

**Court No. - 67**

**Case :-** MATTERS UNDER ARTICLE 227 No. - 6105 of 2022

**Petitioner :-** Smt. Divya Misra

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Petitioner :-** Ravindra Kumar Srivastava, Vikas Mani Srivastava

**Counsel for Respondent :-** G.A.

**Hon'ble Rahul Chaturvedi, J.**

1. Heard learned counsel for the petitioner and learned A.G.A. Perused the record.

2. This petition under Article 227 of the Constitution of India is targeted against the order dated 18.4.2022 whereby learned Additional Session Judge/FTC, Meerut in Crl. Revision No.244/2021 arising out of impugned order dated 28.7.2021 passed by learned Chief Judicial Magistrate, Meerut in Misc. Case No.110/2021 (Smt. Divya Misra vs Prem Chand), u/s 156(3) Cr.P.C., Police Station-Nauchandi, District-Meerut.

3. Factual aspects of the issue which have given rise to the present case is that the petitioner Smt. Divya Misra has filed an application u/s 156(3) Cr.P.C. stating therein that she is a married woman and mother of two children who are 18 and 14 years of age. The petitioner and Prem Chand-opposite party no.2 are working as Lecturer. Opposite party no.2 was having a lustful eye over the petitioner and he used to tease her and on this account she got disturbed. She restrained Premchand not to do these misbehaving deeds but he did not downward. During intervening period, the applicant filled up a form of M.Ed. and the opposite party no.2 after showing his fellow feelings convinced the petitioner to go with him and collect the study material for M.Ed. examination. After reaching the house of opposite party no.2, the petitioner got to know that opposite party no.2 was residing there alone, then she immediately tried to return back from there. The

opposite party no.2 bolted the door from inside and ravished her and also taken her obscene photos and videographs and on that score he used to harass and blackmail her time and again.

4. Submission raised by learned counsel for the revisionist is that the opposite party no.2 has committed rape upon the petitioner and taken obscene photographs and videos and on that score the opposite party no.2 is threatening her and committed rape upon her. It is further submitted by learned counsel that in order to quench his animal instinct, opposite party no.2 made the obscene photographs as a tool of blackmail and compelled her to kneel down before him. Ditched and perturbed by this, the petitioner went to the police station and given an application for lodging the F.I.R. When no action was taken on her application, the petitioner has sent an application dated 28.12.2020 to the S.P., Meerut but none of the authorities have paid any heed to her earnest request of lodging the F.I.R. Left with no option, the petitioner moved an application u/s 156(3) Cr.P.C. before the learned Chief Judicial Magistrate, Meerut who vide impugned order dated 28.7.2021 has rejected 156(3) application of the petitioner, declining to lodge any F.I.R. Aggrieved by this order, the petitioner has moved a revision before the court of District & Session Judge, Meerut who has rejected the revision vide order dated 18.4.2022 and affirmed the order of C.J.M. On these factual aspects of the issue, aggrieved by these both orders of rejection the petitioner has approached this Court assailing the legality and validity of the same.

5. Learned counsel for the revisionist during argument has drawn attention of the Court to Chapter XII of the Code of Criminal Procedure, which deals with the "*information to the police and their powers to investigate.*" In Section 154 its *Proviso* was added by the Criminal Law (Amendment) Act (13 of 2013 dated 3.2.2013), with regard to the offences against a woman relating to Sections 326A, 326B, 354, 376 and its derivatives and Section 509 I.P.C., clearly

## VERDICTUM.IN

mentioning that if the information is given by the woman against whom the offences in these sections alleged to have been committed, such information shall be recorded by the woman police officer or any woman officer and the recording of such information shall be videographed. Not only this, after lodging of the F.I.R., statement u/s 164 Cr.P.C. shall be recorded as soon as possible. In addition to above, a copy of information as recorded under sub-section (1) shall be handed over forthwith, free of cost to the informant. Section 154(3) Cr.P.C. reads thus :

*"(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence."*

6. Thus, from the aforesaid it is clear that the legislature in its wisdom have added the proviso clause in Section 154(1) Cr.P.C. in the year 2013 itself with all the safeguards especially 154(3) Cr.P.C. In fact this addition was a conscious attempt by the legislation, making it incumbent and mandatory to every S.S.P./S.P. to look into the matter if any such complaint is received by him and shall have a preliminary investigation either by himself or some of his subordinate and then lodge a suitable F.I.R. The legislation in its own wisdom have planned to use the stage machinery to investigate into all those offences, in which the women are poor victims of the atrocities committed by male.

7. It is strenuously urged by learned counsel for the revisionist that the poor lady has been running from pillar to post to get a F.I.R. lodged

but of no avail. The responsible police officers of District Meerut have paid no heed or attention to her urge to lodge a F.I.R., nor the mandatory provisions quoted above have been followed by the senior police officers and learned court below too have taken the things lightly and did not oblige her directing to lodge the F.I.R. against erring named offenders. Learned counsel for the revisionist has cited a recent judgment of Hon'ble Apex Court in the case of **XYZ vs State of M.P. and others in Criminal appeal No.1184 of 2022** decided on 5.8.2022, in which the Apex Court has referred to the judgment of Constitution Bench in ***Lalita Kumari vs Government of Uttar Pradesh (2014) 2 SCC 1*** in its paragraph 15, which reads thus :

*"15. First, we find it appropriate to reiterate the duty of police to register an FIR whenever a cognizable offence is made out in a complaint. A Constitution Bench of this Court in **Lalita Kumari v Government of Uttar Pradesh** has laid out the position of law as summarized in the following extract of the decision :*

*119. Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is*

*always an option to prosecute the complainant for filing a false FIR."*

8. In the case of **XYZ v State of M.P. (supra)** the Hon'ble Supreme Court has further dealt with and reiterated the importance of the courts dealing with the complainants of sexual harassment and sexual assault in a sensitive manner and has held as under :

*"25. Especially in cases alleging sexual harassment, sexual assault or any similar criminal allegation wherein the victim has possibly already been traumatized, the Courts should not further burden the complainant and should press upon the police to investigate. Due regard must be had to the fact that it is not possible for the complainant to retrieve important evidence regarding her complaint. It may not be possible to arrive at the truth of the matter in the absence of such evidence. The complainant would then be required to prove her case without being able to bring relevant evidence (which is potentially of great probative value) on record, which would be unjust.*

.....

