

IN THE COURT OF MS. NEHA MITTAL
ADDITIONAL CHIEF JUDICIAL MAGISTRATE-03
ROUSE AVENUE DISTRICT COURT, NEW DELHI

CNR No. DLCT12-000071-2025

CT No. 8/2025

Shiv Kumar Saxena Vs. Arvind Kejriwal & Ors.

PS : Dwarka South

U/s: 156(3) Cr. P.C.

1. Vide this order, application under Section 156 (3) Cr.P.C. filed on behalf of the complainant shall be disposed off.
2. The complainant has filed complaint u/s 200 Cr.P.C. alleging the commission of offence under Section 3 of Delhi Prevention of Defacement of Property Act, 2007 (hereinafter referred to as 'DPDP Act') and the same is accompanied with an application u/s 156(3) Cr.P.C.
3. Brief facts of the present case as stated by the complainant are that the accused persons are misusing public money by putting huge size hoardings at Sector -11 DDA Park, Dwarka (opposite MBS International School) road and crossing, Delhi Development Authority MP green area at Sector -11, Dwarka (behind DDA Sports Complex), Sector-10 main crossing (near Government School and Delhi Government Mohalla Clinic) and Sector -10/11, Sector -6/10 main decorated crossing and roads, power poles, DDA park boundary wall and other public places. It is stated that the complainant filed a written complaint in PS Dwarka South vide DD No. 22B dated 15.11.2019 wherein he mentioned that hoardings have been illegally displayed at

the above mentioned places having greetings for the general public. It is stated that in one of the hoardings, it is stated that the Delhi Government will soon start registration for *darshan* at Kartarpur Sahib and the same bears the photographs and names of Sh. Arvind Kejriwal, the then CM (Accused No.1) and Sh. Gulab Singh, MLA, Matiyala Constituency (Accused No.2). In another hoarding, greetings of Gurunanak Dev Jayanti and *Kartik Purnima* have been extended to the local residents and the same bears the photograph and name of Nitika Sharma, *Nigam Parshad* (Accused No.3) and photographs of Sh. Narendra Modi, Sh. Amit Shah, Sh. Manoj Tiwari, Sh. J.P. Nadda, Sh. Parvesh Verma, Sh. Ramesh Bhiduri and others. It is stated that displaying of aforesaid hoardings at public property is clear violation of DPDP Act, 2007 for which written complaint was made by the complainant in P.S. Dwarka South and to DCP Dwarka District but no action has been taken on the aforesaid complaint. Aggrieved by the inaction on the part of the police officials, the complainant has filed the present application under Section 156(3) of Cr.P.C. praying for registration of FIR.

4. Status report was filed in the year 2022 on behalf of SHO, P.S. Dwarka South stating that the present complaint was filed in 2019 and at present (i.e. at the time of filing status report) no such hoardings have been found displayed at the alleged spot and hence, no cognizable offence is made out at present.

5. It is pertinent to note that vide order dated 15.09.2022 passed by the then Ld. MM, South West, Dwarka Courts, the present

application was dismissed with the observation that field investigation is not required in the present case. Being aggrieved, revision petition was preferred by the complainant against the said order and vide order dated 21.01.2025 passed by Ld. Revisionist Court i.e. Ld. Special Judge (PC Act), CBI-24, MP/MLA cases, RADC, New Delhi, the said order was set aside and the matter was remanded back to Ld. Trial Court with directions to decide the application under Section 156 (3) of Cr.P.C. afresh with a speaking order on the disclosure of a cognizable offence from the allegations made by the complainant. It is further directed that the Trial Court shall then decide the question of directions under Section 156(3) Cr.P.C. or proceeding with the complaint in the manner of a complaint case. Accordingly, the present file has been received in this Court on being so remanded back.

