

IN THE COURT OF MS AMBIKA SINGH, ASJ-02/ WEST
DISTRICT, TIS HAZARI COURTS, NEW DELHI

CNR No.DLWT01-001232-2023

CT No. 04/2023



1. **Sh. Manoj Kumar**

S/o Sahatam Chaudhary
R/o H. No. 2087/6B5,
Gali No. 21, Prem Nagar
PS Anand Parbat, Delhi-110008.

.....Complainant

Versus

1. **Jay Prakash Gupta @ Bunt**

S/o Sh. Surya Nath Gupta,

2. **Laxmi Shankar @ Kaku**

S/o Surya Nath Gupta,

3. **Vicky Gupta**

S/o Surya Nath Gupta,

4. **Surya Nath Gupta**

S/o Not Known

All residents of H. No. 2087/F7,

Gali No. 21, Baljeet Nagar,

Near hanuman Mandir,

Anand Parbat, Central Delhi-110008.

5. **Khem Chand**

S/o Late Sh. Girdhari Lal

R/o H. No. 2087/F-11

....Accused

Date when the cases reserved for order : 17.09.24

Date of announcement of order : 17.09.24

JUDGMENT

17.09.24

1. This criminal complainant filed u/s 156 (3) Cr.P.C. seeking directions against the station house officer, Hari Nagar, New Delhi to register FIR in pursuance of the complaint dated 02.06.2022 being DD No. 116A/2022 preferred by the complainant.

2. Briefly stated, it is the case that the complainant is a peace loving and law abiding citizen of India and residing at above mentioned address with his family members and belong to the Schedule Caste (Chamaar) and accused persons belongs to general caste and they have known to each other since long time as they reside in same locality. On the date 14.06.2022 at around 1:00 pm, the complainant was coming towards his house from the market, on the way, the above accused persons forced to stop the complainant on the way and starts abusing with caste related words with the complainant by saying that "Sale Bhangi Neech Chamar Tu Bahot Zyada Apne Aap Ko Neta Samajhta Hai", when the complainant oppose their misbehave and conduct, then the accused persons started beating the complainant and said that "*Tere Jaise Logo Ko Humne Aaj Tak Thik Kiya Hai*" in the presence of crowd and persons of the locality, the complainant

feel insulted in front of the public view. The complainant reached at home with great difficulty after being saved from the clutches of the accused persons and he told about the entire incident to his family members, then suddenly at around 1:30 pm, the accused persons along with 20-25 people came and attacked the complainant's house, who had hold sticks, weapons, stones and petrol in their hands, the accused no.1 and 2 started pelting stones continuously alongwith their associates and accused no.1, who had a petrol bottle in his hand and saying that "*Aaj In Sale Neech Logo Ke Ghar Mai Aag Laga Do Inhone Bhot Naak Mai Dam Kar Rakha Hai*". The complainant hide in his house with his family, the accused persons were trying to burn the house of the complainant by fire but fortunately the fire did not happen. The accused persons along with their 20-25 associates armed, started pelting stones at the complainant's house, in meanwhile, the father of the complainant namely Sahatam Chaudhary, after rescuing the complainant and his family members inside the house, came to the main door of his house and tried to make understand the accused persons that this act is not right however, instead of stopping, the accused persons and their associates become more angry and started abusing with filthy language with the complainant's father and continue to pelting stones and tried to fire the complainant's house. The father of the complainant, seeing the attack on his family and realized the plan of accused persons to set the house on fire by the accused persons and their associates and to save from stone pelting, he took out his licensed revolver to protect himself and his family and he warned everyone by saying that "*Ya To Tum Log Yaha Se Chale Jao Nahi*".

To Accha Nahi Hoga" when the complainant persuaded, his father started going back to his house after warning the unruly mob, accused no. 2 namely Laxmi Shankar @ Kaku on the instruction of accused no.1 Jai Prakash Gupta started the stone pelting on his head with the intention to cause death of father of the complainant in common intention of other accused and the accused no. 1 instructed the accused no.3 to attack on the father of the complainant which is captured in the CCTV installed at the house of the complainant but the accused persons along with their associates continue to pelting stones at the complainant's house and use vulgar and caste related words for the complainant's father and complainant and all the accused persons instigated the father of the complainant and despite persuade by the father of the complainant, they did not stop pelting stones, being compelled, the father of the complainant took his license revolver for the safety of himself and his family. When the father of the complainant had no intention of causing harm to anyone/accused persons and their associates, only for the safety of himself and his family members and home, he fired through his licensed revolver towards the land/earth but a false case was registered on the father of the complainant but the FIR of the complainant was not registered although admittedly accused persons are the first attacker and response of the father of the complainant was exclusively for protection moreover, it was never cause injury to anyone since it is made towards the land/earth. Further, the father of the complainant first made the call from his mobile to SHO, Anand Parbat at about 14:17:25 PM about the illegal criminal trespass by the accused persons and

