

24.03.2023

At 4.00 p.m.

Present: None.

1. Vide this order, I shall dispose off the application filed by the complainant u/s 156(3) Cr.P.C. seeking registration of FIR against the respondents.
2. For the sake of brevity, the facts averred in the complaint are not reproduced here.
3. Action taken report was filed by SI Sandeep as per which complainant alleged that respondent got mutated land bearing No. 46/2, Village Kheda Kalan, Delhi measuring two Bighas in their favour and currently has possession of the above said land. It is also mentioned in the ATR that during enquiry, statement of alleged persons was recorded and that alleged person also produced the ownership documents with respect to the purchase of the above said land in the year 1995 from one Gobind Ram through sale deed document. As per the ATR, a civil suit vide suit no. 650/2019 is pending adjudication in Rohini Court Delhi between the parties and the present case is found to be civil in nature.
4. In the judgment titled as ***Subhkaran Luharuka and Anr. Vs. State (Govt. of NCT of Delhi) & anr., 2010 (3) JCC 1972 of Hon'ble High Court of Delhi***, certain guidelines were enumerated pertaining to applications u/s 156 (3) Cr.PC. One such guideline is as follows:

“Of course, it is open to the Magistrate to proceed under Chapter XII of the code when an application under Section 156 (3) of the Code is also filed alongwith a Complaint under Section 200 of the Code if the Magistrate decides not to take cognizance of the Complaint. However, in that case, the Magistrate, before passing any order to proceed under Chapter XII, should not only satisfy himself about the pre-requisites as aforesaid, but, additionally, he should also be satisfied that it is necessary to direct Police investigation in the

matter for collection of evidence which is neither in the possession of the complainant nor can be produced by the witnesses on being summoned by the Court at the instance of complainant, and the matter is such which calls for investigation by a State agency. The Magistrate must pass an order giving cogent reasons as to why he intends to proceed under Chapter XII instead of Chapter XV of the Code.”

5. It is a settled proposition of law that although the magistrate has power to direct the police to register a case and initiate investigations, the same should be exercised judiciously and not in a mechanical manner. Reference may be taken from the decision of the ***Hon'ble Delhi High Court in the case of M/s Skipper Beverages Pvt. Ltd. vs. State 92 (2001) DLT 217***, wherein the Hon'ble Court has interalia held the following:

“7. 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 orders under section 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 the magistrate even under section 202(1) of the Code after taking cognizance under Chapter XV of the Code as held by Apex Court in 2001 (1) Supreme Page 129 titled 'Suresh Chand Jain vs. State of Madhya Pradesh & Ors.

10. 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 empowers 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 enquiry under Chapter XV and proceed against the accused if required. Therefore, a Magistrate, must apply his mind before passing an order under section 156(2) 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. The complainant during his arguments has relied upon the judgment of ***Lalita Kumari vs. State of U.P., 2013 (6) CTC 353***, however, the said judgment only deals with the duties of the police and does not direct the Magistrate to order registration of FIR under section 156 (3) Cr.PC in each and every case. It should be noted that direction for registration of FIR U/s 156 (3) Cr.PC is a serious matter and cannot be given in a mechanical manner. In ***Sukhwasi vs. State of U.P. 2007 (59) ACC 739***, it has been observed that the objective of the police investigation is collection of evidence regarding the offence.

Therefore, police investigation is necessary only in those cases where the evidence is neither in the possession of the complainant nor can be produced by the witnesses on being summoned at the instance of the complainant or where the nature of the evidence is technical. Further, in ***Vikrant Kapoor vs. State and Anr. 2012 IV AD Delhi***, it has been observed in the case where the complainant is in possession of evidence to prove allegations, there should be no need to pass an order u/s 156 (3) Cr.PC.

7. In the instant case, as per the ATR, a civil suit is already pending between the complainant and the respondents before Rohini Courts. Upon clarification, it is submitted by the complainant that the complainant came to know in the year 2012 that respondent has used forged documents and muted the said property in his favour. The complainant could not provide any justification as to why the present application is moved after lapse of ten years. *Nonetheless*, the complainant is aware of the witnesses who are to be examined and / or in possession of complete details of the complaint / documents. The mode and manner in which the alleged offence is stated to have been committed is clear, identity of the accused is also not to be established. As per the submissions, identity of the accused persons is known to the complainant. The complainant has brought nothing on record to suggest as to what evidence is required to be collected through police investigation.

Therefore, the offence committed if any may be proved by leading evidence by the complainant himself. No active or passive assistance required from the state machinery for investigation. Therefore, there is no requirement of police investigation in this case for the purpose of collection of evidence. The case, if any, can be proved by the evidence of the complainant. If any further evidence would be required, the same can be summoned by the court at the required stage u/s 202 Cr.PC.

Therefore, in view of the above discussion the present application filed u/s 156 (3) Cr.PC is dismissed.

Now to come up for PSE on 08.06.2023.

(AJAY NARWAL)
MM-02/North/Rohini/Delhi
24.03.2023