



2024:DHC:5893

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

Reserved on: 22nd July, 2024
Pronounced on: 5th August, 2024

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Crl. M.C.2183/2020 & CRL.M.A. 15545/2020**STATE OF NCT OF DELHI**

.....Petitioner

Through: Mr. Rajesh Mahajan, SPP, Mr. Ranjeeb Kamal Bora and Ms. Jyoti Babbar, Advs. SI Devender PS, Alipur.

versus

PURAN SINGH

.....Respondent

Through: Ms. Smritee Relan, Ms. Shweta Dhingra, Mr. Archit Bhardwaj and Ms. Hazel Bhardwaj, Advs. for R-1. Ms. Richa Dhawan, APP for State.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T****NEENA BANSAL KRISHNA, J.**

1. A Petition under Section 482 Cr.P.C. has been filed by the petitioner for setting aside the Order dated 17.09.2020 of learned ASJ/Special Judge, (NDPS), North District, in Criminal Revision No.57344/2016 and Order dated 15.10.2013 passed by learned CMM, North District, Rohini Courts, Delhi, allowing the application under Section 156(3) Cr.P.C. and directing



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registration of FIR against the Police raiding Team in respect of the death of one Rakesh in the Police Encounter.

2. *Briefly stated, FIR No. 135/2013 under Sections 186/353/307/34 IPC and 25/27 Arms Act dated 20.03.2013* was registered at Police Station Alipur, on the basis of a rukka sent by Insp. Rajender Gautam, SHO P.S. Alipur. The Special Team of Crime Branch, Rohini, Delhi had information that a dreaded, hardcore and desperate criminal Manoj @ Morekheri having a syndicate of associates, who had indulged in the offences of murder, extortion, collecting protection money from businessmen etc., was present in the area of Alipur, Delhi.

3. On the basis of this information, on 20.03.2013 at about 09:30 A.M at trap was accordingly laid and at about 2:30 P.M a vehicle was spotted in which Manoj @ Morekheri was found sitting on the front seat by the side of the driver. When the Raiding Team signalled the vehicle to stop, its driver accelerated and started driving the car in a zig zag manner in a bit to escape. The police gave a chase on which the occupants of the car started firing towards the police vehicle. In self defence and also to prevent the escape of dreaded criminal, the Police Team fired at the rear tyres of the fleeing car. The car, however, stopped because of the red traffic signal at Palla crossing. The police rushed towards the car. The occupants came out and one of them managed to escape while the other three were apprehended.

4. Manoj @ Morekheri was found in possession of one 9 mm sophisticated improvised pistol in cock position with two live cartridges loaded, one in chamber and one in magazine. Another member, Rakesh @ Raka was found injured have sustained a gunshot injury in his lower back on the rear seat of the Ritz car used by the accused persons. He was also in



possession of a loaded automatic improvised sophisticated pistol of 7.62 bore in his hand. The gun injury in his lower back corresponded with a bullet mark at the back and the rear seat of the car.

5. He was brought out of the car and taken to BJRM Hospital, Jahangir Puri, where his MLC was prepared. The PCR was called about the incident. Injured Rakesh @ Raka succumbed to his injuries in the hospital at about 04:05 P.M. The other three persons apprehended by the police, were arrested and produced before the concerned MM within 24 hours.

6. During the investigations, the MLC of deceased Rakesh was collected. According to the MLC, he was brought to the casualty with an alleged history of gunshot over his lower back on left side and no other complaints/injuries. He was found conscious, disoriented, irritable and violent. His pulse rate and blood pressure were not recordable. The post mortem of deceased Rakesh was conducted vide P.M. No.272/2013 by the Medical Board constituted by Health and Family Welfare Department of Govt. of NCT of Delhi, on 22.03.2013. *The cause of death was opined as a result of hemorrhage and shock consequent upon firearm ammunition injuries to the abdomen and pelvis (injury No.1) which was opined to be eminently fatal and sufficient to cause death in the ordinary course of nature.* It was also mentioned that the injury was caused by ammunition of a rifled firearm weapon i.e. a bullet. *The injuries No.2 to 6 were stated to have been caused by blunt force.* All injuries were opined to be ante mortem in nature and fresh prior to death.

