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

+ **CRL.M.C. 4523/2016**

PURAN DASS

..... Petitioner

Represented by: Petitioner in person.

versus

GOVT OF NCT DELHI & ORS

..... Respondents

Represented by: Mr. Hirein Sharma, APP for
the State with SI Sandeep
Singh, PS Sadar Bazar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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05.12.2016

Crl. M.A. No. 18910/2016 (Exemption)

Allowed, subject to all just exceptions.

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1. The prayers in the present petition inter-alia are that the orders dated 27th August, 2016, 11th July, 2016, 22nd August, 2012 and 21st May, 2012 passed by the courts of learned Additional Sessions Judge and learned Metropolitan Magistrate, action taken report dated 27th April, 2012 prepared by the SHO, PS Sadar Bazar, Delhi in Crl. Case No.70/1/2012 titled as 'Puran Das vs. Banti & Ors.' be set aside and directions be issued to respondent to register FIR and action be taken against the erring officer for not registering the FIR.

2. A brief background of the case is that complaint case No. 70/1/2012

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was filed by the petitioner against Shri Banti, his wife Smt. Prem, Smt. Babli, Smt. Sushila and Smt. Laxmi for offences punishable under Sections 378/405/406/411/494/498/34 IPC.

3. The allegations of the petitioner who claimed to be a senior citizen was that Banti, Sushila, Babli and Prem were enticing Smt. Laxmi, his wife, making him phone calls for the last one year and finally took her out from the house on some excuse on 8th March, 2012 and 12th March, 2012. After 6.00 PM on 12th March, 2012 when the petitioner reached his house, Banti also came to his house and both Banti and Laxmi committed theft of a mobile, two gold jewellery ornaments worth ₹10,000/- and Rs.2,000/- respectively from outer room of the house. Banti further broke open the locks of the room and committed theft of ₹30,000/-. Thereafter Banti took Smt. Laxmi and the three children and left the house of the petitioner at 7.00 PM by hiring a three-wheeler to Sadar Thana Road. Thus Banti took away Smt. Laxmi, his wife besides the stolen articles to his mother and sister's home. it is further alleged that since 12th March, 2012 after 6.00 PM Banti had detailed Smt. Laxmi, his wife along with the theft property in the house of his mother and sister despite making complaints to PS Sadar Bazar no FIR was registered. Hence he was restrained to file complaint seeking registration of FIR.

4. On the said complaint an action taken report dated 27th April, 2012 was submitted wherein it was noted that Smt. Laxmi was the legally wedded wife of the petitioner and she along with her three children left the matrimonial home of her own free will, however, being the wife of the petitioner she had equal right in the property and from the last date of

incident Smt. Laxmi had contacted the petitioner five times on 6th April and 7th April, 2012 on his landlines number. Thus they were both in contact with each other. According to the action taken report the petitioner was provided with the piece of paper where a purported statement dated 8th March, 2012 of the wife was recorded wherein Laxmi said that she lived with her boy friend and did not want to ruin her life with the petitioner. She also admitted that she had friendly relations with Banti. Hence no cognizable offence was made out.

5. Vide order dated 21st May, 2012 the learned Metropolitan Magistrate dismissed the application under Section 156 (3) Cr.P.C. for issuance of directions to register FIR and listed the matter for pre-summoning evidence. The order dated 21st May, 2012 was challenged by the petitioner in revision petition which was dismissed on 27th August, 2012. Thus the present petition after a lapse of four year challenging the order of the learned revisional court upholding the order of the learned Metropolitan Magistrate, cannot be entertained as the same had attained finality after dismissal of the application under Section 156 (3) Cr.P.C. the petitioner led is evidence as PW-1 and vide order dated 11th July, 2016 the learned Metropolitan Magistrate dismissed the complaint finding no ground to summon the accused which order has been upheld by the learned Additional Sessions Judge in the impugned judgment dated 27th August, 2016.

6. In the witness box the petitioner appeared as CW-1 and deposed that he met Laxmi in the mid of 200 in Gole Market area while he used to supply Bidi, cigarette and gutka. Further their marriage was performed vide affidavit dated 12 the December, 2006. The petitioner married her as her

two boyfriends namely Raju and Nimmi left her and she had to children to be brought up and was on family way. Since he was a divorcee and had four children, they both started living together separately from the other family members. It is alleged that since the beginning of 2011 Banti and his associates started enticing his wife by calling her frequently on her phone number for which he gave number of complaints but no action was taken. The learned Trial Court discussed the various phone call records further the Principal of the school of the children of Laxmi appeared and stated that the father's name of three children in the school record was Banti. The learned Metropolitan Magistrate held that the petitioner has not been able to prove that he had actually seen his wife Laxmi committing theft of the articles nor has he proved that he had entrusted Laxmi with the money or mobile phone. Thus the ingredients of the alleged offence have not been proved. This decision was upheld by the learned Additional Sessions Judge in Rev. Pet. No.50/2016 vide order dated 27th August, 2016. Hence the present petition.

7. Considering the evidence led by the petitioner the revision petition was dismissed. Before this Court the petitioner prays for registration of FIR.

8. As noted above the issue with regard to directions to registration of FIR has attained finality. On the evidence on record this Court finds no reason to disagree with the two orders passed by the learned Metropolitan Magistrate and the learned Additional Sessions Judge.

9. Petition is dismissed.

MUKTA GUPTA, J.

DECEMBER 05, 2016/‘vn’

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