

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

Date of Decision: 25th May, 2016

+ CRL.M.C. 935/2011 & CrI.M.A.No.3492/2011
DEEPAK SINGH & ANR. Petitioners
Through Mr.J.M.Bari with
Ms.Meenakshi Bari, Advocates

versus

STATE Respondent
Through Mr. Arun Kumar Sharma, APP
with Kamal Kumar Yadav from
Police Station New Delhi.
Mr.K.K.Sharma and Mr.Vipin
Rathi, Advs

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CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. By virtue of this petition u/s 482 Cr.P.C., the petitioner seeks quashing of the order dated 17th August, 2010 and 20th January, 2011 whereby learned Metropolitan Magistrate has taken cognizance of the offence and has summoned the petitioner.

2. The essential facts giving rise to the filing of the present petition, in nut shell, are that respondent No.2/complainant made a written complaint dated 6th August, 2008 to SHO Okhla Industrial Area, Phase-I, New Delhi-110020 on the basis of which FIR 355/2008 was registered against the petitioners u/s 408 IPC. The FIR, inter alia, alleged that the petitioners had set up three benami companies and by

misusing their authority as Marketing Manager/Assistant Manager in the complainant company, they had manufactured certain documents in the nature of orders placed by the said company to secure delivery of goods at discounted rates which were later resold to the company customers at profit thereby gaining wrongfully.

3. It appears that the complainant had also preferred a complaint case registered as CC No.529/1/2008 wherein the Magistrate called for status report in the context of the criminal complaint, the police having registered the FIR 355/2008. In view of the registration of the FIR, the Magistrate did not proceed further with the said complaint.

4. On conclusion of investigation, the police filed a report u/s 173 Cr.P.C. seeking closure on the ground that no sufficient evidence has come on record. The report was considered by the Magistrate who took cognizance of the offence and issued summons to the petitioners vide the impugned order.

5. Learned counsel for the petitioners submits that the impugned two orders taking cognizance and issuing summons are mechanical and without application of judicial mind. No reason has been assigned by the learned Trial Court for dis-agreeing with the closure report filed by the police.

6. Countering the submissions of learned counsel for the petitioners, learned Additional Public Prosecutor for the State duly assisted by learned counsel for complainant submits that the Court is not bound to accept the closure report and is competent to take

cognizance of the offence. Even otherwise, pursuant to an application moved by the complainant seeking further investigation in the matter, further investigation was carried out. After finding sufficient evidence available against the petitioners, supplementary charge sheet has been filed. As such, even otherwise the petition has become infructuous.

7. The question which arises for consideration is: in view of filing of closure report by the police whether the Court is competent to take cognizance of the offence or not. This aspect of the matter was dealt by the Hon'ble Supreme Court in ***H.S. Bains vs. State***, AIR SC 1883 where it was observed as under:-

"6.on receipt of a complaint a Magistrate has several courses open to him. He may take cognizance of the offence and proceed to record the statements of the complainant and the witnesses present under Section 200. Thereafter, if in his opinion there is no sufficient ground for proceeding he may dismiss the complaint under Section 203. If in his opinion there is sufficient ground for proceeding he may issue process under Section 204. However, if he thinks fit, he may postpone the issue of process and either enquire into the case himself or direct an investigation to be made by a Police Officer or such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. He may then issue process if in his opinion there is sufficient ground for proceeding or dismiss the complaint if there is no sufficient ground for proceeding. On the other hand, in the first instance, on receipt of a complaint, the Magistrate may, instead of taking cognizance of the offence, order an investigation under Section 156(3). The police will then investigate and submit a report under Section 173(1). On receiving the police report the Magistrate may take cognizance of the offence under Section 190(1)(b) and straightaway issue process. This he may do irrespective of the view expressed by the police in their report whether an offence has been made out or not. The Police report under Section 173 will contain the facts discovered or unearthed by the police and the conclusion drawn by the police therefrom. The Magistrate is not bound by the conclusions drawn by the Police and he may decide to issue process even if the Police recommend that there is no sufficient ground for proceeding further. The Magistrate after receiving the Police report, may,

without issuing process or dropping the proceeding decide to take cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record the statements upon oath of the complainant and the witnesses present under Section 200 Criminal Procedure Code and thereafter decide whether to dismiss the complaint or issue process. The mere fact that he had earlier ordered an investigation under Section 156(3) and received a report under Section 173 will not have the effect of total effacement of the complaint and therefore the Magistrate will not be barred from proceeding under Sections 200, 203 and 204. Thus, a Magistrate who on receipt of a complaint, orders an investigation under Section 156(3) and receives a police report under Section 173(1), may, thereafter, do one of three things : (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence under Section 190(1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report : (3) he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. If he adopts the third alternative, he may hold or direct an inquiry under Section 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be.” (Emphasis added)

8. In the light of the aforementioned law, the learned Metropolitan Magistrate could have either accepted the report or rejected. In the instant case, the learned Metropolitan Magistrate chose to reject the report and decided to take cognizance of the offence. While rejecting the report and taking cognizance of the offence, it was desirable to give reasons for proceeding further with the matter, however, much water has flown after the passing of the impugned order. Application u/s 173(8) Cr.P.C. was filed by the complainant for further investigation. Vide detailed order dated 1st August, 2012, the said application was considered by the learned Magistrate after notice to the petitioner and after taking note of the discrepancies in the investigation leading to the

report u/s 173 Cr.P.C. submitted earlier, the application was allowed and further investigation into the matter was ordered. The said order was challenged by the petitioner by filing Criminal Revision No. 259/2012 and the said Revision was dismissed vide order dated 26th October, 2012 by the learned District Judge and Additional Sessions Judge, Incharge, South and South East, Saket, New Delhi. There is nothing on record to show that this order has been challenged by the petitioner. After further investigation, the supplementary charge sheet has been filed wherein it is mentioned that sufficient evidence has come on record against the petitioner to proceed further in the matter.

9. That being so, now this petition has virtually become infructuous, same is accordingly dismissed. Pending application, if any, also stands disposed of.

Copy of the order along with Trial Court record be sent back immediately.

(SUNITA GUPTA)
JUDGE

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