

\* **HIGH COURT OF DELHI : NEW DELHI**

+ **W.P. Crl. No. 1029/2010**

% Decided on: 9<sup>th</sup> August, 2011.\_

DEEPAK GARG ..... Petitioner

Through: Mr. Vijay Agarwal, Advocate.

versus

STATE & ANR ..... Respondents

Through: Mr. Saleem Ahmed, Additional  
Standing Counsel for the State with  
Inspector Rajendra Prasad,

**Coram:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

1. Whether the Reporters of local papers may  
be allowed to see the judgment? Not necessary
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported  
in the Digest? Yes

**MUKTA GUPTA, J. (ORAL)**

**Crl. M.A. No. 8665/2010 (Exemption)**

Allowed, subject to all just exceptions.

**W.P. Crl. No.1029/2010 & Crl. M.A. No. 8664/2010 (Stay)**

1. By this petition the Petitioner seeks quashing of order dated  
24<sup>th</sup> January, 2009 directing registration of the FIR on an application

under Section 156 (3) Cr.P.C. and consequently FIR No. 38/2009 under Sections 406/409/420/467/468/471/120B/506/34 IPC registered at PS Najafgarh, Delhi and the proceedings pursuant thereto.

2. Learned counsel for the Petitioner contends that the Complainant initially gave a complaint to DIG, Chandigarh regarding the allegations on which the present FIR has been registered. In the said complaint the name of the Petitioner was not there, and as per the complaint even though the property was situated at Kashmere Gate, Delhi, the transactions were allegedly made at Mani Mazra Chandigarh. Since no FIR was registered at Chandigarh, the Complainant filed a complaint before the learned Metropolitan Magistrate wherein the allegations set out were that the Complainant for the purpose of business dealing used to stay in Delhi with one of his old friends Shri Azad Singh at his residence at Najafgarh and the negotiations for the purchase of the aforesaid property took place at Najafgarh and payments were made to accused persons by the Complainant on different dates in the presence of Shri Azad Singh. It is contended that the Complainant has resorted to false pleadings and thus the order directing registration of FIR should be set aside by this Court on this ground itself. It is further contended that the learned Metropolitan Magistrate has passed the impugned order

under Section 156 (3) after taking cognizance of the complaint as he had called for the affidavit of the parties. This procedure is also in contravention of the decision of the Hon'ble Supreme Court in *Gopal Das Sindhi Vs. State of Assam AIR 1961 SC 986*. It is well settled that the Magistrate must call for a status report before directing registration of the FIR however in the present case directions for registration of the FIR were given without even calling for the status report. He took cognizance on a complaint which was based on concealment, as the fact of making a complaint at Chandigarh was not disclosed. Reliance is placed on *Surender Kumar Sharma vs. State (Govt. of NCT of Delhi)*, 2008 (2) JCC 1362, *Majhar @ Papoo and others vs. State*, 96 (2002) DLT 566, *S.P. Chengalvaraya Naidu (Dead) by L.Rs, vs. Jagannath dead through L.Rs* , AIR 1994 SC 853, *Budhan Singh and others vs. State (Trhough NCT of Delhi)*, 2008 (2) JCC 1017, *Harvinder Singh Khurana and others vs. The State (NCT of Delhi) and another*, 2007 (4) JCC 3164.

3. Learned Additional Standing Counsel on the other hand contends that the present FIR was registered on the direction of learned Metropolitan Magistrate under Section 156(3) Cr.P.C. In the complaint, the Complainant Sukhmander Singh had alleged that he had been

cheated for a sum of Rs. 1.50 crores on the pretext of selling the property bearing Khasra No. 98, Kala Ghat, Kashmiri Gate, Delhi by the Petitioner and his co-accused. The Complainant was induced by accused Kamal Kishore for purchasing the property in question and the same was shown to him in Delhi by Kamal Kishore at the instance of two brokers namely Amarjit Kapoor and Dildar Singh. No jurisdictional error has been committed by the learned Trial Court by directing registration of the FIR at Delhi since in the complaint it was alleged that the property is situated in Delhi and the Complainant parted with the money at Delhi. Further no cognizance had been taken by the learned Magistrate as stated by the learned counsel as there was no step taken for proceeding as a complaint case and thus the order directing registration of FIR is not bad in law. The impugned order is a speaking order wherein it has been clearly discussed that the investigation involves serious allegations of cheating and fraud of Rs. 1.50 crores and, that the disputed property belongs to the government. Learned Metropolitan Magistrate had stayed the complaint case till the final police report is received under Section 173 Cr.P.C. Even if the Complainant had filed a complaint at Chandigarh no FIR was registered thereon and thus the Complainant was not barred from filing a

complaint before the learned Metropolitan Magistrate at Delhi and hence the petition should be dismissed.

4. I have heard learned counsel for the parties. In the present petition initially notice was issued to the State only. No notice was issued to Respondent No. 2, however, learned counsel for Respondent No. 2 had entered appearance on 2<sup>nd</sup> November, 2010 and sought for a copy of the paper book of the petition. The prosecution was directed to file a status report in respect of investigation of grabbing and selling of Nazul land in Delhi by a number of persons. A status report has been filed by the learned Additional Standing Counsel and a chart has also been filed about the sequence of events which has been taken on record. However, no report has been filed by the DDA.

