

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION (APL) NO. 1340 OF 2022

APPLICANT : X Y Z, Age: 42 yrs., Occ. Housewife,
R/o. Martin Nagar, Jaripataka, Nagpur,
Tah. & Dist. Nagpur, Maharashtra-
440014.

//VERSUS//

NON-APPLICANTS : 1. Anthony Joseph Michal, Age: 42 yrs.,
Occ. Nil.

2. Smt. Dorthy Anthony Michal, Age: 36
yrs., Occ. Housewife.

Both R/o. Mariam Nagar, Civil Lines,
Nagpur, Tah. & Dist. Nagpur-440001.

3. State of Maharashtra, through its
Police Station Officer, Jaripataka Police
Station, Jaripataka, Nagpur-440014.

Mr. A.Y. Humne, Advocate for the Applicant.

Mr. Abdul Subhan, Advocate for Non-applicant Nos.1 & 2.

Ms. Mayuri Deshmukh, APP for Non-applicant No.3/State.

CORAM : G. A. SANAP, J.

DATED : 5th APRIL, 2023.

ORAL JUDGMENT

Heard.

02] **Admit.** The application is heard finally with the consent
of the learned advocates for the parties.

03] In this criminal application filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “Cr.PC”), challenge is to the order dated 6th July, 2022 passed by the learned District Judge-10, Nagpur, whereby the learned District Judge on the application of the applicant under Section 156(3) of the Cr.PC, instead of directing the police to register the First Information Report (FIR), treated the said application as a complaint and put up it for recording verification statement of the complainant/applicant.

04] The facts giving rise to this application are as follows:

The non-applicant Nos.1 and 2 are husband and wife. The applicant was the tenant in respect of the household property. There was a dispute between the applicant and the non-applicants in respect of the said tenanted premises. According to the non-applicants, the applicant with the help of advocate notary, prepared a false possession letter behind their back. A report was lodged by the non-applicant No.2. A Crime bearing No.138/2022 came to be registered against the applicant, her husband, her son and others for the offences punishable under Sections 420, 451, 448, 467, 468, 471, 506(2), 120-B read with Section 34 of the Indian Penal Code, 1860. The said crime was registered on the basis of report

dated 9th March, 2022.

05] The applicant lodged a report on 3rd February, 2022 at Jaripataka Police Station, alleging that the non-applicant No.1 entered into her house and sexually assaulted her. He abused her in filthy language in reference to her caste. She reported the matter to the police. The police did not take any action. She, therefore, filed an application under Section 156 of the Cr.PC before the learned Special Judge and prayed for a direction to the police to register the FIR against the non-applicants.

06] The learned Judge by order dated 6th May, 2022, in order to satisfy himself about the real nature of incident, called the report of the Jaripataka Police Station. The Police Officer conducted the enquiry and filed his report. In the said report, the Police Officer has stated that the report lodged by the applicant is as a result of the dispute with regard to the tenanted premises between the parties. The Police Officer further stated in his report that during the investigation of Crime No.138/2022 as well as during the course of this enquiry, he did not get any material to find substance in the allegations made in the complaint. The Police Officer after conducting the enquiry, submitted his report stating

that there is no substance in the allegations made in the complaint.

07] The learned Judge on the basis of the material available on record came to the conclusion that the case in question was not fit to direct the registration of FIR, by invoking the provisions of Section 156(3) of the Cr.PC. The learned Judge instead found it appropriate to treat the said application as complaint and fixed the same for recording the verification statement of the complainant/applicant. The applicant being aggrieved by this order is before this Court.

08] The learned advocate for the applicant, relying upon a decision of the Hon'ble Apex Court in the case of *XYX Vs. State of Madhya Pradesh & Ors. [2022 LiveLaw (SC) 676]* and the decision of the Allahabad High Court in the case of *Santosh Kumari Vs. State of U.P. [2007 CRI. L.J. 3869]* and the decision of the Rajasthan High Court (Jaipur Bench) in the case of *Babu Lal Vs. State of Rajasthan and Ors. [2009 CRI. L.J. 4362]*, submitted the Magistrate has no option but to direct the police to register FIR and conduct the investigation, when an application made under Section 156 of the Cr.PC discloses the commission of the cognizable offence. The learned advocate further submitted that

the Hon'ble Apex Court in the case of *XYX Vs. State of Madhya Pradesh & Ors.* (supra), has observed that especially in the cases of sexual harassment, sexual assault or any similar criminal allegation wherein the victim has possibly already been traumatized, the Courts should not further burden the complainant and should press upon the police to investigate. The learned advocate submitted that the application made by the applicant under Section 156 of the Cr.PC disclosed the commission of serious crime, which warranted the investigation by the police. The learned advocate submitted that the applicant has made serious allegations of sexual assault and the commission of the offences by the non-applicant No.1 in reference to her caste. The learned advocate submitted that in the given set of facts, the learned Judge was not right in adopting this course of action. The learned advocate, therefore, submitted that the order in question is required to be quashed and set aside.

