



2024:DHC:8753



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

Date of decision: 29th OCTOBER, 2024

IN THE MATTER OF:

+ **CRL.M.C. 6587/2022 & CRL.M.A. 25687/2022**

JATINDER MEHTA & ANR.

.....Petitioners

Through: Mr. Gurvinder Singh, Advocate.

versus

STATE OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Shoaib Haider, APP for the State.
Mr. Mohit Mathur, Senior Advocate
with Mr. Rahul Tyagi, Advocate for
Respondent No.2.
SI Mahesh Yadav, PS Defence
Colony

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has approached this Court challenging the Order dated 17.09.2022, passed by the learned Additional Sessions Judge – 05, Saket Courts in CRL. REV. No.151/2018, upholding the Order dated 19.01.2018, passed by the learned Metropolitan Magistrate – 09, Saket Courts, dismissing the application under Section 156(3) filed by the Petitioners herein in CT Case No.1476/2017.

2. The facts, in brief, leading to the present Petition are as under:

- a. It is stated that on 25.10.2016 at about 06:10 PM the Petitioners herein approached the SHO, Police Station Defence Colony, and gave him a complaint regarding the incident that took place on the intervening night of 25-26.10.2016. In the complaint it is



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stated that the Petitioner resides at D-54, Ground Floor, Defence Colony, she is senior citizen, aged about 62 years, and is physically handicapped after undergoing a hip replacement surgery. It is stated in the complaint that on the intervening night of 25.10.2016, around midnight the Petitioner herein and her daughter, i.e. the Petitioner No.2 herein, took out their dog for walk. It is stated that when they reached in front of D-53 & D-52 they saw that a dog was charging ferociously towards them from a dark corner of the road. It is stated that behind the dog there was a man who was also running behind the dog. It is stated that the Petitioners asked the man to stop the dog but he kept coming towards the Petitioners along with the dog without stopping or controlling the dog. It is stated that the said dog was loose without any leash and the man made no attempt to catch hold of the dog or stop it from attacking the Petitioners. It is further stated that the dog pounced towards the Petitioners and their pet dog, but somehow they managed to survive the attack with a few scratches on Petitioner No.2's feet. It is stated that during the attack, the Petitioner No.1 also fell down and got severe jerks on her hips. It is stated that the Petitioners returned to their home and Petitioner No.2 chased that man to find out his identity and address & the name of owner of the dog. It is stated in the complaint that the Petitioner No.2 got to know that the man who was walking the dog was Deepak Goswami (Respondent No.3 herein) and he was working as a driver with Mr. Dhir and staying at first floor of D-34, Defence Colony. It



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is stated in the Complaint that Deepak Goswami (Respondent No.3 herein) told the Petitioner No.2 that the owner of the dog is Mr. Madhav Dhir (Respondent No.2 herein), who is the son of Mr. Alok Dhir. It is further stated in the Complaint that Mr. Madhav Dhir is the owner of property No. D - 55 and is also the occupant of first floor at D-54, Defence Colony. It is stated that the husband of the Petitioner No.1 has filed a case against Mr. Alok Dhir and his family members and his companies against their illegal occupation of premises of the Petitioners herein at first floor of D-54, Defence Colony. On the said complaint a Non-Cognizable Report was registered under Section 323 IPC.

- b. It is stated that the Petitioners thereafter approached the learned Metropolitan Magistrate by filing an application under Section 156(3) Cr.P.C stating that a cognizable offence has been committed by the Respondents No.2 & 3 herein and, therefore, an FIR should be registered against them. A Status Report was filed before the learned Metropolitan Magistrate wherein it was stated that an NCR has been registered. The learned Metropolitan Magistrate, after culling out the Judgment of this Court in Skipper Beverages Pvt. Ltd. v. State, **2001 SCC OnLine Del 448**, disposed of the application filed by the Petitioners herein by holding as under:

“There is no fact/evidence which is to be collected by the prosecution and as such there is no requirement for investigation. No doubt, Section 156(3) Cr. P.C. empower the Magistrates to send the matters for investigation but each case has to



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be judged on its own merits and discretion given to the court is to be exercised in a judicial manner and not in a mechanical manner.

The complainant is having control over the evidence as the same is available with him. Subsequently, if it is deemed necessary, then enquiry under Section 202 Cr.P.C. shall be initiated. In these circumstances, I am not inclined to give the direction to the SHO for registration of the case. Hence. the application u/s 156 (3) Cr.P.C. is dismissed.

Put up for pre summoning evidence on 27.02.2018.”

