

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

% Order delivered on : 21st May, 2015

CRL.M.C. 3186/2014 & Crl. M.A. No.14251/2014

RAISA BEGUM Petitioner
Through Mr.H.R.Khan Suhel, Adv. with
Mr.Ankit Mishra & Ms.Minnat
Ullah, Advs.

versus

STATE Respondent
Through Mr.Satish Verma, APP for the State.
Dr.Sumant Bharadwaj, Adv. for
the applicant in Crl. M.A.
No.14251/2014.

**CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The present petition has been filed on behalf of the petitioner above named under Section 482 Cr.P.C. against the order dated 17th April, 2014 passed by, MM, Rohini Courts, in CC no. 70/1/13 PS: Bhalswa Dairy dismissing the application u/s 156(3) Cr.P.C filed by the petitioner.

2. Brief facts as per petition are:

(i) The petitioner through her power of attorney holder had filed an application on 13th May, 2013 before the MM, Rohini Courts, New Delhi seeking directions to the police under Section 156(3)

Cr.P.C. for the registration of the FIR, the same was registered as CC No. 70/01/2013. The MM vide order dated 17th April, 2014 dismissed the application filed by the petitioner and proceeded under Section 200 Cr.P.C. and has now listed the matter for complainants evidence.

- (ii) It is alleged on behalf of petitioner that she is aged about 75 years and is a senior citizen being widow and a pardanashin lady, therefore, hence it is not possible for her to pursue the matter herself. Though she comes to Delhi from time to time, however, she has appointed Sh. Tariq Khan, who is her nephew, as her lawful attorney to pursue the matter on her behalf.
- (iii) Her husband has since expired and she is the only legal heir of his properties. The suit property was mutated in the name of the petitioner and the jamabandi record maintained by the Tehsildar shows the name of the petitioner as a co-owner of the said property.
- (iv) She came to know in 2012 that the property had been mutated in the name of accused persons on the basis of forged and fabricated sale deeds. The sale deeds were purportedly executed in relation to the said property. The details of the same are mentioned below :
 - i) Sale deed dated 18th November, 2005 purported to be executed in the name of Smt Raisa Begum W/o Late Sh. Aftab Ahmad and Mr. Haji Modh. Islam son of Sh. Ashraf Beg in favor of Smt Mamta Jain for the portion of the aforesaid land measuring 10 ½ Bigha out of

Khasra no. 299/226 situated in village Mukundpur, Tahsil Civil 'Lines, District North Delhi, which was registered at the office of Sub-Registrar No.1, North Delhi and is registered at serial No. 9346 in Book No.1, Volume No. 1726 on pages 107 to 119 dated 26th December, 2005. The copy of the said sale deed is filed.

- ii) Sale deed dated 22nd November, 2005 purported to be executed in the name of Smt. Raisha Begum W/o Late Sh. Aftab Ahmad and Mr. Haji Modh Islam son of Sh. Ashraf Beg in favor of Smt. Raj Kumari w/o Manoj Kumar Gupta for the portion of the aforesaid land measuring 10 ½ Bigha out of Khasra No.299/226 situated in village Mukundpur, Tahsil Civil Lines, District North Delhi, which was registered at the office of Sub-Registrar No.1, North Delhi and registered at serial no. 9345 in Book no. 1, Volume No. 1726 on pages 94 to 106 dated 26th December, 2005. The copy of the said sale deed is filed.

It is the case of the petitioners in the complaint is that these forged sale deeds. The property was wrongly mutated.

- (v) The complaint was sent to the SHO, PS Bhalaswa Dairy on her behalf which was filed and acknowledged on 20th July, 2010 by Smt. Sufia Ismail and Smt. Arabia Khan.

(vi) As no action was taken on this complaint for approx, about 2 years, thereafter another complaint was sent on 26th March, 2012 to the Deputy Commissioner of Police (North) by the Petitioner and thereafter another complaint was filed on 22nd November, 2012 before the DCP north, which was signed by the Petitioner Smt. Raisa Begum, Sh. Gulam Mohamad and Arabia Khan but no action was taken. The complaint dated 22nd November, 2012 is a verbatim reproduction of the complaint which was sent to the SHO, PS Bhalaswa Dairy, which was filed and acknowledged on 20th July, 2010. Thereafter another complaint addressed to the commissioner of police was also sent, but no action has so far been taken. A copy of the same is filed. Another complaint was addressed to the Commissioner of Police and same has been received on 4th March, 2013. This complaint was filed by petitioner and contains the copies of all the above mentioned complaints and was meant to be a reminder. A copy of the complaint dated 3rd March, 2013 is filed.

3. It is specific case of the petitioner that she never negotiated or entered into any such agreement with any such persons including the above named accused persons. She also never came to Delhi and appeared before the Sub Registrar No.1, North Delhi. The Photo on the sale deed also doesn't belong to the Petitioner. Therefore the persons who have appeared before the Sub Registrar have impersonated the petitioner and have forged documents and made the registrar believe these documents to be true and thereafter

relying on these forged and fabricated documents got the property mutated in their name.

