

\$~6

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(CRL) 2641/2016

ANAND PRAKASH GUPTA

..... Petitioner

Through: Mr.P.S.Sharma, Advocate

versus

THE STATE GOVT OF NCT OF DELHI & ORS

..... Respondents

Through: Ms.Richa Kapoor, ASC for the State
with Mr.Ashish Negi, Advocate

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

22.11.2017

1. By way of this writ petition filed under Article 227 of the Constitution of India, read with Section 482 Cr.P.C., the petitioner has made the following prayer:

a. Issue writ, order or direction in the nature of mandamus commanding the Respondents No.1 to 3 to lodge the FIR against the respondent No.4 to 9 under section 441/442/443/451/452/453/506/120-B/34 IPC.

b. Direct the Respondent No.2 to 3 to get the vacant premises from the Respondent No.5, who is a trespasser and has been staying illegally on the second floor of the said premises.

c. Direct to the Respondent No.2 to 3 to provide the police protection to the Petitioner and his family members because of threats extended by the Respondent No.4 to 9 to the Petitioner that he and his family members shall be eliminated and they will be killed by them for this property and since very beginning the day the Respondent No.5 entered in the premises of the Petitioner they

want to eliminate to the Petitioner and his family members. Despite of making complaints to the police that i.e. Respondent No. 2 to 3, no action has been taken against the Respondents and the life of the Petitioner and his family members are in danger, so the police protection may be provided to the Petitioner and his family members so that they may feel well protected for their lives.

d. Direct to the Respondent No.2 and 3 to stop illegal activities made by the Respondent No.5 with the help of her associates i.e. Respondent No. 4 to 9 not to harass to the Petitioner and his family members in the said premises of the Petitioner because the Respondent No.5 every day does wrongful activities for teasing to the Petitioner and his family members and the Petitioner feel awkwardness with the illegal activities be also stopped of the Respondent No.5 and her relatives and they may not be allowed enter into the premises of the Petitioner.

e. Direct the Respondent No.2 to lodge the FIR against Respondent No.3 for lodging the false FIR No.514/15 against the Petitioner under Section 354/354A/354AC/506/509/323/34 IPC which was lodged in collusion with the Respondent No.4 to 9 with mala fide intention to grab the said property of the Petitioner, whereas no truth at all and no any offence was committed by the Petitioner against the Respondent No.5, for the kind perusal the Respondent No.5 is staying on the second floor since 18.07.2015 when the Respondent No.4 to 9 in collusion with the police had entered forcibly in the said premises without any consent of the her husband, who was residing and still he is residing in a tenanted premises bearing No.3828/8, Kanhiya Nagar, Tri Nagar, Delhi-110053 and her FIR was lodged after lodging the NCR on the complaint of the Petitioner.

2. Heard.

Prayer (a) & (e)

3. With respect to prayers (a) & (e) made in the petition, status report has already been filed by the State to the effect that on the basis of the complaint made by the petitioner, as commission of cognizable offence was not disclosed, NCR was recorded.

4. Learned ASC for the State also submitted that thereafter the complainant has already availed his remedy by filing a complaint case, wherein pre-summoning evidence is going on after his application under Section 156(3) Cr.P.C. was dismissed by the learned Trial Court. Crl.Rev.Pet. No.103/2014 preferred by the present petitioner impugning the order dated 23rd October, 2015 of the learned MM has also been dismissed *in limine* by the learned ASJ/Special Judge, PC Act.

5. Since FIR in this case was not registered by the State as commission of cognizable offence was not disclosed, now pre-summoning evidence is going on. The prayer made before this Court for seeking direction to register FIR is not tenable in view of the decision in ***Sakiri Vasu vs. State of U.P. & Ors. (2008) 2 SCC 409***, wherein it was held as under:-

‘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.'

6. As the petitioner has already availed his remedy by filing a criminal complaint case and the case is at the stage of pre-summoning evidence, prayer for direction to register FIR against respondent No.4 to 9 is declined.

Prayer (b)

7. So far as Prayer (b) is concerned, it is for the petitioner to plead and prove in appropriate proceedings that the status of respondent No.5 in the said property is that of a trespasser and seek his remedy as per law. On mere averment in the writ petition, no direction need to be given to respondent No.2 and 3 i.e. Commissioner of Police and SHO, PS Keshav Puram to evict respondent No.5 and hand over the possession to the petitioner. The petitioner has efficacious legal remedy available to seek possession from a trespasser.

Prayer (c)

8. The prayer (c) made in the petition is for issuance of directions to respondents No.2 and 3 to provide police protection to the petitioner and his family.

9. The State/R-1 is directed to provide necessary protection to the Petitioner and his family through SHO concerned, after assessing the element of threat, if any. The State/R-1 shall also ensure that mobile numbers of concerned SHO/Beat Constable are provided to the petitioner to

enable them to contact if necessity arises.

10. On behalf of State/R-1, it has been submitted that concerned SHO as well as Beat Staff of the area will be sensitized and mobile numbers of the concerned Beat Staff, Division Officer, SHO as well as concerned Police Station will be provided to the petitioners and that every possible effort will be made for the protection of the petitioners.

11. Thus, prayer (c) is allowed in terms of the submissions made by the learned ASC.

Prayer (d)

12. So far as prayer (d) is concerned, no such general direction can be issued to respondent No.2 & 3 Commissioner of Police and SHO, PS Keshav Puram in exercise of the writ jurisdiction to supervise the daily conduct of the parties of teasing or to regulate the visit of their guests or relatives.

13. The writ petition is disposed of in the above terms.

PRATIBHA RANI, J.

NOVEMBER 22, 2017

'hkaaur'