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

+ **CRL.M.C. 3852/2019 & CRL.M.A. 32857/2019**

SMT. MEENA

.....Petitioner
Through: Mr. Gautam Khazanchi,
Mr. Vaibhav Dubey & Mr.
Ashwint Tripathi, Advs.

versus

STATE OF NCT OF DELHI
& ANR

.....Respondents
Through: Mr. Sunil Kumar Gautam,
APP for the State
ACP Subhash Malik
SI Priyanka, PS- Ranhola

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
09.07.2024

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1. The present petition is filed challenging the order dated 07.09.2018, passed by the learned Additional Session Judge ('ASJ'), West District, Tis Hazari Courts, Delhi, in Crl. Revision No. 109/2018 titled as *Subhash Malik (SHO) v. State & Anr.* (hereafter '**the impugned order**').

2. The learned ASJ, by the impugned order, had set aside the order dated 26.03.2018, passed by the learned Metropolitan Magistrate ('MM'), West District, Tis Hazari Courts, Delhi, in an application filed by the petitioner under Section 156(3) of the Code of Criminal Procedure, 1973 ('CrPC') seeking registration of FIR against Respondent No. 2.

3. The petitioner, in the application filed under Section 156(3) of the CrPC, had alleged that when she had visited Police Station Ranhola to give her complaint for molestation, the SHO/



Respondent No. 2 rebuked her and threw her complaint. Thereafter, the petitioner went out of the police station and made numerous calls to 100 number. It was alleged that after some time a police official came out to call her to the office of Respondent No.2. It was alleged that when the petitioner went to the office, he again started hurling abuses and ran towards her to slap her.

4. The petitioner further alleged that she was held captive and was only released after 08:00 PM after several requests. She alleged that the complaints were given to higher officials, including the Deputy Commissioner of Police and Joint Commissioner of Police against Respondent No. 2 for misbehaving and for not accepting her complaint.

5. The learned MM *vide* order dated 26.03.2018 directed registration of FIR. The said order passed by the learned MM was set aside by the learned ASJ by the impugned order which led to filing of the present petition.

6. The learned ASJ observed that Respondent No. 2 is an Officer of the rank of Inspector and is a public servant within the meaning of Section 21 of the Indian Penal Code, 1860 ('IPC') and, admittedly, no sanction, as provided under Section 197 of the CrPC was obtained for institution of a complaint.

7. The learned counsel for the petitioner submits that the learned ASJ has failed to appreciate that in terms of Section 197 of the CrPC, sanction is required only before a Court takes cognizance. He submits that the same has no applicability at the stage of registration of FIR.

8. He further submits that the allegations against Respondent No. 2 were also in regard to offence under Section 166A of the IPC for which no sanction is required.



9. He submits that the judgments passed by the Hon'ble Apex Court in the cases of **Anil Kumar v. M.K. Aiyappa : (2013) 10 SCC 705** and **Manju Surana v. Sunil Arora : (2018) 5 SCC 557** have not been correctly appreciated.

10. The Hon'ble Apex Court in **Anil Kumar v. M.K. Aiyappa** (*supra*) held that the Magistrate, in the absence of a sanction, cannot order investigation against a public servant while invoking powers under Section 156(3) of the CrPC. The case related to Section 19 of the Prevention of Corruption Act, 1988, which is *pari materia* to Section 197 of the CrPC requiring the sanction by a competent authority before any public servant is prosecuted.

11. In **L. Narayana Swamy v. State of Karnataka : (2016) 9 SCC 598**, it was reiterated that the Court cannot direct registration of FIR or investigation into an offence while exercising power under Section 156(3) of the CrPC in relation to offences where the sanction is required to be taken before a Court can take cognizance. The issue was, thereafter, referred to a larger Bench of the Hon'ble Apex Court in **Manju Surana v. Sunil Arora** (*supra*).

12. It is a settled principle of law that unless the judgement which has been referred to a larger Bench has been overruled, the said judgment occupies the field and continues to operate as a good law.

13. Thus, as rightly observed by the learned ASJ, no FIR could have been directed to be registered while invoking power under Section 156(3) of the CrPC without a valid sanction.

14. The petitioner also relies upon the explanation to sub-section (1) of Section 197 of the CrPC which provides that no sanction is required to be obtained in case of a public servant



accused of any offence under Section 166A of the IPC.

15. The learned ASJ noted the said contention and held that the said issue has not been considered by the learned MM and remanded the matter for fresh consideration.

16. This Court finds no infirmity in the order passed by the learned ASJ. Admittedly, the issue whether the FIR could have been ordered to be registered without a valid sanction, when one of the alleged offence does not require a sanction has not been considered by the learned MM.

17. When the allegations point towards commission of offence under various provisions, one of which requires sanction and the other does not, whether a FIR can be ordered to be registered while exercising power under Section 156(3) of the CrPC needs to be considered by the learned MM. The rights of the petitioner are not foreclosed by the impugned order.

18. In view of the above, I find no merit in the present petition and the same is dismissed.

19. However, since the allegations relate to the year 2016, the learned MM is directed to decide the matter expeditiously.

AMIT MAHAJAN, J

JULY 9, 2024

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