7. The Investigating Officer vide his written letter dated 27.09.2013, obtained a subsequent opinion on 04.10.2013, explaining the nature of injuries of the deceased. During the investigation, the statement of Dr. Mohit



Tiwari, CMO, who conducted medical examination of the deceased, was recorded.

8. The Hon'ble Lt. Governor, Delhi ordered a Magisterial enquiry into the incident vide File No.F.10/ME-40/2013/HP-II/2665 dated 12.04.2013 through Home Deptt., Govt. of NCT of Delhi. A comprehensive and a detailed Magisterial enquiry was conducted by SDM, who concluded the enquiry as under :

*“The version given by the police appears to be more plausible as the same found corroboration from the scientific evidence in the form of ballistic report, P.M. report, Crime Scene Report etc. and the manner of conduct of the encounter which suggests that it was nowhere an intentional act on the part of the police officials comprising of the raiding team to kill/commit murder of any person. The bullets were fired by the police officials in an act of self defence in order to save themselves from the occupants of the car who had fired upon the police party, which factum is corroborated from the scientific evidence. Moreover, the encounter took place on a very busy road in broad day light living behind the doubts that a manipulated false encounter took place. Moreover, all the police witnesses were very much consistent in their version that police officials had fired upon the accused persons in an act of self defence. **It thus appears that no illegality or illegal act as alleged by the witnesses from the side of the father of the deceased had been committed by the members of the police team on the date, time and place of incident.**”*

9. Shri Puran Singh, father of the deceased Rakesh (who is the



respondent herein) filed a *Criminal Complaint under Section 200 Cr.P.C. for taking cognizance of the offence since punishable under Section 302/34 IPC and Section 27 Arms Act* along with an *Application under Section 156(3) Cr.P.C.* seeking directions to the SHO for registration of the FIR on the allegations that the police officials had murdered his son Rakesh on 20.03.2013 at about 2:30 P.M. It was further claimed that the FIR No.135/2013 dated 20.03.2013 under Sections 307/353/186/34 IPC and 25/27/54/59 Arms Act was registered at P.S. Alipur against *Manoj Morkheri, Vivek @ Vicky, Parveen S/o Suresh and Praveen s/o Raj Singh* only to save themselves on the pretext that deceased Rakesh had received injuries during the encounter.

10. It was further contended that even if the version in the FIR was taken to be true, it was established that Rakesh had been murdered intentionally by the Police which is clear from the fact that none of the three accused persons who alighted from the car and were allegedly running to escape, had fired towards the police and none of the police officials received any injury. The Inspection Report of the car also established that the firing was done from all sides of the car as all the wind screens were broken, while Rakesh was found injured and lying in blood on the back seat.

11. It was further alleged that the *Post Mortem Report* conducted by the Medical Board of three Doctors established that there were six injuries on the dead body of Rakesh; one being the firearm injury while the other five were found to have been caused by blunt force. This clearly reflects that deceased Rakesh was allegedly mercilessly beaten by the accused persons with some blunt object and thereafter, they fired upon the car only to save themselves from the commission of offence. It was claimed that the



circumstances established that Rakesh who was not armed with any firearm, was first mercilessly beaten and then the gunshot was fired upon him. The circumstantial evidence establishes a prima facie case of murder and not of encounter.

12. The learned CMM, Delhi allowed the application of the respondent Puran Singh under Section 156(3) Cr.P.C vide Order dated 15.10.2013 and forwarded the complaint to P.S. Alipur *with directions to register the FIR and to investigate the matter*. Against this Order of CMM, a Revision Petition being CR NO.57344/16 (Old No.44/14) was filed in which the learned ASJ upheld the directions for registration of FIR against the Police Officials in regard to the Encounter.

13. Aggrieved, the present petition has been filed on the grounds of the impugned Orders being arbitrary, illegal and passed in a mechanical and casual manner. It is alleged that the incident had been thoroughly enquired into by the SDM who in his detailed Enquiry Report has clearly concluded that the bullets were fired by the Police Officials in an act of self-defence in order to save themselves from the occupant of the car who had fired upon the Police party.

