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

Judgment delivered on: 11th September, 2015

+ **CRL.M.C. No.3729/2015**

SIMRET KATYAL

..... Petitioner

Represented by: Mr.Ramesh Kumar, Adv

versus

THE STATE GOVT OF NCT OF
DELHI AND ANR

..... Respondents

Represented by: Mr.Mukesh Kumar, APP for
the State/R1.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl.M.A.13215/2015 (For exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. No.3729/2015

1. Present petition is directed against order dated 26.05.2015 passed by learned Additional Sessions Judge in Criminal Revision Petition No.04/2015 whereby the order dated 23.03.2015 passed by learned Metropolitan Magistrate, directing registration of FIR on complaint of petitioner against respondent No.2, has been set aside.

2. The facts relevant for disposal of instant petition are that the jewellery articles of the petitioner were kept in locker bearing No.425 maintained with Union Bank of India, Chandni Chowk, Delhi which

belonged jointly to respondent No.2 and the deceased husband of the petitioner. The locker was operated only by the husband of the petitioner till his death and the jewellery lying therein is the *istridhan* of the petitioner. After death of the husband of petitioner, respondent No.2 has refused to allow the said locker to be opened and has instead claimed ownership of the jewellery articles lying therein. Thus, he committed the criminal breach of trust. Accordingly, petitioner made a complaint to the police station Kotwali for registration of FIR against respondent No.2. Since, the police failed to take any action, petitioner filed complaint for the offences punishable under Section 406 of the IPC alongwith an application under Section 156(3) of the Cr P C. Vide order dated 23.03.2015, learned MM directed for registration of FIR against respondent No.2. Being aggrieved, respondent No.2 filed a revision against said order under Section 397 of the Cr PC. The revision was allowed vide order dated 26.05.2015 by learned Additional Sessions Judge observing that while passing the order dated 23.03.2015, learned MM directed the file to be consigned to Record Room, though the application under Section 156(3) of the Cr P C was also filed by petitioner separately from main case under Section 200 of the Cr P C. Accordingly, liberty was granted to the petitioner to approach learned Trial Court if so desirous for pursuing her complaint.

3. Being aggrieved, present petition is directed on the ground that learned Additional Sessions Judge has acted without jurisdiction and committed grave error in depriving the petitioner of her lawful right to get the FIR registered and allow the police to proceed and determine the truthfulness, veracity of allegations raised by her in complaint. Learned

Additional Sessions Judge has erroneously taken into account the merits of the case which are yet to be investigated and has accepted the pleas in the revision petition of the proposed accused/ respondent No.2 including the fact that ever since the death of her husband late Sh Harinder Katyal, the petitioner has been agitating with respect to the jewellery articles lying in the said locker being her istridhan in Civil Courts and which fact has been mentioned in the complaint filed before the learned Magistrate. Learned Revisional Court can only look into the complaint of petitioner and no more to see if there is any perversity or jurisdictional error. By not doing so, learned Judge has exceeded his limited powers and as such has erroneously adjudicated the case on the basis of the facts given by the prospective accused in total disregard to the judicial precedents applicable to the case.

4. Learned counsel appearing on behalf of petitioner submitted that since cognizable offence has been made out, police was duty bound to register the FIR and investigate the matter. Since, that was not done, therefore, learned MM directed to police to register the case accordingly, thus, committed no illegality. The Constitution Bench of the Supreme Court in ***Lalita Kumari vs. Govt of UP & Ors. 2014(2) SCC 1*** has made the registration of FIR mandatory and has approved the judgment of ***Madhubala vs Suresh Kumar*** 1997 (8) SCC 476 wherein it was held as under:-

“8.... as soon as an order under Section 156(3) is passed thereon transforms itself to a report given in writing within the meaning of Section 154 of the Code, which is known as the First Information Report (FIR). As under Section 156 (1) the police can only investigate a

cognizable 'case', it has to formally register a case on that report.

10. If, therefore, passes our comprehension as to how the direction of a Magistrate asking the police to 'register a case' makes an order of investigation under Section 156 (3) legally unsustainable'.

5. Accordingly, learned Additional Sessions Judge has curtailed the powers of the Magistrate under Section 156 (3) of the Cr P C when such statutory power confers jurisdiction to the Magistrate to order registration of the FIR without taking cognizance when the police do not act.

