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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: August 09, 2017

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CRL.M.C.1821/2017

SUSHIL KUMAR

..... Petitioner

Through: Mr.Manish Gandhi and
Mr.Hemant Verma, Advocates.

versus

PRAVESH & ORS.

..... Respondents

Through : Mr.Jogender Kumar, Advocate
for R-1.
Mr.Sushil Ahlawat and
Mr.Sushil Panwar, Advocates
for R-2 to R-7.

PRATIBHA RANI, J. (Oral)

1. The instant petition under Section 482 CrPC has been filed by the petitioner challenging the order dated 24th November, 2016 whereby Crl.Rev.P. 3/2016 filed by the petitioner has been dismissed as well the order dated 05th July, 2016 whereby while dismissing the application filed by the petitioner under Section 156(3) CrPC in Complaint Case No.45/1A/16, the petitioner was directed to lead pre-summoning evidence.

2. The petitioner herein is father of the deceased Nikita. He filed a complaint case against Parvesh Kumar (husband of deceased), Kasturi Devi, Shadi Ram (mother-in-law and father-in-law of deceased),

Bhavna, Vipin (jethani and jeth of deceased) and Kominta and Rajnesh Kumar (nanad and nandoi of deceased) for summoning them as an accused for committing the offence punishable under Sections 498-A/406/354/506/34 IPC.

3. The learned MM, vide order dated 5th July, 2016, directed the complainant to lead pre-summoning evidence observing that there was matrimonial dispute. The daughter of the complainant was murdered by SI Vijender who himself committed suicide for which separate FIR was registered. So far, the accusations made in the criminal complaint were concerned, in the opinion of the learned MM, the investigation by the police was not required and the complainant was directed to lead the pre-summoning evidence. It was also observed that if required later on, investigation may be directed under Section 202 Cr.P.C.

4. Aggrieved by the impugned order dated 5th July, 2016, the petitioner herein preferred Criminal Revision No.3/2016 which has also been dismissed by the learned ASJ vide order dated 24th November, 2016 observing as under:-

'I have heard ld. Counsels for the parties and given my considered thought to the rival contentions.

I find that reliance placed by the ld. Counsel for the revisionist on 'Lalita Kumari v/s State of UP and Others' is highly mis-placed as that judgment relates to the directions or the mandate of law to the police on receipt of an application/complaint which discloses the commission of a cognizable offence whereas, revisionist had sought the Magistrate to invoke his power U/s 156 (3) Cr.P.C. As regard Section 156(3) Cr.P.C. Magistrate had rightly relied upon the judgment of Delhi High Court in Subhakaran Luharka vs. State in Crl.Revision

No.6122/23/05 as decided on 9.7.2010 and further law in this regard has been settled by Hon'ble Delhi High Court in M/s Skipper Beverages Pvt. Ltd. vs. State 2001 IV AD (Delhi). Therefore, the Magistrate while exercising his powers U/s 156(3) Cr.P.C. is required to be very cautious and is only to set the criminal law in motion by ordering investigation by police, where complainant himself could not be able to collect and produce the evidence before the Court and where the assistance of the police for this purpose is required. It has been contended on behalf of the revisionist that statement of witnesses are required to be recorded by the police as those witnesses are not under the control of the complainant. However, this cannot be a ground for ordering investigation by the police especially when the such witnesses can be summoned by the Court and their statements can be recorded before the MM. As far as the recovery of articles is concerned, I find that whether the streedhan or other articles or belonging of the deceased who was a Hindu married female are to be inherited by the complainant who is father of the deceased, or one of the accused who is husband of the deceased is a matter which is to be governed by Hindu Succession Act especially section 14, 15 & 16. Considering these facts and circumstances, I find that ld. Magistrate has rightly arrived at conclusion that there was no requirement of investigation by the police as the entire evidence which the complainant seeks to produce before the Court in order to establish the commission of offences can be produced without any police investigation. I therefore, find that there is no illegality or infirmity in the order of ld. Magistrate. The same is upheld. The revision petition filed by the revisionist is accordingly dismissed.'

5. Now the petitioner/complainant has invoked the inherent jurisdiction of this Court under Section 482 CrPC with a prayer that the impugned orders may be set aside and police may be directed to

register the case as the complaint discloses a cognizable offence and the entire evidence is not within power and possession of the complainant.

6. Mr. Manish Gandhi, learned counsel for the petitioner has submitted that the daughter of the complainant/petitioner was murdered and SI Vijender, who committed the murder, has committed suicide. Entire dowry articles are with the accused persons and they are taking the plea that after the death of the wife, the same vested in the husband. It has also been contended that the offences were committed at the matrimonial home and there may be a necessity to summon the neighbours of the deceased which is not possible for the complainant and police is required to make inquiries from the neighbours and complete the investigation. Learned counsel for the petitioner has relied upon Mr. Amit Khera vs. Govt. of NCT of Delhi & Ors. in W.P.(Crl.) No.804/2008 decided on 15th July, 2010 in support of his contentions.