14. Reliance has been placed on Sankaran Moitra vs. Sadhna Das ((2006) 4 SCC 584) to argue that the acts of the Police Officials were in discharge of their official duty and were protected by Section 197 Cr.P.C and Section 140 of Delhi Police Act. Reliance has also been placed on General Officer Commanding, Rashtriya Rifles vs. CBI ((2012) 6 SCC 228) and Rakesh Kumar Mishra vs. State of Bihar ((2006) 1 SCC 557).

15. The Apex Court in Anil Kumar and Others vs. M.K. Aiyappa and Anr ((2013) 10 SCC 705) has stated that a Magistrate cannot refer a matter under



Section 156(3) for registration of FIR against a public servant without a valid Sanction Order. Therefore, any cognizance of offence against a Police official is barred unless a Sanction is obtained from an appropriate Authority, under Section 197 of Cr.P.C. The judgment of Anil Kumar and Ors. had been followed in L. Narayana Swamy vs. State of Karnataka ((2016) 9 SCC 598).

16. It is further contended that in the subsequent opinion obtained from the Doctor in respect of injuries No.2 to 6 it has been explained as under :

“1.Injuries no. 2 & 3 are located on the face-have nothing to do with the treatment given.

2. Injury no. 4 was located on the lower front of abdomen region adjacent to and surrounding the path of the bullet-it must have been the result of the damage caused by the bullet.

3. Injuries 5 & 6 are located on the front of elbow region and back of right hand respectively. They are also coinciding with injection sites mentioned in the post mortem report.”

17. The Doctor further opined that *“These injuries are very minor and do not affect the nature of injury and severity of illness of the patient. Rest findings like patient is irritable, uncooperative, disoriented to TP and struggling for life are already mentioned in MLC. As per MLC no other injuries were present at the time of examination”.*

18. From the subsequent opinion, it is clear that the observations of learned CMM that the deceased was first beaten severely and then eliminated in a fake encounter, are contrary to the record. The injury on



outer half of the left upper lip and on the left cheek were simple abrasions, from which no inference of severe beatings can be drawn.

19. Dr. Mohit Tiwari in his statement recorded under Section 161 Cr.P.C on 21.10.2013 also stated that *“he (deceased) sustained abrasions over left cheek and left upper lip as he was very irritable and violent. We were planning to transfer the patient for higher center but he succumbed to his injuries during the treatment and he was shifted to mortuary”*.

20. The impugned Order dated 17.09.2020 of learned ASJ upholding the directions for registration of FIR against the Petitioners, **is assailed** on the grounds that the complainant/respondent No.2 Puran Singh was not a eye witness to the incident and has no basis for making the allegations. Learned Courts failed to appreciate that the FIR No.135/2013 P.S. Alipur had been registered against the three other persons who were in the car at the time of encounter/incident. None of these three persons have alleged or raised any doubt about the manner in which the encounter took place.

21. This complaint is nothing but an afterthought in order to put counter pressure on the police officials and/or to create false defence to counter positive evidence put forth by the prosecution in the case pending against the three other persons in FIR No.135/2013.

22. The respondent Puran Singh had made the complaint on 24.04.2013 i.e. almost after one month of the incident and the complaint came in the Court after about five months. In between from the period 20.03.2013 till 09.09.2013, there were no calls made to the PCR nor any complaint either by Puran Singh or any of the accused persons who were apprehended, was made. There are glaring contradictions in the complaint given to the SHO and the one filed before learned CMM which has not been taken note of.



Further, it was not considered that the vehicle was chased for a considerable distance from the point when it was first located. The chasing had continued on the busy National Highway which was full of vehicular traffic. The car in which the deceased and the other accused were travelling had to stop because of the traffic light. The marks of striking bullets on the vehicle were from the back side.

23. It is a matter of record that after stopping the car there was no firing from the side of police. One accused managed to escape whereas three others were apprehended on the spot. The gunshot wound on the deceased was near the back of the rear seat, where possibility of gunshot injury was only under the circumstances when the firing took place targeting the lower back side of the car for which there was a corresponding gunshot mark on the rear of the car.

24. In the circumstances, the registration of FIR against the police officials was neither warranted nor justified in law. It is claimed that the impugned Orders are otherwise, based on conjectures and surmises and are liable to be set aside. A prayer is, therefore, made that the impugned Order dated 17.09.2020 of the learned ASJ be set aside.

25. **No formal reply** has been filed on behalf of the respondent.