09] The learned Additional Public Prosecutor appearing for the State submitted that before passing the order by the learned Judge, the Police Officer was directed to conduct the enquiry. The learned Additional Public Prosecutor pointed out that the enquiry conducted by the Police Officer revealed that there was no

substance in the allegations. The learned Additional Public Prosecutor took me through the material considered by the Police Officer to arrive at this conclusion. The learned Additional Public Prosecutor submitted that, therefore, the order passed by the learned Judge reveals the application of mind to the material placed on record.

10] The learned advocate for the non-applicants submitted that behind the back of the non-applicants, the applicant committed the house trespass by breaking open the lock put up by the non-applicants. The learned advocate pointed out that on 9th March, 2022, the non-applicant No.2 lodged the report at Jaripataka Police Station. The learned advocate further submitted that the applicant, her husband and others were arrested in Crime bearing No.138/2022, registered at Jaripataka Police Station on the report lodged by the non-applicant No.2. The learned advocate pointed out that the offence committed by the applicant and others is of forgery of the letter of possession of the tenanted premises. The learned advocate submitted that in order to take revenge, the false report was lodged against the non-applicants. The learned advocate further submitted that the enquiry conducted by the Police Officer in terms of the order passed by the Court has

revealed the truth. The learned advocate, therefore, submitted that the order passed by the learned Judge is just and proper.

11] The learned advocate for the applicant, relying upon the decisions in the cases of *Santosh Kumari Vs. State of U.P.* (supra) and *Babu Lal Vs. State of Rajasthan and Ors.* (supra), has submitted that the Magistrate has no option but to direct the police to register FIR and conduct the investigation as and when an application made under Section 156 of the Cr.PC discloses the commission of the cognizable offence. In my view, the decisions in the cases of *Santosh Kumari Vs. State of U.P.* (supra) and *Babu Lal Vs. State of Rajasthan and Ors.* (supra), if considered in juxtaposition with the decision of the Hon'ble Apex Court in the case of *XYX Vs. State of Madhya Pradesh & Ors.* (supra), it would show that the same does not lay down the correctness. The Hon'ble Apex Court in the case of *XYX Vs. State of Madhya Pradesh & Ors.* (supra), has held that the Magistrate has discretion in directing the police to investigate or proceeding with the case as a complaint case. It is held that in each and every application made under Section 156(3) of the Cr.PC, the direction cannot be issued for the registration of the FIR. It is held that this discretion cannot be exercised arbitrarily and must be guided by judicial reason. It is

further observed in this case that in cases alleging sexual harassment, sexual assault or any similar criminal allegation wherein the victim has possibly already been traumatized, the Courts should not further burden the complainant and should press upon the police to investigate.

12] It is, therefore, crystal clear that the Magistrate or the Court concerned has discretion, while considering the application under Section 156(3) of the Cr.PC. It is to be noted that there cannot be any straight jacket formula in such matters. The Court has to exercise the discretion bearing in mind the facts and circumstances of each and every case. The facts and circumstances brought on record and consideration of the same, deserves primacy while exercising the discretion. It is to be noted that in this case, I am not persuaded to accept the submission that the learned Judge has exercised his power arbitrarily and the discretion was not guided by the judicial reason. It is to be noted that the learned Judge bearing in mind the civil dispute pending between the parties, thought it appropriate to direct the police to conduct the preliminary enquiry. It is true that the allegations made in the application are serious. It is to be noted that the serious allegations may disclose the commission of cognizable offence. However, it

does not mean that the Court cannot direct the police to conduct the enquiry and to submit a report for the purpose of deciding the matter in accordance with law. It is to be noted that in this case the crime has already been registered against the applicant and her family members on the report of non-applicant No.2. In the said crime, the applicant and her family members were arrested. They were in jail for a period of a month or so.

13] The enquiry conducted by the Police Officer further revealed that the applicant and others have forged the possession letter. It is further seen that the applicant was the tenant of the non-applicant No.1 in respect of the household property. The dispute was going on between them with regard to her tenancy rights as well as the possession. There are complaints and counter complaints against each other. The first complaint made, as can be seen from the record, was by the applicant on 8th January, 2022. The learned Judge keeping all these facts in mind was inclined to direct the police to conduct the enquiry. The enquiry conducted by the police revealed that there were no *prima facie* materials to substantiate the allegations. The learned Judge, therefore, instead of directing the registration of FIR, thought it fit that the applicant should be granted an opportunity to submit her evidence on oath.

The learned Judge, therefore, treated the said application as a complaint and placed the matter for recording the verification statement of the complainant/applicant.

14] In the light of the material, which has been placed on record and by applying the law laid down in the case of **XYX Vs. State of Madhya Pradesh & Ors.** (supra), I am of the view that the discretion exercised by the learned Judge has been guided by judicial reason. In the facts and circumstances, I do not see any substance in the application. The application is, therefore, **dismissed.**

(G. A. SANAP, J.)

Vijay