6. Fresh arguments on application under Section 156(3) Cr.P.C. have been heard.

7. It has been submitted by Ld. LAC for the complainant that an objection was raised by the proposed accused persons in the Revisionist Court that sticking of poster does not amount to defacement of property by relying upon judgments *T.S. Marwah and Ors. Vs. State, 2008 (4) JCC 2561 (DEL)* and *HDFC Bank Limited Vs. State & Anr., 2024 SCC OnLine Del 5860*. Ld. LAC for the complainant has submitted that judgment *T.S. Marwah (Supra)* was passed at the time when West Bengal Prevention of Defacement of Property Act, 1976 was applicable to Delhi and hence, is not binding at present as DPDP Act, 2007 has been specifically enacted for Delhi.

To fortify her submission that pasting of banners/hoardings amount to defacement u/s 3 of DPDP Act, 2007, she has relied upon multiple orders of Hon'ble High Court of Delhi passed in *Prashant Manchanda Vs. Union of India & Ors. WP(C) 7824/2017* and judgment titled *Suswarajya Foundation, Satara and Anr. Vs. Collector Satara & Ors., 2017 SCC OnLine Bom 86*. Reliance has also been placed upon orders passed by the Hon'ble High Court of Delhi in *Col. Shivraj Kumar Vs. South Delhi Municipal Corporation & Ors., WP (C) 3367/2015* dated 28.09.2016 and *Sanjeev Kumar Vs. South Delhi Municipal Corporation & Ors., WP (C) 349/2016* dated 14.11.2016 to contend that the police authorities are bound to register FIRs under DPDP Act, 2007. Ld. LAC for the complainant has also filed copies of various orders and public notices issued by the Government of NCT of Delhi directing removal of defacement from property failing which action under DPDP Act, 2007 would be taken.

8. It is further argued that the definition of the term "writing" has been changed in DPDP Act, 2007. It is further argued that number of FIRs have continuously been registered by the Delhi Police on allegations of illegal display of hoardings. It is further argued that even in the status report, the Enquiry Officer has merely submitted that no hoarding was found on the date of filing of status report and that the report is silent regarding the existence of hoardings on the date and time as alleged by the complainant. It is further argued that investigation is required to be carried out in the present case as it is beyond the means of the complainant to determine as to who affixed

the hoardings in question. Hence, it is prayed that the present application be allowed.

9. On the other hand, Ld. APP for the State has argued that it can be seen from the photographs annexed with the complaint that the details of printing press are not mentioned on the hoardings and hence, it is impossible to determine from where the said hoardings were printed and at whose instance. It is submitted that in such circumstances, no purpose would be served by allowing the present application. It is further argued that complainant had mentioned the names of approximately 8-10 persons as accused including the name of Hon'ble Prime Minister of India in the complaints filed by him in the concerned PS and before DCP but most of these names have been omitted from the present application and thus, the present application cannot be said to have been filed after due compliance of Section 154(3) Cr.P.C. With these submissions, it is prayed that there is no need to order registration of FIR in the present case.

10. This Court has considered the submissions advanced on behalf of both the sides. Record has been perused.

11. Before delving into the facts of the present case, it would be appropriate to refer to the guiding factors for using the discretionary power under Section 156(3) Cr.P.C. Hon'ble High Court of Delhi had discussed the nuances of Section 156(3) Cr. P.C. at length and had laid down certain guidelines for exercise of this power in *Subhkaran Luharuka v. State, 2010 SCC OnLine Del 2324*. The relevant observations read as under:

“52A. For the guidance of subordinate courts, the procedure to be followed while dealing with an application under Section 156(3) of the Code is summarized as under:—

(i) Whenever a Magistrate is called upon to pass orders under Section 156(3) of the Code, at the outset, the Magistrate should ensure that before coming to the Court, the Complainant did approach the police officer in charge of the Police Station having jurisdiction over the area for recording the information available with him disclosing the commission of a cognizable offence by the person/persons arrayed as an accused in the Complaint. It should also be examined what action was taken by the SHO, or even by the senior officer of the Police, when approached by the Complainant under Section 154(3) of the Code.

