

ORDER ON APPLICATION U/S 156(3) Cr.P.C.

28.05.2025

Present: Ms. Sanjana Srikumar, Id. Counsel for the
complainant (through VC).
Ms. Joicy, Id. Counsel for the complainant.

1. Vide this order, I shall decide the application u/s 156 (3) Cr.p.c filed by the applicant.

2. The case of the applicant/complainant in nutshell is that the complainant happens to be unfortunate wife of Late Sh. Sheikh Shadat and the deceased had expired on 22.07.2023/23.07.2023 in the custody of the police officials of PS Subhash Place. Even though more than 7 months have lapsed but the police has failed to register a FIR regarding the custodial death of her husband.

On 21.07.2023 at about 6 pm, deceased Sheikh Shadat along with one Rafiqua , Deepak, Amit and Sunny had gone to Netaji Subhash Place in their car and while deboarding, 3-4 police officers surrounded all of them and started questioning them for no reason. The complainant was informed that her husband confronted the police officers and in response the police officers got angry as well as aggressive and forcefully took all five of them into custody as well as to PS Subhash Place. In the meanwhile, Rafiqua called his wife and informed her that all five of them including the deceased were being taken to PS Subhash Place. Sahana Khatoon informed the same to the

complainant. Sahana went to the PS with few other people where she met with her husband, Rafiqul, the deceased and all of them complained of ill treatment and the extortion attempts made by the police officers of PS Subhash Place.

On the next morning, on 22.07.2023 when Sahana went to PS Subhash Place, she was informed that an FIR No 552/23 u/s 25 of Arms Act has been registered against all five of them and they will soon produced before a Magistrate. Sahana Khatoon was able to speak to the deceased who told her that he was being badly beaten up by the police officials as he had declined the extortion attempts made by the police officers of PS Subhash Place. She saw that the right hand of deceased was badly swollen and seemed to be broken due to severe beatings.

On the same day, i.e. 22.07.2023 at around 5/5.30 pm all five of them including the deceased were produced before the Magistrate in the Rohini Courts where the deceased was remanded to the police custody and the other were sent to juridical custody. On the next morning i.e. on 23.07.2023, the deceased's brother got a call from PS Jahangirpuri informing him that the deceased has been admitted in Ambedkar Hospital after which Sahana Khatoon went to Ambedkar hospital. She was finally told to check the mortuary, there she was informed regarding the death of deceased Shekh Shadat. The body of deceased was handed over to the family of the complainant after two days. The body had black and blue marks of beatings all over the back and at the chest, his hand was swollen and the legs also had injury marks. A video of the same was made by the family. It was stated by the complainant that the death of the deceased was happened in the custody of the police officials of

PS Subhash Place when he was under police custody.

Subsequently, complainant had filed an application seeking status report into the matter and the reply was filed by the DCP vide ATR dt. 15.12.2023 vide which the pendency of judicial inquiry was informed and no FIR was registered. Thereafter, second status report was filed by Inspector PS Subhash Place dt. 19.12.2023 and the said status report also did not disclose about registration of the FIR. Hence, complainant was constrained to write to the DCP qua the registration of the FIR but no action was taken, hence the present application was filed u/s 156 (3) Cr.p.c.

3. An action taken report was called in pursuance of the said application. The same was received and the court was apprised that the inquest proceedings were pending with the Ld Magistrate and the court was informed that the medical opinion was still awaited. Subsequently, the post mortem report that the FSL report was filed. Thereafter, the inquest proceedings were concluded by the Ld MM and it was opined that “ *the death of the deceased namely Sh. Sheikh Shadat s/o Sh. Sheikh Reikhu @ Rehman, aged about 36 yrs, appears to have occurred due “coronary artery disease” and there is no suspicion of the death of the deceased as being homicide or suicidal*”.

