

CIS No. 930/2021
ATISHI Vs. STATE AND ANR.
PS: IP Estate

23.11.2021

Present: Sh. Mohd. Irshad, Ld. Counsel for complainant.

Matter was listed for clarifications/orders on application u/s 156(3) Cr.P.C. No clarifications are required.

Vide this order, I shall dispose off an application u/s 156(3) Cr.P.C. moved on behalf of applicant seeking registration of FIR against proposed accused persons.

Allegations leveled by the complainant:

The present complaint case alongwith application u/s 156(3) Cr.P.C. is moved by complainant Ms. Atishi, M.L.A. from Aam Aadmi Party against proposed accused Mr. Sambit Patra who is the official spokesperson of BJP.

Ld. counsel for complainant has stated that on 30.01.2021, proposed accused had released and published a forged and fabricated video on his social networking site twitter purporting to show that the Chief Minister of Delhi Sh. Arvind Kejriwal is speaking in support of the Farm Laws (Farmers' Produce, Trade and Commerce (Promotion and Facilitation) Act, Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act and The Essential Commodities (Amendment) Act. It is alleged that the said video was released and published from the official twitter handle of proposed accused with the account name of @sambitswaraj. It is further alleged that the impugned video was forged by taking the videographic excerpts from an interview given by Mr. Kejriwal in the past and dubbing over it with the distorted versions of statements of Mr. Kejriwal as well as using mimicked version of his voice to make it appear as if the statements were being made by Mr. Kejriwal when in fact, he had not made such statements in the interview.

It is further alleged that the impugned video contains the statements purportedly made by Mr. Kejriwal which are diametrically opposite to the stand taken by him and the Aam Aadmi Party in respect of Farm Laws. It is further alleged that the impugned video has been fabricated with an intent of harming reputation of Mr. Kejriwal and the Aam Aadmi Party and its leaders and members. It is further alleged that by circulation of the impugned video, the general public has been deceived to believe that Mr. Kejriwal and Aam Aadmi Party are supporting the farms laws and have been induced not to object the same. It is further alleged that the publication of impugned video has also caused discontent and dissatisfaction in the minds of farmer across the country who are protesting against farm laws and will give them a provocation against Mr. Kejriwal and Aam Aadmi Party, which may also result in rioting like situation. It is also alleged that despite complaint dated 02.02.2021 made to SHO PS I.P. Estate and complaint dated 04.02.2021 made to DCP Darya Ganj, no action has been taken in the matter. With these submissions, prayer is made for registration of case FIR against proposed accused.

Preliminary Inquiry conducted by the Police:

In the ATR filed by the police, it is stated that during the course of preliminary inquiry, the impugned video as well as the original video were sent to FSL for analysis and as per the FSL result, no deletion was found in the video. However, FSL did not comment regarding any addition in the video. It is further stated in the ATR that the impugned video was indicated to be the replica of original video which clears that it was not a mimicked version as alleged by the complainant. It is further reported that the proposed accused Mr. Sambit Patra has denied of any addition or deletion in the video or mimicking or dubbing the same and has stated that the impugned video was already available in the public domain as same was tweeted by many persons prior to tweet in question and that the twitter has already marked the video as a “*manipulated media*”. The inquiry has been concluded stating that the impugned video comes in the preview of manipulated media and there is no

misrepresentation from the proposed accused in terms of size, duration or the facts and that the proposed accused was not the originator of impugned video as same was already available in public domain, therefore, no action has been taken on the complaint as same was stated to be a politically motivated complaint.

The position of law with respect to section 156(3) Cr.P.C. and duty of police upon receiving information regarding commission of a cognizable offence:

It has been held by Hon'ble Supreme Court in *Lallan Chaudhary v. State of Bihar AIR 2006 SC 3376* that the mandate of S. 154 is manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station, such police officer has no other option but to register the case on the basis of such information.

In *Ramesh Kumari v. State (NCT of Delhi) and Ors., AIR 2006 SC 1322* it was held that genuineness or credibility of the information is not considered to be a condition precedent for registration of a case.

