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

% **Pronounced on: 17th August, 2022**

\+ CRL.M.C. 3456/2018, CRL.M.As.12562/2018, 29179/2018 & 14684/2020

SYED SHAHNAWAZ HUSSAIN .....Petitioners

Through: Mr. Siddharth Luthra and Ms. Geeta Luthra, Senior Advocates with Mr. Vineet Malhotra, Mr. Vikas Arora, Ms. Shivani Luthra Lohiya, Ms. Asmita, Ms. Apoorva Maheshwari and Mr. Vishal Gohsi, Advocates

Versus

THE STATE & ANR. .....Respondents

Through: Mr. Ritesh Kumar Bahri, APP for the State with Inspector Manoj Kumar and SI Eshter Dazi Duo
Mr. Sanjiv Kumar Singh, Advocate for R-2

**CORAM:**
**HON'BLE MS. JUSTICE ASHA MENON**

**J U D G M E N T**

1. This petition has been filed under Section 482 of the Code of Criminal Procedure ("Cr.P.C.", for short) against the judgment of the learned Special Judge (PC Act), CBI-01(South), Saket Courts, New Delhi dated 12th July, 2018 dismissing the revision petition preferred by the present petitioner against the orders of the learned Metropolitan Magistrate-05 (South), Saket Courts, New Delhi dated 7th July, 2018 passed in a complaint case filed by the respondent No.2.

2. The relevant facts leading up to the present petition may be briefly stated. The respondent No.2 had filed a complaint case under Section 200 Cr.P.C. read with Section 190 Cr.P.C. alleging the commission of offences under Section 376/328/120B/506 of the Indian Penal Code (IPC for short) by the petitioner herein. Along with the said complaint, she also filed an application under Section 156(3) Cr.P.C. seeking directions to the Police for the registration of an FIR against the petitioner for the commission of the said offences under Sections 376/328/120B/506 IPC. This complaint was filed on 21st June, 2018 which was listed before the learned MM on 25th June, 2018 when an Action Taken Report (ATR) was called from the SHO. A report was apparently filed by the Police on 4th July, 2018 concluding that as per the inquiry the allegations raised by the complainant were not found to be substantiated.

3. The grievance of the petitioner is that despite the receipt of this report, the learned MM vide orders dated 7th July, 2018 directed the registration of an FIR following the decision of the Supreme Court in ***Lalita Kumari vs. Government of Uttar Pradesh***(2014) 2 SCC 1. On the same day, vide separate orders, two other applications were also disposed of, one seeking the recording of the statement of the complainant under Section 164 Cr.P.C. and the other for carrying out the medical examination of the prosecutrix and the alleged accused.

4. Aggrieved by these orders, the present petitioner preferred a revision. The same was disposed of by the learned Special Judge (PC Act), CBI-01(South) vide order dated 12th July, 2018 holding that there were no infirmities in the two orders and dismissed the revision petition. It observed that the Criminal Amendment Act of 2013 had made it

mandatory for the Police to record the statement of the victim under Section 164 Cr.P.C. in cases punishable under Section 376 IPC. Moreover, with regard to the registration of the FIR, it concluded that the inquiry which had been made was only a preliminary inquiry and the learned MM had rightly not treated the ATR as a cancellation report. As registration of an FIR is only for a proper investigation of the matter and after detailed investigation, if the police still came to the conclusion that no offence was made out, it was not precluded from filing a cancellation report.

5. It is the submission of Mr. Siddharth Luthra, learned senior counsel for the petitioner that the learned MM had not disclosed reasons for directing the registration of FIR and the learned Special Judge erred in upholding the said order despite noticing this fact. It was submitted that when a detailed ATR had been submitted, the learned MM had to consider the same while directing registration of an FIR but in the instant case there was not a single reference to the detailed ATR. It was submitted that the directions under Section 156(3) Cr.P.C. could have been issued only if it was evident that the complainant had approached the police under Section 154(1) or the senior officers under Section 154(3)Cr.P.C. The learned senior counsel submitted that there is no complaint on record addressed to the SHO and therefore, the complaint to the DCP did not meet the requirements under Section 154 Cr.P.C. . Reliance in this regard has been placed on ***Priyanka Srivastava v. State of U.P.***, (2015) 6 SCC 287 and ***Lalita Kumari*** (supra).Thus, without approaching the police, by straightway coming to the court and requiring the registration of an FIR was in complete violation of the law. Hence,

the impugned order was required to be quashed.

