



2025:DHC:2552



\$~76

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

%

Date of decision: 07.04.2025

+ **CRL.M.C. 2329/2025**

AZAD KAUR

.....Petitioner

Through: Mr. Yashwant Gahlot,
Advocate.

versus

STATE GOVT. OF NCT
OF DELHI AND ORS.

.....Respondents

Through: Mr. Satinder Singh Bawa, APP
with SI Anju, PS-Sagarapur.**CORAM:-****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT (ORAL)****RAVINDER DUDEJA, J.****CRL.M.A. 10461/2025 (exemption)**

Allowed, subject to all just exceptions.

This application stands disposed of.

CRL.M.C. 2329/2025

1. This is a petition under Article 227 of the Constitution of India read with Section 528 of Bhartiya Nagarik Suraksha Sanhita



2025:DHC:2552



[“**BNSS**”], 2023 (under Section 482 of the Code of Civil Procedure, 1973) [“**Code**”] for quashing of the order dated 12.09.2024, passed by the learned Sessions Judge, Dwarka, whereby, the revision filed by the petitioner against the order of the learned Metropolitan Magistrate dated 09.11.2023 has been dismissed.

2. The facts relevant for the disposal of the present petition, briefly stated, are that petitioner filed a complaint under Section 200 of the Code against respondents No. 2 to 9 for the offences punishable under Sections 307/323/352/354/354-B/447/448/451/452/506/509/34 IPC with the allegations that petitioner’s son Pankaj, got married with respondent No. 2 Deepti and after sometime of their marriage, Deepti started quarrelling with her son and pressurized him to live separately from his parents on a separate floor of the same building. Out of love and affection, she allowed her son and Deepati to reside on the second floor of her house but respondent No. 2 started generating pressure on her and her husband to transfer the house in her name or to purchase a flat in her name.

3. On 24.11.2019, respondent No. 2 picked up a quarrel and in order to generate pressure, she hit her own hand in the window, due to which, her hand started bleeding. She was advised to visit the doctor, but she refused. Soon thereafter, respondents No. 3 to 9, who are the relatives of respondent No. 2, forcibly entered the house and started beating her, her husband, her son and her relative namely Bharat. They



assaulted her and shouted “*Yeh Woh Lady Hai Jisne Meri Bahen Ka Ghar Kharab Kiya Hain, Isey Mat Chodna*”. Respondents Ashish Kumar, Mohit, Manpreet and Akshay beat her, used criminal force and touched her private parts. Respondents Anil Kumar, Ashish, Mohit, Manpreet and Akshay assaulted her and threw her on the floor, kicked and abused her. She fainted on account of injuries sustained by her and when her husband tried to save her, respondents assaulted her and threatened to finish the entire family. She was taken to DDU Hospital and from there was referred to Dr. RML Hospital for further treatment.

4. Petitioner made a written complaint to SHO PS Sagar Pur but instead of registering the FIR, an NCR was recorded under Section 323/506 IPC. Hence, a complaint was filed before the Court with prayer to summon the accused for the offences stated above. An application under Section 156 (3) of the Code was also filed along with complaint to direct the police to register the case and investigate the offences.

5. Learned Metropolitan Magistrate vide order dated 09.11.2023 was of the view that there was no need to send the matter to the police for investigation under Section 156 (3) of the Code and recourse to Section 202 of the Code may be taken for meeting the ends of justice. The matter was posted for the recording of statements of the petitioner and her witnesses.



6. Feeling aggrieved, petitioner preferred a revision against the aforesaid order of the learned Magistrate. The revision came to be dismissed vide order dated 12.09.2024. Learned Sessions Court found no illegality, impropriety or error in the order passed by the learned Magistrate.

7. Learned counsel for the petitioner has argued that the learned Metropolitan Magistrate failed to exercise his discretion properly by refusing to direct the police to register the case and conduct investigation. It is argued that the allegations in the complaint reveal the commission of cognizable offence and therefore the learned Metropolitan Magistrate was bound to issue direction for the investigation and registration of the FIR to the police.