6. To strengthen the arguments on the issue, learned counsel has relied upon the decision reported as ***Sakiri Vasu vs State of UP 2008 (2) SCC 409***. He submitted that learned Additional Sessions Judge should not have entertained the said revision petition as he lacked the jurisdiction to interfere with the orders passed by the Magistrate under Section 156 (3) of the Cr P C.

7. It is also argued that learned Additional Sessions Judge has failed to appreciate that petitioner on the death of her husband filed a petition for succession certificate in which the jewellery articles lying in the joint name of late Harinder Katyal and his brother Virender Katyal/ respondent No.2 were claimed with other immovable assets and liability of her deceased husband. Learned Judge also failed to appreciate that in the year 1995, the petitioner filed another suit for permanent and mandatory injunction with respect of the said locker in which her istridhan was locked.

8. The dispute between the parties pertains to the ownership of some jewellery articles lying in the said locker and the admitted position is that

the said locker was initially taken in exclusive name of respondent No.2, but subsequently the name of his brother Harinder Katyal (since deceased) was also added. Accordingly, the locker was to be operated by the duo on 'either or survival' basis. The petitioner is the wife of the deceased Harinder Katyal. Their marriage was solemnized in the year 1972-73. The said Katyal had expired in February 1990. Prior to his death, some disputes had already started between both the brothers relating to their family business and properties resulting into filing of a petition under Section 20 of the Arbitration Act by Sh Harinder Katyal against respondent No.2 and latter also a Civil Suit bearing No.2009/1985 for partition of the family properties and dissolution of the partnership accounts. After death of Sh Harinder Katyal, the name of petitioner was brought on record as legal representative of her deceased husband and a settlement was also arrived between petitioner and respondent No.2, which resulted into signing of one memorandum of understanding dated 30.04.1990 between them. The abovesaid Civil Suit was accordingly disposed of on 17.05.1990 on the basis of aforesaid MOU. The deceased Harinder Katyal also executed one 'Will' dated 02.02.1989 during his lifetime. One letter dated 31.07.1987 was also earlier written by respondent No.2 to the above bank for stopping the operation of the locker and since then the said locker has not been operated by anyone.

9. It is pertinent to note that after the death of Harinder Katyal in the year 1990, the petitioner remarried with one Ashval Vadera, who appeared in the revision proceedings as an attorney of the petitioner. Besides the above proceedings, one other Civil Suit bearing No.1731/1991 seeking a decree of perpetual injunction in respect of

family property bearing No.21, Bunglow Road, Delhi covered by the above MOU and another partition suit bearing No.755/1992 for the same property were also subsequently filed by petitioner against respondent No.2 before this Court. However, the partition suit was dismissed by this Court on 17.01.1996 while observing inter alia, that after the execution of the MOU dated 30.04.1990 between the parties, no portion of above said property was left common, which could have been partitioned by the said suit. Even the appeal filed by petitioner, being RFA (OS) No.20/1996 was also rejected vide judgment dated 03.12.2010 by the Division Bench of this Court.

10. Apart from above, one other petition under Section 372 of the Indian Succession Act was also filed by the petitioner before the Administrative Judge, Delhi for grant of succession certificate in respect of the debts and securities etc of her deceased husband, on the basis of the above 'Will' dated 02.02.1989 left by her deceased husband. She had further filed another Civil Suit No.25/1995 before the Senior Sub-Judge, Delhi seeking a permanent and mandatory injunction for substitution of her name in place of the name of her deceased husband for operating the abovesaid locker and also for restraining the respondent No.2 to operate the same and the said Civil Suit is still pending.

11. The contention of petitioner in Criminal Complaint Case No.402/1 for alleged offence under Section 406 of the IPC lodged against respondent No.2 is that the jewellery articles valued at about Rs.1.00 Crore lying in the said locker are her istridhan and respondent No.2 had committed the offence under Section 406 of the IPC by misappropriating them and not returning the said articles to her, which exclusively belonged

to her.

12. On the other hand, respondent No.2 contended that the jewellery articles kept in the said locker do not belong to the petitioner and do not constitute her isticidhan and that it had already settled each and every moveable and immovable asset in the above MOU arrived at between them and also acted upon by this Court and the claim of the petitioner that the above locker contains jewellery articles constitute her isticidhan is only an afterthought and has been falsely made to harass him.