6. It was further submitted that the investigation by the police completely falsified the case of the complainant that she and the petitioner were together at Chattarpur Farms where she had been drugged and raped by the petitioner. It was submitted that the petitioner had not moved from his residence after 9:15 PM and, therefore, could not have been in Chattarpur at 10:30 PM as alleged by the prosecutrix. Furthermore, witnesses at the Roshan Tent House, where the prosecutrix claims to have met the petitioner, have not confirmed this fact nor did the CCTV footage support her claim. Moreover, the witnesses at the Farmhouse have also disputed her claim that she and the accused had been to the Farmhouse on 12th April, 2018 as alleged by her. It was submitted that the CDRs of the prosecutrix also disclosed that she had remained in Dwarka till 10:45 PM. Thus, her entire case has been falsified by the investigations and, therefore, the learned MM and the learned Special Judge had erred in directing the registration of the FIR and these orders were liable to be set aside and the FIR as well as the complaint case and all the proceedings arising therefrom ought to be quashed.

7. Mr. Ritesh Kumar Bahri, learned APP for the State submitted that two courts have given concurrent decisions and the second revision petition was not permissible. Reliance has been placed on the decision of the Madhya Pradesh High Court in ***Shyam Kushwah vs. State of M.P. & Anr*** [Order dated 15.02.2022 in MCRC No.31640/2021] to submit that alibi is a defence which the accused will have to prove by leading cogent evidence and that such a disputed question on fact particularly being the

defence of the accused cannot be adjudicated in proceedings under Section 482 Cr.P.C. The learned APP for the State also submitted that in the light of the directions issued by the Supreme Court in ***Lalita Kumari*** (supra), the FIR had to be registered and for that reason alone there was no infirmity in the impugned orders of the learned MM as well as those of the learned Special Judge.

8. Mr. Sanjiv Kumar Singh, learned counsel for the respondent No.2 submitted that a complaint had been submitted to the police, namely, on 26th April, 2018 detailing the commission of the offence. Thereafter, a written complaint was also given to the SHO Mehrauli which was not receipted. There was pressure on her to withdraw these complaints but she was not amenable to such pressures. When no action was taken by the police, she was compelled to file an application under Section 156(3) Cr.P.C.. It was submitted that she had also submitted a complaint to the Vigilance Department. It was the contention of the learned counsel for the respondent No.2 that since she had moved the superior Police Officers twice there was due compliance of Section 154(3) Cr.P.C. and for that reason, the complaint filed on 21st June, 2018 alongwith the application under Section 156(3) had been validly filed.

9. It was the contention of the learned counsel for the respondent No.2 that the learned Special Judge had felt that the ATR submitted by the police did not reflect detailed investigation and therefore, rightly held that there was no occasion for the learned MM to treat that report as a cancellation report. It was also submitted that the observations in the impugned order of the learned Special Judge reflected the complicity of the police with the petitioner. Till date the police had not got the

statement under Section 164 Cr.P.C. of the prosecutrix recorded. Thus, there was a complete miscarriage of justice. Hence, it was prayed that the petition be dismissed.

10. In rebuttal, relying on ***Rajinder Prasad v. Bashir***, (2001) 8 SCC 522 and ***Krishnan v. Krishnaveni***, (1997) 4 SCC 241, it was submitted that the present petition was maintainable. It was also submitted that the facts in ***Shyam Kushwah*** (supra) were vastly different. It was submitted that the Status Report filed before this Court also reflected that there was no offence committed and, therefore, the observations of the learned Special Judge were no more relevant. It was further reiterated that Section 154(1) Cr.P.C. was not complied with as it is only on 26th April, 2018 that there was a receipted complaint to the Commissioner of Police and reference to an earlier complaint dated 22nd April, 2018 to the police as mentioned in another complaint filed by respondent No.2 against the petitioner and his brother was never placed before the learned MM by the complainant. Similar allegations had been made in January, 2018.That apart, the complaint was filed on 21st June, 2018 with no explanation for the two months' delay in filing it. Relying on the judgment in ***Babu Venkatesh v. State of Karnataka,*** (2022) 5 SCC 639, the learned senior counsel urged that the orders of the learned MM were unsustainable and so was the order of the learned Special Judge. Therefore, the petition be allowed and the impugned orders as also the complaint be quashed.

11. The first aspect of the case is regarding the maintainability of the present petition. It was held by the Supreme Court in ***Krishnan*** (supra) that while a second revision before the High Court after the dismissal of the first one by the Court of Sessions was barred under Section 397(3)

Cr.P.C., but nevertheless, it did not circumscribe the inherent powers of the High Court under Section 482 Cr.P.C. This is apart from the *suo moto* powers under Section 401 Cr.P.C. Thus, the High Court had continuous supervisory jurisdiction over the courts subordinate to it to examine the correctness, legality, or proprietary of any finding, sentence, or order recorded or passed as also the regularity of proceedings of all such criminal courts. The High Court has very wide inherent powers and could exercise these powers to prevent the abuse of the process or miscarriage of justice or even to correct irregularities/incorrectness of orders passed by the courts below. Thus, when the High Court on examination of the record finds that there was grave miscarriage of justice or abuse of the process of the courts or the required statutory procedures have not been complied with or there was a failure of justice or the orders passed or sentence imposed by the Magisterial/Sessions courts required correction, the High Court would be fully justified in interfering with such orders and prevent grave miscarriage of justice ensuing. However, this power is to be used sparingly and in the rarest of rare cases. This view has been reaffirmed by the Supreme Court in ***Rajinder Prasad*** (supra).

