

\$~28

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

+ **CRL.M.C. 3034/2017**

P L JUNEJA

..... Petitioner

Through Mr N K Aggarwal, Advocate

versus

STATE GOVT OF NCT OF DELHI

..... Respondent

Through Ms Meenakshi Dahiya, APP for
State

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J. (ORAL)

1. Vide order dated 5th October, 2015, the application under Section 156(3) Cr.P.C of the petition was dismissed by the learned Metropolitan Magistrate (06)/SE, Delhi and matter was put up for Complainant's Evidence on 5th December, 2015. Thereafter, the matter was adjourned from time to time and was finally taken up on 12th July, 2016 by another Metropolitan Magistrate, when case was ordered to be consigned to the record room.

2. Learned Metropolitan Magistrate held that application of the complainant under Section 156(3) Cr.P.C. had already been

dismissed and there is no complaint under Section 200 Cr.P.C. on record, therefore, nothing survives in the matter.

3. Petitioner preferred a Revision Petition before the Additional Sessions Judge which has been dismissed by the order dated 10th April, 2017 and which order has been impugned by the petitioner by way of present petition under Section 482 Cr.P.C.

4. Learned counsel for the petitioner submits that all the material facts disclosing the offence, inasmuch as, names of accused were mentioned in the application under Section 156(3) Cr.P.C. and the same was treated as complaint and the matter was posted for Complainant's Evidence on 5th December, 2015 by the learned Metropolitan Magistrate. Thus, the file could not have been consigned to the record room subsequently on the ground that no formal complaint under Section 200 Cr.P.C was on record. He further submits that application under Section 156(3) Cr.P.C. can be considered as a Complaint under Section 200 Cr.P.C. Reliance has been placed on Mohan Shukla Vs State of Uttar Pradesh 2004 LawSuit (All) 1322.

5. In Mohan Shukla (Supra), a learned Single Judge of Allahabad High Court, by following a full Bench decision of the same Court titled Ram Babu Gupta Vs State of U.P 2001 (43) ACC50, has held that an application under Section 156(3) Cr.P.C can be treated as a complaint and the Magistrate has

power to proceed further by recording the statements of the complainant and witnesses under Section 200 and 202 Cr.P.C.

6. Section 2(d) of Cr.P.C reads as under:-

“2.(d) ‘complaint’ means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.-A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant”.

7. In Mohd. Yousuf Vs Afaq Jahan and Another (2006) 1 Supreme Court Cases 627, the Supreme Court, in the context of Section 2(d) of Cr.P.C, has held as under:-

“There is no particular format of a complaint. A petition addressed to the Magistrate containing an allegation that an offence has been committed, and ending with a prayer that the culprits be suitably

dealt with, as in the instant case, is a complaint.”

8. For the foregoing reasons, impugned orders are set aside and matter is remanded back to the learned Metropolitan Magistrate, Delhi for proceeding in the matter by following the procedure, as laid down under section 200 Cr.P.C.

9. Petitioner shall appear before the trial court on 28th August, 2017.

10. Petition is disposed of in the above terms. Dasti.

A.K. PATHAK, J

AUGUST 08, 2017/sm