

IN THE COURT OF SHRI DEEPAK JAGOTRA,
PRINCIPAL DISTRICT & SESSIONS JUDGE, EAST
DISTRICT, KARKARDOOMA COURTS, DELHI

CR/68/20
CNR No.DLET01-001802-2020

In the matter of;

Sh. Praveen Kakkar
S/o late Sh. Beerbal Kakkar,
R/o 16/15, Block, Geeta Colony,
Delhi-31.

..... Revisionist

Versus

- 1. State (NCT of Delhi)**
- 2. Sh. Omkar Singh**
S/o Sh. Sardar Karnail Singh
- 3. Sh. Devender Singh**
S/o Sh. Sardar Karnail Singh
- 4. Sh. Baldev Singh**
S/o Sh. Sardar Karnail Singh
- 5. Sh. Prince**
S/o Sh. Harpal Singh
- 6. Sh. Deepak**
S/o Sh. Harpal Singh
- 7. Sh. Gurvinder Singh**
S/o Not Known

**8. Sh. Saba
S/o Not Known**

**All R/o 16/14, Block,
Geeta Colony, Delhi-31.**

..... Respondents

**Date of Institution: 02-03-2020
Reserved for order on:08-03-2021
Order announced on:07-04-2021**

ORDER

1. In this revision petition under Section 397 Cr.P.C., the revisionist has challenged the order dt.31-01-2020 passed by the Court of Sh. Jitendra Pratap Singh, learned MM, East District, Karkardooma Courts, Delhi whereby the Ld. MM has dismissed the application of the revisionist filed under Section 156(3) Cr PC.

2. I have heard learned counsels for the parties and minutely gone through the record of the case.

3. Learned counsel for the revisionist has submitted that impugned orders passed are bad in the eyes of law and same may kindly be set aside.

4. On the other hand, learned counsel for respondents has prayed for the dismissal of the revision petition.

5. At its threshold the case of the revisionist is that the revisionist herein filed a complaint before the learned MM under Section 200 Cr.PC along with application under Section 156 (3) Cr. PC titled as Praveen Kakkar Vs. Omkar Singh & Ors., CIS

no. 3943/19, PS Geeta Colony alleging commission of offence under Section 307/452/341/506/120B/34 IPC by the respondents herein alleging that on 05.01.2019 in between 12.30 PM to 1.00 PM, while revisionist was going towards his house, respondents no. 2 to 8 who were already present there, stopped him and without any reason started abusing and beating him. They also threatened him to kill by sword. The revisionist got scared and became unconscious. Meanwhile someone informed the brother of revisionist namely Ajay Kakkar about the incident through phone. Ajay Kakkar reached at the spot then respondents no. 2 to 8 misbehaved with him and also threatened him to kill. Thereafter, revisionist was taken to Shri Ram Singh Hospital & Heart Institute.

6. On perusal of the Medico Legal Report of the revisionist it is found out that no bleeding and no abrasion on the body of revisionist was found.

7. Before proceeding further it would be appropriate to delineate the observations made by the Hon'ble Supreme Court of India in a case titled as **Lalita Kumari vs. Government of Uttar Pradesh and Ors., Supreme Court Cases (2014) 2 SCC** which is as follows:-

“19. Thus, this Court has laid down that while prompt registration of FIR is mandatory, checks and balances on power of police are equally important. Power of arrest or of investigation is not mechanical. It requires application of mind in the manner provided. Existence of power and its exercise are different. Delicate balance had to be maintained between the interest of society and liberty of an individual”.

8. In a judgment titled as **Ramdev Food Products Private Limited Vs. State of Gujarat, AIR 2015 SC 1742**, the apex court is pleased to observe as under:-

“Thus, we answer the first question by holding that the direction Under section 156 (3) is to be issued only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued. Cases where Magistrate has yet to determine “existence of sufficient ground to proceed”. Category of cases falling under para 120.6 in Lalita Kumari (supra) may fall Under section 202. Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case.”

9. In another celebrated judgment titled as **Pepsi Foods Ltd Vs. Special Judicial Magistrate (1998) 5 SCC 749**, it was observed as under:-

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law. The order of the Magistrate summoning the accused must reflect that he was applied his mind”.

10. From the aforesaid mandate of Hon'ble Supreme Court of India, it is clearly culled out that in all the applications filed under Section 156(3) Cr PC before the learned Magistrate it is not incumbent on the part of the trial court to give direction to the SHO to register an FIR if any cognizable offence is alleged to have been committed. Ld. Trial Court should apply its mind and having regard to the category of cases where FIR may not be required without an inquiry. FIR may not be ordered to be registered as a matter of rule rather the learned Trial court should hold an inquiry before doing so.

11. In the present case, medical record of the revisionist shows no abrasion and bleeding. Where there is requisite mensrea attracted in the present case bringing it within the four corners of provisions of criminal law is yet to be established. This fact is yet to be threshed and can only be done so by recording pre-summoning evidence. The Ld. Trial court has not found any clear material to proceed against the accused by way of registration of FIR. The best course of action is to record the statements of complainant side and then to analyse if any criminal case is made out or not giving it a colour of criminal case at this stage of the matter is not appreciable. There is absolutely no incorrectness, infirmity or impropriety in the order passed by the Ld. Trial Court.

12. In view of foregoing reason, there is no merit in the revision petition. The revision petition is hereby dismissed.
13. Copy of this order be sent to the Trial Court.
14. Revision file be consigned to Record Room.

**ANNOUNCED IN THE OPEN COURT
ON 07th APRIL, 2021**

**(DEEPAK JAGOTRA)
PRINCIPAL DISTRICT & SESSIONS JUDGE
EAST DISTRICT
KARKARDOOMA COURTS, DELHI**