



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: December 11, 2023.

% *Pronounced on: December 21, 2023.*

+ **CRL.M.C. 922/2021 & CRL.M.A. 4638/2021**

SHEIKH MOHD. UMAR

..... Petitioner

Through: Mr. Sanjay Gupta and Mr.
Shubhangam Thakur, Advocates

Versus

STATE & ORS.

..... Respondents

Through: Mr. Sunil Kumar Gautam, APP for
the State with SI Pankaj Kumar, PS.
H. N. Din
Mr. Azhar Qayyum, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. The petitioner, vide the present petition under Section 482 of the Code of Criminal Procedure, 1973 [*CrPC*], seeks quashing of the impugned order dated 22.08.2020 passed by the Ld. MM, South East, Saket Courts, New Delhi in complaint case No.620872/2016 titled as '*Sheikh Mohd Umar vs Mohd Mubin & Ors.*' and order dated 23.10.2020 passed by the Learned Principal District and Sessions Judge, South East, Saket Courts, New Delhi in Cr. Rev. No.210/2020 titled as '*Sheikh Mohd Umar vs Mohd Mubin & Ors.*' and further direct the SHO, PS. Hazarat Nizamuddin, Delhi to register FIR under the relevant provisions of law.

2. Learned counsel for the petitioner submits that the order passed by the Ld. MM and the Ld. Sessions Court are bad in law as the Courts below



failed to appreciate that the respondent nos.3 and 4 have wrongly registered a non-cognizable report, while the injuries sustained amount to grievous hurt, a cognizable offence. He further submits that custodial interrogation of Mohd. Mubin, one of the three named accused, is much needed to disclose the identity of the 6-7 unnamed assailants. He also submits that the action of the respondent no.3/ SHO Hazrat Nizamuddin, is adverse to the fundamental rights of the complainant as the latter was coerced into the alleged settlement by the former. Lastly, he submits that the respondent nos.3 and 4 are in collusion and connivance with the assailants and shielding them from accountability for their actions.

3. Notice was issued and the Status Report was called for. Trial Court record in the digitized form was also requisitioned from the concerned Trial Court.

4. Learned APP for the State submits that the Ld. MM Court, vide order dated 12.10.2020, dismissed the complaint under Section 156(3) of the CrPC in light of the dispute being *inter se* previously known persons and the facts alleged being personal knowledge of the complainant. He further submits that the petitioner has already preferred a revision petition before the Ld. Sessions Court, Saket Courts, New Delhi, however, it was dismissed as the Ld. Sessions Court found no grounds to direct registration of the FIR as the only requirement of Police investigation is to ascertain the unnamed 6-7 assailants and since the CCTV footage of the scene of crime is on record and the facts alleged are in personal knowledge of the complainant, the investigation by the Police is not required, *albeit* assistance can be called under Section 202 of the CrPC, if deemed necessary. He lastly submits that the Ld. MM Court is seized of

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the matter and the same is at pre-summoning evidence stage, and requires no intervention by this Court.

5. Learned counsel for the respondent no.2 has reiterated the submissions addressed by the learned APP and thus supported the case put forth by the State.

6. This Court has heard the learned counsel for the petitioner, the learned APP for the State and the learned counsel for the respondent no.2. Additionally, this Court has also perused the Status Report as also the other documents on record.

7. Before advertng to the merits of the present case, the Court deems it appropriate to discuss the law with respect to registration of FIR in cases of cognizable offences as set out in Section 154 of the CrPC, relevant excerpt whereof is reproduced as under:-

“154. Information in cognizable cases.

*(1) Every information relating to the **commission of a cognizable offence**, if given orally to an officer in charge of a police station, **shall** be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.”*

(emphasis supplied)

8. The law qua aforesaid has since long been settled to the effect that if the information given clearly mentions the commission of a cognizable offence, the Officer in Charge of a Police Station is bound to proceed for registration of the FIR forthwith as there is no other option. At the time of registration of an FIR, what is to be taken into consideration is merely the



factum as to whether the information given, *ex-facie*, discloses the commission of a cognizable offence. That being so, the other factors such as whether the information is falsely given, whether the investigation by the Police is required, whether the information is credible or like, being irrelevant can be ignored for consideration.

9. In the present scenario, *admittedly*, out of the 6-7 persons involved in the commission of the offence, the petitioner has information about only 2 of them. Further, in the opinion of the Department of Forensic Medicine and Toxicology, AIIMS, New Delhi, the injuries inflicted upon the son of the petitioner, is grievous in nature. The same leads to the conclusion that the injuries sustained amount to grievous hurt which is a cognizable offence. As such, in the considered opinion of this Court, investigation is required for ascertaining other assailants.

10. Also, the circumstances involved herein are not *ejusdem generis* in the list as provided in ***Lalita Kumari vs. Government of Uttar Pradesh*** (2014) 2 SCC 1, which is only illustrative and not exhaustive, where the Hon'ble Supreme Court (Constitutional Bench) held as under:-

“114. It is true that a delicate balance has to be maintained between the interest of the society and protecting the liberty of an individual. As already discussed above, there are already sufficient safeguards provided in the Code which duly protect the liberty of an individual in case of registration of false FIR. At the same time, Section 154 was drafted keeping in mind the interest of the victim and the society. Therefore, we are of the cogent view that mandatory registration of FIRs under Section 154 of the Code will not be in contravention of Article 21 of the Constitution as purported by various counsel.”

11. Further, the Hon'ble Supreme Court has in its Conclusions/ Directions held as under:-

“120. In view of the aforesaid discussion, we hold:

i) Registration of FIR is mandatory under Section 154 of the Code, if the

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information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

12. In light of the present factual matrix and the judgment of the Hon'ble Supreme Court, this Court finds it a fit case to direct registration of the FIR in the present case, especially, when the assailants are yet to be



ascertained and the information discloses a cognizable offence, which is also supported by the opinion of the Department of Forensic Medicine and Toxicology, AIIMS, New Delhi.

13. Accordingly, the impugned order dated 22.08.2020 passed by the Ld. MM, South East, Saket Courts, New Delhi in complaint case No.620872/2016 titled as '*Sheikh Mohd Umar vs Mohd Mubin & Ors.*' and the order dated 23.10.2020 passed by the learned Principal District and Sessions Judge, South East, Saket Courts, New Delhi in Cr. Rev. No.210/2020 titled as '*Sheikh Mohd Umar vs Mohd Mubin & Ors.*' are quashed. Further, the SHO, PS. Hazarat Nizamuddin, Delhi is directed to register an FIR based on the complaint dated 14.03.2016 made by the petitioner/complainant to the CMM, South East, Saket Courts, New Delhi under Section 200 read with Section 156(3) of the CrPC and to proceed in accordance with law.

14. The present petition, alongwith pending applications, if any, is disposed of.

SAURABH BANERJEE, J

DECEMBER 21, 2023
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