



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on: 10th September, 2024*
Pronounced on: 4th October, 2024

+ **CRL.REV.P. 159/2024**

KALAWATI

W/o Shri Ranjit Singh,
R/o F-1/45, Sunder Nagari,
Delhi-110093

..... Petitioner

Through: Mr. Manmohan Singh & Mr. Sourabh
Singh Tomar, Advocates with
petitioner in person.

versus

THE STATE GOVT. OF NCT OF DELHI

Through SHO, PS Nand Nagari

..... Respondent

Through: Mr. Satinder Singh Bawa, APP with
Ms. Sunpreet Singh, Advocate for
State. Insp./I.O. Virender Singh, PS
Nand Nagri, Delhi.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Revision Petition under Sections 397/401/482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C., 1973"*) has been filed on behalf of the petitioner against the impugned Order dated 16.09.2023 passed by the learned Additional Sessions Judge, Shahdara, Delhi dismissing the Application under Section 156(3) of



Cr.P.C., 1973 seeking registration of the FIR under the provisions of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) SC/ST (POA) Act, 1989. (*hereinafter referred to as “SC/ST (POA) Act, 1989”*) was dismissed.

2. ***Briefly stated***, the petitioner-Kalawati, aged 60 years, asserts that her daughter Late Smt. Santosh Koli, was allegedly murdered pursuant to a political conspiracy. She had filed a complaint with the Police, but no FIR was registered for the murder of her daughter, and for other offences under the SC/ST (POA) Act, 1989. The Application under Section 156(3) of Cr.P.C., 1973 filed before the learned Additional Sessions Judge was dismissed *vide* impugned Order dated 16.09.2023. against which the present Revision Petition has been filed.

3. The petitioner-Kalawati has stated that her daughter Late Smt. Santosh Koli was working in Parivartan Institution along with Arvind Kejriwal. Late Smt. Santosh Koli was a brave girl who had been awarded with the Bravery Award by the then Hon’ble President of India, Late Shri Abdul Kalam, who had also invited her for tea and praised her work.

4. The petitioner-Kalawati in her Complaint dated 31.03.2022 made to the SHO, Police Station Nand Nagri had stated that Late Smt. Santosh Koli was working in Parivartan Institution with Arvind Kejriwal, who had formed the Aam Adami Party. Though none in her family had any inclination to join the politics, but Late Smt. Santosh Koli was forcibly given the ticket to contest the Delhi Assembly Elections. One Gaurav and Kuldeep Pawar were assigned by Arvind Kejriwal to help and assist Late Smt. Santosh Koli in the elections. Vandana was also deputed and was responsible to prepare the schedules.



5. It is also submitted that Late Smt. Santosh Koli started getting threat calls, about which she informed to the petitioner-Kalawati, her mother, and her father, Shri Ranjit Singh. Arvind Kejriwal and Kumar Vishwas were also duly informed, who assured Late Smt. Santosh Koli that they would get the details of the numbers from which the threat calls were made. The details of the numbers were obtained and given to Kuldeep Pawar and Gaurav.

6. On the day of incident i.e., 30.06.2013, Vandana told Late Smt. Santosh Koli that she had been called to Kausambi, Ghaziabad by Kejriwal for some urgent work. However, Late Smt. Santosh Koli was not inclined to go as she intended to spend some time with her family, upon which, she was compelled to accompany Vandana to Kausambi, Ghaziabad. Late Smt. Santosh Koli was taken to Kausambi, Ghaziabad by Gaurav on his scooty, at around 01:00 P.M.

7. Around four hours later, the petitioner-Kalawati received a call on her mobile number from one Ramashray, who informed informed that Late Smt. Santosh Koli had met with an accident and was told to go to Yashoda Hospital in Kausambi, Ghaziabad. At the same time, Pankaj came and informed the petitioner-Kalawati and her family members to wait at the bus stand as one vehicle was being sent by Kejriwal to pick them up. Despite waiting for around half an hour, when no vehicle came, on the insistence of the petitioner-Kalawati's elder daughter, they took an Auto and went to Yashoda Hospital, where a huge crowd had gathered. Arvind Kejriwal took the petitioner-Kalawati and her family members in a room where Kumar Vishwas and Atul Gupta were also present. The petitioner-Kalawati was informed that Smt. Santosh Koli fell from the Bullet Bike and suffered



injuries, for which she was undergoing an operation.

