

In the court of Sh. Pankaj Arora, MM-03 (West), THC, Delhi

CC No. 9354/19
PS NihalVihar

Sant Kumar
Vs.
Archana&Ors.

(At 11:30 AM)

22.07.2020 (PROCEEDINGS CONDUCTED THROUGH CISCO
WEBEX MEETING ID 919211305)

Present: Ld. Counsel Sh. Santosh Kumar for the complainant.

Submissions heard.

Put up for orders at 2.00 PM.



(PANKAJ ARORA)
M.M-03 (West), THC, Delhi
22.07.2020

(At 2 PM)

Present: None.

By this order I shall dispose off an application U/s 156(3) Cr. P.C. moved on behalf of the applicant/complainant thereby seeking directions to register an FIR.

Brief facts of the present case as stated by the complainant are that accused no. 2 is mother and accused no. 3 is brother of accused no.1 and all the accused are residing at abovementioned address. All the accused were looking for opportunity to kill the complainant because all the property could be acquired by them wrongfully or dishonestly.

It is further stated that accused no.1 assaulted complainant multiple times by using household items and other harmful and dangerous



articles. She used to abuse complainant not only inside the house but also in his office as and when she visits there.

It is further stated that the applicant/complainant was being beaten up and abused by them continuously. On 07.09.2018, accused no.1 threatened complainant to kill and kicked complainant out of his own house with the help of other co-accused or relatives and mother Kalawati, therefore, on 08.09.2018, complainant made complaint to police i.e. SHO NIhal Vihar in writing for the safety of his life.

It is further stated on 01.12.2018, complainant came home late from the office and accused no.1 was in the kitchen. She said, "Tera dusri ladkiyo ke sath sambandh he isliye to office jaldi jata he aur der se office se aata he" and she used to do same thing with the applicant/complainant every day. Upon such statement, complainant replied her politely that "please live with me peaceful otherwise leave me forever". Suddenly she came out of the kitchen and thrashed complainant by "**BELAN**" over his head then over his leg and he got hurt and it was paining. On the same day, after sometime, accused no.1 called her mother Kalawati i.e. accused no.2, her brother Fateh i.e. accused no. 3 and 6-7 other relatives.

It is further stated that all the accused persons kicked the complainant, thrashed him and dragged him on the floor and he was feeling totally helpless, somehow, he managed to run away from there otherwise he could have been killed by them. Thereafter, complainant reached at his uncle's house who is residing at Nangli, PremVihar, Najafgarh, New Delhi then after he called one boy who took the complainant to the hospital in emergency ward of DEEN DAYAL HOSPITAL. Complainant was badly thrashed, got hurt and was assaulted by all accused. Because of that, complainant's chest and his back were paining and his right leg got injured



then he got plaster over his leg. The whole body was paining because of heavy beating given by all accused.

It is further stated that. thereafter, complainant went to police station to lodge complaint but they did not register his complaint.

As per the ATR filed by the IO/ASI Jai Bhagwan, it is stated that present complaint is filed only to avoid payment of maintenance as per the mediation settlement and matter was reported for the very first time on 11/10/19 vide DD No. 28B i.e. after about 10 months from the date of incident.

Here it is relevant to look into the judgment of Hon'ble Delhi High Court in the mater of **Sh. Subhakaran Luharuka Vs. State Cr.M.L NOS. 6122-23/2005 and 6133-34/2005**, the Hon'ble High Court of Delhi circulated the following guidelines for the Magistrates dealing with the application under Section 156 (3) Cr.P.C.

1. Whenever a Magistrate is called upon to pass orders under Section 156(3) of the Code, at the outset, the Magistrate should ensure that before coming to the Court, the complainant did approach the police officer in charge of the police station having jurisdiction over the area for recording the information available with him disclosing the commission of a cognizable offence by the person/persons arrayed as an accused in the complainant. It should also be examined what action was taken by the SHO, or even by the senior officer of the police, when approached by the complainant under Section 154(3) of the Code.

