

\$~28

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

+ **CRL.M.C. 2206/2016**

MOHAN LAL

..... Petitioner

Represented by: Petitioner in person.

versus

SANDEEP AGGARWAL & ANR

..... Respondent

Represented by: Mr. Ashok Kumar Garg, APP.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

10.08.2016

%

CrI.M.A. 12289/2016

By this application the petitioner seeks early hearing of the CrI.M.C.2206/2016 as the petition is at the stage of admission.

Early hearing of the petition is allowed.

Application is disposed of.

CRL.M.C. 2206/2016

1. The petitioner filed a complaint before the learned Metropolitan Magistrate being C.C. No.62/1C titled as '*Mohan Lal Vs. Sandeep Aggarwal etc.*' with an application under Section 156(3) Cr.P.C. seeking registration of FIR against the respondents. The learned Metropolitan Magistrate vide impugned order dated 11th March, 2016 dismissed the application under Section 156(3) Cr.P.C., however granted opportunity to the petitioner to lead pre-summoning evidence in support of the complaint and listed the matter for 27th July, 2016.

CRL.M.C. 2206/2016

page 1 of 5

2. A revision filed by the petitioner against the order of Metropolitan Magistrate dated 11th March, 2016 was dismissed vide the impugned order dated 7th May, 2016 upholding the order of the learned Metropolitan Magistrate.

3. In nutshell the allegations of the petitioner in the complaint are that his daughter was married to respondent No.1 on 10-11 December, 2005 where after they went to honeymoon to Goa. Immediately after return from the honeymoon respondent No.1 started misbehaving in a strange manner. On 17th February, 2006 when the wife of the petitioner and other relatives went at the house of the respondents they misbehaved. A video CD of the entire incident was prepared by them. Retaining the istridhan, cash and valuables of the daughter of the petitioner, she was sent back to her paternal house on the pretext that she will be called back after 10 days. However, respondent No.1 never turned up to take his daughter back to the matrimonial home. False and misleading OPD slips were prepared deceitfully obtaining the signatures of the petitioner's daughter on four blank pages and a false and vague complaint was filed at PS Model Town. The respondent No.1 also filed a petition under Section 12 of Hindu Marriage Act against his daughter where after on 2nd December, 2006 his daughter filed a petition under Section 9 of the Hindu Marriage Act in the District Court. A charge-sheet for offence punishable under Section 323/354/506 IPC has been filed against the petitioner and charges framed thereon. Later the petitioner came to know that respondent No.1 was having illicit relations with one women namely Deeksha Dewan and a male child was born out of the said relationship. Despite his complaint no action was

taken by PS Civil Lines and Mukherjee Nagar and thus he sought action.

4. Both the learned Metropolitan Magistrate and the learned ASJ noted that all the facts required to be proved were within the knowledge of the complainant and his family members and in respect of allegations of forgery of the slips limited enquiry under Section 202 Cr.P.C. could be conducted and thus no directions for registration of FIR under Section 156(3) Cr.P.C. were warranted.

5. This Court in the decision reported as 92 (2001) DLT 217 *Skipper Beverages Pvt. Ltd. vs. State* held that in a case where no investigation is required to be done by the police, the matter should be proceeded as a complaint case and after examining the complainant the Court can proceed to summon the accused. It was held:

7. It is true that Section 156(3) of the Code empowers a Magistrate to direct the police to register a case and initiate investigations 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 orders under Section 156(3) of the Code. The discretion ought to be exercised after proper application of mind 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 interests of justice demand that the police should step in to help the complainant. The police assistance can be taken by a Magistrate even Under Section 202(1) of the Code after taking cognizance and proceeding with the complaint under

Chapter XV of the Code as held by Apex Court in 20001 (1) Supreme Page 129 titled "Suresh Chand Jain Vs. State of Madhya Pradesh & Ors.

10. Section 156(3) of the Code aims at curtailing and controlling the arbitrariness on the part of the police authorities in the matter of registration of FIRs and taking up investigations, even in those cases where the same are warranted. The Section empower the Magistrate to issue directions in this regard but this provision should not be permitted to be misused by the complainants to get police cases registered even in those cases which are not very serious in nature and the Magistrate himself can hold enquiry under Chapter XV and proceed against the accused if required. Therefore a Magistrate, must apply his mind before passing an order under Section 156(3) of the Code and must not pass these orders mechanically on the mere asking by the complainant. These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of complainant or custodial interrogation appears to be necessary for some recovery of article or discovery of fact."

6. Undoubtedly, when there is a grievance of an offence being committed, whether cognizable or non-cognizable, the complainant has a right to file a complaint before the Magistrate on which the learned Magistrate is required to exercise his discretion judicially. If the allegations disclose commission of a cognizable offence and warrant Police investigation, then a direction under Section 156(3) is required to be issued. However, if the allegations can be proved on the basis of statements of the complainant and his witnesses and only a limited enquiry is required to ascertain some facts which can be got conducted in 202 Cr.P.C., the Court

would be within its jurisdiction to proceed as a complaint case instead of directing registration of FIR. The view taken by both the learned Metropolitan Magistrate and the learned ASJ that with regard to the forgery of the documents a limited enquiry can be got conducted under Section 202 Cr.P.C. and the complaint can be proceeded as a complaint case cannot be held to be a perverse view and does not warrant interference.

7. Petition is dismissed.

MUKTA GUPTA, J.

AUGUST 10, 2016

‘ga’