26. The **petitioner in his written synopsis** reaffirmed the contentions that had been taken in the petition. It is further reasserted that the plea of self defence of the police officials stood fully justified. The injuries on the person of the deceased has been completely explained and the medical evidence collected, clearly reflects that the injuries aside from gunshot were extremely minor and the abrasions on the face and cheek may have been suffered while the petitioner was in the hospital.



27. Furthermore, the respondent is not an eye witness and also the complaint made by him is not only belated but also suffers from major contradictions.

28. In addition to this, it is argued that the Order of the learned CMM has failed to appreciate the facts in right perspective. The learned ASJ has also opined that it was easier for the Police instead of firing upon window panes of the car, to open fire at the tyres and if those tyres had been deflated, certainly car would have stopped and in those circumstances the other accused persons would have stepped out of the car and could have been apprehended. It is thus stated that the impugned order of the learned ASJ dated 17.09.2020 and the Order dated 15.10.2013 of the learned CMM is liable to be set aside.

29. In the end, it is contended that there is non-compliance of Section 154(3) Cr.P.C which vitiates the Order under Section 156(3) Cr.P.C., for which reliance has been placed on Priyanka Srivastava vs. State of U.P ((2015) 6 SCC 28).

30. The **respondent in the written synopsis** has asserted that his son Rakesh had in fact been murdered by the police officials who have tried to camouflage the situation by claiming it to be an encounter. The respondent being the father of the deceased, is aggrieved by the loss of his young son which made him file the complaint under Section 156(3) Cr.P.C. to book the accused persons. There is sufficient evidence to show that there was use of excessive force which resulted in the killing of a person. Such acts do not come within the performance of duty and Section 197(1) Cr.P.C. is not attracted in the given circumstances.

31. It has been pointed out that as per the Investigation Report, the tyres



of the vehicle were not deflated; it was easier for the police to have targeted the tyres instead of window panes so as to stop the vehicle. Significantly, no other person/ occupant of the car or any police official was injured. The kind of brutality depicted by the police officials is deprecable and is prohibited under the law. The injuries on the body of the deceased also reflected about the wrongful acts of the police officials for which reliance has been placed on Devinder Singh vs. State of Punjab (SCC 87 2016).

32. The respondent has further placed reliance on Bajinath vs. State of Madhya Pradesh (1966 SC 220); S.B. Saha and Ors vs. M.S. Kochar (AIR 1979 SC 1841); Bakhshish Singh vs. State of Punjab (1995 CrLJ 2964); Baidyanath Hathi vs. State of Bihar and Anr. (2000 Cr.LJ 3249); State of Orissa vs. Ganesh (AIR 2004 SC 2179); K. Kalimuthu vs. State (2005 Cr.L.J 2190); Bajrang Parab vs. State of Maharashtra (2006 Cr.L.J 4577); Choudhary Parveen Sultana vs. State of West Bangal and Anr. (AIR 2009 SC 1404) and Devinder Singh vs. State of Punjab (AIR 2016 SC 2090) in support of his assertions.

33. **Submissions heard.**

34. In the wake of various instances of fake encounters by the Police and the increase in the number of persons so killed, instead of subjecting them to the due process of law and that no investigations whatsoever, were made against those who were responsible for these unnatural deaths, there being no enquiry about the role of the police officials and the deceased leading to the unwarranted demise of persons, *National Human Rights Commission* wrote a letter dated 29.03.1997 to the Chief Ministers highlighting these aberrations and submitted various recommendations for the correct procedure to be followed by all the States. The part of the recommended



procedure stated as follows:

“A. When the police officer in charge of a Police Station receives information about the deaths in an encounter between the Police party and others, he shall enter that information in the appropriate register.

B. The information as received shall be regarded as sufficient to suspect the commission of a cognizable offence and immediate steps should be taken to investigate the facts and circumstances leading to the death to ascertain what, if any, offence was committed and by whom.

C. As the police officers belonging to the same Police Station are the members of the encounter party, it is appropriate that the cases are made over for investigation to some other independent investigation agency, such as State CID.

D. Question of granting of compensation to the dependents of the deceased may be considered in cases ending in conviction, if police officers are prosecuted on the basis of the results of the investigation.”

