

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: March 14, 2013
Pronounced on: April 10, 2013

+ **CRL. M.C. 1952/2009**

MANOHAR SINGH & ANR. Petitioners

Through: Mr. Ashok Gurnani, Mr. Snehansu
Tripathi, Ms. Bharti Tripathi, Mr.
B.N.Sharma & Mr. Sudhanshu
Pali, Advocates

Versus

STATE & ORS Respondents

Through: Mr. Sunil Sharma, Additional
Public Prosecutor for Respondent-
State with ASI Virender Singh, PS
Mehrauli and HC Ishwar Chand,
PS Hauz Khas, Delhi
Mr. S.K. Rungta, Senior Advocate
with Ms. Pratiti Rungta and Mr.
Prashant Singh, Advocates for
Respondents No.8, 9 & 11 to 14
Mr. Som Dutta Sharma and
Mr. Gaurav Bhardwaj, Advocates
for Respondents No.6 and 7

+ **CRL. M.C. 1959/2009**

MANOHAR SINGH & ANR. Petitioners

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Respondents No.8, 9 & 11 to 14

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. Petitioners of the above captioned two petitions are the complainants of two criminal complaints i.e. one under Sections 418/420/467/468/471/506/120-B of *IPC* and the other one under Sections 327/347/380/386/120-B of *IPC* in which petitioners had sought direction under Section 156 (3) of *Cr.P.C.* for registration of two separate FIRs on the basis of above two complaints.

2. In the above-captioned first petition, trial court vide order of 16th December, 2008 had directed respondent-State to register the FIR on the basis of aforesaid criminal complaint of petitioners which was challenged by respondent-State as well as by respondent-accused by way of two separate revision petitions i.e. Criminal Revision Petitions No.145/2008 & 174/2009 and vide common impugned order of 11th May, 2009, the revision petition preferred by respondent-accused (*as per amended memo of parties*) was held to be maintainable and both the revision petitions were accepted while setting aside trial court's order of 16th December, 2008 and petitioners' criminal complaint was directed to be proceeded with in accordance with the law.

3. In the above captioned second petition, trial court vide order of 19th February, 2009 had accepted petitioners' application under Section 156 (3) *Cr.P.C.* for registration of FIR under Sections 327/347/380/386/120-B of *IPC* against respondents No.2 to 7 (*as per amended memo of parties*) who were accused No.1 to 6 before trial court and accused No.7 & 8 i.e. respondents No.8 & 9 herein were left out. Petitioners had preferred criminal revision No.175/2009 seeking registration of FIR against respondents No.8 & 9 (accused No.7 & 8) as well and respondent-accused had also preferred criminal revision No.165/2009 against trial court's order directing registration of FIR against them. Revisional court vide impugned order of 11th May, 2009 has held revision petition of respondent-accused to be maintainable and trial court's order of 19th February, 2009 has been set aside with direction to proceed with petitioners' complaint in accordance with the law and to determine as to whether cognizance under Section 190 of *Cr.P.C.* has to be taken against accused or not.

4. With the consent of learned counsel for the parties, the above-captioned two petitions were taken up for hearing together and are being disposed of by this common judgment as the submissions advanced in the above-captioned two petitions were identical.

5. At the hearing, to vehemently urge that a revision petition against interlocutory order does not lie, reliance was placed by learned counsel for petitioners' upon decision in *Father Thomas v. State of U.P. & Anr.* 2011 (2) ALJ 217 and to highlight the scope of criminal revision, reliance was placed upon decision in *Amit Kapoor v. Ramesh Chander & Anr.* 2012 IX AD (S.C.) 493. It was urged on behalf of petitioners that

power under Section 156 (3) of Cr. P.C. is to be exercised where the complaint discloses cognizable offence and to outline the nature of power under Section 156 (3) of Cr.P.C and the difference between aforesaid provision and Section 202 of *Cr.P.C.*, reliance was placed by learned counsel for petitioners upon decisions in *Devarapalli Lakshminarayana Reddy and Others* (1976) 3 SCC 252; *Dilawar Singh v. State of Delhi* 2007(10) SCALE 556 and *Srinivas Gundluri and Others v. Sepco Electric Power Construction Corporation and Others* (2010) 8 SCC 206.