(ii) The Magistrate should then form his own opinion whether the facts mentioned in the complaint disclose commission of cognizable offences by the accused persons arrayed in the Complaint which can be tried in his jurisdiction. He should also satisfy himself about the need for investigation by the Police in the matter. A preliminary enquiry as this is permissible even by an SHO and if no such enquiry has been done by the SHO, then it is all the more necessary for the Magistrate to consider all these factors. For that purpose, the Magistrate must apply his mind and such application of mind should be reflected in the Order passed by him. Upon a preliminary satisfaction, unless there are exceptional circumstances to be recorded in writing, a status report by the police is to be called for before passing final orders.

(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 pre-requisites as aforesaid, but, additionally, he should also be satisfied that it is necessary to direct Police investigation in the matter for 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 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.”

Compliance of Sec 154(3) Cr.PC:-

12. The complainant has prima facie shown the compliance of Section 154(3) Cr.P.C. i.e. he approached the concerned SHO and DCP for action on his complaint. He has filed the copy of complaint made in PS Dwarka South vide DD No. 22B dated 15.11.2019. As no action was taken by the police officials on the aforesaid complaint, the complainant approached the office of concerned DCP where his complaint was received vide Diary no. 12762 dated 29.11.2019. Further, it is clear from the status report filed on behalf of the concerned SHO that no action has been taken on the aforesaid complaints. Accordingly, the complainant has rightly approached the court u/s 156(3) Cr.P.C.

Commission of cognizable offence:-

13. In order to arrive at any conclusion regarding the commission of cognizable offence, the question to be determined is whether the act of hanging banner board or affixing hoardings amounts to defacement of property under Section 3 of DPDP Act,

2007 or not. The earliest judgment on the said issue is *T.S. Marwah (supra)* but it has to be kept in mind that the issue before the Court at that time was regarding the interpretation of the provisions of West Bengal Prevention of Defacement of Property Act, 1976 as applicable to Delhi during the relevant period and not regarding the provisions of DPDP Act, 2007. Although Section 3 of both the Acts are in *pari materia*, however, definition of the term “writing” in the two Acts is completely different, in as much as, the term writing under DPDP Act *inter alia* includes printing and painting whereas it was not so in West Bengal Act. Therefore, the ratio of *T.S. Marwah (supra)* cannot be said to be binding at present.

14. The second judgment on this issue has been passed in the case of *HDFC Bank Limited (supra)*. Though the said judgment has been passed in the year 2024 i.e. at the time when DPDP Act, 2007 came into force but the same has been passed after relying upon *T.S. Marwah (supra)* and in ignorance of the order dated 29.05.2018 passed by Hon’ble High Court of Delhi in ***Prashant Manchanda Vs. Union of India & Ors., WP (C) 7824/2017*** wherein the guidelines stating that pasting of pamphlets, banners etc. on property would constitute acts of defacement and consequently attract the penalty for the said offence were approved and also in ignorance of the following observations made by Hon’ble High Court of Delhi in ***WP(C) 7824/2017***: -

“We make it clear that defacement of public property does not mean only painting or writing over public property but it also includes pasting of posters and placement of hoardings on the public property.”

15. The inconsistency in the decisions of Hon'ble High Court can be reconciled by relying upon the following observations made by Hon'ble Apex Court in judgment ***"M/s A.P. Electrical Equipment Corporation vs. The Tahsildar & Ors."***, ***Civil appeal No. 4526-4527 of 2024:-***

"If two decisions of this Court appear inconsistent with each other, the High Courts are not to follow one and overlook the other, but should try to reconcile and respect them both and the only way to do so is to adopt the wise suggestion of Lord Halsbury given in Quinn v. Leathern, 1901 AC 495 at p.506 and reiterated by the Privy Council in Punjab Cooperative Bank Ltd. v. Commr. of Income Tax, Lahore AIR 1940 PC 230:

"..... every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions, which may be found there, are not intended to be expositions of the whole law, but governed or qualified by the particular facts of the case in which such expressions are to be found."

and follow that decision whose facts appear more in accord with those of the case at hand."

