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THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 1152/2010 & CrI.M.A. 4088/2010

Date of Decision: 10.01.2012

OMPRAKASH & ORS.

..... Petitioner

Through: Ms.Rebecca M.John, Advocate with
Mr.Vishal Gosain, Advocate with Mr.
Kushdeep, Advocate.

versus

STATE & ANR.

..... Respondent

Through: Mr.Pawan Sharma, Standing Counsel with
Mr.Harsh Prabhakar, Ms. Afshan Pracha,
Advocate with SI Pankaj Saroha, P.S.
Nangloi.
Counsel for the respondent No.2.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. This is a petition under section 482 Cr.P.C. against the order dated 25.01.2010 of learned MM whereby directions were given to the police under section 156(3) Cr.P.C. for registration of an FIR against the petitioners.
2. The case has peculiar facts. The petitioners are police officers. One Nisheet Aggarwal in his complaints made to the police of P.S. Nangloi on 02.07.2008 and 26.07.2008 had complained that he was owner of premises bearing No. 643 (New No. 1579), Khasra No. 229, Village Mundka having purchased the same from Smt.

Laxmi Devi wife of Pratap Singh, whereas Chand Rani, Syani Devi and Bhim Singh had been threatening and harassing him for the same have put their lock over his lock on the premises. Similar complaints were made by him on 7th August 2008 and also on 10th August, 2008. In the mean time on 18.08.2008 and on 26.08.2008 complaints were made by Smt. Chand Rani to P.S. Nangloi alleging execution of sale deed in favour of Nisheet Aggarwal of the aforesaid property to be a fraudulent and bogus one and claiming herself to be the owner and in possession of the same.

3. Since no action was taken by the police on the complaint of Nisheet Aggarwal, he made a complaint to the Commissioner of Police. The inquiry was got conducted by the Addl. DCP (Vigilance), who vide his report dated 06.01.2009 while finding fault of inaction on the part of the local police reported that Smt. Laxmi Devi had sold the aforesaid property through the registered sale deed dated 19.06.2008 to the complainant Nisheet Aggarwal. The operative part of the inquiry report was as under:

“Enquiry also revealed that the alleged persons prepared fake papers (Affidavit/GPA) of the property in question and submitted to the BSES and also in the court. Smt. Chand Rani having no title and she is not empowered to execute any GPA in the name of his cousin brother, Bhim Singh showing herself as sole owner of the property whereas on the other side Smt. Laxmi Devi has executed the registered sale deed in the name of the complainant. The property executed by Smt. Laxmi Devi was very much in her possession as revealed from the local enquiry and also from the statement of Mr. Harish, the tenant. It also revealed that the possession of the property was given to the complainant on the spot and keys were handed over and the said property remained in the possession of the complainant for 1-1/2 month. The local enquiry further revealed that the alleged persons had demanded a big amount from the complainant to withdraw themselves from the scene. The alleged party had broken the locks of rented room which was already handed over to

the complainant and put their lock and installed an electric meter by submitting fake papers.

The incident took place on 07.08.08 and the complainant, his wife made PCR calls, met SHO/Nangloi and also submitted complaints but no action into the matter has been taken on the pretext of civil suit filed by Smt. Chand Rani on 23.07.2008 in which no interim orders were passed by the Court. On repeated complaints and PCR calls, no legal action was taken by the local police. The enquiry revealed that the alleged persons were indirectly allowed to put lock on the lock of the complainant. The alleged person firstly had broken the lock of one room and put his lock there. Secondly they captured/occupied other room also and put lock on it and on the main gate also. The same has been admitted by the local police personnel who had gone there to attend the PCR calls. The local police have taken a false excuse by saying the matter is sub-judice in the court. In fact they failed to take proper and timed action into the matter.”

4. The enquiry of Additional DCP (Vigilance) was endorsed by Addl. Commissioner of Police (Vigilance) who recorded that allegation of inaction against the local police on the complaints of the complainant Nisheet Aggarwal stands substantiated and a case under the proper sections of IPC should have been registered and investigated. This was further endorsed by the Special Commissioner of Police (Vigilance) and also by the Commissioner of Police. The Commissioner of Police, however, also ordered that “*no dispossession should be allowed and action be taken against the trespassers, if any.*”

5. Thereafter on the statement of the complainant Nisheet Aggarwal, FIR No. 15/2009, under section 448/506/34 IPC P.S. Nangloi was registered by the petitioners and the investigation was carried on by the petitioner No. 1. On 22.01.2009, the petitioners visited the premises and called the locksmith and got opened the premises and gave possession thereof to the complainant. Smt. Chand Rani and others challenged the registration of the FIR by way of W.P. (Crl.) No.