35. A request was also made to issue directions through Director General of Police to all the Police Stations in the States to follow the procedure as indicated above, where the death was caused in police encounter and similar situations.

36. The Apex Court in the case of People’s Union for Civil Liberties (PUCL) vs. State of Maharashtra ((2014) 10 SCC 635) referred to various



judgments of the Apex Court, to conclude that the FIR as envisaged under Section 157 of the Code must be registered and requisite steps must be taken for the proper and effective investigations, in the case of Police encounter deaths.

37. In this case of People's Union for Civil Liberties (PUCL) (Supra), the Apex Court considering the issue of genuineness of nearly of 99 encounters between Mumbai Police and the alleged encounters resulting in deaths of about 135 persons between 1995 and 1997. The *Apex Court* observed that the Court is not oblivious that police in India has to perform a difficult and delicate task particularly when many hardcore criminals like extremists, terrorists, drug paddlers, smugglers who have organized gangs, make strong roots in the Society, but then such criminals must be dealt with by the Police in an efficient and effective manner so as to bring them to justice by following rule of law.

38. In a Society governed by law, it is imperative that extra-judicial killings are properly and independently investigated so that justice may be done. Reference was made to Sections 174, 175 and 176 of Cr.P.C, 1973 which provide for *Magisterial Enquiry* in the cases of unnatural death.

39. Considering the International Instruments and the guidelines advised by NHRC, ***following requirements were prescribed in the matters of investigating police encounters in the case of deaths as a standard procedure for thorough, effective and independent investigations :***

“Pursuant to the tip of or receipt of any intelligence an encounter takes place and firearm is used by the police party and as a result of that death occurs and FIR to that effect shall be registered and forwarded to the Court



under Section 157 of the Code without any delay. While forwarding such Report under Section 157 of the Code, procedure prescribed under Section 158 of the Code shall be followed. It further stated that an independent investigation into the incident/encounter shall be conducted by the CID or police team of another Police Station under the supervision of a senior officer (at least a level above the Head of the Police Party engaged in the encounter).”

40. Likewise, in the case of Rohtash Kumar vs. State of Haryana ((2013) 14 SCC 290), the Apex Court expressed its displeasure as the Court had refused to follow the Guidelines dated 02.12.2003 issued by National Human Rights Commission and a person had died during an encounter by the police, despite which the FIR was not registered. It was observed that two crucial guidelines given by NHRC that the investigations into the encounter death must be done by an independent Investigating Agency and that registration of FIR in case whenever a complaint is made against the Police making out a case of culpable homicide, had not been complied with.

41. In the said case, one person who was a dreaded criminal with six FIRs against him, was killed in a police encounter and the inaction of the police in not registering the FIR was highly deprecated.

42. A similar view has also been taken by the High Court of Madras in the case of Vinothini vs. The State and Ors. (WP (MD) No. 27211 of 2023) wherein the court had reiterated the NHRC Guidelines and also stated that the registration of FIR is mandatory against the police officials if they are involved in an encounter killing.



43. The Apex court in another case of M/s Andhra Pradesh Police Officers Association rep. by its General Secretary vs. A.P. Civil Liberties Committee (APCLC) rep. by its president and Others (Civil Appeal No. 5646 of 2019, dated 18th July 2019) had referred to the judgment of People's Union for Civil Liberties (PUCL) (Supra) and stated about the registration of FIR against police officials or officials involved, being mandatory and to be mandatorily complied with.

44. Pertinently, the Apex Court in the case of Lalita Kumari vs. State of Uttar Pradesh ((2013) 14 S.C.R. 713) has mandated that whenever a complaint discloses the cognizable offence, it is imperative to register the FIR in order to further investigate if the evidence so collected, establishes the commission of offence. The registration of FIR is only to facilitate the investigations, there is no mandate that Charge Sheet would be the inevitable end result would be the filing of Charge Sheet; the investigations can even lead to a Closure Report.

45. Therefore, for directing the registration of FIR, what was necessary was that the encounter killing was shrouded with suspicious circumstances.

46. The The Ld. ASJ in the impugned Order dated 17.09.2020, considered in detail the circumstances in which the incident took place and also the post-mortem report. It was observed that there were six injuries on the body of Rakesh, out of which, one was fire-arm injury and five others were caused due to the blunt force. In these circumstances, it has to be established that the deceased was not mercilessly beaten up by the accused. Thus, the investigations are required to ascertain whether it was a case of murder or of an encounter.