16. Thus, in view of the above discussion, this court is of the considered opinion that ratio of the judgments *T.S. Marwah (supra)* and *HDFC Bank Limited (supra)* is not applicable in the present scenario. Rather, in view the definition of the term 'writing' as defined u/s 2(d) of DPDP Act, 2007 and the judgments referred to by the Ld. LAC for the complainant, it can safely be said that the act of hanging banner board or affixing hoardings amounts to defacement of property

under Section 3 of DPDP Act, 2007. The complainant has placed on record the photographs with date and time stamp to show that hoardings having the names and photographs of the accused persons and other persons have been illegally put up. Section 5 of DPDP Act, 2007 states in express terms that an offence under this Act shall be cognizable.

17. In view therefore, this court is of the opinion that the complainant has prima facie shown that cognizable offence has been committed.

Necessity of Police Investigation:-

18. This takes the court to the next question about the necessity of police investigation. It has to be seen whether the evidence is in possession of the complainant himself or the same has to be procured with the assistance of the police. In the present case, the complainant has alleged that illegal hoardings have been put up at various spots mentioned in the complaint. The photographs of the said hoardings have been annexed with the complaint. Perusal of the same shows that the name or details of the printing press have not been mentioned on the hoardings. In such circumstances, it would be unfair to expect the complainant to bring forth the evidence as to who is the person responsible for putting up the hoardings. It is only the investigating agency which can be expected to come up with something substantial after thorough investigation. This court does not find any merit in the arguments advanced by Ld. APP for the state that it is impossible to collect any evidence at this stage due to lapse of time and non-

availability of any particulars of the printing press. Though the said submission appears to be attractive on the face of it, but this court cannot presume the fact that ordering investigation will be a futile exercise without even giving a chance to the investigating agency, especially in this era of scientific and technological advancement. Further, the investigating agency cannot be allowed to blow hot and cold as record shows that the delay in the present case took place on account of non-filing of ATR on several dates of hearing despite repeated directions of the court and now, the investigating agency cannot shrug its responsibility by saying that evidence cannot be collected due to lapse of time.

19. It has to be kept in mind that the very purpose of section 156(3) Cr.P.C. is to curtail and control the arbitrariness on the part of the police authorities in the matter of registration of FIR and taking up investigations. The principle behind giving statutory power to the police authorities to investigate cognizable offence without any requirement of any order of the Magistrate is to allow them to address serious offences. The seriousness of the offence punishable under Section 3 of DPDP Act 2007 can be gauged from the fact that it is not only an eyesore and public nuisance thereby destroying the aesthetic sense of the city but is also hazardous and dangerous to the smooth flow of traffic by distracting traffic and poses a safety challenge to the pedestrians and vehicles. Deaths caused by collapse of illegal hoardings are not new in India.

20. Quite surprisingly, in the present case, the ATR filed on behalf of the concerned SHO is completely silent on the aspect as to whether the alleged hoardings were present on the date and time alleged by the complainant. The statement in the ATR that no hoardings were found on the date of enquiry appears to be an attempt by the investigating agency to play hoodwink with the court. Thus, in the opinion of this court, investigation is required to be carried out by the investigating agency to unravel the facts as to from where the hoardings were got prepared/printed, who has put up the said hoardings, at whose instance the hoardings were put up etc.

21. The argument put forth by Ld. APP for the State with respect to the omission of names of certain persons from the present complaint cannot have, in the opinion of this court, any bearing on the fate of the present application. The mentioning or omitting the name of certain persons by the complainant cannot determine the course of investigation. The investigating agency has ample power to array any person as accused, though not named as an accused in the present application/complaint, whose complicity in the commission of offence is established from the investigation. Similarly, the persons named by the complainant can be placed in column no. 12 of the charge-sheet or final report can be filed against them if no evidence is found against them after investigation.

22. Hence, in view of the above discussion, this court is of the considered opinion that the application u/s 156(3) Cr.P.C. deserves to be allowed. Accordingly, the concerned SHO is directed to register

FIR immediately U/s 3 of Delhi Prevention of Defacement of Property Act, 2007 and any other offence that appears to have been committed from the facts of the case.

Announced in the open Court
Date: 11th March, 2025

(NEHA MITTAL)
ACJM-03/RADC
NEW DELHI