

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

+ **CRL.M.C. 450/2013**

Date of Decision : November 23<sup>rd</sup>, 2015

**B. SRIRAM & ORS.**

..... Petitioners

Through Mr.K.T.S. Tulsi, Sr. Adv. with  
Mr.Vikas Singh, Sr. Adv. with  
Mr.Anil Kumar Sangal, Mr.Siddharth  
Sangal and Mr.Raj Kamal, Advs.

versus

**GOVT OF NCT OF DELHI**

..... Respondent

Through Mr.G.M. Farooqui, APP with IO Insp.  
Ramesh Chander, PS DIU/S.W.  
Mr.S. Bajaj, Adv. for R-2.

**CORAM:**

**HON'BLE MR. JUSTICE P.S.TEJI**

**P.S.TEJI, J.**

1. The present petition under Section 482 Code of Criminal Procedure, 1973 (hereinafter mentioned as “Cr.P.C.”) has been filed by the petitioners, namely, Mr.B. Sriram, Mr.N.K. Arora and Mr. Ram Pal Singh for quashing of Criminal Complaint No.7/2 titled “Satwant Singh Dahiya v. Shakuntala Dahiya & Ors.”, for quashing of order dated 07.05.2012 passed by the learned Metropolitan Magistrate-6, Saket Court, Delhi and FIR No.98/2012, Police Station R.K. Puram.

2. Factual matrix, emerges from the record, is that the

complainant/respondent No.2 Satwant Singh Dahiya is the son of late Brig. B.S. Dahiya who expired on 08.04.2000. Smt. Shakuntala Dahiya is the second wife of the father of the complainant. Smt. Shakuntala Dahiya and her children were having strained relations with the father of the complainant, due to which his father executed a Will bequeathing his estate to the complainant and to the exclusion of other accused persons. Deceased was having a PPF account, a saving bank account and a locker in State Bank of India, R.K. Puram apart from other movable and immovable assets. Smt. Shakuntala Dahiya and Sh. Deshwant Singh Dahiya approached SBI, R.K. Puram to claim the money in the PPF account No. 900390 of the deceased. Smt. Shakuntala Dahiya filed a suit bearing CS(OS)No.584/02 and obtained an ex-parte injunction on 15.03.2002 restraining all the parties from selling, transferring, alienating, parting with possession or creating third party interest and maintenance of status quo with regard to the said properties. In compliance of the same, the Bank froze the accounts of the deceased. It was alleged in the complaint that on 12.08.2011, the accused persons including the bank officials including the petitioner No.3 facilitated the withdrawal of

Rs.6,30,339.98 from the said PPF Account of the deceased on the basis of forged and fabricated documents. Thereafter, the complainant approached the said Bank on 01.11.2011 against the release of the said PPF amount to Smt. Shakuntala Dahiya. After a meeting, the Bank approached Smt. Shakuntala Dahiya who was requested to bring the PPF money back and the same was restored to the bank on 18.11.2011 which is now lying in the form of two TDRs. The complainant had prayed for summoning and punishing the accused persons for various offences.

3. The learned MM, on an application under Section 156(3) of the Cr.P.C, vide order dated 07.05.2012 directed the SHO, Police Station R.K. Puram to register a case. In pursuance of the directions, FIR No.98/2012 under Sections 404, 468, 120B, 465, 406, 471, 380, 466, 409, 472, 403, 467, 420 and 477A IPC was registered.

4. Feeling aggrieved of the filing of the criminal complaint, passing of the order dated 07.05.2012 and registration of abovementioned FIR, the present petition for quashing the same has been filed by the petitioners.

5. Status report was filed by the State. Arguments advanced by

the learned Senior Counsel for the petitioners, learned Additional Public Prosecutor for the State and learned counsel for the respondent No.2/complainant have been heard.