their friends/unruly mob comprising 20-25 person came and attacked on the house of the complainant after beating the complainant and the SHO concerned namely Dharmender made assurance to the father of the complainant that immediately, he is sending the concerned beat officer namely Rajbir to save the father of the complainant. It is further evident from the record that the DD entry with regard to the incident registered at 14:23 PM about the alleged incident which shows that accused attacked first then in furtherance of their conspiracy, the father of the complainant was framed in a false case provoking, threatening and directly stone pelting.

The accused persons keep caste hatred with the complainant and his family members for a long time and they were/are continuously exploiting the complainant and his family members mentally and physically since 2018 on the ground of complainant's caste, because the accused persons are the powerful persons in the area and they provided illegal lights from Nehru Nagar Vegetables Market, to Murga Market and collect illegal money in this regard, when the complainant raised his voice against the illegal act of accused persons, the accused persons spoken to the complainant with words of assault and caste related words and then threatened to kill the complainant and his family members and it was said by the accused persons that *Tum Jante nahi ho, hamari kaha tak pahuch hai* and *Hum tujhe aur tere pariwar ko yaha se bhaga denge*. The father of the complainant is suffering from heart disease due to mental and physical torture by the accused persons, due to which the complainant's father suffered a heart attack on 13.01.2021, after

which he was immediately admitted to Shri Ganga Ram Hospital, Delhi where a stent was inserted in his heart and is still being treated continuously from Shri Ganga Ram Hospital. In relation to the incident dated 14.06.2022, a false and fabricated FIR bearing No.293/2022 U/s 307 IPC lodged in Police Station Anand Parbat, Delhi against the complainant's father, in which father of the complainant was arrested by the police officials of PS Anand Parbat, Delhi and sent him to Judicial Custody and now he is on interim medical bail, but the police officials of PS Anand Parbat has not taken any legal action against the accused persons and their associates. The complainant and his family are in extreme danger of life and property from the accused persons and their associates, at any time the accused persons and their associates can carry out any major incident.

On 04.07.2022, the complainant made written complaint to SHO of P.S. Anand Parbat, Delhi and other higher police authorities against the accused persons and their associates. A FIR no. 291/2022 was registered at PS Anand Parbat dated 13.06.2022 U/s 379 IPC by the accused no. 2 for the theft of counter, however, there was one CCTV Footage recording from Govt. CCTV installed at the house of the complainant in which the accused no. 2 himself alongwith two other person moving the said counter to another place on the night of 10.06.2022 hence entire FIR case lodged by the accused no. 2 completely falsified by this video and whole incident of 14.06.2022 was scripted in furtherance of conspiracy to implicate the father of the complainant, therefore, they hackled, provoked and attacked with the intention to cause death.

On 15.07.2022 at about 2:00 PM, the accused persons reached in front of complainant's house and they started using abusive filthy language loudly in front of public persons by saying that "*Sale Chude Chamar Bhangi Jaise Tere Ghar Par Hamla Karke Tere Papa Ko Jail Mai Bhijvaya Hai Tujhe Bhi Jail Bhijva Denge Aur Tujhe Aur Tere Pariwar Ko Marva Denge Tere Makan Aur Dukan Par Kabza Kar Lenge, Sale Chude Chamar Bhangi*". The above incident has been recorded in the CCTV Camera. Thereafter, the complainant made written complaint to the ACP, SHO, Commissioner of Police on 19.07.2022. The complainant filed the criminal complaint for lodging the FIR against the accused persons before the Ld.MM Court which is not the designated court for entertaining the SC/ST cases hence on 21.09.2022, the complainant withdrawn his complaint to file the same before the designated court and being the public servants have not followed the directions of law and neglected their official duties in this regard.

It is further prayed that an FIR be registered u/s 147/148/149/120B/307/323/427 /341/451/506/511/34 IPC, 25/27 Arms Act & 3(1) 10 SC/ST ACT and other relevant section and to investigate the said case to meet the ends of justice otherwise justice would be defeated.

