

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

+ **Crl. Rev. P. No. 337/2008**

Reserved on : 29.07.2009
Date of Decision : 12.8.2009

Smt. Mithlesh

.....Petitioner

Through: Mr. Sushant Mukund,
Adv.

Versus

The State of N.C.T. of Delhi & Ors.

..... Respondents

Through: Mr. Pawan Bahl, APP
Mr. Jagdish Chandra,
Adv. for Respondents no.
2 & 3.

**CORAM :
HON'BLE MR. JUSTICE V.K. SHALI**

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| 1. | Whether Reporters of local papers can be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | YES |
| 3. | Whether the judgment should be reported in the Digest ? | YES |

V.K. SHALI, J.

1. This is a revision petition filed by the petitioner against the order dated 5th May, 2008 passed by the learned Metropolitan Magistrate, by virtue of which he had rejected the prayer of the petitioner for giving a direction under Section 156 (3) Code of Criminal Procedure, 1973 to the local police to register an FIR and investigate the matter.

2. That briefly stated the facts of the case are that the petitioner is claiming herself to be the actual owner of the property bearing No.E-643, Harijan Basti, Ashok Nagar, Near DDA Flats, Shahadara, Delhi-110093. She filed a civil suit bearing no. 254/2000 titled **Smt. Mithlesh Vs. Shiv Lal & Ors.**

against the respondents no. 2 and 3 which is stated to be pending in the Court of Sh. M.P. Singh, the learned Civil Judge, Karkardooma Courts, Delhi. It is alleged in the petition that the respondents have fraudulently used forged documents and got a decree in their favour where the petitioner was not even a party. It was alleged that in the said suit forged documents like General Power of Attorney, Agreement to Sell and receipt were alleged to have been filed. All these documents were executed on dated 15th May, 1985. The petitioner's case is that she checked the record of the Sub Registrar-IV, Seelampur, Delhi and learnt that the documents in question were actually registered in favour of one Smt. Kela Devi and not the respondents no. 2 and 3. The petitioner is purported to have obtained a certificate dated 3rd May, 2006 in this regard also. The petitioner filed a complaint with the Commissioner of Police on 27th July, 2006 complaining about the said forged documents and prayed for registration of an FIR against the respondents no. 2 and 3 for an offence under Section 420/468/471 IPC. It is alleged that despite the opinion of the Director (Prosecution), Government of NCT of Delhi the FIR was not registered which constrained the petitioner to file the writ petition bearing no.2999/2006 seeking a direction to the local police for registration of an FIR. The said prayer of the petitioner for registration of an FIR was disallowed by the learned Single Judge.

3. An appeal against the said order of the learned Single Judge was filed which was also dismissed by the Division Bench

on 2nd February, 2007. However, the Division Bench observed that it is open to the petitioner to file an appropriate application under Section 340 Cr.P.C. if so advised.

4. It is alleged that the petitioner filed an application under Section 340 Cr.P.C. before the learned Civil Judge where the civil dispute is pending adjudication between the petitioner and the respondents. The grievance of the petitioner is that after dismissal of the appeal by the Division Bench, he filed a criminal complaint before the Elaka Magistrate under Section 156(3) read with section 200 Cr.P.C. praying for a direction to the local police to register an FIR and investigate into the matter. However, the said prayer of the petitioner was dismissed by the learned Magistrate vide order dated 15th May, 2008 and the case was adjourned for recording of pre-summoning evidence.

5. The petitioner feeling aggrieved by the aforesaid order has chosen to file the present criminal revision petition.

6. I have heard the learned counsel for the petitioner as well as the learned counsel for the respondent apart from learned APP.

7. The main contention of the learned counsel for the petitioner is that a perusal of the impugned order would show that the learned magistrate has dismissed the prayer of the petitioner for direction to the local police to register an FIR and investigate into the matter under Section 156 (3) Cr.P.C. primarily on the ground that the appeal of the appellant was dismissed by the Division Bench while giving the liberty to the

complainant to move appropriate application under Section 340 Cr.P.C. It was contended by the learned counsel for the petitioner that Section 340 Cr.P.C. would be applicable to a situation only when the judicial proceedings are going on and not to a forgery or manufacturing of a document prior to the pendency of the judicial proceedings. To elaborate this submission further the contention of the learned counsel for the petitioner was that the documents like GPA, receipt, Will etc. were forged by the respondents no 2 and 3 before the filing of the documents and accordingly, Section 340 Cr.P.C. would not be applicable. The learned counsel for the petitioner has placed reliance on the case titled **Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr.** (2005) 4 SCC 370.

8. The second contention of the learned counsel for the petitioner was that merely on account of the fact that the writ petition and the appeal of the petitioner were dismissed, it did not preclude the petitioner from filing the complaint under Section 200 read with section 156 (3) Cr.P.C. for a direction to the local police to register an FIR and then investigate the matter as a serious cognizable offence as reported by the complainant disclosing forgery and fabrication of documents in respect of a property which were being used as genuine documents. It was also contended that the petitioner was ill advised earlier to rush to the High Court for the purpose of seeking a Mandamus to the local police for registration of an FIR which actually should not come into the way of the petitioner seeking the remedy under

Section 156 (3) Cr. P.C. Reliance in this regard was placed on the case titled **Sakiri Vasu Vs. State of U.P. & Ors.** 2008 (1) JCC 113 wherein the Hon'ble Supreme Court has observed that it is open to an aggrieved person in the event of refusal by the local police to register an FIR to approach to the Superintendent of Police under Section 154 (3) Cr. P.C. or the Magistrate who may direct the registration of an FIR and also give a direction for proper investigation into the matter.