8. The petitioner-Kalawati was informed that while Smt. Santosh Koli was coming to Kausambi, Ghaziabad with Kuldeep Pawar on Bullet motorcycle, they were hit by one S.B.O. from the back side. Smt. Santosh Koli fell and the Bullet motorcycle skid and caught fire. Kuldeep Pawar also got injured but he took Smt. Santosh Koli to Yashoda Hospital.

9. After three days, she was shifted to Fortis Hospital, Gurgaon despite there being several hospitals in Delhi where she could have been admitted for treatment. Moreover, no family members were allowed to stay with Smt. Santosh Koli in the hospital and were allowed to stay in day time only. Volunteers of Arvind Kejriwal were present every time near the petitioner-Kalawati and her family members. The doctors treating Smt. Santosh Koli were communicating only with Arvind Kejriwal who in turn used to inform the petitioner-Kalawati and her family members about the medical condition of Smt. Santosh Koli.

10. For about one month, Smt. Santosh Koli remained on ventilator and around four days prior to her death, she was shifted to the normal ward from ICU. In the normal ward, there were other patients who were suffering from Dengue and according to the information given to the petitioner-Kalawati, Smt. Santosh Koli was also suffering from fever. Her medical condition deteriorated and she eventually died in the hospital on 07.08.2013.

11. The petitioner-Kalawati has asserted that she has not received the Post-Mortem Report of her daughter. Even the mobile phone of her daughter is not traceable. The petitioner-Kalawati along with her daughter and husband went to meet Arvind Kejriwal to inquire about the status of the case, as she was not aware about the case of her daughter, nor the Police had



made any inquiry from her or her family members. Arvind Kejriwal shouted on her and told her not to utter the name of her daughter as he had managed to get the case file of Late Smt. Santosh Koli closed and no FIR was registered. Thereafter, Arvind Kejriwal informed the petitioner-Kalawati that at the time of the accident, Kumar Vishwas had got the FIR registered.

12. The petitioner-Kalawati made a complaint in National Commission for Scheduled Tribes (*hereinafter referred to as the “said Commission”*) in the year 2017. The said Commission directed the Delhi Police to register an FIR under the relevant sections of the Indian Penal Code, 1860 (*hereinafter referred to as “IPC, 1860”*) and the SC/ST (POA) Act, 1989.

13. During the proceedings before the learned Additional Sessions Judge, an Action Taken Report of Application under Section 156(3) of Cr.P.C., 1973 was filed by Inspector Nitin Pal Singh, Police Station Nand Nagari, Delhi, wherein it was stated that the requisite documents in respect of the present case were received from Ghaziabad. As per these documents provided by learned ACJM, Ghaziabad, Uttar Pradesh, initially an FIR No. 283/2013 dated 30.06.2013 under Sections 279/337/338/307 of IPC, 1860 was registered against some unknown persons on the allegations that Smt. Santosh Koli had been allegedly hit by unknown car while she was travelling on a Bullet motorcycle as a pillion rider on her way to attend Party meeting at the Head Office of the Party at Kausambi, Ghaziabad. Smt. Santosh Koli had been admitted in Yashoda Hospital and was subsequently shifted to Fortis Hospital, Gurgaon, Haryana for treatment. On 07.08.2013, Smt. Santosh Koli was declared dead in the said Hospital. During the investigations, Sections 304A and 427 of IPC, 1860 were also added and after completion of investigation on 04.07.2018, the Untrace Final Report



was filed in the Court of learned ACJM, Ghaziabad.

14. The Protest Petition was filed by the petitioner-Kalawati before the Court of learned ACJM which was accepted by the Court on 28.06.2019 and further investigations were directed to be conducted.

15. The Commission on 13.03.2019 observed that the matter be forwarded for investigations by an independent Agency/CBI. It is thus, submitted that since the FIR has already been registered, second FIR in respect of the same incident cannot be registered at Police Station Nand Nagari, Delhi.