6. To assert that Section 156 (3) of *Cr.P.C.* can be exercised at pre-cognizance stage whereas power under Section 202 of *Cr.P.C.* can be invoked by taking cognizance while issuing the process and Section 156 (3) of *Cr.P.C.* provides for a check by a Magistrate on police to perform their duties and that examination of complainant before passing of order under Section 156 (3) of *Cr.P.C.* is not necessary, reliance was placed on behalf of petitioners upon decisions in *Rameshbhai Pandurao Hedau v. State of Gujarat* AIR 2010 SC 1877 and *Imtiyaz Ahmad v. State of Uttar Pradesh & Ors.* AIR 2012 SC 642.

7. Learned counsel for petitioners had relied upon decision in *Bhushan Kumar and Another v. State (NCT of Delhi) and Another* (2012) 5 SCC 424 to urge that a magistrate is not required to pass a reasoned order while issuing summons under Section 204 of IPC. Reliance was also placed by learned counsel for petitioners upon decision in *Kranti Associates Private Limited and Another v. Masood Ahmed Khan and Others* (2010) 9 SCC 496 to highlight that disposal of a revision petition by a non-reasoned order is unwarranted as insistence

on reason is a requirement for both judicial accountability and transparency and thus, it was contended that impugned order is bereft of reasons and so, it deserves to be set aside and trial court's order ought to be restored.

8. Learned senior counsel for respondent-accused persons had relied upon a recent Apex Court's decision in *Manharibhai Muljibhai Kakadia and Anr. v. Shailesh Bhai Mohan Bhai Patel and Anr.* 2013 CRI. L.J.144 to assert that a criminal revision is very much maintainable against an intermediate order like trial court's order and so, reliance placed by petitioners' counsel upon Full-Bench's decision in *Father Thomas* (supra) is of no avail. Reference was made to Apex Court's decision in *M/s. Thermax Ltd. v. K.M. Johny & Ors.* 2012 CRI.L.J. 438 to contend that where order passed under Section 156 (3) of *Cr.P.C.* suffers from a grave error, then the error so committed by trial court can be corrected while invoking provision of Section 482 of *Cr.P.C.* and impugned order rejecting petitioners' prayer under Section 156 (3) of *Cr.P.C.* is well justified on merits. Reliance was placed on behalf of respondent-accused upon decision in *Omprakash & Ors. v. State and Anr.* 2012 [1] JCC 702 wherein guidelines governing an application under Section 156(3) *Cr.P.C.* as laid down in *Subhakaran Kuharuka & Anr. v.State (Govt of NCT of Delhi) & Anr.* 2010 [3] JCC 1972 were applied and an application under Section 156 (3) of *Cr.P.C.* was rejected as the order allowing it disclosed utter non-application of mind.

9. To contend that registration of two FIRs in respect of same transaction is impermissible, learned senior counsel for respondent-accused had placed reliance upon Apex Court's decision in *Babubhai v.*

State of Gujarat and Others (2011) 1 SCC (Cri) 336 and thus, dismissal of these petitions is sought as it is maintained on behalf of respondent-accused that impugned order does not suffer from any palpable error.

10. To rebut the aforesaid submissions, learned counsel for petitioners had placed reliance upon Apex Court's decision in *Narmada Bachao Andolan v. State of Madhya Pradesh & Anr.* AIR 2011 SC 1989 to contend that doctrine of precedents prohibits disposal of cases by blindly placing reliance upon a recent decision. It was asserted that Apex Court's decision in *Manharibhai* (supra) relied upon on behalf of respondent-accused is inapplicable and the decision in *Father Thomas* (supra) squarely applies to the instant matter. Thus, it was fervently urged by learned counsel for petitioners that by applying the ratio of decision in *Father Thomas* (supra), revision petition of respondent-accused ought to have been dismissed as not maintainable and since the impugned order has erred to do so, therefore, it deserves to be set aside and trial court's order ought to be restored.

11. Upon hearing, it emerges that in the above captioned first petition, criminal complaint of cheating, forgery, etc. was lodged by petitioners against respondent-accused persons including *Smt. Urmila Bajaj*, who is the first informant of FIR case lodged against petitioners levelling allegations of cheating, etc. in respect of Plot No. *D-144 in Freedom Fighters Colony, Neb Sarai, Delhi*.

