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

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*Reserved on: 01.08.2023
Pronounced on: 21.08.2023*

+ **CRL.M.C. 603/2020**

OM PRAKASH

..... Petitioner

Through: Mr. G. D. Sharma, Advocate

versus

STATE

..... Respondent

Through: Mr. Satish Kumar APP for
State with SI Mahesh Chand
along with SHO PS Badarpur

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition under Section 482 of Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of petitioner for allowing the application of the complainant under Section 156(3) Cr.P.C. filed in Complaint Case No.11551/2017 in the Court of learned Metropolitan Magistrate ('learned Trial Court'), Saket Court, New Delhi, who had dismissed the application *vide* order dated 13.12.2018, against which first revision bearing no. 80/2019 was



dismissed by the Court of learned Additional Sessions Judge, Saket Court, New Delhi ('learned Revisionist Court') *vide* judgment dated 20.08.2019.

2. Briefly stated, facts of the present case are that the petitioner had claimed that his wife Maya, had leased a property to M/s. Nikki Creations, represented by Mr. Sidharth Talwar and Kishor Talwar, through a rent agreement dated 08.08.2015, at the rate of Rs. 75,000/- per month. Thereafter, due to persistent rent defaults by M/s. Nikki Creations, leading to an accumulated arrears of 28 Lac, the wife of the petitioner had issued a notice on 02.05.2017, terminating the tenancy from 18.05.2017 and had requested for vacation of the premises alongside clearing the outstanding rent, after which, tenant had only refused to vacate and had started threatening the petitioner and his family with threats. Further, accused persons had attempted to remove their belongings from the premises on various occasions: 22.05.2017, 29.07.2017, 06.08.2017, and 21.08.2021. Upon objection from the petitioner and his family, they were subjected to physical assault by the accused persons. Despite reporting these incidents to the police, PS Badarpur had failed to register an FIR. A Kalandra under Sections of 107/150 Cr.P.C. dated 07.08.2017 was filed against accused persons Om Prakash Dahiya, Maya Devi, Naveen Dahiya, and Sonu. Another Kalandra under Sections 107/151 of Cr.P.C. dated 21.08.2017 was filed against accused persons Siddharth Talwar and Naveen Dahiya. In response to the actions of the local police, the petitioner had filed a complaint case under Section 200 of Cr.P.C. read with section 156(3) of Cr.P.C., however, the application was



dismissed by the learned Trial Court on 13.12.2018. The petitioner had then appealed the decision by filing a Revision Petition, which was subsequently dismissed by learned Revisionist Court *vide* order dated 20.08.2019.

3. Learned Counsel for the petitioner states that the revisionist court failed to take notice of the grievance of the petitioner, who was attacked by huge number of persons on 06.08.2017 and 21.08.2017. It is stated that the police investigation is essential in the present case as its an ongoing dispute, where there are numerous instances of attack on the petitioner. It is also stated that the registration of FIR is mandatory if it discloses the commission of cognizable offence, and the application under Section 156(3) in the present case should have been allowed considering the fact that the petitioner was not in knowledge of the names of all the persons who had attacked him.

4. *Per contra*, learned APP for the State argues that the evidence in the present case the complainant is in possession of the evidence, and thus there is no requirement of the investigation by the police agency.

5. This Court has heard arguments addressed by both the learned counsel for petitioner and learned APP for the State, and has perused the material on record.

6. The case of the petitioner, in a nutshell is that due to non-payment of rent by the accused persons, the wife of the petitioner had issued a notice to terminate tenancy and had directed the accused to vacate the premises and clear the arrears of rent. The accused individuals attempted to retrieve their belongings, but the petitioner



insisted that the goods should not be removed until the outstanding rent was settled. The petitioner himself, as correctly noted by the Revisionist Court, attests to the fact that whenever disputes arose between the parties, they sought police intervention. Additionally, there is documented CCTV footage confirming the presence of the police at the location during the altercation between the revisionist and other individuals.

7. The relevant portion of the impugned judgment of the learned Revisionist Court has been reproduced as hereunder:

“19. The complainant has not brought anything on record to suggest what evidence is required to be collected through police investigations. Whatever are the investigations / documents, they can be proved through witnesses who may be summoned by the revisionist. The CDs are also piece of evidence which would be considered even at the stage of pre-summoning evidence...

20. There is no merit in the present revision petition. The same is hereby dismissed.”

8. This Court has gone through the order passed by the learned Trial Court as well as the learned Revisionist Court, the learned courts whose orders have been impugned before this Court have observed that the objective of the police investigation as per several judgments of the Hon’ble Apex Court is collection of evidence with regard to an offence, and that police investigation is essential only in cases where evidence is not in possession of complainant or cannot be brought by the witnesses on being summoned at the instance of the complainant or where nature of the evidence is technical. This



Court is in agreement with the finding of the learned Trial Court and learned Revisionist Court to this extent.

9. This Court does not find any infirmity in the finding of learned Revisionist Court that the complainant has not brought anything on record to suggest that evidence is required and had to be collected through police investigation. It is observed that all relevant documents and CCTV footage are in the complainant's possession, and he is aware of witnesses who can be summoned to testify on his behalf. In essence, the circumstances of this case reveal a situation where the complainant has access to the evidences and has identified individuals who can serve as witnesses to corroborate his claims. Given these factors, the need for police involvement in evidence collection appears to be minimal, as the complainant is well-equipped to facilitate the presentation of evidence on his own behalf.

10. Considering the circumstances of this case, active police assistance for investigation is deemed unnecessary, and the case should proceed in accordance with Section 200 Cr.P.C. The learned Revisionist Court correctly emphasized that the rejection of the application under Section 156(3) Cr.P.C. does not imply a lack of merit in the revisionist's complaint. Instead, it signifies a decision not to immediately order the registration of an FIR under Section 156(3) Cr.P.C. The proper course of action is to record evidence based on the complaint and subsequently assess the merits of the case under Section 200 Cr.P.C. in order to reach a conclusive resolution

11. The learned Counsel for the petitioner had also contended that that registration of FIR is mandatory if it discloses commission of



cognizable offence and that his application under Section 156(3) Cr.P.C. could not have been rejected since he cannot know the names of all the persons who were involved in the incident in question. In this regard it is observed that it is crucial to recognize that the primary objective of police investigation is the collection of evidence pertaining to an alleged offense. Police involvement becomes imperative only in situations where the evidence is neither within the possession of the complainant nor can be readily obtained from witnesses who can be summoned at the complainant's request. Furthermore, there are cases where the nature of the evidence is inherently technical and necessitates specialized investigative skills. Thus, this court finds no reason to interfere with the impugned order passed by learned Revisionist Court, whereby the order of the learned Trial Court was upheld.

12. Accordingly, the present petition stands dismissed.

13. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression on merits of the case.

14. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 21, 2023/dk