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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 10218/2024**

SHABNAM

.....Petitioner

Through: Mr. Sparsh Choudhary,
Mr. Amandeep Kadyan,
Mr. H. Mittal & Mr. Vikas
Poonia, Advocates.

versus

THE STATE GOVT. OF NCT OF DELHI
AND ORS.

.....Respondents

Through: Mr. Naresh Kumar
Chahar, APP for the State.
SI Priyanka Gupta (P.S.
Madhu Vihar).

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **24.12.2024**

CRL.M.A. 39157/2024 (*exemption from filing certified copies of annexures*)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.M.C. 10218/2024

3. The present petition is filed challenging the order dated 24.06.2024 (hereafter '**impugned order dated 24.06.2024**') passed by the learned Metropolitan Magistrate-04 ('**MM**'), Karkardooma Courts, Delhi in Complaint Case No. 1174/2023 titled *Shabnam v. SHO & Anr.*, dismissing the application under Section 156(3) of the Code of Criminal Procedure, 1973 ('**CrPC**') while taking cognizance on the complaint filed under Section 200 of the CrPC.



4. The said application under Section 156(3) of the CrPC had been filed by the petitioner herein, alleging that, at the time of the incident, Respondent No. 2 and 3 avoided registering a FIR on the original compliant made by the petitioner and her husband in regard to commission of a cognizable offence committed by the accused persons and later recorded NCR No. 22/2023 dated 24.04.2023 under Section 155 of the CrPC. The FIR No. 156/2024 was registered in Complaint Case No. 1173/2023 titled *Shabnam v. Tahir and Ors.* It is alleged that Respondent No. 2 and 3 are public servants and have committed an offence under Section 166A of the Indian Penal Code, 1860 ('IPC'), for delay in registering the FIR.

5. As noted above, the application filed by the petitioner under Section 156(3) of the CrPC was dismissed by the learned MM by the impugned order dated 24.06.2022. The learned MM, while dismissing the said application, has observed as under:

"It is not the case that no action was taken by the police officials and based on the allegations/information received inquiry was conducted by the IO concerned. Initially as per reports available on record inquiry was made regarding commission of non-cognizable offences and accordingly, NCR was lodged but it was only on further inquiry that the FIR was lodged. This was perhaps an error of judgment on the part of the IO concerned. Indeed there was laxity on the part of the IO concerned and for the same necessary disciplinary action has already been taken by the concerned authority not only against the IO but the previous SHOs. Admittedly, FIR has been lodged in the main matter and therefore, it is not the case that no FIR has been lodged as on date. Therefore, this Court is of the view that there is no requirement of passing directions for registration of FIR against the police officials as FIR has already been lodged in the main matter."

6. The learned counsel for the petitioner submits that sufficient material exists for allowing the application under Section 156(3) of the CrPC. He submits that the learned MM



failed to consider that the officials of Police Station Madhu Vihar, Delhi intentionally did not discharge their obligation to register the case despite the fact that the averments made in the original complaint and documentary evidence placed on record clearly satisfy the conditions and ingredients for invoking the applicability of Section 154 of the CrPC.

7. He submits that the Respondent Nos. 2 and 3 have deprived the petitioner of the benefit under Section 154 of the CrPC, despite the fact that the accused persons have committed a sexual offence under Section 354 of the IPC.

8. At the outset, a reference can be made to Section 156 of the CrPC, which reads as under:

“156. Police officer's power to investigate cognizable case.—

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above mentioned.”

9. Thus, while exercising powers under Section 156(3) of the CrPC and directing the registration of an FIR, the Magistrate/Special Court needs to ensure that a cognizable offence is disclosed from the allegations mentioned in the application and the essential elements of the alleged offences, thereof, are *prima facie* satisfied.

10. In the judgment delivered by this Court in the case of ***Skipper Beverages Pvt. Ltd. v. State : 2001 SCC OnLine Del 448***, it was held as under :

7. It is true that Section 156(3) of the Code empowers a Magistrate to direct the police to register a case and initiate



investigations but this power ~~not~~ to be exercised judiciously on proper grounds and not in a mechanical manner. In those cases where the allegations are not very serious and the complainant himself is in possession of evidence to prove his allegations there should be no need to pass orders under Section 156(3) of the Code. The discretion ought to be exercised after proper application of mind and only in those cases where the Magistrate is of the view that the nature of the allegations is such that the complainant himself may not be in a position to collect and produce evidence before the Court and interests of justice demand that the police should step in to help the complainant. The police assistance can be taken by a Magistrate even Under Section 202(1) of the Code after taking cognizance and proceeding with the complaint under Chapter XV of the Code as held by Apex Court in 2001 (1) Supreme Page 129 titled “Suresh Chand Jain v. State of Madhya Pradesh”

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10. Section 156(3) of the Code aims at curtailing and controlling the arbitrariness on the part of the police authorities in the matter of registration of FIRs and taking up investigations, even in those cases where the same are warranted. The Section empowers the Magistrate to issue directions in this regard but this provision should not be permitted to be misused by the complainants to get police cases registered even in those cases which are not very serious in nature and the Magistrate himself can hold enquiry under Chapter XV and proceed against the accused if required. Therefore the Magistrate, must apply his mind before passing an order under Section 156(3) of the Code and must not pass these orders mechanically on the mere asking by the complainant. These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of complainant or custodial interrogation appears to be necessary for some recovery of article or discovery of fact.

