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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 23.01.2024

+ CRL.M.C. 545/2024

..... Petitioner

Through: Petitioner-in-person.

versus

STATE OF NCT OF DELHI & ORS Respondents

Through: Ms. Meenakshi Dahiya, APP for State
with SI Annu, PS Hauz Khas.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

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J U D G M E N T

ANOOP KUMAR MENDIRATTA, J (ORAL)

CRL.M.A. 2194/2024

Exemption allowed, subject to just exceptions.

Application stands disposed of.

CRL.M.A. 2195/2024

For the reasons mentioned in the application, the delay of 45 days in re-filing the petition is condoned.

Application stands disposed of.

CRL. M.C. 545/2024

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioner for setting aside order dated 10.10.2023, passed by learned Additional Sessions Judge, South-East, Saket District Courts, New Delhi in C.R. No.507/2023, whereby the



order passed by the learned M.M. dated 24.07.2023 was not interfered with.

2. Shorn of unnecessary details, as per the facts recorded in order dated 24.07.2023 passed by the learned Metropolitan Magistrate, an application under Section 156(3) Cr.P.C. was preferred by the petitioner (complainant before the learned M.M.) stating that he was married to one “X” on 19.04.2017 at Sadiq Nagar, New Delhi. A few days after the marriage, his wife ‘X’ disclosed that when she was studying in Class-XI and aged about 16 years, her cousin had committed rape upon her at her residence. She further disclosed that when she informed her mother, she was slapped and threatened not to disclose to anyone. Further, she did not reveal it to anyone because of societal pressure, and since aforesaid time, was having anal fissure as the alleged cousin/accused had committed unnatural sex. A complaint was made by the petitioner with the police in this regard, but since no action was taken, a complaint case was preferred before the learned M.M. with an application under Section 156(3) Cr.P.C.

3. It may be noticed that an Action Taken Report was called by the learned MM from the SHO concerned, whereby it was submitted that ‘X’ wife of the petitioner was enquired on her mobile phone on 15.07.2021 and 17.05.2021 regarding the alleged incident, and the complaint lodged by the petitioner with the Police. The wife of the petitioner informed that nothing as alleged by the petitioner had ever happened. Further, she informed that the petitioner had started harassing her physically as well as for dowry. Domestic Violence proceedings, maintenance case, as well as divorce petition were stated to be pending before various forums. She further stated that petitioner wanted to defame her and denied the allegations.

4. In the aforesaid background, for the reasons recorded in order dated



24.07.2023, the learned M.M. declined to exercise powers under Section 156(3) Cr.P.C. for ordering investigation and registration of FIR but granted the complainant/petitioner an opportunity to examine himself under Section 200 Cr.P.C.

5. Aggrieved against the aforesaid order passed by the learned M.M., a Revision Petition was preferred by the petitioner before the learned Additional Sessions Judge, which was dismissed vide order dated 10.10.2023.

6. Present petition has thereafter been preferred under Section 482 Cr.P.C. by the petitioner, who is a practicing Advocate at Saket District Court and has argued the same in person.

7. In nutshell, the grievance of the petitioner is that both learned M.M. as well as Additional Sessions Judge misdirected themselves by not directing the registration of FIR, since the facts disclosed commission of cognizable offence and the evidence could only be collected by the Police. It is further submitted that he has recordings in his possession, which could prove the conversation exchanged by him with his wife/family members as to commission of offence as conveyed to him by his wife. During the course of submissions, reliance is further placed upon ***Raj Kumar & Anr. v. State***, CRL.A. 484/2015 decided by Delhi High Court on 26 June, 2023; ***Suresh Garodia v. the State of Assam and Another***, CRL.A. 185/2024, decided by Hon'ble Supreme Court of India on January 9, 2024 and ***Shaikh Anees v. The State of Maharashtra***, CRL.A 559/2019, decided by High Court of Bombay on 5 August 2022.

