

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

RESERVED ON : 8th FEBRUARY, 2016

DECIDED ON : 29th FEBRUARY , 2016

+ W.P.(CRL) 767/2015 & CRL.M.A.No.5552/2015

‘PS’ (Changed name)

..... Petitioner

Through : Mr.Ajay Choudhary, Advocate.

versus

STATE OF NCT DELHI & ORS.

..... Respondents

Through : Mr.Rajesh Mahajan, ASC.
Mr.Sanjeev Uniyal, Advocate for
respondent No.3.
Mr.Rajeev Sharma, Advocate for
respondent Nos.4 & 5.
Mr.Kirti Uppal, Sr.Advocate with
Ms.Sahiba Pantel, Advocate for
respondent No.6.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The present Writ Petition under Article 226 of the Constitution of India has been filed by the petitioner ‘PS ’ (changed name) praying for a direction to the police to register an FIR against the respondent No.6 (in short ‘R-6’) upon her complaint dated 04.03.2015 and

conduct a fair, impartial and uninfluenced investigation. The petitioner further seeks direction to respondent No.3 to suspend R-6 from his office till the pendency of investigation and restrain him from interfering with it. Direction is further sought to respondent No.5 to cancel her transfer orders dated 09.03.2015. The petition is contested by the respondents.

2. The events giving rise to the filing of the present petition in brief are that the petitioner, Production Assistant, Delhi Doordarshan Kendra was allegedly sexually harassed by R-6 on various dates i.e. 10.02.2014, 09.03.2014, 27.11.2014 and 02.12.2014 at her workplace. He (R-6) taking advantage of his position and status made her feel uncomfortable by explicit sexual overtures and lewd facial expressions / indecent body language. On 09.03.2014, during film festival at IGNCA, he sat exactly next to her and touched her shoulder. She was humiliated by him in the presence of staff making sexually coloured comments outraging her modesty. When she objected to it, he threatened to shelve her documentary film “Kaash” and in fact did so by raising objections though recommended by all other officials to be sent for 62nd National Film Award. On 23.01.2015, she lodged a complaint with Director-General of Doordarshan alleging mental harassment and stressful environment created at the workplace; it did not result in any action.

Finally, on 04.03.2015, she lodged a complaint at PS Tilak Marg but the police did not initiate any action. On 09.03.2015, she was suddenly relieved from the office in the afternoon to join Central Production Centre, Khel Gaon Road, New Delhi.

3. Status report has been filed by the respondent – State. As per it, a detailed enquiry in the allegations in the complaint dated 04.03.2015 was carried out and several relevant witnesses were examined. In the enquiry, allegations leveled by the petitioner could not be substantiated and seemingly found to be false, fabricated, motivated and afterthought. Since no cognizable offence had taken place, police intervention was not required in the complaint and it was filed.

4. R-6 in his comprehensive response completely denied the allegations and averred that the present petition being abuse of process of law was not maintainable. No allegations of sexual harassment were ever leveled by the petitioner in her earlier complaints made to different authorities including Internal Complaints Committee (in short ‘ICC’). ICC vide its report dated 02.03.2015 found all the allegations unsubstantiated. False and fabricated allegations have been introduced for the first time by the complainant in her complaint dated 04.03.2015 for oblique motive.

Number of SMSs exchanged by the complainant with him on various dates are indicative of the fact that she had no grievance whatsoever.

5. Learned counsel for the petitioner relying on '*Lalita Kumari vs. Government of Uttar Pradesh*', 2014 (2) SCC 1, strenuously urged that the police was duty bound to register the FIR on the petitioner's complaint dated 04.03.2015 which disclosed commission of cognizable offence. He referred to the statement of Mr.S.Nagrajan dated 09.03.2015 which corroborated victim's version. He further urged that the reliefs detailed from (b) to (e) in the Writ Petition could be granted only by this Court under its extraordinary jurisdiction under Article 226 of the Constitution of India. Since the complaint dated 04.03.2015 discloses commission of cognizable offence, FIR is required to be registered.

