delhi vide order dated 11th November, 2014. Learned Metropolitan Magistrate decided to proceed with the complaint under Section 200 of the Code. During the course of hearing, it has been pointed out that five witnesses have already been examined by the petitioner at the pre-summoning stage.

5. Petitioner preferred a Revision Petition under Section 397 of the Code before the Additional Sessions Judge, Delhi, which has been dismissed by the judgment impugned in this petition.

6. That is how, petitioner is before this Court by way of present petition under Section 482 of the Code read with Article 227 of the Constitution of India.

7. Briefly stated, petitioner alleged in the complaint that she was married to one Shri Anil Kumar and two children, namely, Divyansh and Suryansh were born from their wedlock. In the year 2001, their marriage was dissolved by a decree of divorce by mutual consent and thereafter, she started living at WZ-251, Virender Nagar, New Delhi along with her son Divyansh. In the year 2006, petitioner met one Rajat Mittal, who exploited her physically by extending promises to marry her. However, he did not marry her and left the country. On 24th February, 2012, she went to Police Station Moti Nagar for registering a criminal case against him, where she met respondent no. 5, who was posted as Station House Officer in the said Police Station. Initially, respondent no. 5 did not show any interest in registering the FIR, however, later FIR No. 33/2012 under Section 376/506 IPC was registered at Police Station Moti Nagar, New Delhi against Rajat Mittal. During the investigation, respondent no. 5 developed friendly relations with her. He proposed to marry her. On 7th June, 2012, respondent no. 5 married her in a simple ceremony in presence of her sister at D-547,

2nd Floor, Shiv Nagar, New Delhi. Thereafter, they started living together. On 12th July, 2012, she checked the mobile phone of respondent no. 5 and found that he was in touch with one Ms. Summi. Later, she came to know that from 2008 till 2011 respondent no. 5 was having relations with one Ms. Ritu Arora also. When she confronted respondent no. 5 with these facts, he became angry and abused her. When she became pregnant, respondent no. 5 said that he was not willing to have children. He took her to Kalra Hospital, Kirti Nagar and forced her to undergo abortion. She conceived for the second time. Respondent no. 5 again asked her to terminate the pregnancy, but she did not agree to this and on 21st August, 2013, one male child, namely, Master Gaurik Kumar was born in Kalra Hospital. Prior thereto, in the month of February, 2013, on checking the mobile phone of respondent no. 5, she found that he was having relations with one of his subordinate, namely, Ms. Anu as well. Soon after the birth of Master Gaurik Kumar, the behavior of respondent no. 5 changed and he started remaining out of the house for prolonged durations. In the month of December, 2013, she was shocked to learn that respondent no. 5 was already married to one Ms. Sushma and was having two sons aged about 11 and 16 years, respectively. When she confronted the respondent no. 5 with this fact, he gave beatings to

her. Thereafter, regular fights started between them. 15th February, 2014 onwards, respondent no. 5 started visiting the house once in 15/20 days. Respondent no. 5 also started pressurizing her to settle the matter with him. He threatened that in case, she did not settle the matter with him, he would kill her and their son. In order to avoid physical and mental torture, she got the CCTV cameras installed on 17th May, 2014 at her residence. In the third week of April, 2014, the respondent no. 5 beat her up and forced her to sign some papers. On 31st July, 2014, respondent no. 5 informed her that he had deposited Rs.9,00,000/- in her bank account. On 1st August, 2014, respondent no. 5 came to her house all of a sudden, bolted the main gate from inside, unplugged all the CCTV cameras, snatched her mobile phone, snatched Master Gaurik Kumar from the maid and threatened that in case, she refused to compromise the matter with him, he would kill her and Master Gaurik Kumar. On 2nd August, 2014, respondent no. 5 again came to her residence and forced her to sign some agreement. She filed a complaint with SHO, Police Station Rajouri Garden on 25th August, 2014, but no action was taken. Complaint before the Assistant Commissioner of Police dated 27th August, 2014 also did not bring any fruitful result, hence the complaint.