9. The learned APP has refuted the arguments of the learned counsel for the petitioner by urging that since the petitioner has already failed in getting a direction to the local police to register an FIR, therefore, the learned Magistrate was well within its power to refuse to give a direction to the local police to register an FIR under Section 156(3) Cr.P.C. and investigate the matter. However, the learned Magistrate has rightly not thrown out the complaint of the petitioner and has directed the complainant, namely, the petitioner to adduce his evidence. As regards the **Iqbal Singh Marwah's** case (supra) there is no dispute that Section 340 Cr.P.C. does not come into way in the instant case because the documents are alleged to have been prepared by the petitioner and thereafter filed in the Court.

10. I have carefully considered the submissions of the learned counsel for the parties and perused the record.

11. I fully agree with the contention of the learned counsel for the petitioner in terms of the pronouncement of the Apex Court in case titled **Iqbal Singh Marwah's** case (supra) that there is a

fine distinction regarding the applicability of provision under Section 340 Cr.P.C. **Iqbal Singh Marwah's** case (supra) clearly enumerates that if there is a commission of an offence of forgery during the course of Trial then there is a bar under Section 195(1)(b)(ii) in as much as no Court shall take cognizance of any such offence except on the complaint in writing by the Court concerned. This is on account of the fact that this is treated as an offence against the Court or against the administration of justice, and therefore, the condition has been put that the criminal justice machinery should not be put into operation without the permission or the complaint being made by the complainant which happens to be the Court itself or an officer of the Court.

12. This is in contradiction where the offence itself has not taken place during the course of judicial proceedings but prior to that. In the instant case admittedly the allegation made by the complainant petitioner is that the respondent no. 2 has filed the documents like GPA, Receipt, WILL etc. and thereafter obtained a decree against the petitioner. Thus, prima facie the petitioner is right in urging that Section 340 Cr. P.C. is not attracted in the case of the petitioner. If that be so nothing precludes the petitioner from filing the complaint as he does not require the permission of the Court. The complaint which may be initiated by the petitioner will not be thrown out on account of the locus standi because **Iqbal Singh Marwah's** case (supra). Curiously enough in the instant case the petitioner of his own admission

has already filed an application under Section 340 Cr.P.C. in the civil case pursued by him, therefore, the ground which has been set up by the learned counsel for the petitioner that the learned Magistrate has failed to appreciate the fact that there is a distinction between the documents which were forged outside the Court and then filed in Court or the documents which were fabricated or tampered with during the judicial proceedings does not have any bearing so far as the case of the petitioner is concerned. This ground does not result in any impropriety, illegality or incorrectness in the order passed by the learned Magistrate and accordingly this submission is without any merit.

13. The second ground which has been raised by the learned counsel for the petitioner that in terms of **Sakiri Vasu's** case (supra) the petitioner was well within his right to have filed a criminal complaint under Section 156(3) read with section 200 Cr.P.C. and the learned Magistrate ought to have given a direction to the local police to register an FIR, and then investigate the matter. I am of the view that the learned Magistrate was perfectly right in not giving such a direction to the local police to register an FIR and investigate into the matter. This is on account of two reasons. Firstly, the petitioner having exhausted his remedy in the High Court by filing the Writ in this regard and then filing an appeal and failing on both fronts had chosen to have a second go by filing the criminal complaint under Section 153 (3) read with section 200 Cr.P.C. Therefore, petitioner cannot be permitted to circumvent the law and take

different recourse for the same purpose. This is in fact a gross abuse of the processes of the law. Secondly, the learned Magistrate has not dismissed the complaint of the petitioner though it has refused to direct the registration of an FIR and the investigation into the matter. It has adjourned the matter and given the direction to the petitioner/complainant to get the statement of the complainant recorded and adduce such other evidence as the petitioner may like to examine in support of its complaint. Section 190 Cr.P.C. clearly lays down that the cognizance of a matter can be taken on the basis of the local police report or on the basis of the complaint or on the basis of the police report or by the Court suo moto. In the instant case, the petitioner has put the criminal justice machinery into motion by a private complaint. Having chosen to do so it is not incumbent in each and every case that the Magistrate must direct registration of an FIR and the consequent investigation by the local police. The Magistrate can take an inquiry under Section 200 Cr.P.C. by examining the complainant and the other witnesses which are produced and then proceed to deal with the complaint under Sections 202 to 204 Cr.P.C. It seems that the petitioner wants to bring bare pressure on the other side by registration of an FIR. This is so on account of the fact that once an FIR is registered other side namely the accused persons would be on the run because they will face an imminent threat of arrest and secondly it becomes convenient for the complainant as well because it becomes a State case where the presence of the

complainant is not required on every date of hearing. That is the modus operandi which is invariably adopted and aimed at by every petitioner. This cannot be permitted to be done more so in a case of a present nature where the petitioner is in litigation with the accused persons/respondents. Therefore, I am of the considered view that the learned Magistrate was well within its right in refusing to give directions to the local police to register an FIR and investigate into the matter. There is no merit in the two submissions made by the learned counsel for the petitioner finding fault in the order passed by the learned Magistrate. There is no illegality, impropriety or incorrectness in the order dated 5th May, 2008 passed by the learned Magistrate and accordingly the present petition is totally misconceived and the same is dismissed.

V.K. SHALI, J.

August 12, 2009
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