

CC No. 14199/18
Arvind Kumar Vs. Manoj Kumar & Anr.
PS Maya Puri
19.06.2020

Present: Sh. S.S. Gautam, Ld. Counsel for the complainant has been contacted on mobile phone no. 9818703080 (specified on his Vakalatnama) by Assistant Ahlmad, Sh. Ravi Khatri but he refused to join the meeting stating that he is not carrying the file with him.

Perusal of the record reveals that last opportunity has already been granted to Ld. Counsel for the complainant to address the arguments on the application under Section 156(3) of Cr.P.C. Court notice along with meeting particulars have already sent to Ld. Counsel for the complainant well in advance. Under these circumstances, no further opportunity can be granted to the Ld. Counsel for the complainant to address the arguments. Accordingly, put up for clarifications/orders at 2.00 p.m. today itself.



(Pankaj Arora)
MM-03(West)/THC/Delhi
19.06.2020

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

CC No. 14199/18
PS. Maya Puri
19.06.2020

Arvind Kumar

Vs.

Manoj Kumar

At 2:00 p.m.

Present: None

By this order I shall dispose of 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 he was a driver by profession and he was a owner of the e-rickshaw.

It is further stated that the accused persons/respondents were posted at PS Maya Puri and accused persons are unnecessary harassing and threatening to complainant and also threatened to the complainant to lodge a false and frivolous case against the complainant. ASI Sunil Kumar and HC Manoj Kumar posted at PS Maya Puri had threatened the complainant and told to the complainant that, "*main ASI Sunil Kumar aur HC Manoj Kumar Maya Puri Thane main tenat hain aur mae tere ghar ki talashi leni hai aur hamare ghar main ghus aye jabardasti aur mare sath mar peeth ki aur in logo ne mere se kaha ki yadi to apane ghar main aram se rahana Chahata hai to jaisa hum kahe best kahe kar aur tu ger kanooni kam kar jaise chars, afim, gaja, Hathiyar verna hum tujhe jail bhejdege aur tu sari umar jail main bitane ko kajbur ho jayega aur kahate hain ki jabtak hum maya puri thane main hain tabtak tujhe 20000 mahine tene padege aur teri bat sunane wala koi nanhi hoga main police wala hun mere kalam main bahut takat hain main jo likho ga uahi kort*

kort manegi aur kahatahai ki thane main sabhi ger kanooni bast uain hain aur hum tujhe kabhi bhi utha sake hain uprokt logo ne Dinak 21.07.2017 mere khilaf jhoota sarab ka case laga diya aur mujhe jail main band kar diya U/s 33/38 Delhi Excise act FIR No. 184/17, PS Maya Puri. The charge sheet filed by the police before the concerned court Tis Hazari Delhi against the complainant and same is pending for adjudication.

It is further stated that thereafter, accused persons again threatened the complainant and his family members, whereupon wife of the complainant has sent a written complaint against the above said person on 26.09.2017 before Delhi Mahila Ayog, I.P. Estate, New Delhi but no action has been taken by the above said authority till today. Thereafter, complainant also lodged a written complaint on 25.09.2017 and also several complaint sent to the ACP and other authority, but no action has been taken by the police and other authority till today.

It is further stated that with a mala fide intention police officials of the Maya Puri under the direction of accused persons had registered a false and frivolous FIR No. 0186/18, U/s 186/332/353 IPC and 33/38 Delhi Exercise Act against the complainant on 22.08.2018.

Since the allegations were made against the police officials, action taken report was called from the DCP concerned which was replied by addl. DCP after conducting enquiry. As per the ATR, it is stated that the enquiry was also conducted on the complaints filed by complainant Arvind Kumar and his wife. The detailed enquiry report was filed before PGC and Delhi Commission of Women. The complaints have been filed by PGC and Delhi Commission of Women.

It is further stated that Arvind Kumar was continually involved in criminal activities and recently on 22.10.201, he was apprehended involved in criminal activities 405/W when he was taking illicit liquor in a car bearing no. DL-9CK-1963. A case vide FIR No. 241/19, U/s 33/38, Delhi PS Maya Puri

has been registered against HC Sandeep No. 405/W/

It is further stated that the above said cases have been put in court and under trial before court.

It is further stated that the allegations made by the complainant Arvind Kumar were false and fabricated to pressurise the police personnel of the beat staff so as to continue their business of selling illicit liquor.

Several opportunities have been granted to the the Ld. counsel for the complainant but he chooses to only seek adjourns on one pretext or the other. He was also given the opportunity to file the written submissions on the court's email i.e. mm03west@gmail.com which were also not filed. Accordingly, opportunity to address arguments from the side of complainant stands closed.

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 04.09.2020

Let copy of this order be supplied to the Ld. counsel for the complainant through WhatsApp on his mobile no. Order be also uploaded through CIS 3.0


(Pankaj Arora)
MM-03 West/THC/Delhi
19.06.2020

FIR No. 174/12
State Vs. Rajiv
PS Maya Puri
19.06.2020

Present: None for the State.

Sh. S.D. Tiwari, Ld. Counsel for the accused has been contacted on his mobile phone no. 9910712720 (specified on his Vakalatnama) by Assistant Ahlmad, Sh. Ravi Khatri but he stated that due to internet connectivity problem at his place, he could not join video-conferencing(Cisco Webex "Meeting ID No. 576403936").

At his request, put up for final arguments through video-conferencing (Cisco Webex) on 26.06.2020 at 11.30 a.m.



(Pankaj Arora)
MM-03(West)/THC/Delhi
19.06.2020