This question was discussed in detail by the Hon'ble Supreme Court in the case of *Lalita Kumari v. Govt. of U.P AIR 2014 SC 187* where it was held that registration of FIR is mandatory under S. 154 of Cr.P.C. if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. S. 154 uses the word 'shall' which in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature. Although S. 154(3) makes a provision to approach the higher police officer for the purpose of getting his complaint registered as an FIR in case a complaint is not registered by the officer in charge, it does not force the court to give a purposive interpretation of the impugned section considering that the wording of the section is clear and unambiguous.

It is evident from the authorities discussed above that as per the mandate of section 154 Cr.P.C., the police is duty bound to conduct the investigation of the case

immediately on receipt of information regarding commission of a cognizable offence. Certain exceptions have however, being laid down in the matter of Lalita Kumari (supra) which permits the preliminary inquiry by the police in certain cases.

In case titled as **Skipper beverages Pvt. Ltd. Vs. State 2001 (92) DLT 217**, after taking the note of Judgment of Hon'ble Apex Court in **Suresh Chand Jain Vs. State of M.P. 2001 (1) SC 129**, the Hon'ble High Court of Delhi dealt with this question. The relevant paragraphs of that Judgments are produced herein below-

*Para 7 “it is true that Section 156(3) of the Code empowers a Magistrate to direct the police to register a case and initiate investigations but this power has to be exercised judiciously on proper ground and not in mechanical manner. In those cases, where the allegation are not very serious and complainant himself is in possession of evidence to prove his allegations there should be no need to pass order under Section 156(3) of the Code. The 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 allegation is such that the complainant himself may not be in a position to collect and produced evidence before the Court and the interest of justice demand that police should step in and help the complainant. The police assistance can be taken by a Magistrate u/s 202 (1) of the Code after taking cognizance and proceedings with the complaint under chapter XV of the Code as held by Hon'ble Apex Court in 2001 (1) SC 129 titled as **Suresh Chand Jain Vs. State of M.P. & Ors.**”*

Para 10 “Section 156(3) of the Code aims at curtailing and controlling the arbitrariness on the part of police authorities in the matter of registration of FIRs and taking up investigations, even in those cases where the same is warranted. The section empower the Magistrate to issue directions in this regard but this provision should not be permitted to be misused by the complainants to get the police cases registered even in those cases which are not very serious in nature and the Magistrate can himself hold an inquiry under chapter XV and proceed against the accused, if required. Therefore, the Magistrate must apply his mind before passing an

order under section 156(3) of the code and must not pass these orders mechanically on the mere asking by the complainant. These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of complainant or custodial interrogation appears to be necessary for some recovery of the article or discovery of fact”.

In the Skipper Beverages case (supra) and also in Suresh Chand Jain case (supra), the position of law has been further crystallized. The above cited rulings aimed at curbing the misuse of provisions of section 156(3) Cr.P.C. making the exercise of power for registration of FIR u/s 156(3) Cr.P.C. permissible only in the cases where the evidences of the case are beyond control and reach of the complainant and in the cases where some technical or scientific investigation has to be conducted by the police or where the custodial interrogation of accused appears to be imperative for effecting recovery of any article or for discovery of any vital facts.

Findings of the Court:

The perusal of ATR dated 15.04.2021 would reflect that during the course of inquiry, the impugned video as well as the original video were sent to FSL and as per the report of FSL, the impugned video was stated to be replica of original one and it was not a mimicked version of the original video. The mere perusal of copy of FSL report dated 05.03.2021 would reflect that the following observations were made by the FSL:

3. RESULTS OF EXAMINATION/OPINION

On laboratory examination of the audio-video files in the pendrive marked “Ex-Q-1” “Ex.S-1”, following were observed:

- i) The audio-video file in “Ex-Q-1” is having indication of alteration.
- ii) Further the waveform and spectrograph of the utterances in “Ex-Q-1” were found similar and indicated to have been reproduction as replica from the video

footages in audio-video file, namely, “Delhi CM Arvind Kejriwal se ZeePHH ke Editor Dileep Tiwari ki Exclusive baatchit.mp4” provided in “Ex-S-1”.

iii) There are also indication to support the contention that the contexts of words spoken are edited by deletion and transformation to form the context of audio-video file in “Ex-Q-1”.