423/2009 wherein in addition to the prayer of quashing of FIR, prayers were also made for initiation of departmental enquiry against petitioner No. 1 and also for return of the household articles allegedly taken away by the police officers at the time of taking over the possession of the premises. However, the writ petition was confined to the prayer of quashing FIR No. 15/2009. The said writ was dismissed by this Court vide order dated 01.04.2009.

6. A civil suit bearing No. 685/2008, titled as Smt. Chand Rani and Others Vs. Smt. Laxmi Devi was also filed by the complainant Chand Rani which came to be dismissed by the Court of ADJ on 19.02.2009. The matter did not rest there. In August 2009 Chand Rani and Others filed a Civil Writ bearing No. 7601/2009 before this Court against the complainant Dr. Nisheet Aggarwal, his wife Neeru Aggarwal and also the Commissioner of Police and SHO P.S. Nangloi which was also dismissed by this Court on 18.03.2010. Not being satisfied, she filed a criminal complaint before the Court of MM on 05.09.2009 against Dr. Nisheet Aggarwal, his wife Neeru Aggarwal, Laxmi Devi, present petitioners and others under section 200 Cr. P.C. read with section 190 Cr.P.C. It was in this complaint that the learned MM passed the impugned order under section 156(3) Cr. P.C. directing SHO, P.S. Nangloi to register a case against the petitioners.

7. The impugned order has been assailed by the petitioners mainly on the grounds that (i) Metropolitan Magistrate ought not to have passed the order

directing for registration of the case under section 156(3) Cr.P.C. without calling for the status report from the police or getting conducted preliminary enquiry as regards the allegations of the complainant. In this regard reliance was placed on **Subhkaran Luharuka & Anr. Vs. State (Govt. of NCT of Delhi) & Anr.**, 2010 (3) JCC 1972 in which the petitioners registered the FIR against the complainant and others, in discharge of their duties as directed by the C.P. and (3) the complainant concealed and suppressed the material facts from the court of MM in obtaining the order under section 156(3) Cr. P.C. Reliance was placed on **MCD Vs. State of Delhi and Another**, 2005 SCC (Cri.) 1322.

8. The Standing Counsel for the State submitted that the complaint as made by Smt. Chand Devi before the Magistrate was not maintainable being barred by limitation under Section 140 of Delhi Police Act inasmuch as the incident took place on 7th August, 2008 and complaint was made on 05.09.2009. He placed reliance on the judgment of **Balbir Singh Vs. Government of NCT of Delhi & Ors.**, 125 (2005) DLT 543 and **Balvinder Singh Sidhi Vs. Mahender Singh (Inspector)**, 70 (1997) DLT 472 of our own High Court to contend that the acts performed by the petitioners were directly and reasonably connected with their official duties or in any case in the purported exercise of their official duties and thus within the ambit of Section 140 of the D.P. Act.

9. On the other hand learned counsel for the respondent Smt. Chand Rani submitted that the Registration of the FIR which was ordered by the MM under Section 156(3) Cr. P.C. was initially stayed by this Court on 03.04.2010, but, subsequently vide order dated 9th August, 2011, the said stay was vacated with the observations made by the Court that the petitioners exceeded their jurisdiction in opening lock and handing over the possession of the disputed property to Dr. Nisheet Aggarwal. Learned counsel for the respondent justified the impugned order of registration of FIR against the petitioners contending that the petitioners had exceeded their jurisdiction in dispossessing the complainant Chand Rani in violation of the order of the Commissioner of Police made in the vigilance report. With regard to the plea of the petitioners on their having concealed material facts, it was submitted by learned counsel for the respondent Chand Rani that the fact of dismissal of Criminal Writ being neither relevant nor necessary, the non mention thereof in the complaint under section 200 Cr. P.C. did not amount to any concealment or suppression of any fact by the respondent. The learned counsel for the respondent also submitted that the power of this Court under section 482 Cr. P.C. was to be used sparingly and disputed questions of facts could not be gone into by this court at this stage.

