

**IN THE COURT OF SH.PANKAJ ARORA, LD. M.M.-03 (WEST), TIS HAZARI COURTS,
DELHI.**

Complaint case No. 3297/2019

PS Nihal vihar

Sh. Ranjeet Yadav
S/o Late Sh. Palat Yadav
R/o C-49, Village Nilothi,
Colony Shiv Vihar Block-C,
Nilothi Extn., West,
New Delhi-110041.

.....Complainant

Versus

1. Smt. Marry Yadav,
W/o Sh. Ranjeet Yadav,
R/o C-49, Village Nilothi,
Colony Shiv Vihar, Block-C,
Nilothi, Extn. West,
New Delhi.

..... Accused no. 1.

2. Sh. Sanjay Kumar Ray,
S/o Sh. Ramjeet Ray,
R/o RZR-200, Nihal Vihar,
Nangloi, West Delhi,
Delhi-110041.

..... Accused no. 2.

ORDER

Present: Sh. Gyan Chand Singh, Ld counsel for the complainant via video conferencing conducted through Cisco webex application vide meeting No. 576 403 936

Vide this order, this court shall dispose of the application filed under Section 156(3) Cr. PC filed on behalf of the complainant Sh. Ranjeet Yadav. The brief facts of the complaint case as per the complainant are that the complainant is the husband of accused no. 1 and got married with accused on dated 30.05.2006. That the matrimonial relationship between the complainant and accused till 2011 was going smoothly and both were enjoying their married life happily along with other family members including their children. That in the meantime, the complainant came into contact with one Sanjay Kumar Ray resident of RZR-200, Nihal Vihar, Nangloi West Delhi, who was running a Maid Bureau. Gradually said Sanjay Kumar Roy started coming close

to the complainant by visiting complainant's house on one or other pretext which was not noticeable at that time and also became familiar with the accused no. 1. That in the first week of October 2018, Complainant came to know that the accused no.1, accused no. 2, accused no. 3 and accused no. 4 (accused no. 4 is sister of accused no1 and accused no. 3 is working with accused no. 2) all together made a conspiracy to grab the property of the complainant. The complainant also came to know that the accused no.1 planned to marry accused no. 2. That on the next day i.e. on 07.10.2018, the complainant went to his duty and on return became shocked and surprised as the accused no.1 alongwith children left the house alongwith all her belongings, property papers and some jewellery (gifted by the complainant to accused no.1). On enquiry amongst known, family and relatives, the complainant came to know that the accused no.1 went to Mumbai at her sister's residence. After sometime, the accused no. 1 with children returned back to the house of complainant on 26.10.2018 with changed mind and at once started quarrelling and misbehaving with the mother of the complainant. That complainant was on duty and got surprised on being informed by such behavior of the accused no. 1.

That on returning from duty, the complainant enquired from accused no.1 regarding the reason of leaving the house without information and further the reason for picking up quarrel with mother of the complainant. The complainant also asked the accused that why she left the house without providing property documents, without informing him. The accused no. 1 was totally changed and she just asked the complainant to leave the house immediately along with his brother and mother. The accused no.1 also shouted on complainant by saying that she does not want to live together with the complainant any further. That the complainant tried to make her understand that he is her husband and moreover legal and absolute owner of this house which is his self-acquired property. The complainant also replied her that he is not going to leave the house at any cost. That the accused no.1 was so adamant that she threatened the complainant to teach lesson and without reason called police by dialing number 100. Resultantly, complainant has to spend whole night in police lock-up on false police complaint of accused no.1. The complainant narrated before the police officials about the conspiracy of accused no.1 to 4 but they failed to take any notice regarding the same and warned that if they received another complaint from the accused no.1 then they will not hesitate from lodging FIR against the complainant.

That after this event the complainant submitted a complaint to SHO Nihal Vihar on 13.11.2018. The complainant has also stated that accused is residing with Sanjay Kumar Roy at of the same locality. It is a matter of utter surprise that no action has been taken by the police station Nihal Vihar.

As per the ATR filed by the IO, it is stated that enquiry reveals that there is only family dispute which appears to be civil in nature.

Arguments of the Ld. Counsel for the complainant on the application under Section 156 (3) of Cr. P.C. already heard.

Application and complaint perused.

In the matter of “**M/s Skipper Beverages Pvt. Ltd. Vs. State**” 2002 CrL LJ NOC 333 (Delhi), it has been held as under:-

“Section 156 empowers Magistrate to direct police to register case and initiate investigation but this power had to be exercised judiciously and not in mechanical manner. Those cases where allegations are not very serious and complainant himself in possession of evidence to prove allegation, there should be no need to pass order under Section 156”.

In matter of “**Zubair Ul-Abidin (Dr.) Vs. State (NCT of Delhi)**” 2014 III AD (DELHI) 61 of *Hon'ble High Court of Delhi* has held that : -

“12. Thus, the magistrate is not supposed to act mechanically and direct registration of FIR in each and every case in routine and casual manner. Criminal law is not expected to be set in motion on mere asking of a party. There has to be some substance in the complaint filed and it is only if it appears that the allegations are serious enough and establish the commission of cognizable offence required thorough investigation by the police an FIR should be ordered to be registered.”

In the case of “**Sukwasi Vs. State of Uttar Pradesh**” 2008 Cri. L. J. 472, Division Bench of **Hon'ble Allahabad High Court** has held that merely because a complaint discloses a cognizable offence, application under Section 156 (3) of Code of Criminal Procedure, 1973 is not bound to be allowed. The following observations are relevant : -

“22. Applications under Section 156(3) of Code of Criminal Procedure, 1973 are now coming in torrents. Provisions under Section 156 (3) of Code of Criminal Procedure, 1973 should be used sparingly. They should not be used unless there is something unusual or extra ordinary like miscarriage of justice, which warrants a direction to the Police to register a case. Such applications should not be allowed because the law provides them with a remedy because the law provides them with an alternative remedy of filing a complaint, therefore, recourse should not normally be permitted for availing the provisions of Section 156 (3) of Code of Criminal Procedure, 1973.

23. The reference is, therefore, answered in the manner that it is not incumbent upon a Magistrate to allow an application under Section 156 (3) of Code of Criminal Procedure, 1973 and there is no such legal mandate. He may or may not allow the application in his discretion.”

I have considered the submissions advanced by Ld. Counsel for complainant in view of the above-said case law. This is not a fit case for invoking powers under Section 156(3) of Code of Criminal Procedure, 1973 and for directing the SHO of concerned police station to register FIR for the following reasons :-

- 1.The identity of the accused persons is already known.
- 2.All the incriminating facts are already with in the knowledge of the complainant.
- 3.No facts are to be unearthed so as to require aid of police and it is also not the case where the collection of evidence is required.
- 4.Custodial interrogation of the accused persons is not necessary.
- 5.The evidence required in the case is within the reach of the complainant.

In view of the above-said reasons, the application of the complainant under Section 156 (3) of Cr. P.C. is hereby dismissed.

The complainant is at liberty to treat his complaint as a complaint case for the purpose of Section 200 of Code of Criminal Procedure, 1973. Be listed on 17.07.2020.

Dictated through Cisco Webex Application as per Circular No.8188-8348/DJ/COVID 19 Lockdown/pronouncements/2020 Dated 03.05.20
Date:06.05.2020


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