13. It is also pertinent to mention here that the police filed the Action Taken Report before learned MM wherein it was stated that no cognizable offence was made out in the matter and the dispute between the parties was only of a 'civil nature'. As far as the maintainability of the revision petition is concerned, this Court vide judgment dated 10.04.2013 delivered in Crl.M.C.No.1952/2009 and 1959/2009 in case titled ***Manohar Singh & Another vs State & Ors*** wherein after discussing all the relevant law on subject and while relying upon the judgment of the Supreme Court in case ***Amit Kapoor vs Ramesh Chander & Ors. 2012 IX AD (SC) 493*** and ***Kishan Lal vs Dharmendra Bafna & Anr. 2009 (6) Scale 768*** made the following observations:-

“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 selfrestraint, 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.

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."

14. Also in Crl.M.C.Nos.6122-23 & 6133-34 of 2005 decided on 09.07.2010 in the case titled ***Subhkaran Luharuka & Ors vs State (Govt of NCT of Delhi) & Anr*** this Court laid down certain guidelines on the issue involved in the case for the subordinate Courts as under:-

"52A. For the guidance of subordinate courts, the procedure to be followed while dealing with an application under Section 156(3) of the Code 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.”

15. Learned MM in the order dated 23.03.2015 did not even refer to above MOU dated 30.07.1990 executed between the parties qua the ‘Will’ dated 02.02.1989 executed by deceased husband of the petitioner. Moreover, there was no mention of the fact that any jewellery articles being the istridhan of the petitioner are kept or lying in the said locker. Even in the above petition under Section 372 of the Indian Succession Act, filed by the petitioner for obtaining succession certificate on the basis of the said ‘Will’, it was nowhere alleged that articles or jewellery kept in the said locker constitute her istridhan. However, it was only alleged that all the jewellery articles lying in the locker belong to her deceased husband.

16. It is pertinent to note that since the day when the operation of the locker was stopped on the basis of the letter dated 31.07.1987 by respondent No.2, till death of late Harinder Katyal in February, 1990, no claim was ever made regarding their being any such istridhan articles of the petitioner being kept in the said locker. It was only for the first time, petitioner had made claim in this regard in Civil Suit No.25/1995.

17. The alleged offence defined under Section 405 of the IPC and punishable under Section 406 of the IPC, requires specific entrustment

with or without the dominion over a property, which could be misappropriated dishonestly or converted to his own use etc by the person who it was so entrusted or placed in the dominion thereof. There are no such allegations made by the petitioner in her complaint that either she or her husband had ever entrusted the abovesaid jewellery articles to respondent No.2 or had placed the same under his domain. Moreover, as per the ATR filed by the police, even the SHO concerned stated therein that the matter was of a civil nature and was already adjudicated before the Civil Court.

18. The Supreme Court recently in *Mrs. Priyanka Srivastava & Anr vs State of UP and Ors, Crl. Appeal No.781 of 2012* delivered on **19.03.2015** made certain observations to the effect that even the allegations made in the complaint should not be taken on the basis of face of it and to curb the tendency of making false and baseless allegations in the complaint, one detailed affidavit should also be taken from the complainants in support of the allegations made therein. It was further observed that learned MM should exercise the discretion under Section 156 (3) of the Cr P C in a wise manner and should apply his judicial mind before directing any police investigation in the matter and the truth and veracity of allegations should be verified first.

19. Also in *State of Haryana & Ors vs Ch. Bhajan Lal & Ors¹* while dealing with the issue in question some illustrations were quoted while preventing the abuse of process of the Court as under:-

“.....
.....

¹ 1992 AIR 604

8.1 (g) *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.”*

20. The case in hand falls in category (g) of ***Bhajan Lal*** (*supra*). The judicial process cannot be allowed in any manner. Moreover, the petitioner is directed to proceed with her complaint case under Section 200 Cr P C before learned Trial Court and lead the evidence accordingly. Thus, the Revisional Court has not rejected the complaint of petitioner, however, only set aside the order dated 23.03.2015 passed by learned MM.

21. In view of above discussion, I find no discrepancy or perversity in the order dated 26.05.2015 passed by learned Revisional Court.

22. Accordingly, finding no merits in the instant petition, the same is hereby dismissed in *limine*.

Crl.M.A.13214/2015 (For stay)

Dismissed as infructuous.

**SURESH KAIT
(JUDGE)**

SEPTEMBER 11, 2015

M/RS