6. Arguments advanced by the learned Senior Counsel for the petitioners are that there were no specific allegations against the petitioners in the complaint on the basis of which the Id. Magistrate directed to register the said FIR. The petitioners were the bank officials and had no personal role in the commission of the alleged offence. The petitioners cannot be proceeded against, as the principle of vicarious liability does not apply in the offences under the Indian Penal Code, 1908. It is further argued that the registration of FIR in the present case is just an attempt to bring financial institutions on their knees as it is an unhealthy situation to direct the police to register FIR only on the basis of contents of the application. It is further argued that there is no criminal conspiracy amongst the petitioners and at the maximum it only amounts to negligence in discharging official work.

7. In support of the above contentions, reliance has been placed on a judgment in the case of *Saroj Kumar Poddar v. State (NCT of*

*Delhi) and another (2007) 3 SCC 693* in which it was observed by the Hon'ble Apex Court that with a view to make a Director of a company vicariously liable for the acts of the company, it was obligatory on the part of the complainant to make specific allegations as are required in law.

In another judgment in the case of *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and another (2007) 4 SCC 70*, it was observed by the Hon'ble Apex Court that sufficient averments should be made to show that the person who is sought to be proceeded against on the premise of his being vicariously liable for commission of an offence by the Company must be in charge and shall also be responsible to the Company for the conduct of its business. It was further observed that the liability of a Director must be determined on the date on which the offence is committed. On similar point, judgment in case of *Maksud Saiyed v. State of Gujarat and others (2008) 5 SCC 668* has been relied upon.

8. Next judgment relied upon by the petitioners is in the case of *GHCL Employees Stock Option Trust v. India Infoline Limited (2013) 4 SCC 505* in which it was observed that in the order issuing

summons, the learned Magistrate has not recorded his satisfaction about the prima facie case and the role played by Managing Director, Company Secretary or Directors which is sine qua non for initiating criminal action amongst them. On similar point, judgment in the case of *Thermax Limited and others v. K.M. Johny and others (2011) 13 SCC 412* has been relied upon.

9. Next judgment relied upon is in the case of *Priyanka Srivastava and another v. State of Uttar Pradesh and others (2015) 6 SCC 287* in which the Hon'ble Apex Court observed that issuing a direction stating "as per the application" to lodge an FIR creates a very unhealthy situation in society and also reflects the erroneous approach of the learned Magistrate. It also encourages unscrupulous and unprincipled litigants to take adventurous steps with courts to bring the financial institutions on their knees.

In *Rishipal Singh v. State of Uttar Pradesh and another (2014) 7 SCC 215*, it was observed that the courts should not allow a litigant to file vexatious complaints to otherwise settle their scores by setting the criminal law into motion, which is a pure abuse of process of law and it has to be interdicted at the threshold. It was further

observed that even assuming that the Branch Manager has violated the instructions, all it amounts to is negligence in discharging official work and at the maximum it can be said that it is dereliction of duty.

10. On the other hand, learned counsel for the respondent no.2 has argued that the investigation of the case is at the initial stage. The role of each of the petitioners is yet to be ascertained and any interference by the Court would result into premature death of the prosecution case. The petitioners were entrusted with the public money. It is further argued that the conspiracy is apparent from the fact that the documents were prepared for making payment of money from the PPF account of the deceased. The petitioners being officers of the bank had no authority to convert the amount of PPF into a term deposit and that too in the name of a dead man.

11. The arguments advanced from both the sides and the judgments relied upon have been gone into detail.

12. The aspect of “*investigation*” is mentioned in Section 156 and Section 202 Cr.P.C. Under Section 202 Cr.P.C., any Magistrate on the receipt of complaint made to him under Section 192 Cr.P.C., could postpone the issue of process and get the investigation made

from the police officer. Secondly, investigation under Section 156(1) Cr.P.C. is by the police officer on the receipt of complaint and without the order of the Magistrate in the cognizable offence. Thirdly, under Section 156(3) Cr.P.C., where the Magistrate is empowered under Section 190, he may order such an investigation.

13. Section 156 of the Cr.P.C. reads as under :

**“156. Police officer's power to investigate cognizable cases** (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII  
(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate  
(3) **Any Magistrate empowered under section 190 may order such an investigation as abovementioned.”**

14. In *P. Kannappan v. State of Kerala (Reported in 2006 (1) RCR (Criminal) 165)*, it was observed by the Kerala High Court that the Magistrate can adopt two options when a complaint is filed before him. He may direct the police to investigate and file the report. He

may take cognizance and proceed under Section 202 of Cr.P.C.