12. In the aforesaid complaint of petitioners, a status report was called by the Trial Court which revealed that *Smt. Urmila Bajaj*, first informant of FIR No. 624/08 under Sections 420/ 447/ 34 *IPC* registered at P.S. Mehrauli on 13th December, 2008 as well as third party-*Devender*

Bansal had claimed to have purchased the subject land from petitioner-*Manohar Singh*. Aforesaid status report reveals that for effective investigation, handwriting expert's opinion is essential.

13. Trial Court vide order of 16th December, 2008 had acted upon aforesaid status report and had directed petitioner-*Manohar Singh* to give his specimen handwriting to Investigating Officer of FIR case, but had also directed the concerned SHO to register an FIR against himself because the investigation in respect of petitioners' complaint related to the same dispute. The revisional court vide impugned order of 11th May, 2009 had set aside trial court's order of 16th December, 2008 and had directed that complaint of petitioner be tried as a complaint case.

14. Pertinently, in the above captioned second petition, complaint of petitioners is in relation to the offences under Sections 327/347/380/386/120B of *IPC* against different set of accused persons and relates to another property of petitioners i.e. *D-145-B in Freedom Fighters Colony, Neb Sarai, Delhi*. Trial court vide order of 19th February, 2009 had entertained application under Section 156(3) of *Cr.P.C.* moved by petitioners which has been partly allowed with direction to register FIR against respondent-accused except police officials as CFSL Report was required to test the genuineness of the documents produced by both the sides. Petitioners had assailed aforesaid order of Trial Court before the revisional court to seek registration of FIR against two police officials who are accused in the complaint case of petitioners. Respondent-accused *Rajbir Singh*, etc had assailed aforesaid order of Trial Court being unwarranted. Revisional

court vide impugned order of 11th May, 2009 has directed that criminal complaint of petitioners be tried as a complaint case.

15. The basic challenge to the impugned order is on the ground of non-maintainability of the revision petition of respondent-accused, which stands allowed vide impugned order. Implicit reliance placed by petitioners' counsel upon full bench decision of Allahabad High Court in *Father Thomas* (supra) to contend that revision petition against an order allowing 156(3) *Cr.P.C.* is not maintainable, is of no avail for the reason that Apex Court in its recent decision in *Amit Kapoor* (supra) has authoritatively ruled that a criminal revision certainly lies against an intermediate order. The pertinent observations made by the Apex Court in *Amit Kapoor* (supra) are as under:-

"It may be somewhat necessary to have a comparative examination of the powers exercisable by the Court under these two provisions. There may be some overlapping between these two powers because both are aimed at securing the ends of justice and both have an element of discretion. But, at the same time, inherent power under Section 482 of the Code being an extraordinary and residuary power, it is inapplicable in regard to matters which are specifically provided for under other provisions of the Code. To put it simply, normally the court may not invoke its power under Section 482 of the Code where a party could have availed of the remedy available under Section 397 of the Code itself. The inherent powers under Section 482 of the Code are of a wide magnitude and are not as limited as the power under Section 397. Section 482 can be invoked

where the order in question is neither an interlocutory order within the meaning of Section 397(2) nor a final order in the strict sense. Reference in this regard can be made to *Raj Kapoor v. State*. In that very case, this Court has observed that inherent power under Section 482 may not be exercised if the bar under Sections 397(2) and 397(3) applies, except in extraordinary situations, to prevent abuse of the process of the Court. This itself shows the fine distinction between the powers exercisable by the Court under these two provisions. In that very case, the Court also considered as to whether the inherent powers of the High Court under Section 482 stand repelled when the revisional power under Section 397 overlaps. Rejecting the argument, the Court said that the opening words of Section 482 contradict this contention because nothing in the Code, not even Section 397, can affect the amplitude of the inherent powers preserved in so many terms by the language of Section 482. There is no total ban on the exercise of inherent powers where abuse of the process of the Court or any other extraordinary situation invites the court's jurisdiction. The limitation is self-restraint, nothing more. The distinction between a final and interlocutory order is well known in law. The orders which will be free from the bar of Section 397(2) would be the orders which are not purely interlocutory but, at the same time, are less than a final disposal. They should be the orders which do determine some right and still are not finally rendering the court *functus officio* of the *lis*.