7. I have considered the submissions made by learned counsel for the petitioner and perused the record.

8. In the case Mr. Amit Khera vs. Govt. of NCT of Delhi & Ors. relied upon by learned counsel for the petitioner/complainant, the facts were that the petitioner made a complaint to the SHO that he had received threats on his mobile phone from another mobile phone, of which number was disclosed by the petitioner. The petitioner had also recorded the conversation with the caller and furnished the said conversation to the police and wanted the police to initiate action. It was in the facts and circumstances of that case that Court directed for

registration of FIR which cannot be treated as precedent.

9. The complaint filed against the respondents/proposed accused persons is for commission of the offence punishable under Sections 498-A/406/354/506/34 IPC. So far as the accusations under Section 498-A IPC for treating the deceased with cruelty during the period she was in the matrimonial home is concerned, the same does not require any investigation by the police. So far as dowry articles are concerned, for recovery of the same by the complainant, necessary evidence can be led by the complainant about the criminal breach of trust being committed by the proposed accused persons in respect of the dowry articles. Similarly, for accusations under Section 354/506 IPC, the nature of evidence required to be led to substantiate such accusations does not require any police investigation.

10. The complainant has placed on record the letter sent to the SHO, PS Sagarpur for registration of the FIR and thereafter he filed the criminal complaint. As noted above, the learned MM directed the complainant to lead pre-summoning evidence which order was upheld by the Court of revisional jurisdiction.

11. The main grievance of the petitioner is that learned M.M. ought to have issued directions under Section 156(3) CrPC for the registration of the FIR instead of taking cognizance of the complaint and adjourning the case for pre-summoning evidence.

12. It is necessary to note here that the learned MM has rejected the prayer of the petitioner/complainant to issue directions to the police to investigate the matter and register an FIR, relying upon the decisions of this Court in Subhkaran Luharuka s/o Late K.P.Luharuka and

Shree Ram Mills Ltd. vs. State (Govt. of NCT of Delhi) and Utility Premises Pvt. Ltd. (2010) ILR 6 Delhi 495 and Mrs. Priyanka Srivastava and Anr. vs. State of U.P. & Ors. in Crl.A. No.781/2012 decided on 19th March, 2015, which order has been upheld by the learned ASJ and impugned herein.

13. The learned ASJ after noting the submission of the petitioner/complainant that in view of the decision of the Supreme Court in Lalita Kumari vs. Government of U.P. & Ors. in W.P.(Crl.) No.68/2008, the learned MM ought to have directed registration of FIR, rejected the same for the reasons extracted hereinabove in para 4.

14. In the case of Minu Kumari and Another Vs. State of Bihar and Others, (2006) 4 SCC 359, the Supreme Court has dealt with the aspect as to how the Magistrate can proceed when the police fails to take action on the complaint made. It was observed :

‘When the information is laid with the Police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in All India Institute of Medical

Sciences Employees' Union (Reg.) through its President v. Union of India and others MANU/SC/1769/1996 : 1996 (11) SCC 582. It was specifically observed that a writ petition in such cases is not to be entertained.”

27. The Supreme Court has deprecated the practice of the High Courts issuing directions for registration of FIR. Reliance can be placed on Sakiri Vasu vs. State of U.P. & Ors. (2008) 2 SCC 409, wherein the Apex court, in paras 26 to 28, has observed that :

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

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.'

15. In the light of the above pronouncements, it cannot be said that the learned M.M. and learned ASJ committed any illegality by rejecting the application of the petitioner for registration of FIR.

16. The plea of the petitioner that he cannot summon the neighbours is unfounded for the reason that he is only required to give list of witnesses and process have to be issued by the Court for recording their statement during pre-summoning evidence.

17. The powers of High Court under Section 482 CrPC are to be exercised sparingly and not as a matter of routine. Inherent powers of High Court under Section 482 CrPC are meant to add *ex debita justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of court.

18. In *Janata Dal Vs. H.S.Chowdhary*, (1992) 4 SCC 305, the Supreme Court observed that in what circumstances the inherent powers should be exercised:

“132 The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plentitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this

power is based on sound principles”.

19. In the light of the above judicial pronouncements and the facts and circumstances of the case, I do not find any illegality or impropriety in the impugned orders of the courts below.

20. The petition is accordingly dismissed.

**PRATIBHA RANI
(JUDGE)**

AUGUST 09, 2017

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