8. Trial court has held that the Magistrate has not to order for the registration of FIR mechanically and in a routine or casual manner. Criminal law is not expected to be set in motion on mere asking of the parties. Power has to be exercised where evidence is beyond the reach of the complainant or custodial interrogation appears to be necessary for recovery of some articles and discovery of facts. It is held that, in this case, the parties were known to each other and the facts as well as evidence was within the knowledge and control of the complainant and no custodial interrogation was required as nothing was to be recovered during the police investigation. The evidence sought to be led can be adduced by the complainant in pre-summoning evidence under Section 200 of the Code. Reliance was placed on *Dilshad vs. S.R. Sundaram & Ors.* 2013 (3) JCC 2227 and *Brahm Prakash Gupta vs. State* 2008 (4) JCC 2331. Learned Metropolitan Magistrate has also considered the action taken reports filed by the Assistant Commissioner of Police and has noted that a MOU was signed between the parties in presence of the witnesses, inasmuch as there was delay in lodging of the complaint. Learned revisional court has concurred with the view taken by the trial court. It has been noted in the impugned order that MOU for Rs.60,00,000/- was also signed by the elder sister of the

petitioner, besides one more witness. No document of marriage was placed on record. As regards incident of 1st August, 2014 is concerned, it is noted that no PCR call was made. Learned Additional Sessions Judge has also noted that MOU was dated 16th April, 2014, thus, there was no occasion for the respondent no. 5 to extend any threat on 1st August, 2014. In a nutshell, the courts below have taken a view that there was delay in lodging the FIR, inasmuch as entire material was within the knowledge of the petitioner and no evidence was to be collected through the process of police investigation.

9. Learned Senior Counsel for the petitioner has contended that the averments made in the complaint disclose cognizable offences including the offence under Section 376 IPC, therefore, learned Metropolitan Magistrate ought to have ordered for the registration of FIR, in exercise of its powers under Section 156(3) of the Code. Allegations are serious in nature, therefore, police investigation was necessary. Learned Metropolitan Magistrate as well as learned Additional Sessions Judge have erred in holding that matter could have been inquired by following the procedure laid down in Section 200 of the Code. Police assistance was required as witnesses would be reluctant to come forward to depose, since respondent no.5 is a police officer. Reliance has been placed on *Lalita Kumari vs. State*

of U.P., (2014) 2 SCC 1, Raisa Begum vs. State (2015) SCC online Del. 10078, Srinivas Gundluri & Ors. Vs. SEPCO Electric Power Construction Corporation & Ors. (2010) 8 SCC 206, Rameshbhai Pandurao Hedau vs. State of Gujarat (2010) 4 SCC 185, Amit Khera vs. State of NCT of Delhi & Ors. (2010) 171 DLT 607, Smt. Masuman vs. State of U.P. & Ors. (2007) 1 All LJ 221 and Devarapalli Lakshminarayana Reddy vs. V. Narayana Reddy & Ors. (1976) 3 SCC 252. It is contended that in Lalita Kumari (supra) Supreme Court has held that the police is duty bound to register an FIR when the complaint discloses a cognizable offence. Heavy reliance has been placed on Smt. Masuman (supra), a judgment rendered by the learned Single Judge of Allahabad High Court, to contend that the Magistrate has to order for registration of FIR under Section 156(3) of the Code if the ingredients of cognizable offences are attracted and he cannot decline to pass such an order solely on the ground that complainant is in the know of all the facts.

10. Learned Additional Standing Counsel has supported the impugned judgment. It is contended that the trial court and the revisional court have rightly not directed for registration of FIR under Section 156(3) of the Code, in the facts of the present case, as detailed hereinabove, including the delay. Learned Senior Counsel for the respondent no. 5 has contended that the trial

court, while dismissing the application of petitioner under Section 156(3) of the Code, has granted opportunity to the petitioner to lead pre-summoning evidence under Section 200 of the Code. Learned Metropolitan Magistrate is not bound to direct investigation by the police in each and every case in a routine manner and it is open for him to direct the petitioner to lead pre-summoning evidence, more so, in the cases where the evidence sought to be led is in possession of the complainant and there is no need for custodial interrogation of the accused. Reliance has been placed on *Madhao & Anr. Vs. State of Maharashtra & Anr.* (2013) 5 SCC 615, *State of Gujarat vs. Girish Radhakrishnan Varde* (2014) 3 SCC 659, *Shri Subhkaran Luhurka & Anr. Vs. State & Anr.* ILR (2010) VI Delhi 495, *Brahm Prakash Gupta vs. State* 2008 (106) DRJ 199, *Suresh Sahu vs. State & Ors.* 2014 SCC online Del. 3655 and *Dilshad vs. S.R. Sundaram & Ors.* 2013 SCC online Del 2156. It is further contended that Section 397(3) of the Code, bars a second Revision, accordingly, High Court in exercise of its inherent powers under Section 482 of the Code should interfere only in the cases, when it is shown that mandatory provisions of law have not been complied with by the trial court or serious miscarriage of justice will result if impugned order is sustained. Reliance has been placed on *Krishnan & Anr. vs. Krishnaveni &*