5. Learned counsel for the Petitioner has strenuously contended that the impugned order in the present case suffers from lack of jurisdiction as the Complainant had earlier filed a complaint before the DIG, UT Chandigarh and thus he was barred from filing the present complaint before the Magistrate at Delhi. This contention is wholly meritless and deserves to be rejected. As admitted by the Petitioner, no action was taken on the complaint filed before the DIG, Union Territory of Chandigarh. In case no action is taken thereon and no FIR is

registered, then the Complainant has a right to file a complaint before the Court wherever the jurisdiction is made out.

6. In the present case the property in question is situated in Delhi at Kashmere Gate. As per the Complainant the property was shown in Delhi and the transactions were made at Najafgarh where he stayed at his friends place. Section 178 Cr.P.C. contemplates that when it is uncertain in which of the several local areas an offence is committed or where an offence is committed partly in one local area and partly in another or where an offence is a continuing one, and continues to be committed in more local areas than one, or consists of several acts done in different local area, it can be inquired into or tried by a Court having jurisdiction over any of such local areas.

7. Further Section 181 Cr.P.C. provides that an offence of criminal misappropriation or criminal breach of trust may be inquired into or tried by a Court within whose legal jurisdiction the offence was committed or any part of the property which is the subject matter of the offence was received or retained or was required to be returned or accounted for by the accused person. Thus by no stretch can it be said that the Court at Delhi had no jurisdiction to entertain the complaint. The earlier complaint to DIG, UT Chandigarh was a complaint to police

officer only and the Petitioner had not been tried for the said offence at Chandigarh. Thus the bar of double jeopardy is not applicable in the facts of the present case.

8. I also do not find any merit in the contention of the learned counsel for the Petitioner that the impugned order passed by the learned Metropolitan Magistrate was passed after taking cognizance. When the complaint was filed undoubtedly two affidavits had been filed on behalf of the Complainant however, the Magistrate took no cognizance on the complaint. He heard arguments on the application under Section 156(3) Cr.P.C. In view of the fact that there were serious allegations of cheating and fraud of Rs. 1.50 crores in the complaint, the disputed property belongs to the government; 12 accused persons were involved and the facts disclosed required thorough investigation and collection of evidence, the learned Magistrate stayed the complaint under section 210 Cr.P.C. and directed the SHO concerned to register FIR under Section 154 Cr.P.C. for offence under appropriate sections and to file a final report under Section 173 Cr.P.C at the earliest. The affidavits taken were not for taking steps towards proceeding as a complaint case. Thus mere filing of the affidavits on behalf of the Complainant cannot be said to result in the learned Magistrate taking cognizance of the offence. As

has been held in a catena of decisions by the Hon'ble Supreme Court that, whether the Magistrate has taken cognizance or not is a question of fact which has to be deciphered from the impugned order and the facts of the case. In the present case the facts do not disclose that the Magistrate has taken cognizance. Thus reliance of the Petitioner on *Surender Kumar Sharma* (Supra) is misconceived, as the facts therein were that the learned Magistrate after perusing the report filed by the police observed that no investigation is required to be done by the police authorities and permitted the Complainant to lead evidence. The Complainant accordingly examined two witnesses CW1 and CW2 and after completion of the pre-summoning evidence of the Complainant's the learned Metropolitan Magistrate directed registration of the FIR. This was held contrary to the law laid down by the Hon'ble Supreme Court. Reliance of the Petitioner on *Majhar @ Papoo* (supra) is also misconceived. The allegations therein did not prima facie disclose allegations against the Complainant's husband, mother-in-law, brother-in-law and sister-in-law and thus this Court held that the FIR and the summoning order deserved to be quashed. In the present case the reading of the complaint shows allegations against the Petitioner and the co-accused and the case is at the stage of investigation.

9. Reliance placed on *S.P. Chengalvaraya Naidu* (Supra) to contend that the person who does not come to the Court with clean hands is not entitled to relief is also misconceived. There is no doubt that all the facts should be disclosed however, in the case before the Hon'ble Supreme Court what was concealed was the execution of the lease deed in respect of the property in favour of his employer before filing of the suit. The Hon'ble Supreme Court thus held that the decree was vitiated by fraud whereas in the present case the fact concealed was that a cryptic complaint was made to the DIG, UT Chandigarh on which no action was taken and to my mind this would not be a material concealment so as to quash and stall the investigation in a case of cheating to the tune of Rs. 1.50 crores and where the government land is being sold with impunity by a number of persons. In fact, the concept of locus standi of the Complainant is not known to criminal law. If this fact would have come to the notice of the learned Metropolitan Magistrate suo motu or on a complaint filed by some other person, he was bound to take action thereon. In *Baldev Singh* (supra) the Complainant had first filed a complaint before the learned Court wherein evidence had been led and further evidence was being led on an application under Section 311 Cr.P.C. regarding forgery of a General

Power of Attorney whereafter neither the Complainant nor his counsel appeared and thus the complaint was dismissed in default for want of prosecution. Subsequently the Complainant filed another complaint before the learned Sub-Divisional Judicial Magistrate regarding the forgery of the same very general power of attorney and thus it was held that the non-disclosure of filing and dismissal of the first complaint should not be ignored as a mere irregularity. In *Harvinder Singh* (Supra) this Court quashed the FIR as the facts urged in the subsequent complaint were contrary to the earlier complaint. It may be noted that in the present case the complaint given to the DIG, UT Chandigarh was a cryptic complaint wherein all facts were not mentioned and no action thereon was taken.

10. In view of the seriousness of the allegations leveled in the FIR, I find no reason to quash the same. Petition and application are dismissed.

**MUKTA GUPTA, J**

**9<sup>TH</sup> AUGUST, 2011**  
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