- c. The said Order was challenged by the Petitioners by filing CRL. REV. No.151/2018 before the learned Additional Sessions Judge.
 - d. The learned ASJ placed reliance on the Full Bench of the Allahabad High Court in Jagannath Verma v. State of U.P., **AIR 2014 All 214**, and has held that there is no requirement for investigation as the identity of the accused persons is well established and all the evidence is within the reach and knowledge of the Petitioner herein and there is nothing new to be collected for which assistance of Police agency is required and that further proceedings can go on under Section 202 Cr.P.C.
 - e. It is this Order which has been challenged by the Petitioner in the present Petition.
3. In the NCR the entire complaint has been reproduced. This Court is



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inclined to reproduce the entire NCR and the same reads as under:

“24/25-10/2016. From Mrs. Jatinder Mehta, D-54, Ground Floor, Defence Colony, New Delhi, To The SHO, PS Defence Colony, New Delhi, Respected Sir, Reg. Attack by dog on me & my daughter by dog belonging to Mr. Dhir, R/o D-34, 1st Floor. I have to inform that at about 11:55 PM, we have taken out dog out for last night walk in the routine course from our house at D-54. We have barely reached D-52 when we saw a man walking accompanied with a dog without any leash. We told him to stop & take the dog away. He kept walking towards with us with an intention to harm us 2 ladies. I am a patient of hip replacement and any jerk or fall can do me life threatening harm. My daughter is suffering from slipped disc. She almost got bitten by the dog & the dog almost jumped on me. We could have got bitten by the dog. In this milee I have got a bad jerk. The person who brought the dog is Mr. Deepak Goswami residing at first floor D-34, Defence Colony, New Delhi. He appeared to be drunk & non-reactive to our shouts for help. No body came to our rescue & we had to seek help of Police PCR 100, they have taken our statement HC Ashok Kumar has come from PS Defence Colony. Seek your assistance. Sir to take appropriate action to ensure our safety as we fear safety of our lives. It need to be mentioned that there is a case in court against the owner & their company, Alchemist ARC residing at D- 54, First Floor, Defence Colony. I request you to take appropriate action & ensure safety of our lives. Thanking you, yours sincerely Sd- English, Mrs. Jatinder Mehta. To Duty Officer PS Defence Colony, Delhi is requested to register the complaint by Mrs. Jatinder Mehta W/o Anil Mehta R/o D-54, Ground Floor, Defence Colony, Delhi and HC was appointed and MLC No. 591756/16 of Mrs. Jatinder Mehta and MLC No. 591757 of Chhahat Mehta and result has been obtained and under which Doctor has opined simple blunt. On the



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complainant's statement and MLC no cognizable offence is made out, therefore complainant is given report u/s 323 IPC and is advised that if she desires same can approach Hon'ble Court for further proceedings. SD: English, HC Hari Singh, NO. 323/SD, PS Defence Colony, Dt. 22/12/16."

4. A reading of the NCR shows that all the ingredients of Section 289 IPC are made out in the complaint. Section 289 IPC reads as under:

"Section 289. Negligent conduct with respect to animal.

Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

5. A Bench of five Judges of the Apex Court in Lalita Kumari v. Govt. of U.P., (2014) 2 SCC 1, has held that the investigation of offences and prosecution of offenders are the duties of the State and for "cognizable offences", a duty has been cast upon the police to register FIR and to conduct investigation except as otherwise permitted specifically under Section 157 of the Code. The Apex Court was categorical that if a discretion, option or latitude is allowed to the police in the matter of registration of FIRs, it can have serious consequences on the public order situation and can also adversely affect the rights of the victims including violating their fundamental right to equality. The Apex Court has further held that the context in which the word "shall" appears in Section 154(1) of



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the Code, the object for which it has been used and the consequences that will follow from the infringement of the direction to register FIRs, all these factors clearly show that the word “shall” used in Section 154(1) needs to be given its ordinary meaning of being of “mandatory” character. The Apex Court has held that the provisions of Section 154(1) of the Code, read in the light of the statutory scheme, do not admit of conferring any discretion on the officer in charge of the police station for embarking upon a preliminary inquiry prior to the registration of an FIR. The Apex Court has further held as under:

“54. Therefore, the context in which the word “shall” appears in Section 154(1) of the Code, the object for which it has been used and the consequences that will follow from the infringement of the direction to register FIRs, all these factors clearly show that the word “shall” used in Section 154(1) needs to be given its ordinary meaning of being of “mandatory” character. The provisions of Section 154(1) of the Code, read in the light of the statutory scheme, do not admit of conferring any discretion on the officer in charge of the police station for embarking upon a preliminary inquiry prior to the registration of an FIR. It is settled position of law that if the provision is unambiguous and the legislative intent is clear, the court need not call into it any other rules of construction.

55. In view of the above, the use of the word “shall” coupled with the scheme of the Act lead to the conclusion that the legislators intended that if an information relating to commission of a cognizable offence is given, then it would mandatorily be registered by the officer in charge of the police station. Reading “shall” as “may”, as contended by some counsel, would be against the scheme of the Code. Section 154 of the Code should be strictly construed



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and the word “shall” should be given its natural meaning. The golden rule of interpretation can be given a go-by only in cases where the language of the section is ambiguous and/or leads to an absurdity.