Similar views have been expressed by Hon'ble Apex Court in the case of ***Rameshbhai Pandurao Hedau v. State of Gujarat, AIR 2010 SC 1877*** in which it was held that the power to direct an investigation to the police is available to the Magistrate both under Section 156(3) Cr.P.C. and under section 202 Cr.P.C. The powers under Section 156(3) Cr.P.C. to direct an investigation by the police is at the pre-cognizance stage while the power to direct similar investigation under section 202 Cr.P.C. is at the post-cognizance stage.

This Court in ***Ravindra Kumar v. State (Govt. of NCT of Delhi) & Anr. 2013 VIII AD (Delhi) 403*** held that remedy under section 156(3) of 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 which is neither in possession of the complainant nor can be procured without the assistance of police.

**In *Maksud Saiyed v. State Of Gujarat & Ors*, 2008(1)CTC259**

the Hon'ble Apex court observed that where a jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 of the Cr.P.C., the Magistrate is required to apply his mind.

As also held by Apex Court in ***Suresh Chand Jain v. State of Madhya Pradesh & Ors*. 2001 (1) Supreme Page 129**

"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 help the complainant. The police assistance can be taken by a Magistrate even Under Section 202(1) of the Code after taking cognizance and proceeding with the complaint under Chapter XV of the Code"

In *Meenakshi Anand Soota v. State*, 2007(4) JCC 3230 *Delhi*, this Court observed that it is well settled that under Section 156(3), CrPC, the Magistrate has not to pass the order mechanically and has to apply his judicial mind. On this point, decision of this Court, *Skipper Beverages Pvt. Ltd. v. State*, 2001 IV AD (Delhi) 625, may be referred to in which it was held:

“It is true that Section 156(3) of the Code empowers to Magistrate to direct the police to register a case and initiate investigation 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 a possession of evidence to prove his allegations there should be no need to pass order under Section 156(3) of the Code. This 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 interest of justice demand that the police should step in to help the complainant.”

Further in *Subhakaran Loharuka & Anr. v. State (Govt. of NCT of Delhi) & Anr.*, 170 (2010) DLT 516, for guidance of

subordinate courts, the procedure to be followed while dealing with an application under Section 156(3), Cr.P.C. is 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 Complaint. 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.

In *Devarapalli Laxminarayana Reddy and Ors. v. Narayana Reddy and Ors.*, MANU/SC/0108/1976, the Hon'ble Supreme Court explained the powers of the Magistrate under Section 156(3), Cr.P.C. wherein it is held that, it is well settled that when a Magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint, disclose the commission of an offence. This is clear from the use of the words "may take cognizance" which in the context in which they occur cannot be equated with "must take cognizance". The word "may" gives a discretion to the Magistrate in the matter. If on a reading of the complaint he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence, himself.

In *Dilawar Singh v. State of Delhi*, MANU/SC/3678/2007 the

Hon'ble Supreme Court took the view as follows:

17. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of Cr.P.C. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all, registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of Cr.P.C. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Cr.P.C. that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Cr.P.C. only thereafter.

In *S.N. Sharma v. Bipen Kumar Tiwari & Ors.*, [(1970) 1 SCC 653], it was observed that even in sub- section (3) of Section 156, the

only power given to the Magistrate, who can take cognizance of an offence under Section 190, is to order an investigation; there is no mention of any power to stop an investigation by the police. The scheme of these sections, thus, clearly is that the power of the police to investigate any cognizable offence is uncontrolled by the Magistrate, and it is only in cases where the police decide not to investigate the case that the Magistrate can intervene and either direct an investigation, or, in the alternative, himself proceed or depute a Magistrate subordinate to him to proceed to enquire into the case. The power of the police to investigate has been made independent of any control by the Magistrate."

