

ORDER BELOW EXH.1 IN CRI. M.A.NO. 2074/2023
(Mansi Salvi Vs. Vivekanand Singh and others)

1) Read application / complaint and affidavit of the applicant / complainant. The learned advocate of the complainant stated that complainant is fashion designer. The complainant was searching shop for her business. The complainant approached to accused no.3 who is estate agent. The complainant had taken shop on leave and license for 3 years from accused no.1 and 2 through accused no.3 by registered agreement vide no. 9998/2021 dated 17/08/2021. The complainant has paid Rs. 1,00,000/- towards security deposit. The complainant has paid amount of Rs. 17,000/- monthly rent to the accused. The complainant further stated that she had material of clothes, designer material, blouse and dress material, western dresses, gowns, jeans, t-shirts, formal dress in the boutique took on leave and license.

2) The complainant has kept Paytm machine, passbook, cheque book, printer and other personal documents in the shop. The complainant has started her business in the said shop. The complainant has installed CCTV, DVR in the said shop. The complainant started new business, as she must enrolled for GST number, she approached to GST department in government office for new GST number. The complainant came to know that shop number is different in leave and license agreement and electricity bill and property tax receipt. There were three names mentioned in

government authorities as owner. As there is error in documents, GST authority reluctant to give GST number to the complainant. The complainant stated this query to the accused, but they had given evasive reply.

3) There was leakage started in the gala so the material lying in the shop were damaged. The complainant stated the said fact to the accused no.1 and 2 through accused no.3. The complainant has suffered loss amount of Rs. 2,50,000/-. The accused shown sympathy towards the complainant. Thereafter, accused no. 1 to 3 forced the complainant to leave the premises. The accused threatened the complainant that they will not give back the deposit amount. The complainant has suffered mental harassment from the accused. The complainant has sent legal notice to the accused on 03/10/2022. The accused no. 1 to 3 replied the said notice. The complainant on 15/02/2023 went to the boutique. That time complainant came to know that some unknown person sealed the lock of shop through wielding. The complainant lodged the complaint against the accused no.1 to 3 in Kasarwadavli police station.

4) On 25/02/2023 son of accused no. 1 and 2 threw the railing box of shutter of shop. The complainant filed application in Kasaarwadavli police station. The complainant opened the said shop with the aid of police. On 31/03/2023 accused no.1 to 3 and

their sons alongwith 4 to 5 unknown persons entered in said shop and throw all the material and stocks lying in the shop outside of shop. The cost of material is of Rs.7,00,000/- to Rs.8,00,000/-. The complainant seen all incidents in her CCTV. The complainant rushed to the shop. The complainant obstruct illegal activity of the accused. That time son of accused no.1 and 2 abused and assaulted the complainant and her mother. They pushed the complainant outside of the shop and outrage her modesty. The complainant rushed the kasarwadavli police station. But police did not take cognizance of the complaint. The CCTV footage of the incident happened on 15/02/2023 and 31/03/2023 deleted by the accused as the DVR is in the custody of the accused no. 1, 2 and 4.

5) Heard Ld. Advocate for the applicant / complainant. This application / complaint is filed for the offence under Section 420, 452, 354, 354D, 323, 504, 506 read with 34 of the Indian Penal Code. The applicant / complainant requested for direction of investigation under section 156(3) of Cr.P.C.

6) Heard learned advocate of the complainant. First of all while referring Section 154 of Criminal Procedure Code, which states that upon receiving information about commission of a ***cognizable offence***, whether oral or written, the Officer in charge of the police station shall record an FIR in that regard, which clearly states that for filing of FIR (First Information Report) commission of cognizable offence is necessary. I have gone through the

provision of section 156(3) of Criminal Procedure Code. The application is supported by the affidavit.

7) The complainant has prayed for directing officer in charge of Kasarwadavli Police Station to carry out necessary and incidental direction with regard to investigation in the present case. The compliance of 154(3) is a sine qua non for maintain an application under section 156(3) of the Criminal Procedure Code. The complainant has sent the compliant to commissioner of police. Prima facie offence is cognizable in nature. However, Kasarwadavli police station did not register the FIR. In these circumstances it would necessary to investigate the crime through police.

8) learned advocate of the complainant relied on documents of leave and license agreement, tax bill and electricity bill. The leave and license agreement executed between the complainant and accused no. 1. The complainant has filed photographs to show that accused persons throw the material of the complainant's shop outside the gala. The leave and license agreement prima facie show that, it was executed for 36 months from 10/08/2021 to 09/08/2024. As per contention of the complainant, during existence of agreement accused thrown the shop material outside the gala. The email copy prima facie shows that accused kept all belongings of the complainant outside the shop without her permission. The incidents stated by the complainant necessary to be investigated thorough police.

9) After considering the allegations levelled against accused persons and documents filed in that effect, I find substance in the said matter and prima facie reveal commission of cognizable offence. Hence, it is necessary to direct officer in charge of Kasarwadavli Police Station to file report regarding the investigation in the said matter. In my opinion the investigation is required by the police machinery as prima facie evidence disclose the same. There is no reason to reject the application and treat this application as a complaint when the police investigation is must in the present case. Thus, I pass the following order:-

:- ORDER :-

1. The application is allowed.
2. The Police Inspector, Kasarwadavli Police Station is directed to investigate the allegations made in the complaint *vide* Section 156(3) of Code of Criminal Procedure.
3. Police officer in charge of Kasarwadavli is hereby directed to register FIR and submit further report as per rule and law as earlier as possible.
4. Informed the concern police station. The copy of the application, order and xerox copies of concern documents be sent to the police machinery for investigation.
5. This application is disposed off.

Thane
Date : 16/08/2023

(P. S. Dhumal)
9th Judicial Magistrate F.C., Thane.