Anr. (1997) 4 SCC 241 and Kailash Verma vs. Punjab State Civil Supplies Corporation and Anr. (2005) 2 SCC 571. Learned Senior Counsel has further contended that, in the instant case, there is no legal infirmity or miscarriage of justice caused by the manner in which the learned Magistrate has exercised his discretion under Section 156(3) of the Code, by dismissing the application of petitioner, which has been rightly upheld by the learned Additional Sessions Judge, in exercise of revisional jurisdiction under Section 397 of the Code.

11. In Lalita Kumari (supra), guidelines have been laid down and certain directions have been issued to the police with regard to the registration of FIRs. It is held that it is mandatory for the police to register the FIR under Section 154 of the Code, in the cases where complaint discloses commission of a cognizable offence. Lalita Kumari (supra) is not in the context of Section 156(3) and Chapter XV of the Code, that is, Section 200 to 203 of the Code. Even in Lalita Kumar (supra), a preliminary inquiry is envisaged in certain types of cases. Relevant it would be to refer to para 120.6 in this regard, which reads as under:-

“120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The

category of cases in which preliminary inquiry may be made are as under:-

- (a) Matrimonial disputes/family disputes
- (b) Commercial offences
- (c) Medical negligence cases
- (d) Corruption cases
- (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.”

12. In *Ramdev Food Products Private Limited vs. State of Gujarat*, MANU/SC/0286/2015, appellant sought directions for investigation under Section 156(3) of the Code. However, Magistrate instead of directing investigation as prayed, thought it fit to conduct further inquiry under Section 202 of the Code and sought report of the Police Sub-Inspector within 30 days. Grievance of the appellant before the High Court was that in view of the allegation that documents had been forged with a view to usurp the trademark, which documents were in possession of the accused and were required to be seized, investigation ought to have been ordered under Section 156(3) of the Code, instead of conducting further inquiry under Section 202 of the Code. In *Ramdev (supra)*, Supreme Court considered *Latika Kumari* and in paras 20 and 22 held as under:-

“20 It has been held, for the same reasons, that direction by the Magistrate for investigation Under Section 156(3) cannot be given mechanically.

In Anil Kumar v. M.K.Aiyappa
MANU/SC/1002/2013: (2013) 10 SCC
705, it was observed:

11. The scope of Section 156(3) Code of Criminal Procedure came up for consideration before this Court in several cases. This Court in Maksud Saiyed case [MANU/SC/7923/2007 : (2008) 5 SCC 668] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction Under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Code of Criminal Procedure, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter Under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation Under Section 156(3) Code of Criminal Procedure, should be reflected in the order, through a detailed expression of his views is neither required nor

warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.

The above observations apply to category of cases mentioned in Para 120.6 in *Lalita Kumari* (supra)."

"22. Thus, we answer the first question by holding that 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 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 appropriate to straightaway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed". Category of cases falling under Para 120.6 in *Lalita Kumari* (supra) may fall Under Section 202. Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case."

(emphasis supplied)

13. In *Shri Subhkaran Luharuka & Anr. Vs. State & Anr.* ILR (2010) VI

Delhi 495, a Bench of coordinate jurisdiction of this court has held thus:-

"42 Thus, there are pre-requisites to be followed by the complainant before approaching the Magistrate under Section 156(3) of the Code which is a discretionary remedy as the provision

proceeds with the word 'May'. The magistrate is required to exercise his mind while doing so. He should pass orders only if he is satisfied that the information reveals commission of cognizable offences and also about necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without the assistance of the police. It is thus not necessary that in every case where a complaint has been filed under Section 200 of the Code the Magistrate should direct the Police to investigate the crime merely because an application has also been filed under Section 156(3) of the Code even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, may be with the assistance of the court or otherwise. The issue of jurisdiction also becomes important at that stage and cannot be ignored.”