NOTE: Case exhibits sent to this laboratory for examination have been sealed with the seal of “Dr. C.P. SINGH FSL-DELHI”.

Examined by
(Dr. C.P. Singh)

The above-mentioned findings in the FSL report clearly reflects that the impugned video is opined to have been edited/alterd. Therefore, the fact that the impugned video clip was a doctored electronic record stands prima facie proved.

Now what remains left to be seen is that what was the intention of the proposed accused behind circulation/publication of the impugned video on his twitter account.

The careful examination of the impugned video and on comparison of same with the original video, the following facts surface:

(a) In the original video which is 40 minutes 52 seconds long clip, it can be seen at 6:24 minutes that Mr. Kejriwal was replying to the question of the journalist by quoting that in the speeches given by leaders of BJP in support of farm laws, it was stated that due to operation of said laws, the farmers will not lose their lands, the minimum support price assured to them will not be lost, the *mandi system* will not over turn, the farmers can sell their harvest anywhere in the country and will get good price for the same even with the option of selling it outside the *mandies*. In this video itself, at the end of each sentence itself, Mr. Kejriwal can be seen saying that the above quoted benefits of the farm laws were already in existence even prior to the operation of said laws.

(b) Again at 09:47 minutes of the video, Mr. Kejriwal can be seen to have been

responding to the questions raised by the journalist regarding the solutions proposed by the farmers and in this context, he can be seen to have been speaking in support of MSP measures. Mr. Kejriwal can be clearly seen saying that if MSP comes into operation, it would be the most revolutionary law made in past 70 years.

(c) In the impugned video clip running in 18 seconds, it can be clearly seen that the above stances quoted by Mr. Kejriwal in the original video, were placed and doctored in such a way to give them a color as if he was speaking in support of farm laws.

The above discussed facts clearly reveal that the impugned video was manipulated/doctored in such a way to give it a color as if Mr. Kejriwal was endorsing his support in favour of the farm laws. The fact that the impugned video was published on the twitter handle of proposed accused with the caption “*teeno farm bills ke laabh ginate hue... Sir jee*”, prima facie proves that same was circulated on twitter with no intention but to cause the protesting farmers to believe that Mr. Kejriwal is supporting the farm laws, which may have perpetuated the state of outrage with the protesting farmers and may have resulted in rioting like situation across the nation.

The fact that during the course of preliminary inquiry, police has proceeded for obtaining expert opinion from FSL regarding the impugned video is sufficient to believe that the evidences of the case are not within the control and reach of the complainant and that the scientific investigation is required in the present case. The ATR filed by the police also clearly says that the impugned video clip was within the category of *manipulated media* marked by the twitter. If the impugned video clip was a manipulated media, the circumstances under which the proposed accused has published the same on his twitter handle has not been probed into by the police. Besides, the police has also not conducted any probe to find out whether the impugned video clip was already available in public domain by associating twitter during the inquiry, so as to rule out the fabrication/ alteration of the same at the behest of proposed accused. The thorough investigation is required to be conducted on the abovementioned aspects considering the seriousness of the allegations and

accordingly, this Court is of the considered view that the prayer made by the complainant deserves to be accepted and the present application deserves to be allowed.

Directions of the Court:

Apropos the discussion made above, the present application is accordingly allowed and SHO concerned is directed to register the case FIR under the appropriate provisions of law taking into account the allegations leveled by the complainant and initiate the investigation in accordance with law.

SHO concerned is directed to file compliance report along with report regarding status of investigation on **03.02.2022**.

(Rishabh Kapoor)
MM-03(Central),THC,Delhi
23.11.2021