Nisar Ahmed Vs. Vikas Kashyap
PS Gokalpuri
Us: 156(3) R/w 200 Cr. P.C.

26.10.2020

Order on the application under Section 156(3) Cr.PC.

This is an application of complainant under Section 156(3) Cr. P.C. for registration of separate FIR from FIR No. 78/2020, PS Gokalpuri.

Present: Ld. APP for the State.

Ld. Counsel for applicant/complainant already made detailed oral submissions on the present application under Section 156(3) Cr. P.C. and he also filed written synopsis on behalf of complainant. Police official concerned has also filed reply to the present application of complainant. Ld. Counsel for applicant submits that complainant is a poor trader of readymade garments and on 24.02.2020 communal violence took place wherein some members of a particular community has been brutally injured and also killed. He further submits that the bodies of deceased were thrown into the Bhagirathi Vihar Nala and genocide with open loot with arson also took place all the night and the complainant has witnessed the same and locked himself with family inside his house. Ld. counsel for applicant submitted that on 25.02.2020, some accused persons came to the house of complainant at about 9:30 AM with large crowd of 200 people. Ld. Counsel for applicant further stated that accused persons had broken the gate of complainant's house and also raised

the shutter of shop of complainant and his godown of readymade garments. He also stated that all the stock worth of Rs. 10 lakhs was looted and his three motorcycles, an Enfield Bullet, a Bajaj Platina and a Hero Splendor were dragged out on the road and set ablaze. He further submitted that a large heavy trunk containing complainant's daughter in law's jewelry and other personal articles related to her marriage were also looted and with the help of sympathetic neighbour, complainant and his family were escorted out from the given area. Ld. Counsel for applicant argued that the present complainant came to know that some FIR No. 78/2020 under Section 147/148/149/380/427 of IPC was registered at PS Gokalpuri on the complaint of some Aas Mohammad, who was also a victim of unnamed rioters and theft. Now, Ld. Counsel for complainant submits that the said FIR bearing No. 78/2020 of PS Gokulpuri relates to theft in the dwelling house and mischief against unknown persons and therefore, same is not related to the murders, looting, assault, arson, intimidation and rioting witnessed by the present applicant/complainant. Ld. Counsel for applicant also submitted that complainant received threatening calls inquiring about the details of his complaint and they were also telling for settling the complaint. Finally, ld. Counsel for applicant prayed for direction of the court under Section 156(3) Cr. P.C. to the police for lodging separate FIR on the basis of present complaint.

Ld. Counsel for applicant argued that the said FIR No. 78/2020 is not related to the incident of same place, time or accused as present complainant has different house from that of complainant of said FIR No. 78/2020 of PS Gokalpuri and present applicant has narrated about the heinous crime which took place on 24.02.2020 and 25.02.2020 (morning time) against above

named accused persons unlike the allegations of said FIR No. 78/20 being related to some different incident of 25.02.2020 in evening time against unnamed accused persons.

On other hand IO SI Ashish Garg of PS Gokalpuri in his reply dated 28.08.2020 stated that on 02.03.2020 FIR No. 78/20, under Section 147/148/149/380/427 of IPC was registered on the complaint of Aas Mohammad, who was a victim of unknown rioters and theft and on 04.03.2020 a hand written complaint of present applicant was also received which has been clubbed with said FIR No.78/2020 as the date and place of incident was same. IO further stated in his reply that allegation of the complainant regarding killing of any burqa wearing women and their dead bodies were thrown into Bhagirathi Vihar Nala are false and baseless. It is also stated in said reply of the police that charge-sheet against arrested accused persons has been prepared under Section 147/148/149/427/436/454/380/188/34 of IPC and supplementary charge-sheet with regard to the other accused persons will be filed, if any incriminating evidence crops up during further investigation of the case bearing FIR No. 78/2020 of PS Gokalpuri.