In *Dharmeshbhai Vasudevbbhai & Ors. v. State of Gujarat (2009) 6 SCC 576*, the Hon'ble Supreme Court held and observed that it is well settled that any person may set the criminal law in motion subject of course to the statutory interdicts. When an offence is committed, a first information report can be lodged under Section 154 of the Code of Criminal Procedure (for short, 'the Code'). A complaint petition may also be filed in terms of Section 200 thereof. However, in the event for some reasons or the other, the first

information report is not recorded in terms of sub-section (1) of Section 156 of the Code, the magistrate is empowered under sub-section (3) of Section 156 thereof to order an investigation into the allegations contained in the complaint petition. Thus, power to direct investigation may arise in two different situations - (1) when a first information report is refused to be lodged; or (2) when the statutory power of investigation for some reason or the other is not conducted. When an order is passed under sub-section (3) of Section 156 of the Code, an investigation must be carried out. Only when the investigating officer arrives at a finding that the alleged offence has not been committed by the accused, he may submit a final form; On the other hand, upon investigation if it is found that a prima facie case has been made out, a charge-sheet must be filed.

*In CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd., AIR2005SC4284*, the Court while dealing with the power of Magistrate taking cognizance of the offences, has opined that having considered the complaint, the Magistrate may consider it appropriate to send the complaint to the police for investigation under Section 156(3) of the Code of Criminal Procedure. When a Magistrate

receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself. As said earlier, in the case of a complaint regarding the commission of cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3).

In *Ramdev Food Products Private Limited v. State of Gujarat*, **AIR2015SC1742** while dealing with the exercise of power under Section 156(3) CrPC by the learned Magistrate, a three-Judge

Bench has held that: "... the direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed."

In *Mohd. Salim v. State*, 175 (2010) DLT 473 the Hon'ble Supreme Court observed that 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.

In *Priyanka Srivastava & Anr. V. State of U.P. & Ors.* 2015,

*AIR (SCW) 2075*, it was held :

*“24. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the bank. We are absolutely conscious that the position does not matter, for nobody is above law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) Cr.P.C. and also there is a separate procedure under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.*

*25. Issuing a direction stating “as per the application” to 27 CRL.A.781/12 lodge an FIR creates a very unhealthy situation in the society and also reflects*

*the erroneous approach of the learned Magistrate. It also encourages the unscrupulous and unprincipled litigants, like the respondent no.3, namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions on their knees. As the factual exposition would reveal, he had prosecuted the earlier authorities and after the matter is dealt with by the High Court in a writ petition recording a settlement, he does not withdraw the criminal case and waits for some kind of situation where he can take vengeance as if he is the emperor of all he surveys. It is interesting to note that during the tenure of the appellant No.1, who is presently occupying the position of Vice-President, neither the loan was taken, nor the default was made, nor any action under the SARFAESI Act was taken. However, the action under the SARFAESI Act was taken on the second time at the instance of the present appellant No.1. We are only stating about the devilish design of the respondent No.3 to harass the appellants with the sole intent to avoid the payment of loan. When a 28 CRLA.781/12 citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum. As we have noticed, he has been able to do such adventurous acts as he has the embedded conviction that he will not be taken to task because an application under Section 156(3) Cr.P.C. is a simple*

*application to the court for issue of a direction to the investigating agency. We have been apprised that a carbon copy of a document is filed to show the compliance of Section 154(3), indicating it has been sent to the Superintendent of police concerned.*

*26. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same.”*

15. Under the Code of Criminal Procedure, 1973, the concerned Magistrate, competent to take the cognizance, is vested with the power under Section 156(3) Cr.P.C. to take the necessary assistance of the investigation to reach to the just conclusion for the purpose of taking the cognizance. The discussion made above culminated into the legal position that the power under Section 156(3) Cr.P.C. is discretionary power vested with the Magistrate competent to take the cognizance of the offence sparingly and in exceptional circumstances,

after due application of the mind and justifying the need of the assistance by way of investigation from the police. The power under Section 156(3) Cr.P.C. more or less depends on the facts and circumstances of each case and to the satisfaction of the Magistrate concerned. The above mentioned powers are ought to be exercised by the Magistrate concerned in the light of observations made by the Hon'ble Apex Court as well as by this Court, as discussed above.