47. The learned ASJ further observed that the post-mortem report cannot



be ignored at this stage. Moreover, as per the inspection report, tyres of the vehicle were not deflated. Rather, the firing was on the window pane of the car. Had the firing been targeted on the tyres, they would have been deflated and the car would have been stopped, following which the accused persons could have been apprehended. Pertinently, no police official was injured despite the claim that the persons had fired at them too. The circumstances leading to the death of Rakesh need to be explained.

48. The Ld. ASJ in the impugned Order dated 17.09.2020 considered the circumstances in which the incident took place and also the post-mortem report. It was observed that there were six injuries on the body of Rakesh, out of which, one was fire-arm injury and five others were caused due to the blunt force. In these circumstances, it has to be established that the *deceased was not mercilessly beaten up by the accused*. Thus, it has to be ascertained whether it was a case of murder or of an encounter. The circumstances leading to the death of Rakesh need to be explained.

49. ***The learned ASJ thus, rightly concluded that there was enough material to direct the registration of FIR.***

50. ***The second limb of the argument was that no criminal investigations can be carried out against the Public Officer without grant of sanction under Section 197 Cr.P.C.***

51. In the case of Devender Singh vs. State of Punjab, (AIR 2016 SC 2090) it was observed that it is not a part of official duty to commit an offence. Hence, the question of sanction may not be relevant at initial stage but at any stage during trial. A similar view was also taken in the case of K.Kalimuthu Vs. State (2005 Cr.L.J. 2190). Similar view was taken by Patna High Court the case of Baidyanath Hathi Vs. State of Bihar and Anr. (2000



Cr. LJ 3249) wherein it was held that Section 197(1) Cr. P.C. does not offer a complete exemption from prosecution of a public servant. *The question whether sanction is necessary for prosecution in a particular case is to be determined at the time of cognizance taken only on the basis of allegations made in the complaint and not on the basis of what is alleged by the accused by way of his defence.* If the allegations in the complaint do not attract the protection of Section 197 Cr.P.C., the Court cannot throw out the complaint for want of sanction merely because the accused is a public servant.

52. Likewise, the case of Bakhshish Singh Vs. Gurmej Kaur (AIR 1988 SC 257), the Hon'ble Apex Court opined that to determine whether the Police Officer while acting in his official duty, had exceeded the limits of his official capacity or not, the cognizance of the offence has to be taken and in these circumstances, trial shall not be stayed for the want of sanction for the prosecution of the accused officer.

53. The Apex court in the case of S. B. Sahavs M. S. Kochar (1979 Cri LJ 1367), observed that not every offence committed by a public servant while engaged in the performance of his official duty, is entitled to the protection under Section 197(1) of Cr. P.C. *For an act to be constituting as an offence, it has to be directly and reasonably connected with his official duty which will require a sanction for prosecution under the said provision.*

54. In the case of State of Orissa vs. Ganesh (AIR 2004 SC 2179), the Apex Court held that sanction against the public official or servant would be necessary if the act complained of is directly concerned with his official duties, such that it could be claimed to have been done by virtue of the office even if questioned about. The Court opined the word “Official” which



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means pertaining to an office, and official act or an official duty done by an officer in his official capacity. Furthermore, “official duty” implies that the act or omission must have been done by the public official in the course of his service and that it should have been in discharge of his duty. Section 179 Cr.P.C. does not extend its protective cover to every act or omission done by a public servant in service, but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

55. Therefore, it is established proposition of law requirement of Sanction under S.197 Cr.P.C. is necessary for the acts done by the Official in discharge of duty and would not scuttle the registration of FIR, as it can be obtained subsequently, if the circumstances so warrant.

Conclusion:

56. In the light of aforesaid judgments, it is held that the law mandates that whenever a person dies in an encounter which is alleged to be fake, the FIR has to be mandatorily registered. Ld. ASJ has given cogent reasons for upholding the directions to register the FIR, as also given by learned CMM under Section 156(3) Cr.P.C.

57. ***There is no merit in the present petition which is hereby rejected.***

**(NEENA BANSAL KRISHNA)
JUDGE**

AUGUST 05, 2024

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