4. It was also alleged in the complaint that it bears the right thumb impression purportedly of the petitioner and not her signatures. The petitioner is a literate lady and can sign her name. In this regard the copy of passport, her Haj passport and her attested signatures are filed.

5. It was also mentioned that in the entry in the register maintained with the Tehsildar, before the mutation done by the accused persons, the said property was in the name of Smt. Raisa Begum i.e. the petitioner and Sh.Mohd. Ismail. However in the purported sale deeds the names of the sellers are written as Smt. Raisha Begum and Haji Mohd Islam. It is submitted that Haji Mohd. Ismail whose name is entered in the records as a co-owner had expired on 1st September 1996 and the sale deeds have been executed in the year 2005. Therefore it is averred in the complaint that the sale deeds are forged on the face of it and have been executed by the accused in furtherance of their pre-planned conspiracy. The death certificate of Haji Mohd. Ismail is filed. Being aggrieved by the order dated 17th April, 2014, the petitioner is seeking the intervention of this Court by invoking its jurisdiction under Section 397 read with Section 482 Cr.P.C. on following grounds which are taken in the alternative without prejudice to each other.

6. It is argued by the learned counsel for the petitioner that the finding of the MM that the identity of all the accused is known is erroneous as it is alleged by the petitioner that two of the main

accused are the ones who have impersonated the petitioner and Haji Mohd. Ismail are not known to the complainant and this fact was mentioned in the application filed under Section 156(3) but despite of that MM has given his finding. Otherwise, the real identity of the unknown accused can be revealed through custodial interrogation of the other accused and necessary that investigation by the police is carried out to prevent them from escaping the law and getting away with their crimes. For that, the Petitioner only became aware of the fact of occurrence of this crime in 2012 whereas it had occurred in 2005. Therefore, the petitioner is completely unaware of how and by what means this said crime was committed. In light of this fact it is furthermore important that police investigation should be conducted.

7. It is also argued by him that the facts of the present complaint prima facie disclose commission of cognizable offences Smt. Mamta Jain and Smt. Raj Kumari in conspiracy with each other and all the other accused persons, have got the property transferred in their names based on forged and fabricated documents and by impersonation of the petitioner in a calculated manner.

8. It is submitted that Sh. Manoj Kumar who is the husband of Smt. Raj Kumari, has signed as a witness in the sale deed in favour of Smt. Mamta Jain and has also been appointed as the Power of Attorney holder in respect of the portion mentioned in the sale deed in favour of Smt. Mamta Jain which was registered at the office of Sub Registrar No.1, North Delhi and is registered at serial no. 9346 in Book no. 1, Volume No. 1726 on pages 107 to 119 dated 26th December, 2005. Whereas Sh. Dileep Kumar Jain, who is the

husband of Smt. Mamta Jain, has signed as a witness on the sale deed in favour Smt. Raj Kumari which was registered at the office of Sub-Registrar No.1, North Delhi and registered at serial no. 9345 in Book no.1, Volume No. 1726 on pages 94 to 106. Therefore all the named accused persons were in conspiracy with each other and have acted in the furtherance of their conspiracy.

9. Bipin Kumar Jain has signed as a witness on the Sale Deed in favour of Smt. Raj Kumari which was registered at the office of Sub-Registrar No.1, North Delhi and registered at serial no. 9345 in Book no.1, Volume No. 1726 on pages 94 to 106 dated 26th December, 2005 Suhail Ahmad and Aizaz Ahmad have signed as a witness on the sale deed in favour of Smt. Mamta Jain which was registered at the office of Sub-Registrar No.1, North Delhi and is registered at serial no. 9346 in Book no. 1, Volume No. 1726 on pages 107 to 119 dated 26th December, 2005 and the trial Court failed to appreciate that apart from the beneficiaries of the said sale deeds.

10. Learned counsel for the petitioner submits that while passing order dated 17th April, 2014, the learned trial Court has not examined the documents placed on record and did not compare the photographs appears on the sale deed and the passport of the petitioner and did not aspect the issue about the death of Haji Ismail who expired on 1st September, 1996 and sale deed as co-owner was allegedly executed in 2005 which is impossible in view of recent decision of ***Lalita Kumari Vs. Government of Uttar Pradesh***, (2014) 2 SCC 1.

11. His submissions that in the list of these documents the prayer made in the application ought to have been allowed being a strong prima facie case made out by the petitioner. However, the trial Court had taken the cognizance but refused to exercise his jurisdiction under Section 156(3) of the Cr. P.C as he feel that it was not necessary.