16. *The Code of Criminal Procedure, 1973 envisages the provision of sub-section (3) of Section 156 empowering the Magistrate competent to take the cognizance having the judicial discretion at the earliest stage, to seek the assistance by way of investigation from the investigating agency.*

*This can be done on the basis of subjective satisfaction to be reflected from the detailed speaking order, in exceptional cases exercising the due application of mind, avoiding the undue advantage/unnecessary inconvenience to the person, to curb the unnecessary delay, to reach the just decision to take the cognizance and strictly in accordance with the law laid down by the Hon'ble Apex Court as discussed above.*

17. In the present case, it is not in dispute that all the petitioners were the bank officials and were posted in different departments at the relevant time. It is apparent from the record that petitioner no.1 B. Sriram joined as Chief General Manager, SBI, Local Head Office, New Delhi on 03.10.2011, whereas petitioner no.2 N.K. Arora joined the concerned branch of the bank on 28.09.2011. It is an admitted fact that the PPF amount of Rs.6,30,340/- lying in the account of the late father of the complainant/respondent No.2 was released to Smt. Shakuntala Dahiya on 12.08.2011 i.e. to say prior to joining of petitioner no.2-N.K. Arora in the concerned branch of the bank. Thus, there is no role of petitioner no.2-N.K. Arora in the release of said amount to Smt. Shakuntala Dahiya. So far as petitioner no.1-B. Sriram is concerned, he was never posted in the said branch of the SBI. He joined as Chief General Manager, SBI, Local Head Office, New Delhi only on 03.10.2011 i.e. after the release of money to Smt. Shakuntala Dahiya.

18. The State has filed the status report on record which also shows that during the investigation, the prosecution did not find any involvement of petitioner no.1-B.Sriram and petitioner no.2-N.K.

Arora, directly or indirectly, in any manner with the accused Smt. Shakuntala Dahiya. Even in the complaint made by the respondent no.2/complainant, there is no averment against petitioner nos.1 and 2 that they had ever released the money to accused- Smt. Shakuntala Dahiya which was lying in the PPF account of the late father of the complainant. In the entire complaint, there is no role attributed to petitioner nos.1 and 2 with regard to criminal conspiracy or forging the documents. The contention of the learned counsel for the complainant that the investigation is still going on and the role of the accused persons including the petitioners is yet to be ascertained, does not have any force inasmuch as the status report filed by the prosecution itself shows that there is no involvement of petitioner nos.1 and 2 in any manner in the present case.

19. In view of the above discussion, this Court is of the considered opinion that summoning of petitioner nos.1 and 2 amounts to abuse of process of law as there is no material against them.

20. Learned Senior Counsel for the petitioners further argued that the complainant has failed to make any specific allegation against petitioner no.3. The allegation of fraudulent withdrawal or

conspiracy does not stand. There is no averment with regard to criminal conspiracy or prior meeting of mind prior to the commission of the offence. It is submitted that in the nomination form, the deceased made Smt. Shakuntala Dahiya the nominee to collect the amount in case of death of the subscriber. The claim of the claimant was scrutinized by the bank as per the standard guidelines and due process was followed in dealing with the claim.

21. In support of the above contentions, reliance has been placed in case of *Gunmala Sales Private Limited and others v. Navkar Promoters Private Limited and others (2015) 1 SCC 103* in which it was observed that the High Court always uses and must use the power under Section 482 Cr.P.C. sparingly and with great circumspection to prevent the abuse of the process of the court. There are no fixed formulae to be followed by the High Court in this regard. The High Court at that stage does not conduct a mini trial or roving enquiry, but nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary. On similar point, judgment in the case of *Maharashtra State Electricity Distribution Company Limited and*

*another v. Datar Switchgear Limited and others (2010) 10 SCC 479*

has been referred.

