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

Reserved on: 12.04.2021

Pronounced on: 19.04.2021

+ CRL.M.C. 1880/2020

KUSUM LATA

..... Petitioner

Through Ms.Neha Kapoor, Adv. with
Mr.Mohit Bhadu, Adv.

versus

STATE OF NCT OF DELHI & ORS.

..... Respondents

Through Mr.Panna Lal Sharma, APP for State.
Mr.Vikram Singh, Adv. with
Mr.Bhanu Pant & Ms.Smita Singh,
Advs. for R-2 to 12.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. The present petition has been preferred under section 227 of the Constitution of India read with section 482 Cr.P.C. seeking setting aside of the order dated 28.02.2020 passed by learned Special Judge, NDPS Act, Patiala House Court (ND), Delhi in CR No.159/2019 titled as '*Kusum Lata vs. Shikha & Ors.*' dismissing the revision petition of the petitioner and upholding the order dated 03.01.2019 passed by learned MM rejecting the

application of the petitioner filed under section 156(3) Cr.P.C. Petitioner further seeks directions to be issued to respondent no.1 for registration of FIR against respondent nos.2 to 12.

2. The brief facts of the case, as narrated in the present petition, are that petitioner is the mother-in-law of respondent no.2 and owner of the property situated at RZ-38-39/184, Gali No.2, Durga Park, New Delhi-110045 which consists of two floors where petitioner is residing with her husband.

3. On 29.10.2009, son of the petitioner got married to respondent no.2 and since then, they were residing peacefully at the first floor of the said property. Since 2018, respondent no.2 started causing problems for petitioner and her husband and used to fight with them asking them to transfer the rights of all their movable, immovable properties and business of husband of petitioner to the husband of respondent no.2 and herself. On 17.06.2018, the petitioner and her husband disintitiled their son from all their properties by publishing it in the newspaper of '*Indian Express*' and '*Jansatta*'. Thereafter on 18.06.2018, husband of the petitioner made a complaint against respondent nos.2 to 8 alleging that they forcibly entered into the house of the petitioner and threatened them of dire consequences, subsequently subjected them to abuse, manhandle, defamation, mental

torture, harassment, etc. however, no action was taken by police. Thereafter, on 27.06.2018, just to avoid any more dispute between petitioner and respondent no.2, petitioner's son took a rented accommodation and decided to shift along with respondent no.2 and their children, however, respondent no.2 refused to leave the said property and again called respondent nos.3 to 8 who threatened the petitioner and her husband. On 28.06.2018, respondent no.2 called the police and made a complaint and after receiving the complaint, police called the petitioner, her husband, husband of respondent no.2 and respondent nos.3 & 4 to Police Station, Sagarpur. The police did not take any action and asked respondent nos.3 & 4 to take respondent no.2 to their home and thus respondent no.2 went to her parent's home with her relatives and vacated the said property. The son of the petitioner had already shifted to the rented accommodation and vacated the portion of the said property which was in their possession and petitioner had the possession of the whole property.

4. On the morning of 29.07.2018, respondent no.2 came to the said property with a large group of people including respondent nos.3 to 12 to forcibly take possession of the said property and threatened the petitioner and her husband but it was of no avail as the neighbours of the petitioner

helped and protected them from respondent no.2. The whole incident was recorded in the CCTV camera installed in the said property. After the above-mentioned incident, on 07.08.2018, husband of the petitioner again made a complaint to the SHO, Sagarpur Police Station against the respondents alleging that they forcefully entering into their house with intent to assault and threatened to kill but again no action was taken by the police.

5. Thereafter in the night of 12.08.2018 at around 11:40 pm, all the respondents with other 10-15 people came to the said property and tried to forcefully break open the main door and illegally enter inside the house of the petitioner. Respondent no.2 broke open the lock on the main gate with hammers and other equipment. The whole incident was recorded in the CCTV camera but respondent no.2 broke the CCTV camera with stick as she knew location of the camera but before she could break the camera, it had recorded the faces of the respondents. Thereafter, all the respondents illegally and forcefully entered into the property, broke many articles and stole Rs.60,000/- along with jewellery of the petitioner. In this manner, respondent no.2 took possession of the ground floor of the property, then the petitioner made a PCR call but it was of no avail. Thereafter, husband of the petitioner again made a complaint to the SHO, Sagarpur Police Station on

15.08.2018. He also made complaint to DCP Vasant Vihar on 16.08.2018 and 15.09.2018, however, again no action was taken on the complaints of the husband of the petitioner and due to which, he made a complaint to the Commissioner of Police on 03.09.2018 mentioning that he had made more than 50 calls to PCR at 100 number for help. He had also made calls to the mobile number of SHO PS Sagarpur, ACP, DCP but no response was given and the abovesaid persons were beating his gates, manhandles them and they also molested the petitioner and threatened of dire consequences.