10. Heard learned counsel of the parties and perused the record.

11. The facts as have been briefly noted above are not in dispute. The law with regard to power of this Court in entertaining petitions under section 482 Cr. P.C. is well settled by various pronouncements of the Supreme Court and this court. Only a reference can be made to the judgment of **State of Haryana and others vs. Bhajan Lal and others, 1992 Supp (1) Supreme Court Cases 335** wherein the Supreme Court enumerated category of cases where this Court could exercise power under section 482 Cr. P.C. and under Article 226 of the Constitution of India to prevent the abuse of the process of any court or otherwise to secure ends of justice and it was held as under:

“1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section [156\(1\)](#) of the Code except under an order of a Magistrate within the purview of Section [155\(2\)](#) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section [155\(2\)](#) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

12. From the above facts it may be seen that the complainant Dr. Nisheet Aggarwal prima facie seems to be the bona fide purchaser of the property in question by virtue of registered sale deed from Smt. Laxmi Devi. Smt. Chand Rani had allegedly executed GPA in respect of the said premises in favour of her cousin Bhim Singh. They filed a civil suit in respect of the said premises which came to be dismissed by the Court of learned ADJ vide order dated 19.02.2009. The said judgment of the civil court has become final, having not been challenged by them, meaning thereby that they had not been able to prove any right, title or interest in the said premises. Since no action was being taken by the police on the complaints made by Dr. Nisheet Aggarwal, the matter was enquired into by the vigilance department of the police which, as noted above, recorded a finding of fact that it was because of inaction of the local police that no action was taken against the trespassers namely Smt. Chand Rani, Sh. Bhim Singh and others. All the authorities including the Commissioner of Police had endorsed the vigilance report. The Commissioner of Police while endorsing the report had also ordered that there shall be no dispossession and the action was to be taken against the trespassers, if any. It

was in pursuance of this order that the petitioners on the statement of complainant Dr. Nisheet Aggarwal registered FIR No. 15/2009 on 21.01.2009 under section 448/506/34 IPC. The interpretation that was sought to be given to the order of Commissioner of Police by the learned counsel for the respondent Chand Rani was misplaced inasmuch as by reading this order in the context of the vigilance report, it would be seen that the Commissioner of Police directed that there shall not be dispossession and the action was to be taken against the trespassers. Since Dr Nisheet Aggarwal had been dispossessed from the premises legally owned by him by Chand Rani and others, the act of the petitioners in getting the same restored to him could not be said to be in exceeding their jurisdiction or powers. They had done all these in discharge of their duties and in compliance of the order of the Commissioner of Police.

13. The Criminal writ petition No. 423/2009 was filed by Chand Rani and Ors for quashing of the aforesaid FIR. Despite the fact that the reliefs sought regarding departmental enquiry and return of articles were given up by them and the petition confined to the relief of quashing of the FIR, it was dismissed by this court on 01.04.2009.

14. The Civil suit bearing No. 658/2008 filed by Chand Rani and others in respect of the said premises also came to be dismissed by the Court of ADJ on 19.02.2009. Now having lost the criminal writ as well as civil suit, Chand Rani and

others filed Civil Writ 7601/2009 in August 2009 seeking somewhat similar reliefs in respect of the aforesaid premises which also came to be dismissed by this Court on 18.03.2010. It is noted that in the complaint made to the MM under section 200 Cr. P.C. on 05.09.2009, the complainant Chand Rani had mentioned about filing of civil writ No. 7601/2009, but, did not disclose about the filing and dismissal of her criminal writ by this Court on 01.04.2009. The plea raised by learned counsel for the respondent Chand Rani that this was not a material and relevant fact to be disclosed in a complaint, was untenable. The disclosure of the contents of the writ and the order that came to be passed would certainly have bearing on the mind of the MM while entertaining the complaint under section 200 Cr.P.C. It is settled proposition of law that litigant is expected to approach the Court by disclosing all relevant facts against his plea. Courts of law depend on the parties to put correct facts and there is no other means to ascertain true facts. It is the obligation of all those who come to seek justice particularly in the criminal complaints, since the procedure leading to the summoning of accused is based on the evidence which has not been subjected to the cross examination. Intentional concealment of material facts in the given facts and circumstances would entail quashing of the complaint. This Court while dismissing the writ on 11.04.2009 in para 3 observed as under:

