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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 3588/2011

LOKESH KHANNA

..... Petitioners

Through

Mr. Rohan Kanhai, Advocate

versus

SATYA KHANNA & ORS

..... Respondents

Through

None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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08.11.2011

Crl.M.A. 1743/2011(Exemption)

Exemption allowed subject to just exceptions.

Application is disposed of.

Crl. M.A. No. 12752/2011(summoning of trial court record)

This application is dismissed.

Crl. M.C. No. 3588/2011 & Crl. M.A. No. 12753/2011(Stay)

1. By the present petition, the Petitioner seeks quashing of the order dated 17th January, 2011 passed by the learned Metropolitan Magistrate and the order dated 16th August, 2011 passed by the learned Addl. Sessions Judge. The Petitioner further seeks registration of FIR against the Respondent Nos. 1 and 2.

2. Learned counsel for the Petitioner states that he had filed a criminal complaint dated 30th September, 2008 against Respondent Nos. 1 and 2 under various Sections of IPC along with an application under Section 156(3) IPC for registration of a case against the Respondents which was dismissed by the learned

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trial court without properly considering the factual matrix of the case. It is stated that the learned Courts have failed to apply their mind that the Respondent No.1 and 2 filed a petition giving the wrong address and have continuously filed frivolous civil and criminal petitions against the Petitioner. They have also committed number of offences and misguided Delhi Legal Services Authority (DLSA) that they are not financially sound and procured the Court fees from DLSA for filing the civil suit. It is stated that the Respondent No. 1 is earning and receiving more than Rs.22,000/- per month and Respondent No. 2 is a Government employee and hence have committed the offence of cheating and fraud by falsely representing themselves to be poor before the DLSA to procure the ad valorem court fees from legal aid. Learned Trial Courts have failed to consider the illegal activities of cheating and fraud committed by the Respondent Nos. 1 and 2. Hence the impugned orders are bad in law and liable to set aside.

3. I have heard counsel for the Petitioner.

4. Briefly, the case of the Petitioner is that the Petitioner had filed a complaint case against the Respondent Nos. 1 and 2 along with an application under Section 156(3) Cr. P.C. for directions to PS Sarai Rohilla to lodge an FIR against the Accused/Respondents before the learned Metropolitan Magistrate. In the said complaint, the Petitioner had stated that the Respondent Nos. 1 and 2 were pressurizing him to give divorce to his wife for the purpose of getting more dowry and are financially sound persons having a number of bank accounts. In collusion

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with certain relatives they had filed civil suit against the Petitioner which is pending disposal in the district court. For the purpose of that suit, the Respondents filed a false application before the DLSA for providing court fees for filing of the said suit and DLSA provided them with the legal assistance by supplying them the court fee. It was alleged that the suit had been wrongly falsely and frivolously filed against the Petitioner.

5. Learned Metropolitan Magistrate vide order dated 17th January, 2011 observed that there is a history of previous litigations between the parties and the allegations set out in the complaint are of such a nature which can be proved by the Complainant(Petitioner herein) himself and does not require any kind of investigation. No recovery of any other document has to be effected from the Respondent. All the evidence/documents are well within the reach of the complainant and as such require no investigation by the police. Thus, the application of the Respondent was dismissed and the case was listed for pre-summoning complainant evidence. This order was challenged by the Petitioner by way of a revision petition before the learned Addl. Sessions Judge. Vide order dated 16th August, 2011 the learned Addl. Sessions Judge dismissed the said revision petition observing that there was no infirmity or illegality in the order passed by the learned Trial Court.

6. It may be noted that both the orders passed by the learned Metropolitan Magistrate dismissing the application under Section 156(3) Cr. P.C. and the



learned Addl. Sessions Judge in revision are detailed orders keeping in mind all the averments and documents placed on record by the Complainant. This Court in *M/s Skipper Beverages Pvt. Ltd vs. State, 2001 IV ADC (Delhi) 625* held that in case the Complainant himself is in a position to collect all the evidence and for collecting the same intervention of the police is not required, the application under section 156 (3) Cr.P.C. should be dismissed and the learned Metropolitan Magistrate should proceed as a complaint case if the facts warrant.

7. In *Gopal Das Sindhi vs. State of Assam & Anr., AIR 1961 SC 986*, the Hon'ble Supreme Court held:

“We cannot read the provisions of Section 190 Cr. P.C. to mean that once a complaint is filed, a Magistrate is bound to take cognizance if the facts stated in the complaint disclose the commission of any offence. We are unable to construe the word ‘may’ in Section 190 Cr.P.C. to mean ‘must’. The reason is obvious. A complaint disclosing cognizable offence may well justify a Magistrate in sending the Complainant under Section 156 (3) Cr.P.C. to police for investigation. On the other hand, there may be occasions when the Magistrate may exercise his discretion and take cognizance of a cognizable case. If he does so then he would have to proceed in the manner provided by Chapter XVI of the Code.

8. Thus, it is well-settled that when a complaint is filed before the Magistrate, he has the option of either directing the police to register the FIR under Section 156 (3) and investigate the same and in case the Magistrate is of the opinion that the evidence required to prove the case of the Complainant is in possession of the Complainant and in case some evidence is required, the same can be obtained by having recourse to Section 91 or 202 Cr. P.C., it is not necessary in such a case to

relegate the Complainant to the procedure of getting the FIR registered and await the police investigation and charge-sheet thereon.

9. I find no infirmity in the impugned orders much less any abuse of process of Court, warranting interference by this Court. The jurisdiction under Section 482 Cr. P.C. is required to be resorted to sparingly with great care, caution and circumspection in order to prevent abuse of the process of the Court.

10. The Petition and the application are dismissed.


MUKTA GUPTA, J

NOVEMBER 08, 2011
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