12. Aggrieved by the said order, the petitioner filed the above petition for quashing of impugned order.

13. It is not necessary to deal with the allegations made in the said complaint. By reasoned order dated 17th April, 2014, the trial court refused to direct investigation in the matter by the Station House Officer in terms of Section 156(3) of the Code, stating:

“10. In my considered view here the question which assumes importance is that despite there being the allegations of the commission of cognizable offence whether the registration of the FIR and consequent investigation is required or whether the complainant should be asked to lead its evidence for the summoning of the accused persons. As held in the judgment of the Subhkaran Luharuka (supra) which took note of the law in the field, in my considered opinion, there is no requirement of any police investigation at this stage as the complainant is fully aware about the identify of the alleged perpetrator of the offence and the complainant is within the control and possession of all the evidence against the proposed accused persons. The evidence that is proposed to be adduced by the complainant is not of such a technical nature which can only be collected and produced by police in investigation. Moreover, the incident allegedly took place nearly nine years back and

therefore, the police cannot be expected to be in position to extract any additional evidence in addition to the evidence that the complainant can independently produce. Therefore, no fruitful purpose would be served by sending the present complaint for investigation by the police. Further, if during the course of pre-summoning evidence the investigation by the police is found desirable, then the recourse to section 202 Cr.P.C. can be taken to serve the ends of justice. Hence, Hence, I do not deem it appropriate to direct the police to register an FIR and carry out investigation at this stage.”

14. On the aforementioned reason, the complainant was asked to lead pre-summoning evidence. It was directed to furnish list of witnesses, if any.

15. In the present case alongwith the complaint, a party may file an application under Section 156(3) of the Code. When a First Information Report is lodged, a police officer has the requisite jurisdiction to investigate into the cognizable offence in terms of Section 156(1) of the Code. The trial court is entitled to take cognizance of the offence under Section 190 of the Code, he may also direct that such investigation be carried out in terms thereof.

16. When a complaint petition is filed under Chapter XV of the Code, the Magistrate has a few options in regard to exercise of his jurisdiction. He may take cognizance of the offence and issue summons. He may also postpone the issue of process so as to satisfy himself that the allegations made in the complaint petition are prima facie correct and either inquire into the case himself or direct an investigation to be made by a police officer or by such other

person as he thinks fit for the purpose of deciding as to whether or not there is sufficient ground for proceeding. By order dated 17th April, 2014 the Magistrate intended to inquire into the case himself who directed examination of the complainant and his witnesses.

17. The main contention of the learned counsel for the petitioner is that despite of specific averment and allegation made in the complaint coupled with and clear and cogent evidence placed on record, the trial court has refused to pass the order for registering the FIR despite of the decision of ***Lalita Kumari*** (supra). He says that the law laid down by Full Bench of Supreme Court has been ignored by the trial court. Counsel has referred many paras of the judgment and the guidelines mentioned in paras 119 and 120 of the said judgment, where the guidelines have been given. The said paras are read as under :

“119. Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the

information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

Conclusion/Directions:

120. In view of the aforesaid discussion, we hold:

120.1 The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2 If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3 If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4 The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5 The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6 As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- a) Matrimonial disputes/ family disputes
- b) Commercial offences
- c) Medical negligence cases
- d) Corruption cases

- e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7 While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8 Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

18. Therefore, the relation to registration of FIR by the police has been settled by the Supreme Court in the case of ***Lalita Kumari vs. Govt. of Uttar Pradesh***, (2014) 2 SCC 1 whereby the Apex Court had clearly stated that in any case where the complaint discloses a cognizable offence it is mandatory for the police to register an FIR. Even in cases where the option of preliminary enquiry has been given to the police, the police cannot take more than 7 days for such enquiry and that the reasons for the delay must be clearly recorded in the case diary.

19. Learned counsel for the petitioner has submitted that the learned trial court has relied upon ***Skipper Beverages Pvt. Ltd. vs. State***, 2001 (92) DLT 217, ***Gulab Chand Upadhyay vs. State of U.P.***, 2002 (2) Crimes 488, ***Subhkaran Luharuka & Anr. vs. State & Anr.***, 170 (2010) DLT 516, nowhere the point of law in regard to registration of an FIR was clarified in the case of ***Lalita Kumari*** (supra) by the Full Bench has not been discussed in the impugned order, the said judgment was also brought to the notice of the trial Court.

20. His further submission is that on one hand the learned trial Court has prima facie come to the conclusion that the complaint discloses a cognizable offence and yet not exercised its power under Section 156(3) Cr.P.C. by ignoring the judgment of the Supreme Court which was brought to the notice of the trial Court during the course of hearing.

21. Having considered the entire gamut of the case, the allegations made in the complaint as well as the impugned order, it appears to

the Court that judgment in the case of ***Lalita Kumari*** (supra) of the Full Bench of the Supreme Court has not been discussed in the impugned order. This Court does not want to make any comment as to whether this judgment was referred by the counsel or not. But the fact of the matter is that the said judgment has to be considered in the matter at the time of deciding the complaint under Section 156(3) Cr.P.C. Without expressing any opinion on merit of the case as to whether the petitioner is entitled to relief or not as per the facts available on record, the trial Court is directed to pass fresh order after considering the judgment of Full Bench of the Supreme Court in the case of ***Lalita Kumari*** (supra).

22. With these directions, the present petition is disposed of by quashing the impugned order. Parties shall appear before the trial Court on 3rd August, 2015.

(MANMOHAN SINGH)
JUDGE

MAY 21, 2015