“Respondent No. 3 (Nisheet Aggarwal) is the first informant of the FIR in question. He has alleged that on 26.07.2008, the petitioners (Chand Rani and others) had forcibly trespassed into his property which he had purchased for a consideration of Rs.17.00 lakh and the petitioners had put their own lock on it and had threatened the first informant, while

petitioner No. 1 Bhim Singh pointed a revolver at him and had threatened to kill him if he raised a eye towards the property in question.”

15. In the case of **MCD Vs. State of Delhi and Another**, 2005 SCC (Cri.) 1322 the Hon’ble Supreme Court in paragraph No. 21 held as under:

“This apart, the respondent did not also disclose the fact in the criminal revision filed before the High Court that he has also been convicted in another Criminal Case No. 202 of 1997 by the Court of Metropolitan Magistrate, Patiala House, New Delhi. Thus, the contesting respondent has come to the High Court with unclean hands and withholds a vital document in order to gain advantage on the other side. In our opinion, he would be guilty of playing fraud on the Court as well as on the opposite party. A person whose case is based on falsehood can be summarily thrown out at any stage of the litigation. We have no hesitation to say that a person whose case is based on falsehood has no right to approach the Court and he can be summarily thrown out at any stage of the litigation. In the instant case, non-production of the order and even non-mentioning of the conviction and sentence in the criminal Case No. 202 of 1997 tantamounts to playing fraud on the Court. A litigant who approaches the Court is bound to produce all documents which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well on the opposite party. The second respondent, in our opinion, was not justified in suppressing the material fact that he was convicted by the Magistrate on an earlier occasion. Since the second respondent deliberately suppressed the crucial and important fact, we disapprove strongly and particularly, the conduct of the second respondent and by reason of such conduct, the second respondent disentitled himself from getting any relief or assistance from this Court.”

16. In the case of **Subhkaran Luharuka & Anr.** (supra) this Court laid down certain guidelines for the Magistrates while dealing with applications under section 156(3)Cr. P.C. The said guidelines were 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 Complainant. 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.”

17. Though the guidelines in the case of Subhakarana Luharkha (Supra) came to be passed by this Court after the impugned order of the learned MM, but it is seen that the impugned order seems to have been passed by the learned MM in routine and casual manner. The learned MM ought to have given reasoned order while directing registration of FIR under section 156(3) Cr. P.C. Not only that, no reasons

have been given, even it has also not been stated against whom and under what provision of law the FIR was to be registered.

18. Assuming for the sake of arguments that the acts of the petitioners as police officers were in excess of their jurisdiction or power, the complaint against them was apparently time barred. This was also the submission of learned Standing Counsel for the State. The incident took place on 7th August 2008 and the complaint was made by Smt. Chand Rani to the Magistrate on 05.09.2009. Section 140 of the Delhi Police Act which provides limitation for such an action against the police officers reads as under:

“140. Bar to suits and prosecutions.-

(1) In any case of alleged offence by a police officer or other person, or of a wrong alleged to have been done by such police officer or other person, by any act done under colour of duty or authority or in excess of an such duty or authority, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained and if entertained shall be dismissed if it is instituted, more than three months after the date of the act complained of: Provided that any such prosecution against a Police Officer or other person may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence.

(2) In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall give to the alleged wrongdoer not less than one month' s notice of the intended suit with sufficient description of the wrong complained of, and if no such notice has been given before the institution of the suit, it shall be dismissed.

(3) The plaint shall set forth that a notice as aforesaid has been served on the defendant and the date of such service and shall state what tender of amends, if any, has been made by the defendant and a copy of the said notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof.”

19. In view of my above discussion the allegations taken at their face value do

not constitute any offence against the petitioners. Hence, I am of the view that subjecting the petitioners to undergo criminal trial was nothing but an abuse of the process of the Court and was apparently miscarriage of justice. For all these reasons, the petition is allowed and the impugned order is set aside.

M.L. MEHTA,J

JANUARY 10, 2012

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