6. In addition to above, he had come to know that the officials of PS Sagarpur had joined hands with the abovesaid persons who did not even bother to come on the spot to rescue them from the clutches of the abovesaid persons. Moreover, his son was booked by the SHO PS Sagarpur in a false case of Kalandra and he got released on bail on 13.08.2018. He had all call records of PCR and other police officials, who did not pick his phone and joined hands with respondents. Again he neither received any response nor any action was taken by the police on the complaints of the husband of the petitioner, therefore, petitioner filed a complaint under section 200 Cr.P.C. along with an application under section 156(3) Cr.P.C. before learned Metropolitan Magistrate, Patiala House Court, Delhi seeking direction

thereby to register a case against the respondents. During the proceedings, SI Ashok Kumar, Police Station Sagarpur had submitted an Action Taken Report on 03.01.2019 before learned Metropolitan Magistrate Court and after perusing the Action Taken Report, the application of the petitioner was dismissed vide order dated 03.01.2019.

7. Being aggrieved, petitioner filed a revision petition under section 397 Cr.P.C. being CR No.159/19 titled as "*Kusum Lata vs. Sikha & Ors.*" before the District & Sessions Judge, Patiala House Courts, Delhi with the Action Taken Report filed by SI Ashok Kumar before learned Metropolitan Magistrate along with photos of the incident dated 29.07.2018 and 12.08.2018. As the Action Taken Report revealed that police control room had not received any calls regarding the incident dated 12.08.2018 from the husband of the petitioner, husband of the petitioner filed an application under Right to Information Act seeking copy of the records of the Delhi Police Control Room containing entries from the mobile number 9873318182 (mobile number of husband of the petitioner). The police record of entries 12.08.2018 received from the RTI were also filed before learned ASJ, Patiala House Courts, Delhi, however, without applying judicial mind, learned ASJ dismissed the revision petition of the petitioner

vide order dated 28.02.2020 & upheld the impugned order dated 03.01.2019 passed by the Ld. MM. Hence, the present petition.

8. Learned counsel appearing on behalf of the petitioner submits that learned ASJ has not taken into consideration the fact that when respondent no.2 vacated the house voluntarily along with her husband, therefore, nothing entitles her to forcibly enter the property in possession of the petitioner or break open the locks, damage the CCTV camera or unlawfully restrain the petitioner and her husband which can be seen in the photos placed on record as obtained from the CCTV camera installed at the property of the petitioner. Moreover, the photos which were placed on record clearly proved the incident that took place on the night of 12.08.2018 including house breaking at night and the wrongful confinement of the petitioner and her husband and other things mentioned in the complaint beyond reasonable doubt and thus the same being a cognizable offence as held by the Hon'ble Apex Court in ***Lalita Kumari vs. Govt. of U.P. & Ors.:*** (2014) 2 SCC 1, therefore FIR ought to have been registered in the instant case.

9. Counsel for the petitioner submits that the present matter is not a matrimonial dispute as the husband of the respondent no. 2 was disentitled

from all his rights in the properties of petitioner and her husband vide publication dated 17.06.2018 and further the respondent no. 2 and her husband had vacated the said property on 28.06.2018. therefore, respondent no. 2 had no right in the said property.

10. To strengthen her arguments, counsel for the petitioner has relied upon the case of *S.R. Batra & Anr. vs. Smt. Taruna Batra: (2007) 3 SCC 169* wherein it was held that the wife is only entitled to claim a right to residence in a shared household, and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to husband nor was it taken on rent by him nor is it a joint family property of which the husband is a member. It is the exclusive property of mother-in-law of respondent no.2 (petitioner herein). Hence, in the present petition, the house in question belongs to the petitioner and respondent no.2 was residing at a rented accommodation along with her husband and cannot claim any right in the said property more so when her husband has been disentitled from the property and is not residing therein.