4. The Ld counsel for the complainant has relied upon various judgments of Hon'ble Apex Court which are mentioned herein below:

- a) TMT. R. Kasthuri Vs. State (2014) SCC online Mad
- b) Esakkiamal Vs. State (2014) SCC online Mad

- c) XYZ Vs. State of MP (2023) 9 SCC 705
- d) D.K Basu Vs State of West Bengal 1997 (1) SCC 416
- e) Parambir Singh Saini Vs, Baljeet Singh & Ors (2021) 1 SCC 184
- f) Kismatun Vs. NCT of Delhi 2024 SCC online DAL 4996

5. Arguments on the same were heard earlier. It was vehemently argued on behalf of the complainant that the deceased has expired due to custodial torture done by police officials of PS Subhash Place on the unfortunate day of the incident. It was argued that the deceased has been brutally murdered by the custodians while he was in the custody of police officers of PS Subhash Place.

6. Record has been perused. The submissions advanced have been considered. The judgments cited by the complainant have also been carefully perused along with the record available. The judgment in case titled as R. Kasthuri is qua the inquiry done by Executive Magistrate. The judgment in case titled as Parambir Singh Saini is qua the installation of CCTV cameras in the PS. The judgment in case titled as D.K. Basu Vs. State of West of Bengal is qua the guidelines upon the arrest. Similarly, the other judgments as relied by the complainant are not identical to the facts of the present case.

7. In the present case, the allegations have been levelled upon the police officers of PS Subhash Place that the deceased has been tortured in the custody and has been brutally assaulted in the custody due to which the deceased has expired. As per the

inquest report, the cause of death was neither homicidal nor suicidal. However, as per the allegations levelled as well as the photographs available on record including the video footage as well as Ex. C-17/43 to Ex. C17/46 (the pictures of the deceased from the mortuary), there were injury marks on the entire upper back and the lower back of the deceased. As per judgment of Hon'ble High Court of Delhi in matter of “Subhkaran Luharuka & Anr. Vs. State (Government of NCT of Delhi) & Anr.” 170 (2010).

In “M/s Skipper Beverages Pvt. Ltd. Vs. State” 2002 CrL LJ NOC 333 (Delhi), it has been held that,

“It is true that Section 156(3) of the Code empowers to a 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 order under Section 156(3) of the Code. The discretion ought to be exercised after proper application of the mind and only in those cases where the Magistrate is of the view that the nature of allegations is such that the complainant himself may not be in position to collect and produce evidence before the Court and interests of justice demand that the police should step into held the complaint”.

Further in “Ravindra Kumar Vs. State (Govt. of NCT of Delhi) & Anr.” 2012 VIII AD (Delhi) 403, it has been held that,

“Remedy under Section 156(3) Cr.P.C. is a discretionary one as the provision proceeds with the word 'may'. Magistrate is required to exercise his mind while doing so and pass orders only if he is satisfied that the information reveals commission of cognizable offence/offences and also about necessity of police investigation for digging out of the evidence neither in possession of the complainant nor can be procured without the assistance of the police”.

8. Though the inquest report is on record, the same can be considered at the appropriate stage. To dismiss the present application only on the basis of present inquest report will not serve the purpose of justice where the complainant is not in a capacity to record or collect extensive evidence. The Court is of the view that prima facie a cognizable offence has been committed and a thorough investigation into the matter is required to unearth the entire scenario as well as to record the statement of all of the possible witnesses. Also, an investigation on technical aspect is required qua the availability of CCTV footages, qua the attempts made to preserve the same and qua the other possible inputs.

9. Accordingly, the application in hand is allowed.

Copy of order be sent alongwith the notice to the SHO concerned for the necessary compliance.

Copy of order be dasti to the applicant or to the Ld. Counsel for the applicant.

The SHO concerned is directed to register a FIR into the matter and to send the compliance report to this Court by 28.06.2025.

(VASUNDHRA CHHAUNKAR)
CJM (North-West)
Rohini Courts, Delhi.
28.05.2025