8. It is pertinent to note that in the Action Taken Report filed by the Police, it was submitted that wife of the petitioner does not have any



grievance and had denied any such incident as already noticed above. Merely because an information was allegedly disclosed by his wife regarding commission of offence to the petitioner, it cannot give rise to the cause of action when the 'wife of the petitioner' herself has categorically denied any such offence having been committed by her cousin. Obviously, petitioner who is an Advocate intends to obliquely use the proceedings and gain some advantage in the pending matrimonial proceedings against his wife.

9. It is pertinent to observe that when an application under Section 156(3) Cr.P.C. is filed by an applicant, the Magistrate is empowered to verify the veracity of complaint by calling of Action Taken Report to ascertain if any action has been taken by the Police and also ensure that complaint may not have been filed with oblique motives to harass a person or settle the scores. It may also be noticed that a Police Officer under Section 157(1)(b) Cr.P.C. may not investigate the case, if it appears to such officer that there is no sufficient ground for entering on an investigation, and should inform the complainant in the prescribed manner. The power to direct investigation under Section 156(3) Cr.P.C. is crucial in the sense that if directions are issued to Officer-in-Charge of a Police Station to investigate the complaint, it takes away the discretion vested in such Officer under Section 157(1)(b) Cr.P.C. to not to investigate the case and bounds him to carry out the directions for investigation given by the Magistrate. The application of judicial mind by the MM while exercising power under Section 156(3) Cr.P.C. is of utmost importance not only to assess the disclosure of commission of cognizable offence but to rule out the possibility of harassment by unscrupulous elements by making bald allegations. The *locus standi* of the complainant, if made on behalf of another person can also be



looked into by the Magistrate and he has to be satisfied as to the need of investigation in the matter. If the allegations are vague and non-specific, the directions may not be issued for registration of FIR, since the power to investigate under Section 156(3) Cr.P.C. on one end intends to check arbitrariness by the police authorities to not to carry out investigation in cases where it is warranted, and on the other hand also to ensure that same is not invoked at whims and fancies of the complainant. Merely alleging disclosure of cognizable offence may not be sufficient to issue directions under Section 156(3) Cr.P.C. if the same lacks credibility and is bereft of necessary details as to the time and date of commission of offence and appears to be perverted litigation.

10. In the present case, wife of the petitioner is under no handicap and did not come forward with any complaint or allegations of commission of offence as alleged by the petitioner.

Any such allegation of rape not only puts a question mark on dignity of 'X' but also may lead to harassment and affect reputation and life of another person. The Action Taken Report by Police cannot be brushed aside lightly. Having received the communication from the complainant that no such incident had occurred, the police rightly exercised the discretion to not to register the FIR as it would have been a futile exercise. However, despite the Action Taken Report being on record, the petitioner persisted with the aforesaid complaint and also filed the Criminal Revision Petition before the learned Additional Sessions Judge, which was rightly dismissed.

11. The petitioner does not have *locus standi* to file the complaint in the facts and circumstances of the case in the face of denial by his wife of any alleged offence to have been committed. The proceedings appear to be



prima facie initiated with oblique motives with an intention to gain some advantage in proceedings against his wife 'X'. The wheels of criminal justice system cannot be permitted to be clogged by frivolous complaints wherein the victim herself does not have a grievance but the same is maliciously filed on her behalf. This may be an agonizing way of harassment not only to the spouse but a person who may be innocently framed and prosecuted. The provision of Section 156(3) Cr.P.C. which empowers a Magistrate to direct the police to register a case and investigate cannot be permitted to be abused as sought by the petitioner. The Magistrate is bound to apply his judicial mind to the complaint and appears to have rightly refused the registration of FIR exercising power under Section 156(3) Cr.P.C.

The prayer made by the petitioner for directions to investigate and register an FIR under Section 156(3) Cr.P.C. defy any logic or prudence, since any such incident of commission of offence has been categorically denied by the wife of the petitioner. The authorities cited by the petitioner are distinguishable.

The petition being without any merits, is dismissed with a cost of Rs.25,000/- (Rupees Twenty Five Thousand Only) to be paid to Delhi High Court Legal Services Committee within eight weeks.

Pending application, if any, also stands disposed of. A copy of this order be forwarded to the learned Trial Court for information.

ANOOP KUMAR MENDIRATTA, J.

JANUARY 23, 2024/akc/sd