8. Chapter XII of the Code deals with information to the police and its powers to investigate the offences. Clause (3) thereof lays down that a Magistrate empowered under Section 190 of the Code may order investigation by the police. This Chapter provides additional remedy to a complainant whose complaint is either not entertained by the police or if he is not satisfied with the investigation being conducted by the police.

9. Upon receiving the complaint, the Magistrate has to apply his mind to the allegations in the complaint, upon which, he may proceed at once to take cognizance or may order the police for registration of the FIR and its investigation. Before Magistrate orders for



investigation by the police under Section 156 (3) Cr. PC, he has to apply its mind to know whether the allegations in the complaint prima facie make out a case.

10. Where a complaint filed before the Magistrate contains simple allegations, it is the duty of the Magistrate to investigate into the allegations itself. The order directing the police to investigate the case are not to be passed mechanically. The Magistrate is not always bound to pass an order for the registration of the FIR and investigation upon receipt of application under Section 156 (3) Cr. PC, disclosing a cognizable offence. The Magistrate may use his discretion judiciously and if he is of the opinion that in the circumstances of the case it will be proper to treat the application as a complaint case, then he may proceed according to the procedure provided under Chapter XV of the Code. The use of word “shall” in Section 154 (3) and the use of word “may” in Section 156 (3) of the Code makes the intention of the legislation amply clear. If the legislature intended that Magistrate had no options but to direct the investigation and the registration of the FIR, it could have used the word “shall”. The use of word “may” therefore indicates that Magistrate has discretion in the matter and can in appropriate cases, refuse to order registration.

11. This Court in the case of **Skipper Beverages Pvt. Ltd. Vs. State, 2001 (59) DRJ 129**, held that discretion under Section 156 (3) Cr. PC ought to be exercised only in those cases where the Magistrate



is of the view that the nature of allegations is such that the complainant himself may not be in a position to collect or produce evidence before the Court and interest of justice demand that the police should step in to help the complainant and it is open to the Court to seek police assistance even under Section 202 (1) of the Code after taking cognizance and proceeding with the complaint under Chapter XV of the Code as has also been held by the Apex Court in **2001 (1) Supreme Page 129 titled Suresh Chand Jain Vs. State of Madhya Pradesh & Ors.**

12. Gujarat High Court in the case of **Arvinbhai Ravjibhai Patel Vs. Dhirubhai Sambhubhai, 1998 (1) Crimes 351**, took strong exception to the growing tendency of asking the police to investigate cases under Section 156 (3) of the Code and advised the Magistrates not to pass orders mechanically. It was held that Magistrates should act under Section 156(3) of the Code only in those cases where the assistance of the police is essentially required and the Magistrate is of the considered view that the complaint on his own may not be in a position to collect and produce evidence in support of the accusations.

13. On a perusal of the complaint filed by the petitioner, it is evident that it is not a case where the police assistance was required for discovery and collection of evidence which the complainant herself was unable to collect of her own. The learned Sessions Court rightly observed that the identity of the accused persons is known to



2025:DHC:2552



the petitioner and the evidence which the petitioner proposes to place on record for substantiating her allegations are within her control. The Sessions Court also took note of the fact that custodial interrogation of the accused persons is not required and the incident having taken place nearly five years back, it is highly improbable that the investigating agency would be able to collect any additional evidence.

14. Considering the nature of allegations made by the complainant in her complaint filed before the learned Metropolitan Magistrate, this Court is of the view that learned Magistrate exercised his discretion properly in accordance with law by declining the request of the petitioner to make over the investigation to the police under Section 156 (3) of the Code. The learned trial court has already taken the cognizance of the offence. Learned trial court has rightly observed that if during the evidence of the complainant under Section 200 of the Code, the trial court considers it expedient for the ends of justice, it may invoke the provisions of Section 202 of the Code for taking assistance of the police for collecting evidence by directing it to conduct investigation in that regard.

15. In view of the above, no interference, thus, is called for by this Court. The petition accordingly stands dismissed.

RAVINDER DUDEJA, J.

APRIL 07, 2025/_{RM}