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

RESERVED ON : 21st MAY, 2013
DECIDED ON : 13th AUGUST, 2013

\+ **CRL.M.C.No. 1027/2013 & CRL.M.A. 3204/2013 (Stay)**

ALKA GUPTA ....Petitioner
Through : Mr.Ramesh Gupta, Sr.Advocate with Mr.Hrishikesh Baroan, Advocate.

versus

STATE & ORS. ….Respondents
Through : Mr.M.N.Dudeja, APP.
Mr.Arvind Nigam, Sr.Advocate with Mr.Sameek Vashisht & Mr.Tanmay Mehta, Advocates.

\+ **CRL.M.C.No. 1028/2013 & CRL.M.A. 3206/2013 (Stay)**

ALKA GUPTA ....Petitioner
Through : Mr.Ramesh Gupta, Sr.Advocate with Mr.Hrishikesh Baroan, Advocate.

versus

STATE & ORS. ….Respondents
Through : Mr.M.N.Dudeja, APP.
Mr.Arvind Nigam, Sr.Advocate with Mr.Sameek Vashisht & Mr.Tanmay Mehta, Advocates.

AND

\+ **CRL.M.C.No. 1029/2013 & CRL.M.A. 3208/2013 (Stay)**

ALKA GUPTA ....Petitioner
Through : Mr.Ramesh Gupta, Sr.Advocate with Mr.Hrishikesh Baroan, Advocate.

versus

STATE & ORS. ….Respondents

Through : Mr.M.N.Dudeja, APP.
Mr.Arvind Nigam, Sr.Advocate with
Mr.Sameek Vashisht & Mr.Tanmay
Mehta, Advocates.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The petitioner has filed the petitions under Section 482 Cr.P.C. to set aside a common order dated 17.01.2013 passed by learned Additional Sessions Judge, Delhi in Crl.Revision Petitions No. 129, 130 and 131 of 2012; to direct the police authorities to register the complaints as FIRs and conduct investigation. I have considered the submissions of the parties and have examined the record. It reveals that the petitioner herein filed three Complaint Cases No.132/1, 133/1 & 134/1 against the respondents for committing offences punishable under Sections 415/420/463/465/468/471/477(A) read with Section 120B of the Indian Penal Code, 1860. Applications under Section 156 (3) Cr.P.C. were also filed for issuing appropriate directions for registration of FIRs and for conducting investigation through police. The petitioner averred in Complaint Case No. 132/2001 that she and Sanjay Gupta (Respondent No.2 herein) were shareholders in '*Sampat Real Estate Private Ltd.*'. They both were Directors in the said company. The company had no other

business apart from the only asset consisting of property situated at 47, Amrita Shergil Marg, New Delhi and paltry cash in the Bank. She further averred that recently she, after going through electronic records available with the Registrar of the Companies on website, learnt that she was neither a shareholder nor a Director in the said company. Annual returns for the period from 30.09.2004 to 30.09.2010 revealed that shares held by her were transferred in the name Sanjay Gupta(Respondent No.2), Kamlesh Gupta (Respondent No.3) and her father-in-law. She claimed that she never executed any instrument of transfer like a share transfer in favour of respondents No.2 & 3 or submitted resignation as Director of the said company. She alleged that the respondents pursuant to criminal conspiracy illegally and dishonestly removed her from the post of Director by forging documents and falsifying accounts. They forged share transfer forms to transfer the shares in their names.

2. By an order dated 02.05.2012, the learned Metropolitan Magistrate after considering the rival contentions of the parties and relying upon the judgments cited therein declined to give directions under Section 156 (3) Cr.P.C. to the police to investigate the case and instead took cognizance himself. The complainant was given an opportunity to prove her contentions by leading evidence and the case was adjourned for

recording her statement and that of her witnesses. The petitioner went in revision and by the impugned order dated 17.01.2013 the learned Additional Sessions Judge did not accept it and with detailed reasons dismissed the revision petitions.

3. It is well settled that when a complaint case is filed under Section 200 Cr.P.C. before a Magistrate, he has two options either to get the matter investigated through police under Section 156 (3) Cr.P.C. or to proceed under Section 200 Cr.P.C. When the Magistrate proceeds under Section 156 (3) of the Code, he passes order without taking cognizance of the offence. If he wishes to proceed under Section 200 of the Code then, he has to take cognizance of the matter and follow the procedure prescribed under chapter-XV. It is an alternative procedure which the Magistrate 'may' or 'may not' adopt at the stage when he is examining the complainant under Section 156 (3) of the Code. Under Section 200 Cr.P.C., the Magistrate has a duty to record evidence led by the complainant and also to examine his witnesses and if necessary even to call for a police report and then to decide as to whether he has to proceed under chapter-XV or has to dismiss the complaint. Section 156 (3) empowers the Magistrate to refer and direct the police to investigate the cognizable offence. It is however not necessary to refer every complaint

filed under Section 200 to the police for investigation under Section 156 (3) Cr.P.C. In '*Skipper Reverages Pvt. Ltd. vs. State*', 2001 (92) DCT 217 SC, while relying upon '*Suresh Chand Jain vs. State of Madhya Pradesh and Ors.*', 2001 (1) AD (Cri.) SC 34, Supreme Court held :

