

\$~

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

Judgment reserved on: 25.09.2019

%

Judgment delivered on: 23.12.2019

+ **W.P.(CRL) 482/2019**

MANJARI BAKSHI

..... Petitioner

Through: Mr. Rundhir, Advocate.

versus

STATE & ORS.

..... Respondents

Through: Mr. Jamal Akhtar and Mr.
Amanpreet Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

JUDGMENT

BRIJESH SETHI, J.

1. The instant petition has been filed under article 226/227 of the constitution of India and r/w. Section 482 CrPC for quashing the order dated 28.11.2018 passed by the Ld. ASJ-02, South East District vide which the LD ASJ has dismissed the revision petition moved against the order of Ld. MM-09/South-East dated 29.09.2017 vide which Ld. MM has dismissed the application of the petitioner moved u/s. 156 (3) CrPC seeking registration of the FIR. It is submitted that SHO PS. Defence Colony be directed to

register an FIR on the complaint of petitioner dt. 05.06.2015 on the allegations of sexual assault, house trespass and extortion.

2. It is submitted that the petitioner, is a married woman, residing at C-293, Defence Colony, New Delhi and is working as Principal of Manava Bharti India Intl. School in Mussoorie, Uttrakhand for the last many years. The accused B. S. Siddhu and other persons have compelled the petitioner to execute property documents in his favour. In November, 2016 accused had come to petitioner's house at C-293, Defence Colony, New Delhi and threatened her by showing weapon and extorted Rs. 10,00,000/-. On the same day, the accused also sexually and physically assaulted, wrongfully restrained and threatened the petitioner and her other family members with dire consequences.

3. It is submitted that the petitioner had met the accused, B.S.Sidhu in September 2013 at one Mr. Kashyap's place, Principal Pestle Weed College, Dehradun, to take advice regarding an incident which had taken place in her school (Manava Bharti India Intl. School). At that time, the accused was posted as Senior Police Official in Uttarakhand and the petitioner was totally

unaware about the character and mala-fide intention of the accused and had started trusting him as family friend. The petitioner had even provided him access to her property whenever he was around or needed the same. However, after couple of years, the petitioner suspected that the accused was indulging in suspicious activities and was using her property for storing suspicious undisclosed articles and also indulging in immoral and illegal acts and the petitioner had, therefore, asked the accused to return the keys of her property.

4. It is alleged that the accused, who was holding a senior post police in the state of Uttarakhand had threatened to kill the Petitioner's family. He had also threatened that he would destroy the Petitioner's life and social reputation by implicating all her family members in a false and frivolous case. It is further submitted that on 29.09.2014, the petitioner had purchased a land at Rishikesh, Mauja Gugtyani Talli. Tehsil & Paragaga Narandra Nagar, Distt. Tehri Garhwal, which is part of land Khata No. 10 and has a total area 1.6730 hect. However, the accused by creating

terror in petitioner's mind had compelled her to execute a sale deed in his favour at half of rate of purchase price.

5. It is further submitted that due to terror of accused, the petitioner was compelled to execute sale deed of one property bearing flat no. A-106, Block A-4, area 1456 sq. Ft. Situated at Project Aloha, Rishikesh in favour of accused for a consideration of Rs. 23,62,000/-.

6. It is next submitted that in the month of November 2016, the accused had come to Delhi at the Petitioner's residence i.e. C-293, Defence Colony with some police guard and hired criminals and at gun point demanded Rs. 10 Lacs. The petitioner, had thereafter, asked her mother in law to give him Rs. 10 Lacs. The petitioner's mother in law had given three cheques totalling Rs. 10 lacs in favour of one Jagdev Memorial Foundation. It is further alleged that the accused had wrongfully restrained the Petitioner's husband and also assaulted the petitioner with intent to create terror in the mind of the family members. It is further alleged that the accused also harassed the Petitioner's son, who is a Canadian citizen and threatened him that he will put him in Jail. It is submitted that the

written complaint dated 05.06.2017 filed by the petitioner discloses cognizable offences i.e. sexual assault, outraging the modesty of a woman, extortion and forgery for the purpose of cheating, forgery of valuable security and criminal intimidation. It is submitted that the order dated 28.11.2018 passed by the Ld. ASJ is totally against the law as the Ld. MM has dismissed the application under section 156(3) Cr.P.C. 1973 on wholly erroneous grounds of delay and on the ground that cause of action has not arisen within the territorial jurisdiction of Delhi Courts.

7. It is submitted that the Ld. MM and Ld. ASJ have failed to appreciate the fact that this being a case involving sexual harassment and assault, the delay in approaching the authorities on the part of the petitioner is clearly explicable. It is further submitted that the Apex Court in Ramdas & Ors. State of Maharashtra, AIR 2007 SC 155, Supreme Court has decided that mere delay in lodging FIR is not fatal to the prosecution case. It is next submitted that the offence which is engrafted in written complaint clearly shows that the offence is committed within the jurisdiction of PS Defence colony. Ld.MM and Ld. ASJ have, therefore, failed to

exercise the jurisdiction vested in them under section 156(3) Cr.P.C. and section 397 Cr.P.C. respectively. It is, therefore, prayed that appropriate order be passed for quashing the order dated 28.11.2018 passed by the Ld. ASJ-02, South-East, District, Delhi and respondents be directed to register an FIR on the complaint of petitioner dated 05.06.2017.

8. Ld. APP for the state has submitted that a complaint from Ms. Manjari Bakshi, Principal Manav Bharti India international School, Mussoorie, Uttarakhand R/o C-293, Defence colony was received by post on 07.06.2017 in Police Station Defence Colony and the said complaint (in original) has been sent to SSP, Mussoorie, Uttarakhand for taking necessary action vide letter No. 346/LC/SHO/DC on 19.06.2017 through proper channel. It is submitted that the order passed by the Ld. MM as well as Ld. ASJ are in accordance with law and the petition be, therefore, dismissed.

9. I have considered the rival submissions and perused the order of Ld. MM as well as Ld. ASJ. The incident mentioned by the petitioner which is alleged to have happened within the

jurisdiction of PS Defence Colony has taken place in November, 2016. The petitioner has, however, filed a complaint in this regard through post on 05.06.2017. There is inordinate delay in filing the complaint and there is no explanation for the same. So far as allegation of extortion is concerned, the Ld. MM as well as Ld. Revisionist Court has rightly observed that no prudent man will receive extortion money through the cheques. It was observed by Courts below that there is no evidence which is to be collected by the prosecution. The complainant is having all the evidence available with her. Ld. MM is required to exercise his mind before passing an order under Section 156(3) CrPC and has to pass the order only if he is satisfied that the information reveals commission of cognizable offence and also about necessity of police investigation for digging out the evidence which is neither in possession of the complainant nor can it be procured without the assistance of police. In the present case since the evidence is in possession of the complainant/ petitioner, the application of the petitioner u/s. 156 (3) CrPC was rightly dismissed. In these circumstances, there is no illegality or irregularity in the order

dated 28.11.2018 passed by the Ld. ASJ-02, South-East, Saket Courts, New Delhi. The petition filed by the petitioner is, therefore, dismissed.

BRIJESH SETHI, J

DECEMBER, 23, 2019.