73. The legislature has consciously used the expression “information” in Section 154(1) of the Code as against the expression used in Sections 41(1)(a) [Ed. : Vide Act 5 of 2009, w.e.f. 1-1-2010 Sections 41(1)(a) and (b) of the principal Act were substituted with differently worded Sections 41(1)(a) and (b) : the new clause (b) being substantially in pari materia with the old clause (a). A new clause (ba) was also added. The old clause (a) mentioned in most of the judgments cited hereinbelow stood as follows: “41. (1)(a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or” The new Sections 41(1)(a), (b) and (ba) are as follows: “41. (1)(a) who commits, in the presence of a police officer, a cognizable offence; (b) against whom a reasonable complaint has been made, or credible information has been received ... (ba) against whom credible information has been received that he has committed a cognizable offence ...” Clause (g) of Section 41(1) remains unaltered.] and (g) where the expression used for arresting a person without warrant is “reasonable complaint” or “credible information”. The expression under Section 154(1) of the Code is not qualified by the prefix “reasonable” or “credible”. The non-qualification of the word “information” in Section 154(1) unlike in Sections 41(1)(a) [Ed. : Vide Act 5 of 2009, w.e.f. 1-1-2010 Sections 41(1)(a) and (b) of the principal Act were substituted with differently worded Sections 41(1)(a) and (b) : the new clause (b)



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being substantially in pari materia with the old clause (a). A new clause (ba) was also added. The old clause (a) mentioned in most of the judgments cited hereinbelow stood as follows: “41. (1)(a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or” The new Sections 41(1)(a), (b) and (ba) are as follows: “41. (1)(a) who commits, in the presence of a police officer, a cognizable offence; (b) against whom a reasonable complaint has been made, or credible information has been received ... (ba) against whom credible information has been received that he has committed a cognizable offence ...” Clause (g) of Section 41(1) remains unaltered.] and (g) of the Code is for the reason that the police officer should not refuse to record any information relating to the commission of a cognizable offence on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, reasonableness or credibility of the said information is not a condition precedent for the registration of a case.

84. The insertion of sub-section (3) of Section 154, by way of an amendment, reveals the intention of the legislature to ensure that no information of commission of a cognizable offence must be ignored or not acted upon which would result in unjustified protection of the alleged offender/accused.

85. The maxim expressio unius est exclusio alterius (expression of one thing is the exclusion of another) applies in the interpretation of Section 154 of the Code, where the mandate of recording the information in writing excludes the possibility of not recording an information of commission of a cognizable crime in the



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special register.

86. Therefore, conducting an investigation into an offence after registration of FIR under Section 154 of the Code is the “procedure established by law” and, thus, is in conformity with Article 21 of the Constitution. Accordingly, the right of the accused under Article 21 of the Constitution is protected if the FIR is registered first and then the investigation is conducted in accordance with the provisions of law.

Significance and compelling reasons for registration of FIR at the earliest

93. The object sought to be achieved by registering the earliest information as FIR is inter alia twofold : one, that the criminal process is set into motion and is well documented from the very start; and second, that the earliest information received in relation to the commission of a cognizable offence is recorded so that there cannot be any embellishment, etc. later.

94. Principles of democracy and liberty demand a regular and efficient check on police powers. One way of keeping check on authorities with such powers is by documenting every action of theirs. Accordingly, under the Code, actions of the police, etc. are provided to be written and documented. For example, in case of arrest under Section 41(1)(b) of the Code, the arrest memo along with the grounds has to be in writing mandatorily; under Section 55 of the Code, if an officer is deputed to make an arrest, then the superior officer has to write down and record the offence, etc. for which the person is to be arrested; under Section 91 of the Code, a written order has to be passed by the officer concerned to seek documents; under Section



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160 of the Code, a written notice has to be issued to the witness so that he can be called for recording of his/her statement, seizure memo/panchnama has to be drawn for every article seized, etc.”

6. Applying the law laid down by the Apex Court in the abovementioned Judgement to the facts of the present case, this Court is of the opinion that the Police was duty bound to register an FIR for offences under Section 289 IPC which is a cognizable offence.

7. In the considered opinion of this Court, the learned Metropolitan Magistrate and the learned Additional Sessions Judge have failed to appreciate that the Police has not done its duty by registering an NCR under Section 323 IPC when the ingredients of Section 289 IPC are made out in the complaint. This Court is of the opinion that the Police ought to have conducted an investigation and should have proceeded in accordance with law.

8. Accordingly, the Order dated 17.09.2022, passed by the learned Additional Sessions Judge – 05, Saket Courts in CRL. REV. No.151/2018, and the Order dated 19.01.2018, passed by the learned Metropolitan Magistrate – 09, Saket Courts, are set aside and the authorities are directed to proceed in accordance with law.

9. The Petition is disposed of along with the pending application(s), if any, stand disposed of.

SUBRAMONIUM PRASAD, J

OCTOBER 29, 2024

Rahul