12. In the light of the stated position in law, the present petition is considered on merits.

13. The main thrust of the arguments of the learned senior counsel for the petitioner has been that the provisions of Section 154(1) Cr.P.C. have not been complied with and without such compliance, no order under Section 156(3) Cr.P.C. could have been issued. Section 154 provides that the information of cognizable offences is to be given to the police and if given orally to an officer in charge of a police station, it is to be reduced

into writing by such officer. The submission of the learned senior counsel is that the undated complaint to the Commissioner of Police received on 26th June, 2018 would not suffice as action under Section 154(1) Cr.P.C.

14. No doubt, the information with regard to a cognizable offence is to be given to the police under Section 154(1)Cr.P.C. Once the police officer receives such a complaint in a cognizable offence, investigations can commence. Additionally, under Section 156(3), any Magistrate empowered under Section 190 of the Cr.P.C. can also order such an investigation. Now, what would be the format in which an information is to be given to the officer in charge of the Police Station is not prescribed anywhere in the Cr.P.C and naturally it cannot be so. A person giving information to the officer in charge of the Police Station may do so orally or in writing and would obviously do so in their own words. It is only when the officer in charge decides to record the information that the police officer is to follow a format. In case the police officer declines to register the complaint, the complainant can send the substance of the information to a superior police officer under Section 154(3) Cr.P.C. The law thus gives the complainant the right to approach a superior officer in case of the commission of a cognizable offence.

15. To therefore say that the complaint addressed to the Commissioner of Police by the respondent No.2, which was, admittedly, received at the Office of the Commissioner of Police on 26th April, 2018, prior to the filing of the complaint on 21st June, 2018 does not fulfil the requirement of Section 154(1) Cr.P.C, is absolutely untenable. The complainant, as required in compliance of the directions issued in ***Priyanka Shrivastava*** (supra), mentioned in the complaint filed before the Magistrate about the

filing of the complaint with the police. The reference to a complaint dated 22nd April, 2018 is not in the matter at hand but some other complaint filed by respondent No.2 against the petitioner and his brother. Until those proceedings are brought as evidence in the present matter the existence or absence of a complaint dated 22nd April, 2018 would be irrelevant to the determination of the issue at hand. The copy of the complaints to the police have been annexed to the complaint. The Magistrate is not precluded from considering these documents while considering the issuance of orders under Section 156(3) Cr.P.C.

16. In fact, this complaint the respondent no.2 sent to the Commissioner of Police clearly discloses the commission of the cognizable offence of rape after administration of a stupefying substance and when this complaint was forwarded to the concerned SHO, the SHO was obligated under law to register the FIR as re-affirmed by the Supreme Court in ***Lalita Kumari*** (supra) and subsequent cases. But admittedly, in the present case, till the filing of the complaint before the Magistrate on 21stJune 2018, the SHO, PS Mehrauli had done nothing. In fact, the Status Report filed before this Court refers to the said complaint having been received at PS Mehrauli on 20th June, 2018 from the Commissioner's office. The police have a lot to explain for not having registered the FIR on the receipt of the forwarded complaint. The directions issued by the learned Trial Court to do so can hardly be described as an "irregularity" committed by the learned Trial Court and the said order calls for no interference. As a consequence of the registration of an FIR, investigations have to follow which would include the recording of the statement under Section 164 as also the medical

examination and, therefore, these orders of the learned MM also call for no interference.

17. The next question that arises is what is the nature of the report that was submitted to the learned MM by the police and whether while directing the registration of an FIR, the court ought to have discussed that report. The submissions on behalf of the petitioner were that the learned MM as also the learned Special Judge had erred in not factoring in that report. At the same time, it was urged that even on the basis of the Status Report filed before this Court, there would be no justification for the registration of the FIR or any further investigations.