16. The petitioner-Kalawati has asserted that the attention of learned Additional Sessions Judge was drawn towards the Order dated 28.03.2022 of the said Commission which had directed the Delhi Police to register a new FIR at Police Station Nand Nagari, Delhi as the petitioner-Kalawati resided in the jurisdiction of the said Police Station; to arrest Kuldeep Pawar and Gaurav for further investigations and give necessary compensation to the petitioner-Kalawati under the relevant provisions of SC/ST (POA) Act, 1989, within seven days.

17. It is submitted that the Sub-Divisional Magistrate, Seemapuri *vide* its Letter dated 19.04.2023 requested the Deputy Commissioner of Police, North-East Delhi to take immediate action.

18. The learned Additional Sessions Judge *vide* impugned Order dated 16.09.2023, while dismissing the Application under Section 156(3) of Cr.P.C., 1973 observed that no Complaint under Section 200 of Cr.P.C., 1973 along with the present Application had been filed. The learned Additional Sessions Judge after referring to the details of the complaint and other material, concluded that no offence under the SC/ST (POA) Act, 1989



seems to have been committed, more so, in the absence of any *prima facie* material on record. Merely because the deceased-Santosh Koli belonged to Scheduled Caste, would not be enough to bring the matter within the ambit of the SC/ST (POA) Act, 1989. Therefore, the Application under Section 156(3) of Cr.P.C., 1973 had been held to be not maintainable and accordingly the same was dismissed. However, it was observed that the complainant is at liberty to approach the Court of appropriate jurisdiction to seek her remedy under the relevant provisions of IPC, 1860.

19. **Learned Additional Public Prosecutor** on behalf of the State has contended that due action was taken by the Police *vide* registration of FIR at Kausambi, Ghaziabad and there is no infirmity in the impugned Order dated 16.09.2023 and the present Revision Petition is liable to be dismissed.

20. **Submissions heard.**

21. The factual background leading to filing of an Application under Section 156(3) of Cr.P.C., 1973 is that the petitioner-Kalawati had filed a Complaint dated 01.04.2022 before the SHO, Police Station Nand Nagari, Delhi seeking registration of FIR against Arvind Kejriwal, Kumar Vishwas, Vandana, Kuldeep Pawar, Gaurav and Pankaj etc., under the relevant provisions of IPC, 1860 and the SC/ST (POA) Act, 1989 pursuant to the directions passed by the Commission. However, the SHO, Police Station Nand Nagari, Delhi failed to register an FIR.

22. Thereafter, the petitioner-Kalawati gave a Complaint dated 02.04.2022 to the Deputy Commissioner of Police, North East District, Delhi with the copy of the said Complaint to the said Commission for registration of FIR, despite which, no FIR was registered. The petitioner-Kalawati then filed a Complaint dated 30.09.2022 against the Deputy



Commissioner of Police, North East District, Delhi to the Commissioner of Police, Delhi with a copy to many dignitaries with a prayer for registration of FIR on her Complaint dated 01.04.2022 filed in the Police Station Nand Nagari, Delhi. However, no FIR was registered even then. Thereafter, the Application under Section 156(3) of Cr.P.C., 1973 had been filed by the petitioner-Kalawati before the learned Additional Sessions Judge.

23. The facts briefly stated in the Complaint dated 01.04.2022 which was also set out in the Application under Section 156(3) of Cr.P.C., 1973, were that the complainant is the mother of Late Smt. Santosh Koli, who alleged that her daughter was allegedly murdered in a political conspiracy by the aforementioned persons. Despite having pursued her remedies before all the agencies, she has not been able to get an FIR registered.

24. Evidently on 30.06.2013, while the deceased-Smt. Santosh Koli was travelling as a pillion rider on the Bullet motorcycle being driven by Gaurav, on their way to Kausambi, Ghaziabad to attend a Party meeting, the motorcycle got hit by an unknown vehicle and Smt. Santosh Koli suffered grievous injuries, and the motorcycle also caught fire because of the impact.

25. Smt. Santosh Koli was admitted initially in Yashoda Hospital, Kausambi, Ghazibad and was subsequently, she was shifted to Fortis Hospital, Gurgaon, but eventually, she succumbed to her injuries on 07.08.2013.

26. An FIR No. 283/2013 dated 30.06.2013 was initially registered in Ghaziabad under Sections 279/337/338/307 of IPC, 1860 against some unknown persons However, on the demise of Smt. Santosh Koli on 07.08.2013, Section 304A and 427 of IPC, 1860 were also added. After conducting due investigations, an Untrace Final Report was submitted



before the learned ACJM, Ghaziabad and the same was accepted by learned ACJM.