3. IO/ACP Deepak Chandra has filed the reply and stated the complainant Manoj Kumar had filed the present application u/s 156 (3) Cr.P.C in which he mentioned that he belongs to Scheduled Caste community and on 14.06.2022 at around 01:00 pm, while he was returning home from the market, alleged persons namely Jai Prakash Gupta @ Bunty, Laxmi Gupta

@Kaku, Vicky Gupta, and Surya Nath Gupta, intercepted him on the way. They began verbally abusing him with derogatory caste-related remarks, stating, "*Sale Bhangi Neech Chamar Tu Bahot Zyada Apne Aap Ko Neta Samajhta Hai*". When he protested against the abuse, all the alleged persons proceeded to physically assault him, uttering statements such as, "*Tere Jaise Logo Ko Humne Aaj Tak Thik Kiun Hai*". Somehow, he reached home, and informed his family members about the entire incident. Subsequently, at around 01:30 PM, the aforementioned persons, accompanied by around 20-25 people having sticks, weapons, stones, and carrying petrol, arrived and invaded his residence. Jai Prakash and Laxmi Gupta initiated assault by throwing stones. Jai Prakash, who held a bottle of petrol, exclaimed, "*Aaj In Sale Neech Logo Ke Ghar Mai Aag Laga*". The complainant further alleged that his father, Sahatam Chaudhary, approached the main door of his house and attempted to know the reason behind all this with the alleged persons. However, instead of stopping, the accused persons and their associates used filthy language and continued to throw stones at his father and attempted to set his house ablaze. In order to protect himself and his family from the barrage of stones, Sahatam Chaudhary retrieved his licensed revolver and issued a warning, stating, "*Ya To Tum Log Yaha Se Chale Jao Nahi To Accha Naht Hoga*". Thereafter, at the instruction of Jai Prakash, Laxmi Gupta, targeted Sahatam Chaudhary's head with the intention to kill him. This entire incident was captured by the CCTV camera installed at his house. Despite the warning and the use of vulgar and caste-related language by the alleged persons, father of the

complainant Sahatam Chaudhary had no other option then to fire in self defence. However, a false case was registered against his father Sahatam Chaudhary. Complainant also alleged that on 15.07.2022 at about 2:00 PM, the alleged persons gathered in front of his house and began verbally abusing him. They used caste derogatory remarks again. As per the complainant this incident was also captured by the CCTV camera. The complainant reported this incident to the police on July 19, 2022, but action was taken by the Police. A detailed enquiry into the matter was conducted by the officials. During the course of enquiry, the complainant joined the enquiry and produced his caste certificate. Further the complainant alleged that both the incidents have been committed by alleged persons in a public view to tarnish his image and insult him in the society. He mentioned that both those incidents on 14.06.2022 and 15.07.2022 were witnessed by two witnesses Saroj Devi and Hari Ram. However, the complainant has given in writing that both the witnesses can not depose during the course of inquiry, they can only be examined in the Court. It is also pertinent to mention here that Hari Ram & Ms. Saroj Devi are real uncle & aunt of complainant. The alleged Jai Prakash Gupta@Bunty and his brother Laxmi Kaku has joined the enquiry and they denied all the allegations leveled by the complainant and referred the present complaint as a replica to case FIR No. 293/22, U/S 307/308 IPC, PS. Anand Parbat in which the complainant's father Satatam Chaudhary is still running in judicial custody

Thereafter, local enquiry was also conducted in the vicinity and it was found that during enquiry no independent witness had

come forward to substantiate the allegations leveled by the complainant

Inspr. Dharmendra Kumar has corroborated the fact that Sahatam Chaudhary had made a phone call on the official mobile number of SHO/AP at around 02:17 PM on 14.06.2022 but this call was made after the incident of firing which took place at around 01:30 PM only. It is also pertinent to mention here that after the incident of firing, some abusive word was used by alleged Jai Prakash but not a single caste derogatory remark. It has also come to light that after firing by Sahatam Chaudhary stone pelting was done by Laxmi at around 2:23 PM, a PCR call GD No. 42A was Received at the P.S regarding quarrel, firing and one person is injured. On reaching the spot it was found that the injured has been shifted to RML Hospital by his friend. Thereafter, the Hospital was visited where injured Pradeep S/o Liladhar R/o 2088/8A, Street No 18. Prem Nagar, Anand Parbal, Delhi age 32 years was found under treatment on MLC No. 120292/22 with A/H/O Gunshot wound Statement of eyewitness Laxmi Gupta @ Kaku was recorded in which he stated that there was property dispute with accused Sahatam Chaudhary. On 14.06.2022, some hot words exchanged with the present complainant Manoj but accused Sahatam Chaudhary fired two Revolver shots towards the complainant and his elder brother Jai Prakash Gupta but the bullets hit on a bike rider. During investigation, the CCTV cameras which was installed at the spot was checked in which it is clearly seen that accused Sahatam Chaudhary fired Revolver shot towards the Laxmi Narayan Gupta and his elder brother Jai Prakash Gupta. Accused Sahatam