6. On perusal of the record, it reveals that in her complaint dated 04.03.2015 lodged with SHO, PS Tilak Marg, the petitioner claimed to have been sexually harassed at her workplace by the R-6. In her earlier complaints to the Director General as well as before the ICC, there were no specific and definite allegations of sexual harassment. ICC in its report dated 02.03.2015 submitted by Ms.Vijay Laxmi Chhabra, Director General of Doordarshan observed :

“it is my opinion that the complaints are a result of the frustration of the officer’s whose programme “Kaash” was not forwarded to the 62nd National Awards, 2015 and her feeling that her work is not being recognized and exchanges during the course of her working at DDK, Delhi under the overall supervision of ADG (R-6) that has caused frustration and de-motivation in the officer.”

It is informed that the said findings are under challenge before the competent authority.

7. Perusal of the Writ Petition further reveals that the complaint relates to the alleged acts of sexual harassment at workplace on various dates since 10.02.2014. Apparently, there is delay in lodging the complaint with the police.

8. Without delving into the merits or demerits of the allegations in the complaint, this Court is of the view that in case of denial by the police to register an FIR on her complaint, proper alternative remedy for the petitioner for redressal of her grievances, was to first approach the Superintendent of Police under Section 154 (3) of Cr.P.C. and in case it was ineffective, she had the right to file an appropriate application before the Magistrate under Section 156 (3) of the Cr.P.C. Admittedly, that has not been done. In the case of ‘*Gangadhar Janardan Mhatre vs. State of*

Maharashtra & Ors.’, 2004 (7) SCC 768, Hon’ble Supreme Court held that “at this stage it needs to be clarified that the obligation to register a case is not to be confused with the remedy. The remedy availability to the aggrieved person in case of refusal to register FIR to have recourse to lay complaint before the Magistrate under Section 190 read with Section 200 Cr.P.C.”

9. In ‘*Sakiri Vasu vs. State of U.P. & Ors.*’, 2008(2) SCC 409, the Hon’ble Supreme Court observed as follows :

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"11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 CrPC, then he can approach the Superintendent of Police under Section 154(3) CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) CrPC before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

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17. In our opinion Section 156(3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

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24. In view of the abovementioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) CrPC to order registration of a criminal offence and/or to direct the officer in charge of the police station concerned to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers had not been expressly mentioned in Section 156(3) CrPC, we are of the opinion that they are implied in the above provision.

25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 CrPC. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters and relegate the petitioner to his alternating remedy, first under Section 154(3) and Section 36 CrPC before the police officers concerned,

and if that is of no avail, by approaching the Magistrate concerned under Section 156(3).

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) CrPC or other police officer referred to in Section 36 CrPC. 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) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC. 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 CrPC 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 police officers concerned, and if that is of no avail, under Section 156(3) CrPC before the Magistrate or by filing a criminal complaint under Section 482 CrPC and not by filing a writ petition or a petition under Section 482 CrPC.

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."

10. In '*Aleque Padamsee vs. Union of India*', 2007 (6) SCC 171, Supreme Court held :

"The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to their notice show that cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Section 190 read with Section 200 of the Code."

11. This Court in W.P.(Crl.) 2462/2014 '*Rakesh Kumar & Ors. Vs. Union of India & Ors.*', MANU/DE/0054/2016 decided on 06.01.2016 declined to entertain Writ Petition for direction to register FIR.

12. The additional reliefs claimed by the petitioner in the Writ Petition are primarily off-shoot of the main relief i.e. direction to register FIR. Moreover, for seeking other reliefs, the petitioner has other alternative remedies available to her before the Tribunal dealing with service conditions.

13. In view of the forgoing, the present writ petition is devoid of merits and is accordingly dismissed. Pending application also stands disposed of.

14. Liberty is, however, given to the petitioner to approach the concerned Magistrate under Section 156 (3) of the Cr.P.C. in the first instance.

15. Observations in the order would have no impact on the merits of the case.

(S.P.GARG)
JUDGE

FEBRUARY 29, 2016 / *tr*