After hearing Ld. counsel for complainant and considering the said reply of the police, it is not clear that as to how police will investigate all the allegations of present complainant/applicant in said FIR No. 78/20, PS Gokalpuri, wherein charge-sheet under Section 147/148/149/427/436/454/380/188/34 of IPC has already been prepared. It is noticeable that the present complainant had alleged that the incident of arson and looting took place at his house and he had seen killing of some members of a particular community by the mob and throwing of the dead body of

deceased in some nearby Nala on 24.02.2020 and 25.02.2020. Here, at this stage, the court is not supposed to go into the veracity or credibility of given information/claims of the complainant in present application. Further, the judicial consideration of the court, at this stage, is confined to consider the legal justification of complainant to insist for separate FIR by the police on the basis of information given in the present complaint disclosing commission of various cognizable offences, which are different from the allegation of complainant of another case bearing FIR No. 78/2020 of PS Gokalpuri in terms of place, time and effect of the alleged crime. Here, the court is also aware of observation of 5 Judges Constitutional Bench of Hon'ble Supreme Court of India made in Lalita Kumari Vs. Govt. of U.P. (2014), 2 SCC1 regarding mandatory registration of FIR wherein information reveals commission of cognizable offence without any insistance on credibility of information or even any preliminary inquiry by the police barring only exceptional cases of specific nature. Here, the police has tried to justify it's act of alleged clubbing of the present complaint of the applicant vide some DD entry 26A dated 22.03.2020 with FIR No. 78/20, PS Gokalpuri and it has also claimed that it may file supplementary charge-sheet on the basis of incriminating evidence, which may crop up in the course of further investigation of said case bearing FIR No. 78/2020. The police has also claimed that the allegation of complainant regarding killing of some burqa wearing women was false and baseless. However, the court fail to appreciate as to how the police could even claim that the allegation of the applicant as to he had seen from his house that some burqa wearing women or looking alike Muslim women were killed with swords and their dead body were thrown into Bhagirathi Nala of given area are false and without any evidence before

conducting any through and proper investigation known to law, of which FIR is commencing point under given scheme of Cr.P.C. It is also noticeable that in case police finds that the information given by the complainant was false and motivated against any innocent person with malafide intention after proper investigation, such complainant may be taken to task of law for such unlawful misdeed/commission/omission. The police, in it's said reply dated 28.08.2020, also stated that charge-sheet against arrested accused persons under Section 147/148/149/427/436/454/380/188/34 of IPC have been prepared. In this situation how the investigating agency/police can be expected to investigate the allegations of present complainant, which are substantially different from the aforesaid charge-sheet prepared by the IO and even any further investigation in said case bearing FIR No. 78/2020 could not be said to be afresh investigation under Section 173(8) Cr.P.C. It is, therefore, clear that even further investigation in FIR No. 78/2020, would not cover the required proper investigation in the allegations leveled by present complainant. It is noteworthy that in case any accused became aggrieved from two FIR/trial for same act or series of connected transaction in question taking place at one place qua same victim/victims, he may insist for clubbing of the same before appropriate forum at appropriate stage and police cannot refuse to lodge even the case for investigating the allegation/claims of complainant on account of no need of more FIR as the complaint of applicant has been allegedly clubbed in some other case which was lodged on the complaint of another complainant regarding different offences against unknown accused. The Apex Court in Babubhai Vs. State of Gujrat & Ors, (2010) 12 SCC 254 has observed that investigation must be fair, transparent and judicious as it was minimum requirement rule of law and fair investigation, apart from fair

trail, is also part of constitutional right guaranteed under Articles 20 and 21 of Constitution of India. The Supreme Court of India in Anju Chaudhary Vs. State of UP (2013) 6 SCC 384 observed as under:

> ***"to illustrate such a situation, one can give an example of the same group of people committing theft in a similar manner in different localities falling under different jurisdictions. Even if the incidents were committed in close proximity of time, there could be separate FIRs and institution of even one stating that a number of thefts had been committed, would not debar the registration of another FIR. Similarly, riots may break out because of the same event but in different areas and between different people. The registration of a primary FIR which triggered the riots would not debar registration of subsequent FIRs in different areas. However, to the contra, for the same event and offences against the same people, there cannot be a second FIR."***

In view of above discussion of facts, logic and authorities, this court is of considered view that police should register FIR under appropriate provisions of law on the basis of information given by the complainant as same reveals commission of some serious cognizable offences which can be investigated properly by the investigating agency of the State only. Accordingly, SHO, PS concerned is directed to lodge FIR within five days from receiving copy of this order and get the matter investigated properly as per law and expeditiously in view of nature of allegation in question. With

above observations, present application of complainant under Section 156(3) Cr.P.C. stands disposed of. Copy of this order be sent to SHO, PS concerned through Naib Court for information and necessary compliance.

(RAKESH KUMAR RAMPURI)
MM-03/N-E/KKD Courts/Delhi
26.10.2020