14. In Mohd. Salim vs. State 175(2010) DLT 473, a learned Single Judge of this court, in para 11, has held thus:-

“11. The use of the expression “may” in Sub-section (3) of Section 156 of the Code leaves no doubt that power conferred upon the Magistrate is discretionary and he is not bound to direct investigation by the Police even if the allegations made in the complaint disclose commission of a cognizable offence. In the facts and circumstances of a given case, the Magistrate may feel that the matter does not require investigation by the Police and can be proved by the complainant himself, without any assistance from the Police. In that case, he may, instead of directing investigation by the Police, straightaway take cognizance of the alleged offence and proceed under Section 200 of

the Code by examining the complainant and his witnesses, if any. In fact, the Magistrate ought to direct investigation by the Police only where the assistance of the Investigating Agency is necessary and the Court feels that the cause of justice is likely to suffer in the absence of investigation by the Police. The Magistrate is not expected to mechanically direct investigation by the Police without first examining whether in the facts and circumstances of the case, investigation by the State machinery is actually required or not. If the allegations made in the complaint are simple, where the Court can straightaway proceed to conduct the trial, the Magistrate is expected to record evidence and proceed further in the matter, instead of passing the buck to the Police under Section 156(3) of the Code. Of Course, if the allegations made in the complaint require complex and complicated investigation of which cannot be undertaken without active assistance and expertise of the State machinery, it would only be appropriate for the Magistrate to direct investigation by the Police. The Magistrate is, therefore, not supposed to act merely as a Post Office and needs to adopt a judicial approach while considering an application seeking investigation by the Police.”

15. I concur with the view taken by this court in *Shri Subhkaran Luhurka* and *Mohd. Salim (supra)*, which otherwise, have a binding force, having been rendered by the learned Single Judge of this Court; as against the view expressed in *Smt. Masuman (supra)*, a judgment of Allahabad High Court, which only has a persuasive value. I am not persuaded by the view expressed by the Allahabad High Court that Magistrate has to order

registration of FIR under Section 156(3) of the Code, in case complaint discloses ingredients of a cognizable offence. I am of the view that the directions for investigation under section 156 (3) of the Code cannot be given by the Magistrate mechanically. Such a direction can be given only on application of mind by the Magistrate. The Magistrate is not bound to direct investigation by the police even if all allegations made in the complaint disclose ingredients of a cognizable offence. Each case has to be viewed depending upon the facts and circumstances involved therein. In the facts and circumstances of a given case, the Magistrate may take a decision that the complainant can prove the facts alleged in the complaint without the assistance of the police. In such cases, the Magistrate may proceed with the complaint under Section 200 of the Code and examine witnesses produced by the complainant. The delay in approaching the police by the complainant can yet be another factor which the Magistrate may take note of, while considering the application under Section 156(3) of the Code. The Magistrate ought to direct investigation by the police if it feels that the evidence is required to be collected with police assistance. All other judgments, cited by the parties, are in the context of different facts and are of no help. In this case, there is a delay in filing of the complaint, inasmuch

the facts and evidence are within the knowledge of the petitioner, which she can adduce during the inquiry conducted by the learned Metropolitan Magistrate under Section 200 of the Code, inasmuch as she has already produced five witnesses.

16. In the peculiar facts of this case, as detailed hereinabove, I do not find any palpable absurdity or perversity in the impugned judgment, which may require to be corrected or set right by this Court, in exercise of its inherent jurisdiction under Section 482 of the Code or the power of superintendence under Article 227 of the Constitution of India, which has to be exercised sparingly and only in appropriate cases.

17. For the foregoing reasons, petition is dismissed. Miscellaneous application is disposed of as infructuous. Needless to add here that trial court will proceed with the complaint, in accordance with law and on the evidence adduced before it, uninfluenced by any observation made in this judgment and the judgment of revisional court, touching the merits of the case.

A.K. PATHAK, J.

DECEMBER 16, 2016

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