Chaudhary who is the father of the present complainant was arrested and used revolver with two used cartridges were recovered from his house. Presently accused Sahatam Chaudhary is in J/c and the case is pending trial.

The CCTV footage of the incident dated 14.06.2022, was checked and it has been revealed that alleged Laxmi Gupta throw stone/piece of brick two three times after the firing. At the time of incident only Jai Prakash and Laxmi Gupta were present in front of the house of the complainant. Jai Prakash having his mobile in hand and he was recording

The CCTV footage of the incident dated 15.07.2022 provided by the complainant was checked and it came to notice that complainant and other alleged Jai Prakash are present in front of house of the complainant but no conversation is notices between them. It is also pertinent to mention here the said CCTV footage is without voice recording. Therefore, the incident dated 15.07.2022 is also without any evidence. It is also worth mentioning here that the complainant had neither made any PCR call regarding both alleged incidents nor reported the matter in P.S on the same day

It has come to notice from the enquiry conducted so far that on 13.06.2022 alleged Laxmi Gupta @ Kaku has got registered FIR No. 291/22, U/S 379 IPC, PS. Anand Parbat regarding theft of his iron counter, cylinder etc. On 14-06-2022 when he was taking photographs of scene of crime which was objected by father of complainant. This altercation/quarrel resulted in the incident of firing by father of complainant and a case vide FIR No. 293/22, U/S 307 IPC & 25/27 Arms Act, P.S.

Anand Parbat was registered against him. In this case father of the complainant was arrested who is still in judicial custody. As per the enquiry/investigation conducted so far and on the perusal of CCTV footage (as the footage dated 14.06.2022 does not bear any caste derogatory remark as alleged while CCTV Footage dated 15.07.2022 is without any voice recording/audio). The allegations levelled by the complainant seems to be false, fabricated and motivated in nature to counter FIR No. 293/22 of P.S. Aannd Parbat.

4. I have perused the application as well as the status report and have gone through the statements, so recorded by the police, during inquiry.

5. Before proceeding further let the Case Law on the subject be analyzed. In the case of ***Skipper Beverages Pvt. Ltd. Vs. State 2001 (92) DLT 217***, after taking note of the judgment of Apex Court in ***“Suresh Chand Jain Vs. State of Madhya Pradesh” 2001 (1) Supreme 129***, the Hon'ble High Court of Delhi dealt with this question. The relevant paragraphs of that judgments are reproduced here as under:-

“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 has 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 order under Sec. 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 u/s 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 129** titled **“Suresh Chand Jain Vs. State of Madhya Pradesh and Ors.”**

“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 empower 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 inquiry under Chapter XV and proceed against the accused if required. Therefore, *the Magistrate, must apply him mind before passing an under U/s 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.*”

6. Similar, Hon'ble Allahabad High Court in the case titled as **“Gulab Chand Upadhyay Vs. State of UP, 2002(2) Crimes, 488,** observed as under:-

“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 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) of Cr.PC order investigation, even through of a limited nature.”

7. Applying the aforesaid principles of law on facts and circumstances of case, this court is opinion that there is no requirement of investigation on behalf of the police as the evidence to prove the offence if any, are within the knowledge, reach and control of complainant herself. In the given facts and circumstances, nothing has to be recovered from the alleged accused persons and the allegations made in the complaint are subject matter of trial and further, the custodial interrogation of alleged accused persons is not necessary and the complainant is in possession to produce the evidence and all the f, accordingly, I found no ground to give directions u/s 156 (3) Cr. PC for registration of FIR.

In view of the same, application u/s 156(3) Cr.P.C is accordingly stands dismissed. However, Complainant is given opportunity to lead pre-summoning evidence in support of his case.

Put up for pre-summoning evidence on **20.12.24**.

**Announced in the open court
on 17.09.24**

**(Ambika Singh)
ASJ-02/THC, West/Delhi
17.09.24**