27. The Protest Petition was filed by the petitioner-Kalawati before the Court of learned ACJM which was accepted by the Court on 28.06.2019 and further investigations were directed to be conducted. *Vide* Order dated 28.06.2019 of learned ACJM, the Protest Petition was accepted and further investigations were directed to be undertaken by the Police of the concerned Police Station.

28. Once the FIR about this incident had already been registered, in which the investigations had been undertaken and when further investigations have already been directed on the Protest Petition of the complainant-Kalawati, the law does not permit the registration of second FIR on the same incident.

29. It is also pertinent to observe that the entire incident in which Smt. Santosh Koli suffered grievous injuries which eventually proved to be fatal, had happened in Ghaziabad, Uttar Pradesh and no part of the said incident occurred in the jurisdiction of Delhi.

30. Therefore, no such fresh FIR can be directed to be registered with the Police Station Nand Nagari, Delhi, as has been rightly observed by the Ld. ASJ, in the impugned Order dated 16.09.2023.

31. The complainant had further made allegations in her Complaint dated 01.04.2022 which read as under: -

“Mai ek anya pichda warg ki mahila hun aur mujhe yakeen hai ki meri beti ki hatya Arvind Kejriwal, Kumar Vishwas, Vandana, Kuldeep Pawar, Gaurav, Pankaj aadi logon ne isliye karwayi ki hum pichde warg se aate hain aur meri beti ki mrityu se Arvind Kejriwal aadi logon ko rajneetik fayda mila”.



32. The learned Additional Sessions Judge has observed that no such averments were made by the petitioner-Kalawati in her Application under Section 156(3) of Cr.P.C., 1973. Moreover, only general assertions have been made in the Application under Section 156(3) of Cr.P.C., 1973 that the offences under the SC/ST (POA) Act, 1989 have been committed by the accused persons. However, the petitioner-Kalawati has completely failed to disclose the facts on the basis of which such sections are sought to be invoked. Moreover, neither any caste-based abuse or remarks to insult, abuse or humiliate have been uttered in the present matter, which is the most common offence committed generally against the victims under the SC/ST (POA) Act, 1989 and no offence as enumerated in Section 3 of the SC/ST (POA) Act, 1989 has been made out.

33. The averments made in the Complaint dated 01.04.2022 as reproduced above do not come within the definition of Section 3(2)(v) of the SC/ST (POA) Act, 1989. In Patan Jamal Vali vs. State of AP, 2021 SCC OnLine SC 343, the Apex Court observed that under Section 3(2)(v) of the SC/ST (POA) Act, 1989, the person is required to prove a discrete experience of oppression suffered on account of a given social characteristic. However, when oppression operates in an inter-sectional fashion, it becomes difficult to identify, in a disjunctive fashion, which ground was the basis of oppression because often multiple grounds operate in tandem. The *sine quo non* for the application of Section 3(2)(v) of the SC/ST (POA) Act, 1989. is that an offence must have been committed against the person on the ground that such person is a member of the SC/ST. No offence merely because a woman belongs to SC/ST community, the provisions of the SC/ST (POA) Act, 1989 would not be attracted.



34. The averments made in the complaint merely imputes to certain persons conspiracy to allegedly murder her daughter because the petitioner-Kalawati and her family members, including the deceased-Smt. Santosh Koli come from the Scheduled Caste Community. Even if all the averments of the petitioner-Kalawati made in the complaint are accepted, there is no caste-based abuse or remarks to insult, abuse or humiliate which can be deciphered, except that the petitioner-Kalawati imputes motive on the named persons to have allegedly murdered her daughter because of their caste , which is essentially based on her hunch and has no basis.

35. The learned Additional Sessions Judge has rightly observed that no offence under the SC/ST (POA) Act, 1989 is made out from the averments made in the complaint under the SC/ST (POA) Act, 1989 and, therefore, rejected Application under Section 156(3) of Cr.P.C., 1973.

36. In view of above, there is no merit in the present petition, which is hereby dismissed.

**(NEENA BANSAL KRISHNA)
JUDGE**

OCTOBER 4, 2024

S.Sharma