18. Now, the record discloses that when the complaint along with the application under Section 156(3) Cr.P.C was filed, after hearing submissions thereon, the learned MM vide the order dated 25th June, 2018 had sought an Action Taken Report (ATR) on five aspects. The said order is reproduced hereinbelow for ready reference- :

> *Heard on the application U/s 156(3) Cr.P.C. I have perused the file. SHO, PS-is directed to file an action taken report stating the following:-*
>
> *1. Whether any complaint has been made/received by the complainant in the police station.*
>
> *2. If yes, whether any action has been taken on the complaint.*
>
> *3. Whether as a result of investigation/inquiry, any cognizable offence has been made out against the accused person and whether any action has been taken by the police.*
>
> *4. If yes, whether any FIR has been registered and status of investigation.*
>
> *5. If no cognizable offence has been made out,*

*whether the complainant has been informed accordingly.*

*Copy of the complaint alongwith the annexures be supplied to the Naib Court, PS today.*

*Put up for filing of report on 02.07.2018.*

19. The record discloses that the police did not file the ATR in terms of the directions of the learned MM. What was filed was titled as the *'reply of complaint under Section 156(3) Cr.P.C'*. Of course, in conclusion it did record that the allegations raised in the complaint have been found to be *not substantiated* and that the complaint on the basis of examination of concerned relevant witnesses, analysis of multiple CDRs, and inspection of CCTV Footage etc. establish that *the allegations leveled by the complaint are false and devoid of merits* but that the directions of the court would be abided with. The learned MM in the impugned order has recorded that the "ATR" has been received but clearly it refers to this reply. But the learned MM followed the decision in ***Lalita Kumari*** (supra), holding that the complaint revealed the commission of the cognizable offence particularly of sexual assault and directed the registration of the FIR.

20. In the Status Report filed before this Court, however, some answers appear namely, that the complaint had been received at the police station from the Commissioner's office, but clearly, till the directions were issued by the learned Trial Court, no investigations were carried out. It is also interesting to note that in the instant Status Report filed before this Court, it is mentioned that the complainant had gone to the police station on 16th June, 2018 to register a complaint but since she was not aware of the place of incident, she said she would come to the police

station the following Monday. Thus, some information had in fact been given to the Station House Officer, Mehrauli about which the so-called "reply" is completely silent. The recording of the statement of the prosecutrix on four occasions is referred to in the Status Report filed before this Court, but there is no explanation as to why the FIR was not lodged. The FIR only puts the machinery into operation. It is a foundation for investigation of the offence complained of. It is only after investigations that the police can come to the conclusion whether or not an offence had been committed and if so by whom.

21. In the present case, there seems to be a complete reluctance on the part of the police to even register an FIR. In the absence of the FIR, at best, the police could have, as correctly observed by the learned Special Judge, conducted only what is a preliminary inquiry. The very fact that it was only a reply that was filed by the police before the learned MM, sufficiently establishes that it was not a final report that was submitted by the police. The final report is required to be forwarded to the Magistrate empowered to take cognizance of the offence in a prescribed format (Section 173 (2) Cr.P.C.). There was no reason for the learned MM to have treated that reply as if it was a report under Section 173 Cr.P.C. when the FIR itself was not registered.

22. To say that the learned Trial Court had directed investigation by calling for an ATR and, therefore, the reply is to be treated as a report under Section 173(2) is a nebulous argument. As has been held by a Coordinate Bench of this Court in ***Rajni Palri Wala (Dr.) v. D. Mohan (Dr).*** 2009 SCC OnLine Del 1041, the police, even without a formal

order of the court could proceed with the investigation when a cognizable offence is disclosed. But even then, an F.I.R. must be registered and upon conclusion of such investigations, the police must submit a final report under Section 173 Cr.P.C. Even where such a report is submitted to the Magistrate, the Magistrate is not bound to accept that report and can still determine the question whether or not to take cognizance and proceed with the matter.

23. The learned MM, if was intending to treat the so-called reply as a cancellation or a Closure Report without the FIR or a report under Section 176(3) Cr.P.C., even then, would have had to issue a notice to the prosecutrix and deal with the matter including giving a right to the prosecutrix to file a protest petition. Thus, there is no force in the contention of the learned senior counsel for the petitioner that the courts below ought to have considered the reply submitted by the SHO to the complaint referred to him with specific questions by the learned MM as a Closure Report to have straightaway dismissed the complaint.

24. There is thus no perversity in the orders of the learned MM directing the registration of the FIR. There is also no error in the judgment of the learned Special Judge holding that the inquiry report being preliminary in nature cannot be considered as a cancellation report. The police after registration of an FIR and conducting a complete investigation will have to submit a report under Section 173 Cr.P.C. in the prescribed format. The learned MM would, no doubt, proceed in accordance with law to determine whether to accept the final report to either proceed with the case by taking cognizance or by holding that no case was disclosed and cancel the F.I.R after granting a hearing to the

complainant in accordance with law.

25. There is no merit in the present petition. The petition is dismissed. The interim orders stand vacated. The FIR be registered forthwith. The investigations be completed and a detailed report under Section 173 Cr.P.C. be submitted before the learned MM within three months.

26. The copy of this order be transmitted by electronic mode to the learned Trial Court who shall take further steps in accordance with law in terms of the present order.

27. The judgment be uploaded on the website forthwith.

**(ASHA MENON)**
**JUDGE**

**AUGUST 17, 2022**
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