22. The record reveals that at the relevant time i.e. at the time of releasing the money to Smt. Shakuntala Dahiya, the petitioner no.3 Ram Pal Singh was posted as Branch Manager in the R.K. Puram Branch of State Bank of India. The money was released to Smt. Shakuntala Dahiya on 12.08.2011 by the petitioner no.3-Ram Pal Singh, then branch manager of the bank. It was during the tenure of petitioner no.3, the documents were submitted by Smt. Shakuntala Dahiya for withdrawal of money from the PPF account of his deceased husband. It is specifically averred by the complainant/respondent no.2 in his complaint that forgery in the documents was committed by Smt.Shakuntala Dahiya and other co-accused persons for withdrawal of money and it was wrongly informed by her to the bank that she was the only legal heir of deceased. There are several allegations against other accused persons that they had entered into a criminal conspiracy with a view to fraudulently withdraw the money from the PPF account of deceased and also of commission of forgery, impersonation, cheating and using of forged documents as genuine.

23. The fact that the petitioner no.3 was posted as Branch Manager in the R.K. Puram Branch of the State Bank of India where the PPF account of deceased was lying and there was withdrawal of money from the said account by co-accused Smt. Shakuntala Dahiya, creates suspicion and is a matter of investigation. The entire conspiracy and cheating has taken place during the tenure of petitioner no.3, then branch manager and responsible for all the transactions of the bank. So, no ground is made out to quash the criminal complaint, impugned order dated 07.05.2012 and the FIR in question qua the petitioner no.3 Ram Pal Singh.

24. In the present case, the order passed by the learned Metropolitan Magistrate in an application under Section 156(3) Cr.P.C. demonstrates the due application of mind and rightly exercising the discretion in the facts and circumstances. Thus, the submission made by the learned counsel for the petitioners that the exercise of the power by the Magistrate in the present case is not sustainable in the eyes of law, is not sustainable. Furthermore, during the course of arguments, the learned counsel for the petitioners claimed the advantage of the investigation conducted in pursuance of

the order passed by the learned Magistrate under Section 156(3) of the Cr.P.C. and relied upon the status report filed by the investigating agency, which reports the lack of sufficient evidence and decision to submit the closure report in the present case against the petitioner nos.1 and 2. Thus, the argument for setting aside the order of the learned Metropolitan Magistrate under Section 156(3) Cr.P.C. is without any substance or merit. More the reason that the primary challenge of the petitioners is to quash the complaint and order under Section 156(3) Cr.P.C. is consequential to that.

25. The case of petitioner No.3 is distinguished from petitioner no.1 and 2. There are specific allegations against him in complaint, status report filed by police and order under Section 156(3) Cr.P.C.

26. So far petitioner No.1-B.Sriram and petitioner No.2-N.K. Arora are concerned, apparently no role has been assigned to the petitioner nos.1 and 2 in the complaint itself till the date of the alleged offence of withdrawal of the amount i.e. 12.08.2011 and only role ascribed is that subsequently they asked the petitioner No.3-Ram Pal Singh to recover the amount from accused Smt. Shakuntala Dahiya. Similarly, even after the passing of the order under Section 156(3) Cr.P.C. and

the investigation conducted by the police, the police was of the consistent stand that no material was available during the investigation to proceed against petitioner nos.1 and 2. It has been categorically mentioned in the status report that the police was going to furnish the closure report against petitioner nos.1 and 2. In the circumstances, apparently to proceed against petitioner nos.1 and 2 tantamount to abuse of the process of law and to secure the ends of justice it would be necessary to quash the complaint and proceedings emanating therefrom including the FIR qua petitioner nos.1 and 2.

27. With the above observations, the criminal complaint No. 7/2, impugned order dated 07.05.2012 and consequential FIR 98/2012, police station R.K.Puram are quashed qua petitioner nos.1 and 2.

28. As discussed in detail, the prayer for quashing of the complaint and order under Section 156(3) Cr.P.C. is rejected and the present petition is dismissed qua petitioner No.3.

39. Consequently, the present petition and pending applications are disposed of.

**(P.S.TEJI)**  
**JUDGE**

**NOVEMBER 23, 2015**  
**dd**