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

\+ **CRL.M.C. 4065/2012 and Crl. M.A. No. 19305/2012**

% Decided on: 14th July, 2016

SANT PRAKASH SINGH ..... Petitioner

Represented by: Mr. Mukesh Sharma, Advocate for Mr. Vijay Aggarwal, Advocate.

versus

STATE ..... Respondent

Represented by: Mr. Hirein Sharma, APP for the State.
Mr. Lovkesh Sawhney, Advocate for respondent No. 2 to 6.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. The petitioner filed a complaint along with an application under Section 156 (3) Cr.P.C. seeking registration of FIR against respondent Nos. 2 to 6 for offences punishable under Sections 464/465/467/468/471/120B/34 IPC.

2. The complaint read as under:

> *"Accused No.1 is the father of the complainant, accused No.2 and 4 are his brothers, accused No.3 is not related to him and accused No.5 is the personal Sewadar of accused No.1. The complainant's grandfather namely Sant Sujan Singh Ji Maharaj was the founder of the Trust i.e. Anand Samagam Charity Trust (Regd.) which was constituted for the benefit of the public. With the passage of the time, the*

Trust constructed the Gurudwara at C-9, Rajouri Garden, New Delhi. In addition to this property, the Trust holds significant amount of offerings received from the members of the community and believers in the form of cash and articles. The complainant, since the demise of his grandfather, had been continuously contributing to the Trust and the community by providing his services to the Gurudwara and the Trust had given him two rooms on the ground floor of the abovesaid Gurudwara for his personal use. As the Trust prospered, some persons of the founders family started turning dishonest and accused No.1 and 4, in connivance with each other, in order to misappropriate the properties of the Trust, started deviating from the objects of the Trust and started gross mismanagement of the Trust and when the complainant started objecting to such dishonest activities, the accused No.4 in connivance with accused No.1 accused No.3 and Sant Gurumukh Singh convened a meeting of the Trustees on 11.07.2010 at the abovesaid Gurudwara where the complainant was also called, accused No.2 and 5 were also present there. In connivance with each other, they passed an illegal resolution terminating the complainant from his post. The resolution was signed by Gurumukh Singh, accused No.3 and accused No.1 in complainant's presence and then the meeting was concluded.

On 16.07.2010 when the complainant went in the morning to the Gurudwara, he and his family members were assaulted and his belongings and other goods lying there were found stolen by the accused persons in association with other persons. Complainant lodged a complaint with the SHO, PS Rajouri Garden. In order to have transparency about the assets and accounts of the Trust, the complainant filed a Civil Suit in the Hon'ble High Court of Delhi wherein the accused persons filed a written statement and on receipt of copy of the written statement accompanied with its annexure, the complainant was shocked and surprised to see that the resolution dated 11.07.2010 was *not the original one as had been passed and signed during the said meeting because the same was got forged by inserting portion A to A in the same. The complainant got the said documents opined from Handwriting Expert who in his report dated 06.10.10 opined that the documents were tampered/manipulated by squeezing lines between lines which is clearly evident in the Annexure A at point A to A. On the basis of this forged resolution, the accused persons have attempted to try to prevent the complainant from assisting in the Kirtan at the Gurudwara apart from discharging his other responsibilities. Apart from this various other letters, alleged to have been sent by the accused persons on the letter heads of the Trust were also filed by the accused persons in the Hon'ble High Court which were without the seal of the Trust/Managing Trustee and was not printed upon the printed letterheads of the Trust but the prints were taken out from the computer with the letterheads printed upon the said letters.*

By interpolating in the resolution by writing in squeezed form in pre-existing space, certain directions were entered though no such proceedings took place till the meeting was concluded in complainant's presence and further by forging the letterheads accused persons have committed the offences punishable u/Sec. 465/457/468/471/120-B/34 IPC. The complainant lodged the complaint with the police but no FIR was registered by the police.

3. The Trial Court relying upon the decision of this Court reported as 92 (2001) DLT 217 <u>Skipper Beverages Pvt. Ltd. vs. State</u> held that direction to register FIR under Section 156 (3) Cr.P.C. cannot be passed by the Court on the asking of the complainant for satisfying the personal vendetta. The learned Metropolitan Magistrate noted that the present was not a case for discovery of evidence which the complainant was unable to collect on his

own and thus, dismissing application under Section 156 (3) Cr.P.C. proceeded to take cognizance of the offence and listed the matter for pre-summoning evidence.

4. Aggrieved by the order of the learned Metropolitan Magistrate dated 24th December, 2012 the petitioner filed a revision petition before the learned Additional Sessions Judge who also dismissed the revision petition vide order dated 7th May, 2012. Hence the present petition.

5. The learned Additional Sessions Judge noted that the facts alleged by the complainant were within the personal knowledge of the petitioner and as regards the allegation of forgery of the resolution dated 11th July, 2010, the petitioner had already obtained the report of the hand writing expert, thus no investigation was required to be done.

6. Having heard learned counsel for the petitioner and the learned APP for the State, I concur with the view taken by the learned Metropolitan Magistrate and the learned Additional Sessions Judge. This Court in *Skipper Beverages* (supra) held that in a case where no investigation is required to be done by the police, the matter should be proceeded as a complaint case and after examining the complainant the Court can proceed to summon the accused. It was held:

> *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 held 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 as held by Apex Court in 20001 (1) Supreme Page 129 titled "Suresh Chand Jain Vs. State of Madhya Pradesh & Ors."

10. Section 156(3) of the Code aims at curtailing and controlling the arbitrariness on the part of the police authorities in the matter of registration of FIRs and taking up investigations, even in those cases where the same are warranted. The Section empower the Magistrate to issue directions in this regard but this provision should not be permitted to be misused by the complainants to get police cases registered even in those cases which are not very serious in nature and the Magistrate himself can hold enquiry under Chapter XV and proceed against the accused if required. Therefore a Magistrate, must apply his mind before passing an order under Section 156(3) of the Code and must not pass these orders mechanically on the mere asking by the complainant. These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of complainant or custodial interrogation appears to be necessary for some recovery of article or discovery of fact.

7. A perusal of the allegations as noted above would reveal that no investigation is required to be conducted by the police. The petitioner has detailed the facts alleged and as regards forgery of the resolution he is in possession of an expert opinion. Thus I find no reason to interfere with the impugned order.

8. Petition and the application are dismissed.

(MUKTA GUPTA)
JUDGE

JULY 14, 2016
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