> *"7. It is true that Section 156(3) of the Code empowers a Magistrate to direct the police to register a case and initiate investigations but this power has to be exercised judiciously on proper grounds and not in a mechanical manner. In those cases where the allegations are not very serious and the complainant himself is in possession of evidence to prove his allegations there should be no need to pass orders under Section 156(3) of the Code. The discretion ought to be exercised after proper application of mind and only in those cases where the Magistrate is of the view that the nature of the allegations is such that the complainant himself may not be in a position to collect and produce evidence before the Court and interests of justice demand that the police should step in to held the complainant.----------"*
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> *10. Section 156(3) of the Code aims at curtailing and controlling the arbitrariness on the part of the police authorities in the matter of registration of FIRs and taking up investigations, even in those cases where the same are warranted. The Section empower the Magistrate to issue directions in this regard but this provision should not be permitted to be misused by the complainants to get police cases registered even in those cases which are not very serious in nature and the Magistrate himself can hold enquiry under Chapter XV and proceed against the accused if required. Therefore the Magistrate, must apply his mind before passing an order under Section 156(3) of the Code and must not pass these orders mechanically on the mere asking by*

the complainant. These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of complainant or custodial interrogation appears to be necessary for some recovery of article or discovery of fact."

4. Remedy under Section 156 (3) Cr.P.C. is a discretionary one as the provision proceeds with the word 'may'. The Magistrate is required to exercise his mind while doing so and pass orders only if he is satisfied that the information reveals commission of cognizable offence/ offences and also about necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without the assistance of the police. The complainant, as a matter of right, cannot insist that the complaint case filed by him/ her should be directed in every eventuality to the police for investigation. In '*Mohd. Salim vs. State*' (Crl.M.C. 3601/2009) decided on 10.03.2010, this Court held :

"*11. The use of the expression "may" in Sub-section (3) of Section 156 of the Code leaves no doubt that the power conferred upon the Magistrate is discretionary and he is not bound to direct investigation by the Police even if the allegations made in the complaint disclose commission of a cognizable offence. In the facts and circumstances of a given case, the Magistrate may feel that the matter does not require investigation by the Police and can be proved by the complainant himself, without any assistance from the Police. In that case, he may, instead of directing investigation by the Police, straightaway take cognizance*

of the alleged offence and proceed under Section 200 of the Code by examining the complainant and his witnesses, if any. In fact, the Magistrate ought to direct investigation by the Police only where the assistance of the Investigating Agency is necessary and the Court feels that the cause of justice is likely to suffer in the absence of investigation by the Police. The Magistrate is not expected to mechanically direct investigation by the Police without first examining whether in the facts and circumstances of the case, investigation by the State machinery is actually required or not. If the allegations made in the complaint are simple, where the Court can straightaway proceed to conduct the trial, the Magistrate is expected to record evidence and proceed further in the matter, instead of passing the buck to the Police under Section 156(3) of the Code. Of course, if the allegations made in the complaint require complex and complicated investigation of which cannot be undertaken without active assistance and expertise of the State machinery, it would only be appropriate for the Magistrate to direct investigation by the Police. The Magistrate is, therefore, not supposed to act merely as a Post Office and needs to adopt a judicial approach while considering an application seeking investigation by the Police."

5. In the instant case, for the detailed reasons in the orders, the Trial Court did not deem it fit to order investigation under Section 156 (3) Cr.P.C. I find no illegality or irregularity in the impugned orders to interfere with. The dispute between the petitioner and the respondents is primarily a family dispute. They are related to each other. Earlier, there was civil litigation pending before this Court being CS (OS) No. 1968/2003 among the petitioner's husband Rajiv Gupta, her father-in-law

and respondents No.1 & 2. Subsequently, the matter was compromised and a joint application was moved to dispose of the suit in terms of the compromise on 06.01.2006. The compromise is comprehensive and exhaustive. Compromise decree was passed by this Court under Order 23 Rule 3 being IA No. 220/2006. Rajiv Gupta and his family were given two properties in the said settlement besides substantial amount in cash. Rajiv Gupta declared and assured that he would have no other claim in any other company or property of either Sh.L.R.Gupta or Sanjay Gupta or have any concern including the properties of various Private Limited Companies which were family companies. The compromise decree was acted upon. Rajiv Gupta, petitioner's husband did not challenge the compromise decree after disposal of his application bearing IA No. 11162/2006 and IA No. 10004/2007 vide order dated 03.09.2007. The petitioner who was not a party in the said proceedings in her individual capacity never challenged the said compromise decree any time regarding the properties including the property in question which was subject matter of the said litigation. She did not explain the inordinate delay in lodging the complaint with the police after about ten years. It is unbelievable that she was not aware of her status in the said company during this period. It is for the competent Court to consider all these aspects. This Court avoids

observations on merits to prejudice the case of either party. Nevertheless, these circumstances were sufficient for the Courts below not to order investigation under Section 156 (3) Cr.P.C. Moreover, the petitioner's case is based upon documentary evidence which is available with the Registrar of the Companies and other concerned institutions. The petitioner can seek assistance of the Court to examine relevant witnesses and summon the relevant record to prove her contentions before the Trial Court. In my considered view, assistance of the police is not required to collect evidence on this aspect. Moreover, status report was called by the Courts below and was taken into consideration while declining investigation under Section 156 (3) Cr.P.C. The discretion has been exercised diligently and petitioner's right to pursue the case has not been foreclosed. I find no infirmity or impropriety in the orders under challenge. The petitions are unmerited and are dismissed. Pending applications also stand disposed of.

6. It is however made clear that observations in the impugned orders and this order will have no impact upon the merits of the case.

(S.P.GARG)
JUDGE

AUGUST 13, 2013/*tr*