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

+ **CRL.M.C. 850/2012**

PRATIBHA SHARMA & ORS.

..... Petitioners

Represented by: Mr. Vipin Gogia and Mr.
Narendra Hudda, Advocates.

versus

STATE NCT OF DELHI & ORS.

..... Respondents

Represented by: Mr. Ashok K. Garg, APP for
the State with SI Manoj Singh,
PS Mehrauli.
Mr. S.S. Tripathy, Advocate for
respondent Nos. 2 and 3.

+ **CRL.M.C. 1834/2012**

SATBIR SINGH & ORS

..... Petitioners

Represented by: Mr. Santosh Kumar and Mr.
Rajiv Ranjan Mishra,
Advocates.

versus

MANOHAR SINGH & ORS

..... Respondents

Represented by: Ms. Rajni Gupta, APP for the
State with SI Manoj Singh, PS
Mehrauli.
Mr. S.S. Tripathy, Advocate for
respondent Nos. 2 and 3.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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28.11.2016

1. The petitioners challenge the directions of the learned Metropolitan Magistrate passed vide order dated 29th October, 2011 directing registration

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of FIR for commission of offences punishable under Sections 3/4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Sections 327/354/468/471/506/509/120B/34 IPC and to file a compliance report.

2. The petitioners in Crl. M.C. No.850/2012 had directly challenged the said order whereas the petitioners in Crl. M.C. No. 8134/2012 filed a revision petition challenging the order dated 29th October, 2011 which was dismissed holding that the revision petition was not maintainable. When the petition came up before this Court on 7th March, 2012 the main ground taken by the petitioners was that the learned Metropolitan Magistrate did not follow the law laid down by this Court in the decision reported as 92 (2001) DLT 217 M/s Skipper Beverages Pvt. Ltd. vs. State and also though directed registration of FIR under Section 156 (3) Cr.P.C. kept the matter with him for further monitoring. It is further argued that the falsity in the complaint was brought out on the face of it as the land claimed to be owned by the complainant was in fact government land and no rights vested in the complainant.

3. In the complaint filed by Manohar Singh, Dinesh Kumar and Resham Devi it was alleged that the complainants were scheduled caste persons residing in Harijan Basti, Village Neb Sarai and Manohar Singh was the recorded owner of Khasra No.38, admeasuring 4 bighas 16 biswa which he had divided into 24 plots situated at D Block Freedom Fighter Colony. It was further alleged that since the year 2007 the petitioners in Crl. M.C. No.1834/2012 who were the property dealers in active aid, support and collusion with the local police illegally and forcibly took the possession of

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the complainant's plot bearing Nos. 5, 8, 9, 11, 12, 14, 15, 16, 17, 20, 21, 22, 23 worth ₹26 crores on the strength of forged and fabricated documents in the name of different persons using fictitious addresses.

4. It is further alleged that on 9th July, 2011 Jugal Kishore Aggarwal and S.K. Arora along with three persons came to plot No.19 and threatened the tenants of the complainant and tried to dismantle their hutments. They also abused them making caste remarks. The complainant called the police on 100 number. Jugal Kishore Aggarwal and S.K. Arora showed forged and fabricated documents in respect of the Plot No. 19 having been allegedly sold to Kishori Lal. It was further stated that Kishori Lal, was in fact the owner in respect of Khasra No.37 which has been notified as ridge area in the year 1986 itself and thus he in conspiracy with other accused persons forged documents in respect of the plot No.19 of the complainant which falls in Khasra No.38.

5. He made complaint to the DCP concerned as a result of which on 11th July, 2011 at 9'o clock two-three police men visited the spot and gave beatings. A complaint was lodged however, no action was taken thereon. It was further alleged that it had come to the notice of the complainant that accused Nos. 1 to 8 have heavily bribed accused Nos. 9 to 11 for non-registration of the case. Hence registration of FIR was sought.

6. The learned Trial Court called for a report. In the report of Mr. Nitin Panigrahi, Tehsildar, Hauz Khas dated 19th September, 2011 it was stated that as per Khatauni 1998-99 and Khasra Girdawari 2009-10 Khasra No.37 (4-16) and 38.(4-16) of village Neb Sarai, New Delhi, stand in the name of Forest Department and Gaon Sabha respectively. Accordingly, any claim

over the said land by any individual is illegal. Further the plotting of said land and any construction over the same is unauthorised.

7. The learned Trial Court even directed the SDM, Hauz Khas to demarcate the plots and despite repeated reports that Khasra Nos. 37-38, Village Neb Sarai stand in the name of Forest Department and Gaon Sabha respectively directed registration of this FIR as above.

8. During the pendency of this petition again a report was called as to the ownership of the land in question and it is reiterated that Khasra No.37 is Forest Land whereas Khasra No.38 is Gaon Sabha land as per the entries reflected in the revenue record.

9. This Court in the decision reported as 170 (2010) DLT 516 Subhkaran Luharuka & Anr. vs. State (Govt of NCT of Delhi) & Anr. following the decisions of the Supreme Court laid down the guidelines for the Trial 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 Complainant. 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.*

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- (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.

10. Considering the fact that the complainants were not even the owners of the property, whose documents they claim to have been forged and fabricated and possession thereon which fact was duly brought to the notice of the learned Trial Court and the Trial Court without following the dictum of this Court in the decision of M/s Skipper Beverages (supra) and 170 (2010) DLT 516 Subhkaran Luharuka & Anr. vs. State (Govt of NCT of Delhi) & Anr. passed the impugned order, the same is set aside.

11. Petitions are disposed of.


MUKTA GUPTA, J.

NOVEMBER 28, 2016
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