11. Counsel for the petitioner further submits that identities of all the

accused persons were not within the knowledge of the petitioner as the contents of the CCTV footage clearly show that there were around 9-10 persons whose identities were unknown to the petitioner and police investigation is required to find out the identities of those unknown people.

12. He further submits that learned ASJ has wrongly relied upon the Action Taken Report (hereinafter referred as 'ATR') filed by the IO and erred in giving a finding that the dispute is of matrimonial nature. The ATR does not mention anything about the dispute on the night of 12.08.2018 which happened at the said property and which is clearly visible in the CCTV footage and thus could not be looked into for passing the impugned order/judgment. It is also submitted that in the ATR, as per the records, no calls were received from the petitioner or her husband and ignored the copies of the Police Control Room Entries received through RTI filed by the petitioner which clearly show that the petitioner or her father had made various calls to the police regarding the incident dated 12.08.2018 seeking protection. Moreover, learned Additional Sessions Judge/ Metropolitan Magistrate have ignored the gravity of the offence committed by the respondents and wrongly considered the incident as a matrimonial dispute when there are also allegations of robbery in the instant case and admittedly

the petitioner cannot find the robbed articles.

13. On the other hand, learned Additional Public Prosecutor for State has relied upon the ATR submitted by SI Ashok Kumar of Police Station Sagarpur on 03.01.2019 wherein it was submitted that as per record available, on 12.08.2018 at 03:46 pm a PCR call vide DD No.31A was received regarding *“lady ke sasural wale jhagda kr rahe hain aur ghar se bahar nikal rahe hain”* at RZ 38/184, Gali No.2, Durga Park, New Delhi. Same call was marked to ASI Jagbir who reached at the spot and met with PCR caller Smt.Shikha (respondent no.2 herein). She stated that a quarrel was running with her in-laws, however, no written complaint was filed by any person and same call was filed by above-named officer. No other PCR call was received on that day at PS Sagarpur. On 13.08.2018 at about 12:30 am, ASI Ram Niwas PS Sagarpur was present in the area, he noticed that there was a gathering at the abovesaid address. Thereafter the abovenamed ASI noticed that a person was abusing in a loud manner and his wife Shikha was standing there in fear. He controlled that person with the help of staff and an action under section 107/151 Cr.P.C. was taken against that person (husband of respondent no.2) as per direction of senior officers. On 13.08.2018 at about 10:01 am, another PCR call was received regarding

“lady caller ko sas sasur mar rahe hain” at the said address. Same call was marked to SI Ajeet Singh for taking necessary action, SI Ajeet reached at the spot and met with PCR caller Smt.Shikha (respondent no.2) and she filed her complaint regarding matrimonial dispute. Complaint was received and sent to CAW cell for counselling and complainant had refused to medical examination before the EO. Hence, there is a matrimonial dispute between respondent no.2 and her in-laws. As per available records, on 12.08.2018 and 13.08.2018, no PCR call was received from petitioner herein and her husband. Abovesaid complaint has already been filed on 01.09.2018.

14. Learned APP further submitted that in regard to the application which the petitioner moved under section 156(3) Cr.P.C. before learned MM which was dismissed with the observation that there is no ground on which the police may be directed to register the FIR, the request under section 156(3) Cr.P.C. is declined as all the facts and circumstances are within the knowledge of the complainant including identity of the accused as well as the name and address of the concerned witnesses. Thus, there is no ground on which the assistance of the police is required. Further, if at any stage, the court is of the opinion that investigation in the matter is required, the Court is within its power to order investigation under section 202 Cr.P.C. and

impugned order shall in no way bar such investigation at latter stage.

15. Learned APP for State has relied upon the case of ***Skipper Beverages Pvt. Ltd. vs. State: 2001 SCC OnLine Del 448***, wherein this Court exemplified that the power under section 156(3) Cr.P.C. is to be exercised by a Magistrate judiciously and not in a mechanical manner by observing as under:

“Section 156(3) of the Code empowers a Magistrate to direct the police to register a case and initiate investigations but this power has to be exercised judiciously on proper grounds and not in a mechanical manner. In those cases where the allegations are not very serious and the complainant himself is in possession of evidence to prove his allegations there should be no need to pass orders under Section 156(3) of the Code.”