2. The Magistrate should then form his own opinion whether the facts mentioned in the complaint disclose commission of cognizable offences by the accused persons arrayed in the complaint which can be tried in his jurisdiction. He should also satisfy himself about the need for investigation by the police in the matter. A preliminary enquiry as this is permissible even by an SHO and if no such enquiry has been done by the SHO, then it is all the more necessary

for the Magistrate to consider all these factors. For that purpose, the Magistrate must apply his mind and such application of mind should be reflected in the Order passed by him.

Upon a preliminary satisfaction, unless there are exceptional circumstances to be recorded in writing, a status report by the police is to be called for before passing final orders.

3. The Magistrate, when approached with a complaint under Section 200 of the Code, should invariably proceed under Chapter XV by taking cognizance of the complaint, recording evidence and then deciding the question of issuance of process to the accused. In that case also, the Magistrate is fully entitled to postpone the process if it is felt that there is a necessity to call for a police report under Section 202 of the Code.

4. 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 along with 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 reason as to why he intends to proceed under Chapter XII instead of Chapter XV of the Code.

*As a matter of fact it has been stressed by law Courts and more particularly in the recent decisions by the **Hon'ble Apex Court** in **L. Sakiri Vasu Vs. State of U.P. & Ors, CRL appeal No. 1605/07** arisen out of **SLP No. 6404/07** that there is nothing illegal for a magistrate to direct police to register a FIR as after all registration of a FIR involves only a process of*

entering a substance of the notion relating to the commission to the cognizable offence in a book kept by the officer in-charge of the police station as indicated in section 154 [Cr.P.C.](#)

This Court has heard the arguments & perused the record.

It is observed that all the documents and evidence are in custody of the complainant and nothing is out of reach of the complainant which requires special investigation through Police. This court is also of the considered view that the complainant is well within the power and in possession of the documents/material/evidence required to prove her case by adducing evidence.

Accordingly, the application of the complainant under Section 156(3) Cr.P.C is accordingly dismissed. The complainant is given opportunity to prove his case by adducing C.E.

Put up for CE on 08.10.2020



(Pankaj Arora)
MM-03 West/THC/Delhi
22.07.2020

CC No. 3762/16
Govind @ Rinku Vs. Vidyawati
PS Nihal Vihar
22.07.2020

At 12.30 p.m.

22.07.2020 (PROCEEDINGS CONDUCTED THROUGH CISCO WEBEX MEETING ID 919211305)

Present: Sh. Kuldeep Mansukhani, Ld. Counsel for the complainant present through video conferencing (Cisco Webex "Meeting ID No. 919211305").

Status report filed. Let the copy of the same be supplied to Ld. Counsel for the complainant through Whatsapp.

Put up for arguments on the point of summoning of accused at 2.30 p.m. today itself.


(Pankaj Arora)
MM-03(West)/THC/Delhi
22.07.2020

At 3.00 p.m.

Present: As above.

Part arguments heard.

Some clarification regarding investigation conducted by the IO concerned in connected FIR No. 83/11, PS Nihal Vihar is required. Accordingly, Put up for remaining arguments on the point of summoning of accused on 25.08.2020.


(Pankaj Arora)
MM-03(West)/THC/Delhi
22.07.2020

CC No.24111/16
PS Mayapuri
Sandeep Kumar Vs. Subhash Chand

(At 12 noon)

22.07.2020 (PROCEEDINGS CONDUCTED THROUGH CISCO WEBEX MEETING
ID 919211305)

Present: Ld. Counsel Sh. Ashok Barnwal for the complainant did not turn up in the Video conference (meeting ID No. 919211305) despite having been intimated by Ahlmad Sh. Ravi Khatri in his mobile phone no. 9811759758.

Accordingly, put up for arguments on 09.09.2020.


(PANKAJ ARORA)
M.M-03 (West), THC, Delhi