

:- ORDER BELOW EXH.1 IN 76/SW/2022 :-

1. By way of present application complainant prayed for the direction u/s. 156(3) of Cr.PC to the concerned police station to registered the FIR under Sections 420, 406, 378, 379, 441, 442, 451, 467, 468 and 120-B r/w. 34 of the IPC against accused.

2. It is contended in the application that proposed accused are the relatives of each other. Accused no.1 to 3 have initiated the procedure of creating third party rights in the name of accused no.4. Mr. Kashyap Ravalia executed the Power of Attorney between him and the complainant in the year 2015 which granted power to the complainant to sell the property. Accused nos. 1 to 3 in connivance of accused no.4 illegally broke the security lock of the flat i.e. Flat no.6, Tulsi Bhavan, Near Mahalaxmi Temple, Mumbai-26 and entered into the said flat of the complainant and stolen valuable documents, goods and ancestral jewelery from the house of the complainant. Thus, he prayed for direction to registered the FIR.

3. Head Ld. Counsel of the accused. He submitted that written complaint was given to the police but police failed to registered the FIR. The Ld. Advocate of the complainant has relied on the judgment in the case of **Lalita Kumari Vs. Govt of UP reported in (2014) 2 SSC** wherein it was held that registration of FIR is mandatory if complaint of cognizable offence is made to the police station. Similarly, he also relied on the Judgment in the case of **Priyanka Srivastava Vs. State of Uttar Pradesh reported in Criminal appeal No. 781 of 2012** wherein

4. Record shows that accused have broken the lock of the flat, entered and stolen some documents, goods and ancestral jewelry. However,

prima facie it does not mean that forgery or house trace pass is committed. There are specific allegation regarding the criminal breach of trust, forgery, house tracepass etc but considering the relation between the parties and dispute over property, it will not proper to direct the concern police station to registered the FIR under Section 153 (3) of the Cr.PC. Instead of this it will be proper to treat this application as complaint under Section 2(d) of the Cr.PC and keep the matter for verification under Section 200 of the Cr.PC. Hence, I pass the following order -

:- O R D E R :-

1. The prayer for seeking the direction under Section 156(3) of the Cr.P.C. is rejected.
2. The complainant is at liberty to proceed under Section 200 of the Cr.P.C.

Mumbai.
Date :- 16/02/2023.
Ppk/-

-sd/-
(N. A. Patel)
Metropolitan Magistrate,
40th Court, Girgaon, Mumbai.