

Ct Cases / 59143/2024
AMITA SACHDEVA Vs. STATE AND ORS
(Parliament Street)

22.01.2025

Present: Sh. Markand Adkar, Ld. Sr, Counsel for
complainant.
Sh. Vikram Kumar, Sh. Yadavendra Saxena, Sh.
Santanu Adkar, Sh. Ankush Mahajan and Sh.
Abhinav Kumar Ld. Counsels for complainant.
Ms. Amita Sachdeva, complainant in person.

Compliance report filed by IO stating that the
alleged paintings have been seized.

Arguments on the application U/s 175 (3) BNSS
heard.

Put up for orders at 04.00 PM.

(Sahil Monga)

JMFC-06/PHC/ND/22.01.2025

At 04.00 PM

Present: Ms. Amita Sachdeva, complainant in person.

1. By this order, I shall dispose of application under
section 175 (3) of BNSS seeking directions to the concerned
SHO for registration of FIR against the proposed accused
persons. I have heard arguments from the Ld. counsel for
complainant.

2 Action taken report in the present matter was called from SHO concerned and the same was filed by EO. It is stated in the Action Taken Report that CCTV footage and NVR have been seized. A notice was served to managing director of Delhi Art gallery by the IO and a reply was given by Delhi Art Gallery. As per the ATR, list of paintings was furnished and the alleged paintings are mentioned at Sl. No. 6 and 10. Today, compliance report regarding the seizure of alleged paintings has also been filed by the IO stating that the said painting have been seized and kept in Malkhana. It is further stated in the ATR that commission of cognizable offence could not be ascertained. I have carefully perused the present complaint, annexed documents and the status report.

3. It has been held by the Hon'ble High Court of Delhi in Subhakaran Loharuka & Anr. Vs. State & Anr., CrI. M.C. No. 6122-23/2005 that:

(iii) "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".

(iv) "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 prerequisites as aforesaid, but, additionally, he should also be satisfied that it is necessary to direct Police investigation in the matter of 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 the complainant, and the matter is such which calls for investigation by a State Agency. The Magistrate must pass an order giving cogent reasons as to why he intends to proceed under Chapter XII instead of Chapter XV of the Code".

5. It has been held by the Hon'ble High Court of Delhi in *Vijay Gupt v. Development Credit Bank Ltd. & Ors.*, Crl. Rev. P. No. 41/2019 dated 14.01.2019 that:

11. 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 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. The Magistrate can treat an application under Section 156(3) Cr.P.C. as a complaint case, adopt the procedure of the complaint case by recording evidences under Sections 200 and 202 Cr.P.C. and then either proceed under Section 203 Cr.P.C. and dismiss the complaint if no offence is made out on summoning the accused under Section 204 Cr.P.C. whose complicity is disclosed in the inquiry conducted by it under Sections 200 and 202 Cr.P.C.

6. It is settled law that U/s. 175(3) BNSS, Magistrate has power to direct the police to register a case and investigate the matter, but this power is to be exercised judiciously and not in a mechanical manner. In the matters where the complainant has in his/her possession all the evidence required to prove his/her allegations, there should be no need to pass an order U/s. 175 (3) BNSS. In this regard, reliance is placed, on the decision of our own Hon'ble High Court in **M/s. SKIPPER BEVERAGES PVT. LTD. Vs. STATE**, Cited as 2001 IV AD (Delhi), wherein it has been held as under:-

"It is true that Section 156(3) of the Code empowers to Magistrate to direct the police to register a case and initiate investigations but this power has to be exercised judiciously on proper grounds and not in a mechanical manner. In those cases where the allegations are not very serious and the complainant

himself is in possession of evidence to prove his allegations there should be no need to pass orders under section 156 (3) of the Code. This discretion ought to be exercised after proper application of mind and only in those cases where the Magistrate is of the view that the nature of the allegations is such that the complainant himself may not be in a position to collect and produce evidence before the court and interest of justice demand that the police should step in the help the complainant".

7. In the present case, all the facts and circumstances of the case are within the knowledge of the complainant. CCTV footage of Delhi Art Gallery , NVR and the paintings in question have already been seized. In the considered opinion of this court, no further investigation and collection of evidences is required on the part of investigating agency at this stage, as all the evidences are in the possession of complainant as well as on record, and if the same is required at later stage, then Section 225 BNSS can be resorted to. In the present facts and circumstances, the application u/s 175(3) of Cr.P.C. stands dismissed.

8. This matter may be proceeded as a complaint case henceforth . Let notice be issued to proposed accused persons in terms of first proviso to section 223 BNSS for 12.02.2025.

(Sahil Monga)
JMFC-06/PHC/ND/22.01.2025