*30. Finally, we wish to once again reiterate the importance of courts dealing with complainants of sexual harassment and sexual assault in a sensitive manner. It is important for all courts to remain cognizant of the fact that the legal process tends to be even more onerous for complainants who are potentially dealing with trauma and societal shame due to the unwarranted stigma attached to victims of sexual harassment and assault. At this juncture, especially in cases where the police fails to address the grievance of such complainants, the Courts have an important responsibility. As the Delhi High Court held in **Virender v State of NCT of Delhi 2009, SCC OnLine Delhi**, courts have to remain alive to both treating the victim sensitively while also discharging the onerous task of ensuring that the complete truth is brought on record so as to facilitate adjudication and answering the basic question regarding the complicity of the accused in the commission of the offence. In that case, the High Court held that:*

*22. It is to be noted that the embarrassment, and reservations of those concerned with the proceedings including the prosecutrix,*

## VERDICTUM.IN

witnesses, counsel may result in a camouflage of the trauma of the victim's experience. The judge has to be conscious of these factors and rise above any such reservations to ensure that they do not cloud the real facts and the actions which are attributable to the accused persons. **The trial courts must be alive to the onerous responsibility which rests on their shoulders and be sensitive in cases involving sexual abuse. (emphasis supplied).**

31. While the Delhi High Court made these observations while dealing with a case of rape, courts must remain alive to their duty to treat victims sensitively in cases alleging all forms of sexual harassment and sexual assault. The Courts must try to ensure that the process of attempting to bring alleged perpetrators to justice is not onerous for the victims. Aggrieved persons should not have to run from pillar to post for the mere registration of a complaint and initiation of investigation especially when a cognizable offence is prima facie made out in their complaint."

9. The Hon'ble Apex Court in the decision of **XYZ v State of M.P. (supra)** has consciously bracketed the weaker section of the society with the special proviso in the case of sexual harassment, sexual assault or any similar criminal allegation where the victim is already under the stage of trauma, the Courts should press upon the police for investigation. It is also mentioned that due regard must be had to the fact that it may not be possible for the complainant to retrieve important evidence regarding her complaint. It may also not be possible to arrive at the truth of the matter in the absence of such evidence. It is also expected from the courts to remain cognizant of the fact that legal process tends to be even more onerous for complainants who are potentially dealing with trauma and societal shame due to the unwarranted stigma attached to victims of sexual harassment and assault. The Court should be sensitive enough to fathom the agony and the mental trauma faced by the poor victim and it is the onerous responsibility of the courts to agitate the police agency to hold an in-depth probe into the matter. The legislature have

## VERDICTUM.IN

consciously moulded the criminal procedure to enable victims of sexual crimes to seek justice. This has to be done in recognition of the gravity of sexual crimes and the need to handle such cases in an appropriately sensitive manner and for this an especial provision u/s 327 of Cr.P.C. was enacted for an in-camera trials to be conducted relating to offences punishable under Sections 376, 376A, 376B, 376C or 376D of the Indian Penal Code. Summarizing the entire discussion the Hon'ble Apex Court in aforesaid case of **XYZ v State of M.P. (supra)** has given certain guidelines to be strictly adhered by the trial courts in paragraph 35, which reads thus :

*"35. It is the duty and responsibility of trial courts to deal with the aggrieved persons before them in an appropriate manner, by:*

*a. Allowing proceedings to be conducted in camera, where appropriate, either under Section 327 CrPC or when the case otherwise involves the aggrieved person (or other witness) testifying as to their experience of sexual harassment/violence;*

*b. Allowing the installation of a screen to ensure that the aggrieved woman does not have to see the accused while testifying or in the alternative, directing the accused to leave the room while the aggrieved woman's testimony is being recorded;*

*c. Ensuring that the counsel for the accused conducts the cross-examination of the aggrieved woman in a respectful fashion and without asking inappropriate questions, especially regarding the sexual history of the aggrieved woman. Cross-examination may also be conducted such that the counsel for the accused submits her questions to the court, who then poses them to the aggrieved woman;*

*d. Completing cross-examination in one sitting, as far as possible."*

10. After perusing the entire material on record including the impugned orders, I have got no hesitation to say that the impugned orders are well short of the standard set up by Hon'ble Apex Court (as

## VERDICTUM.IN

mentioned above). Thus, impugned orders dated 18.4.2022 and 28.7.2021 are hereby quashed and the matter is remanded back to learned C.J.M., Meerut with a direction to re-consider and re-visit the entire matter once again and decide the same in the light of the ratio laid down by Hon'ble Apex Court in aforementioned judgment, by passing a well reasoned order in accordance with law within a period of six weeks from the date of production of certified copy of this order.

11. With above observation this petition is disposed off.

**Order Date :-** 20.12.2022

M. Kumar