16. He has further relied upon the case of ***Gulab Chand Upadhyaya vs. State of UP & Ors.: 2002 SCC OnLine All 1221*** wherein Allahabad High Court observed that the option to direct the registration of the case and its investigation by the police should be exercised where some “*investigation*” is required, which is of a nature that is not possible for the private complainant, and which can only be done by the police upon whom statute has conferred the powers essential for investigation. Moreover, where there full details of the accused are not known to the complainant and the same

can be determined only as a result of investigation. But where the complainant is in possession of the complete details of all the accused as well as the witnesses who have to be examined and neither recovery is needed nor any such material evidence is required to be collected which can be done only by the police, no “*investigation*” would normally be required and the procedure of complaint case should be adopted.

17. Moreover, in regard to the CDs/DVDs which husband of the petitioner handed over in the Police Station which were analysed and after analysing, on 29.07.2018, 4-5 people were seen entering in the above-mentioned house. On 12.08.2020, alleged Shikha (respondent no.2) entered in the house over the main gate. Thereafter, she opened the main gate and some people entered the petitioner’s house, however, nobody was seen entering forcefully or carrying iron rod, stick etc. Neither any quarrel nor any scuffle was noticed. In meantime when the Main Gate was open it was noticed that 15-20 persons including 3-4 ladies were found standing in street in front of house of petitioner, but nobody has entered in said house. Thereafter, Shikha (Daughter-in-law of petitioner) who was already standing inside the house covered, the camera installed inside the Main Gate of petitioner's house with the help of piece of cloth. In view of above facts,

learned APP submitted that the present petition deserves to be dismissed.

18. I have heard learned counsel for both the parties and perused the material available on record.

19. Learned Metropolitan Magistrate has dismissed the application of the petitioner under section 156(3) Cr.P.C. by observing that all the facts leading to the complaint are within the knowledge of the complainant. Even identity of the accused is known to the complainant, evidence is within reach and no custodial interrogation is required. The relevant portion of the order is reproduced for ready reference:

“there is no justification for directing the police for registering the FIR, request u/s 156(3) Cr.P.C. is declined, as all the facts and circumstances are within the knowledge of the complainant including identity of the accused as well as the name and address of the concerned witnesses. Thus, there is no ground on which the assistance of the police is required. Further, if at any stage the court is of the opinion that investigation in the matter is required, the court will be within its power to order investigation u/s 202 of Cr.P.C., and this order shall in no way bar such investigation at latter stage.”

20. Thereafter, the learned Additional Sessions Judge while dismissing the revision petition of the petitioner, upheld the order of learned Metropolitan Magistrate with the observation as under:

“The main thrust of the allegations is that the respondent

along with her family members forcibly entered in the house however the question of vacation of the house prior to this entering is disputable. The Action Taken Report filed by police categorically suggested that this is a matrimonial dispute which is also corroborated from the fact that there is no dispute between the in laws and daughter in law for about 09 years of marriage however dispute occurs only in the last one year. Considering the nature of allegations and dispute, I do not find any ground to interfere in the discretion exercised by the Ld. trial court by dismissing the application u/s 156 (3) CrPC. Hence, revision petition stands dismissed.”

21. At this stage, it is relevant to reproduce section 156 of Cr.P.C. which is as under:

“156. Police officer's power to investigate cognizable case.

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above- mentioned.”

22. It is clear from the scheme of section 156, where the police fail in its duty to register and investigate a cognizable offence, the aggrieved person

may file a complaint before the concerned Magistrate. Where the Magistrate receives a complaint the word '*may*' give a discretion to the Magistrate in the matter. Two courses are open to the Court; either take cognizance under Section 190 or may forward the complaint to the police under Section 156(3) Cr.P.C. for investigation.

23. Likewise, in the facts and circumstances of a particular case, Magistrate may take cognizance on the basis of the complaint instituted before him and may adopt the procedure provided under sections 200, 202 of Cr.P.C. and if there is no substance in the prima-facie evidence adduced by the complainant, the complaint may be dismissed under section 203 Cr.P.C.

24. In view of above facts, observation made by the courts below and the law discussed, the material facts of the present case are well within the knowledge of the petitioner including the identity of the accused persons. Hence, she can establish her case while leading evidence before the trial court under section 200 of Cr.P.C. Therefore, I find no illegality or perversity in the orders passed by the Trial Court and Appellate Court.

25. Finding no merit in the present petition, the same is dismissed with no orders as to costs.

(SURESH KUMAR KAIT)
JUDGE

APRIL 19, 2021
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