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

+ **W.P.(CRL) 624/2017**

SMT KAMLESH

..... Petitioner

Through: Mr. Ali Abbas, Advocate.

versus

STATE OF DELHI & ORS

..... Respondents

Through: Mr. Rahul Mehra, Standing Counsel
(Criminal) for State with Mr. Jamal Akhtar,
Advocate with Insp. Ashok Kumar and SI M.L.
Meena, PS Pul Prahlad Pur, Delhi.
Mr. Karan Sharma, Advocate for R-2 to 5.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

ORDER

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07.07.2017

CrI.M.A. 3428/2017 (exemption)

Exemption allowed subject to all just exception.

Applications are disposed of.

W.P.(CRL) 624/2017

1. The petitioner has approached this court under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973 for direction to respondent no. 2 and 3 to provide protection of her life from respondent no. 5 and 6.

2. It is submitted that the petitioner has been selling the general merchant's items in a temporary wooden shop in her colony to maintain her family members. It is further submitted that on 27.12.2016, the respondent no. 5 and 6 along with police personnel came and demolished her shop and

thrown away her items. She was given beatings by the respondent no. 5 and 6 by fists and blows. She suffered injuries. Copy of the MLC is placed on record showing that the petitioner was brought on 27.12.2016 at 04.18 PM in Jai Prakash Narain Apex Trauma Centre (AIIMS) with alleged history of assault. She was complaining pain over wrist and left ankle with foot. She was examined again at 11.52 PM by CMO who mentioned that she had history of fall and injury to left foot on 27.12.2016. She was complaining of the pain. CMO found swelling on her foot. On X-Ray examination, no bone injury was found on the left foot.

3. Status report has been filed indicating that on 27.12.2016 on receiving a PCR call by DD No. 27.12.2016 regarding demand of money by DDA officials, the matter was assigned to SI M.L. Meena. On reaching there at the spot, the IO/SI found that the complainant was not present. He also noticed that no quarrel had taken place there. The IO/SI also visited the hospital where also the injured was not found though the copy of the MLC was collected from Trauma Centre AIIMS and the doctor opined the nature of injury as “simple blunt”. On the complaint of respondent no. 6 regarding the encroachment on the DDA land by the petitioner the wooden shop was removed from the site. The statement of the local residents was recorded by the police officers.

4. This court has already directed the SHO, PS Pul Prahlad Pur, Delhi on 28.02.2017 to make an assessment of the threat perception from the respondent no. 5 and 6 and provide protection to the petitioner. It is mentioned in the status report that there is no specific threat to the petitioner. However, the Beat Staff and Division Officer are in regular touch with the petitioner.

5. Learned standing counsel submits that alternative remedy is available to the petitioner to move senior police officers under Section 154 (3) read with Section 36 of the Code of Criminal Procedure, 1973 as also under Section 156 (3) of the Code of Criminal Procedure, 1973 to approach the *Ilaqa* Magistrate. Learned standing counsel has relied upon the judgment of Hon'ble Supreme Court in the case of **“Sakiri Vasu Vs. State of Uttar Pradesh and Others” (2008) 2 SCC 409**, para 25 to 27 reads as under: -

“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 Cr.PC. 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 Cr.PC 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 remedy is to approach the Superintendent of Police under Section 154 (3) Cr.PC or other police officers referred to in Section 36 Cr.PC. 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) Cr.PC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.PC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 Cr.PC. 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 Cr.PC 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) Cr.PC before the Magistrate or by filing a criminal complaint under Section 200 Cr.PC and not by filing a writ petition or a petition under Section 482 Cr.PC.

6. Faced with the situation, learned counsel for the petitioner submits that he does not press this petition except that the petitioner may be provided protection from respondent no. 5 and 6.

7. In these circumstances, the petition is disposed of with the direction to the respondent no. 4 SHO, PS Pul Prahladpur, Delhi to remain in touch with the petitioner and provide his mobile number and that of Beat Constable and in case of need the petitioner may contact them and if required necessary protection be provided.

VINOD GOEL, J.

JULY 07, 2017

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