(Emphasis supplied)

11. Thus, once a complaint/application under Section 156(3) of the CrPC is filed, the Magistrate can exercise the option of applying his own judicial mind to the entire material on record and ‘may’ direct registration of FIR. However, at times, the Magistrate also calls for a report from the police as to why no action had been taken on an earlier complaint filed by the complainant with the police, and thereafter, once a report is filed by the police, the Magistrate applies his mind to the material



before him i.e. the complaint as well as the Action Taken Report which constitutes a 'preliminary inquiry' conducted by the police. After this, the Magistrate may make up his mind to either order registration of FIR or otherwise.

12. In the present case, the Action Taken Reports filed by the police officials before the learned MM contained an account of preliminary inquiry conducted by the police. To summarise, a perusal of contents of the Action Taken Reports reveals that a quarrel had taken place between the two parties who are neighbours, regarding throwing of garbage. Both parties sustained minor injuries but no incident of molestation and snatching took place, thus, NCR was registered under Section 323 of the IPC.

13. The Hon'ble Apex Court in **Lalita Kumari v. Govt. of U.P., (2014) 2 SCC 1** held that registration of FIR is mandatory under Section 154 of the CrPC, if the information discloses commission of a cognizable offence. 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 a cognizable offence is disclosed or not.

14. Keeping in perspective the aforesaid observations, this Court has carefully perused and examined the records of the case including the order impugned before this Court.

15. In **Subhkaran Luharuka & Anr. vs. State : (2010) 170 DLT 516**, it was observed as under:

"42. Thus, there are pre-requisites to be followed by the complainant before approaching the Magistrate under Section 156 (3) of the Code which is discretionary remedy as the provision proceeds with the word 'May'. The Magistrate is required to exercise his mind while doing so. He should pass the orders only if he is satisfied that the information reveals commission of cognizable offences and also about necessity of police investigation for digging out of evidence



neither in possession of the complainant nor can be procured without the assistance of the police. It is thus not necessary that in every case where a complaint has been filed under Section 200 of the Code the Magistrate should direct the police to investigate the crime merely because an application has also been filed under Section 156 (3) of the Code even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, may be with the assistance of the Court or otherwise,....."

16. In **Gulab Chand Upadhyaya vs. State of U.P. :** (2002) 44 ACC 670, the Hon'ble Allahabad High Court held that:

"22. But where the complainant is in possession of the complete details of all the accused as well as the witnesses who have to be examined and neither recovery is needed nor any such material evidence is required to be collected which can be done only by the police, no "investigation" would normally be required and the procedure of complaint case should be adopted. The facts of the present case given below serve as an example. It must be kept in mind that adding unnecessary cases to the diary of the police would impair their efficiency in respect of cases genuinely requiring investigation. Besides even after taking cognizance and proceeding under Chapter XV the Magistrate can still under Section 202(1) Cr.P.C. order investigation, even though of a limited nature."

(Emphasis supplied)

17. It is apparent that the petitioner is seeking registration of FIR against the police officials for a delay in registration of the FIR in the original complaint in regard to the cognizable offence. As is evident from the above narration of facts and the Action Taken Reports filed by the police officials before the learned MM, that FIR No. 156/2024 has already been registered in the original complaint in regard to the cognizable offence in Ct. Case No. 1173/2023 and disciplinary action has also been taken not only against the IO but also the previous SHOs in regard to Ct. Case No. 1174/2023, as recorded in the impugned order dated 24.06.2024. Given these factors, the need for registering a FIR against the police officials is unwarranted, as it is not the case of



the petitioner that no action ~~has~~ been taken in regard to the original complaint.

18. In my opinion, the learned MM has rightly relied upon the judgments in ***Subhakaran Luharuka v. State (Govt. of NCT of Delhi)*** (*supra*) and ***Skipper Beverages Pvt. Ltd. v. State*** (*supra*), wherein it was held that when the allegations are not particularly severe, and investigation is not required, directions to register FIR should not be resorted to. Moreover, the main grievance of the petitioner has already been remedied, and there is no necessity to pass orders under Section 156(3) of the CrPC.

19. In the instant case, this court is of the opinion that no exceptional circumstances have been presented to warrant the exercise of its extraordinary jurisdiction under Section 528 of the Baratiya Nagarik Suraksha Sanhita, 2023. There is no indication of any miscarriage of justice or legal irregularity in the proceedings undertaken by the learned MM, and the grievance of the petitioner has already been addressed by the registration of FIR No. 156/2024 as well as disciplinary action against the police officials.

20. In view of the above, I find no infirmity in the impugned order dated 24.06.2024 passed by the learned MM, and the same cannot be faulted with.

21. The petition, is, therefore, dismissed.

AMIT MAHAJAN, J

DECEMBER 24, 2024