

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

% Decided on: 23rd September, 2016

+ CRL.M.C. 3532/2016

MRS RITA BHALLA & ANR

..... Petitioner

Represented by: Mr.Manish Bhasin, Adv.

versus

STATE (GOVT OF NCT OF DELHI) & ANR

..... Respondent

**Represented by: Mr. Amit Ahlawat, APP with
ASI Satyabir Singh PS
Mianwali Nagar.**

+ CRL.M.C. 3533/2016

ARPIT BHALLA & ANR

..... Petitioner

Represented by: Mr.Manish Bhasin, Adv.

versus

STATE (GOVT OF NCT OF DELHI) & ANR

..... Respondent

**Represented by: Mr. Amit Ahlawat, APP with
ASI Satyabir Singh PS
Mianwali Nagar.**

**CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA**

MUKTA GUPTA, J. (ORAL)

Crl.M.A. 14934/2016 in CRL.M.C. 3532/2016

Crl.M.A. 14936/2016 in CRL.M.C. 3533/2016

Exemptions allowed subject to just exceptions.

CRL.M.C. 3532/2016 & Crl.M.A. 14935/2016 (stay)

CRL.M.C. 3533/2016 & Crl.M.A. 14937/2016 (stay)

1. The four petitioners in the two writ petitions are family members and seek quashing of the order dated 28th October, 2015 whereby directions were issued by the learned Metropolitan Magistrate to register FIR on the complaint of respondent No.2, dismissing the complaint case bearing No. CC 63/1/15 and application under Section 156(3) Cr.P.C. and quashing of the order dated 29th August, 2016 in Criminal Revision No.47/2/15 passed by the learned ASJ remanding back the matter to the learned Metropolitan Magistrate giving liberty to the respondent No.2 to file an affidavit in support of her application under Section 156(3) Cr.P.C. and thereafter to proceed in accordance with law.

2. Learned counsel for the petitioner contends that on the incident dated 11th November, 2013 two FIRs were registered one being on the complaint of Arpit Bhalla i.e. FIR No.102/2014 under Sections 452/326/308/506/218/120B/34 IPC against the husband of respondent No.2 and the other co-accused and the other being FIR No.354/2013 under Section 160 IPC on the complaint of the Police Officer ASI Satbir Singh against both Arpit Bhalla and Iqbal Singh. It is alleged that the complainant respondent No.2 filed the complaint case bearing No.63/1/15 after FIR was registered against her husband and others on the complaint of Arpit Bhalla belatedly after more than one and a half year of the incident and thus learned Trial

Court could not have taken any action thereon. Further, directions under Section 156(3) Cr.P.C. have been passed without application of mind and the learned ASJ without noting the contentions of the petitioners remanded back the matter only for taking the affidavit of the complainant Baljeet Kaur on record and thereafter passing appropriate orders in accordance with law.

3. On 11th November, 2013 a quarrel took place wherein Arpita Bhalla his father A.C. Bhalla, mother Rita Bhalla and sister Pratishta Bhalla were on one side and Iqbal Singh and his wife Baljeet Kaur were on the other side. Both the parties are neighbor being residents of A-194 and A-193 Ashoks Enclave, Peera Garhi, Delhi respectively. Pursuant to the quarrel on the complaint of ASI Satbir Singh FIR No. 342/2013 under Section 160 IPC was registered on the same day and both Arpit Bhalla and Iqbal Singh were named as accused. Arpit Bhalla made a complaint to the Police and since no action was taken on his complaint he filed a complaint before the learned Metropolitan Magistrate in 2013 itself whereon FIR No. 102/2014 was registered at PS Mianwali Nagar under Sections 452/326/308/506/218/120-B/34 IPC on 19th February, 2014. Baljeet Kaur filed a complaint as noted above being complaint case No.63/1/15 wherein she gave the complete history and the incident that took place on the evening/ night of 11th November, 2013. In the complaint she alleged that she was filthily abused by accused No.1 to 3 i.e. Arpit Bhalla and his parents and accused No.4 i.e. sister of Arpit Bhalla also tried to let her dog loose on the husband of the complainant, allegations under Section 354 IPC were leveled against A.C.Bhalla and that Arpit Bhalla beat her on the face and ear. The fact that two FIRs one on the complaint of ASI Satbir Singh and the other on the complaint of Arpita Bhalla were registered was mentioned in the complaint.

It was also stated that the MLC report and CCTV footage of the alleged place of occurrence was also handed over which showed that her modesty was outraged besides abusive language being used however still no FIR was registered on her complaint. The learned Metropolitan Magistrate vide the order dated 28th October, 2015 directed registration of FIR on the complaint of Baljeet Kaur under appropriate sections of law and directed the SHO to file a final report or charge-sheet under Section 173 (2) Cr.P.C. as per the result of investigation on completion thereof.

4. Assailing this order dated 28th October, 2015 learned counsel for the petitioner states that there is no application of mind by the learned Trial Court while directing registration of FIR.

5. A perusal of the impugned order which spans into two and a half pages noted the allegations and that on 11th November, 2013 the accused persons attacked the complainant and her husband and outraged the modesty of the complainant and even after the incident they were still using the abusive language. Relying upon the decision of the Supreme Court in Lalita Kumari Vs. Govt. of U.P. (2014) 2 SCC 1 the Court noted that since the complaint discloses commission of a cognizable offence the Police was bound to register the FIR. However the Court further cautioned that the order will not be treated as a direction to the SHO to immediately arrest the accused and that they will first investigate the matter and find out whether actually any offence was committed or not and the investigating officer may arrest the accused only if the circumstances so warrant. Thus it cannot be held that the Court did not apply itself while passing this order.

6. However, needless to state that when the petitioner took the matter to revision, the learned ASJ noting the facts also noted that no affidavit in

support of the complaint was filed and remanded back the matter for re-consideration. Supreme Court in the decision reported as Priyanka Srivastava and Anr. Vs. State of Uttar Pradesh & Ors. (2015) 6 SCC 287 held:

“30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can 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. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes,

commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari[(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

7. In view of the law laid down by the Supreme Court it cannot be held that the impugned order of the learned ASJ remanding the matter to the learned Metropolitan Magistrate seeking affidavit of the complainant in support of the complaint and then passing of directions as warranted suffers from any illegality.

8. I find no merit in the two petitions. The petitions and applications are dismissed.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 23, 2016
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