The provisions of Section 482 are pervasive. It should not subvert legal interdicts written into the same Code but, however, inherent powers of the Court unquestionably have to be read and construed as free of restriction." (*underlined to supply emphasis*).

16. Now what is required to be seen is whether trial court order directing registration of FIR while exercising its power under Section 156(3) *Cr.P.C.* is an interlocutory order or an intermediate order. No doubt in *Father Thomas* (supra), an order under Section 156(3) *Cr.P.C.* has been held to be an interlocutory order being non-revisable, but Apex Court in *Kishan Lal v. Dharmendra Bafna & Anr.* 2009 (9) Scale 768 in respect of such an order, has ruled as under:-

"It is correct that the revisional court should not interfere with the discretionary jurisdiction exercised by the learned Magistrate unless a jurisdictional error or an error of law is noticed."

17. In view of authoritative pronouncement of Apex Court in *Kishan Lal* (supra), this Court is of the considered view that the order under Section 156(3) *Cr.P.C.* is revisable and impugned order holding revision petition against it to be maintainable does not suffer from any illegality or perversity.

18. This Court is conscious of the fact that on a counter version, second FIR can be registered but whether it is required to be done, is to be seen in the facts of each case and so reliance placed by petitioners upon decision in *Mohd. Salim* (supra), *Dilawar Singh* (supra) and *Srinivas Gundluri* (supra) would be of no avail. Not disputing the legal

position, re-stated in *Rameshbhai Pandurao Hedau* (supra), that a Magistrate can invoke the powers under Section 156(3) *Cr.P.C.* at a pre-cognizance stage and as per the dictum of Apex Court in *Bhushan Kumar* (supra), speaking order is not required to be passed at pre-summons stage, this Court finds that the validity and legality of the impugned order as well as of the trial court order has to be tested with reference to the contents of the criminal complaint in *juxtaposition* with the FIR case pending against the petitioners/complainants as in the instant case.

19. The object of Section 156(3) *Cr.P.C.* is to ensure a fair investigation. Trial court had called for a status report on petitioners' application under Section 156(3) *Cr.P.C.* and upon its perusal had directed petitioners' to give a specimen signature in FIR case pending against them at the instance of respondent-accused herein. Having done so, it was not a proper exercise of discretion under Section 156(3) *Cr.P.C.* to have directed registration of an FIR as petitioners' complaint was infact the defence to the FIR case against them instituted at the instance of respondent-accused herein.

20. In the aforesaid view of this matter, revisional court vide impugned order has rightly exercised its revisional powers to correct the patent illegality of trial court directing the concerned SHO to register a case against himself. Petitioners are accused of the FIR case, who are levelling allegations against the first-informant and the police. To register an FIR on such a complaint is not at all warranted. The appropriate course in such a situation is as has been adopted by the revisional court in the impugned order i.e. to let such a complaint to be tried as a

complaint case. Needless to say, once the investigation of FIR case against petitioners is completed, then the FIR case as well as the complaint case ought to be tried together. In the instant matter, simply because the complaint case also refers to same dispute as is in FIR case, would not be ground to direct registration of an FIR while exercising discretionary power under Section 156(3) *Cr.P.C.*

21. Having considered petitioners' criminal complaint for the offences under Sections 327/347/380/386/120B I.P.C., I find that trial court's order of 19th February, 2009 directing registration of FIR to get thorough investigation and to get the report about genuineness of the documents of both the sides is unsustainable on the face of it as the dispute raised in the petitioners' complaint CC No. 4016/A/1 titled as *Manohar Singh v. Rajbir Singh* is essentially a property dispute having civil flavour. So impugned order directing petitioners' complaint to be tried as a complaint case is fully justified in the facts of this case and the status report placed by respondent-accused on record.

22. In the ultimate analysis, I do not find any patent illegality or perversity in the impugned order warranting interference by this Court in exercise of its inherent jurisdiction. Consequently, both the petitions are dismissed while refraining to comment on the merits of the case lest it may prejudice either side.

Both the petitions are accordingly disposed of.

(SUNIL GAUR)
Judge

APRIL 10, 2013

s/vn