

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

% **Decided on: 11th May, 2017**

+ **CRL.M.C. 1773/2012 & CrI.MAs. 6213/2012, 16102/2013,
12511/2012 & 7385/2012**

H.K. GANGWANI

..... Petitioner

Represented by: Mr. A.S. Chandhiok, Sr. Adv.,
Mr. Sanjeev Narula, CGSC,
Ms. Shaheen and Mr. Abhishek
Ghai, Advs.

versus

AIFAA TR.SAHDEVA SINGH SECRETARY GENERAL & ANR.

..... Respondents

Represented by: Mr. Sankalp Goswami with Mr.
Azhar Alam, Advs. for R-1.

+ **CrI.M.C. 732/2013 & CrI.M.A. 2569/2013**

THE PAY & ACCOUNTS OFFICER

..... Petitioner

Represented by: Mr. Sanjeev Narula, CGSC and
Mr. Abhishek Ghai, Adv.

versus

AIFAA & ANR.

..... Respondents

Represented by: Mr. Sankalp Goswami with Mr.
Azhar Alam, Advs. for R-1.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Respondent No.1 through Sahdeva Singh its Secretary General filed a complaint under Section 156(3) Cr.P.C. wherein vide order dated 21st March, 2012 learned Metropolitan Magistrate dismissed the application of respondent No.1 under Section 156(3) Cr.P.C. and listed the matter for

complainant evidence on 11th May, 2012 thus directed the complaint to be proceeded as per the complaint case procedure.

2. Aggrieved by the order dated 21st March, 2012, respondent No.1 filed a revision petition being CR No.152/2012 before learned Additional Sessions Judge, who vide the impugned order dated 5th May, 2012 set aside the order dated 21st March, 2012 passed by learned Metropolitan Magistrate declining to direct registration of FIR and directed SHO PS Inderpuri to register the FIR under the relevant provisions of law as disclosed in the complaint and conduct investigation thereon. In the two petitions before this Court the order dated 5th May, 2012 passed by learned Additional Sessions Judge is under challenge.

3. Learned counsel for the petitioners submit that that the impugned order dated 5th May, 2012 was passed by learned Additional Sessions Judge without any notice to the petitioners which is contrary to the settled law that no adverse order can be passed without hearing the party affected. Further there is no illegality in the order dated 21st March, 2012 passed by the learned Metropolitan Magistrate who proceeded with the complaint as a complaint case procedure in view of the fact that it is the admitted case of respondent No1 in the complaint that he has all the documents available with him by filing application under the Right to Information Act and any limited inquiry which was required to be got conducted could have been got done under Section 202 Cr.P.C. Learned counsel for the petitioners rely upon the decisions of the Supreme Court reported as (2009) 1 SCC (Cri) 801 Raghu Raj Singh Rousha Vs. Shivam Sundaram Promoters Pvt. Ltd. & Anr. and 2011(2) JCC 720 A.N. Santhanam Vs. K. Elangovan.

4. Learned counsel for respondent No.1 does not dispute that he is in possession of the documents however he states that since respondent No.1 does not know the complicity of other officers which would be revealed only from perusal of the file of the concerned ministry, a thorough investigation is required to be done. The decision of learned Additional Sessions Judge is inconformity with the law laid down by the Supreme Court and hence the same warrants no interference.

5. In the complaint filed by respondent No.1 against the petitioner in CrI.M.C. 1773/2012 and others, it is alleged that the petitioner while acting as a Central Government Standing Counsel was engaged by the Department of Agriculture and Cooperation to contest Civil Suit bearing No.930/2008 and also CrI.Rev. 286/2009 in the matter of Dr. Sahadeva Singh Vs. P.K. Basu & Ors. It is alleged that the petitioner charged ₹25000/- to ₹98000/- per hearing as special rates of legal fee for appearance in Civil Suit and CrI. Rev. against approved rate of ₹1500/- for effective hearing and ₹300/- for non-effective hearing fixed by Ministry of Law. It is alleged that the petitioner has been paid unjustifiably high fees as Govt. counsel and he falsely claimed for appearance without actual appearance and also falsely claimed transport charges for attending the Court dates.

6. Vide order dated 21st March, 2012, learned Metropolitan Magistrate relying upon the decision of the Supreme Court reported as 2001 (I) AD (CrI.) SC 34 Suresh Chand Jain Vs. State of Madhya Pradesh held that the discretion of the Court in directing the police to register a case under Section 156(3) Cr.P.C. and initiate investigation has to be exercised judicially on proper grounds and not in a mechanical manner and in those cases where the Magistrate is of the view that the nature of allegations is such that the

complainant himself may not be in a position to collect and produce evidence before the Court and interest of justice demands that the police should step into to help the complainant. Further police assistance can be taken by the Magistrate even under Section 202(1) Cr.P.C. after taking cognizance and proceeding with the complaint as a complaint case procedure. Noting that registration of FIR has serious consequences as it gives power to the police to effect arrest, the learned Metropolitan Magistrate dismissed the application under Section 156(3) Cr.P.C. on the ground that contents of the complaint clearly identified the accused, the mode and manner in which the offence has been committed.

7. Admittedly, an order in favour of the petitioners was passed by learned Metropolitan Magistrate and in CR 152/2012 filed before learned Additional Sessions Judge resulting in passing of the impugned order dated 5th May, 2012, the petitioners were not impleaded as parties and only State was impleaded as a party. Thus, in the absence of the petitioners, learned Additional Sessions Judge though noting the decision of the Supreme Court also noted that there was no dispute as to the identity of the accused and that no doubt that alleged fraud, misappropriation and cheating committed by the petitioner in CrI.M.C. 1773/2012 could be proved by respondent No.1 by leading his evidence however the matter needed further investigation as to who and in what circumstances the bills passed were submitted by the counsel and there appears to be collusion between the counsel and the concerned officials posted in the department which needs to be unearthed.

8. Learned counsel for respondent No.1 fairly submits that he has received documents under the Right to Information Act which he can prove

by leading evidence. Further the officers involved in the entire transaction can be found out from the file of the concerned department.

9. Supreme Court in the decision reported as Raghu Raj Singh Rousha (supra) held that the power of the Sessions Court under Section 399 and of the High Court under 401 clearly prescribes that no order under these sections can be made to the prejudice of the accused or other person unless he had an opportunity of being heard either personally or through pleader in his own defence. It was further held that by refusing to exercise its jurisdiction under Section 156(3) Cr.P.C. and directing to proceed as a complaint case, the Magistrate had applied its judicial mind and taken cognizance on the complaint. Even though summons had not been issued in the complaint, the Sessions Court or the High Court could not reverse the order without hearing the accused. The decision in Raghu Raj Singh Rousha (supra) was later followed in A.N. Santhanam (supra) and the decision reported as 2012(10) SCC 517 Manharibhai Muljibhai Kakadia & Anr. Vs. Shaileshbhai Mohanbhai Patel & Ors.

10. Thus, the impugned order suffers from two gross illegalities firstly it was passed without any notice to the petitioners thereby denying them the right of being heard and causing prejudice to them and Secondly learned Additional Sessions Judge though noting that the identity of the accused was not disputed and respondent No.1 was competent to lead evidence however illegally directed investigation on a so called suspicion or collusion between the petitioner in CrI.M.C. 1773/2012 and officials which needed to be unearthed directed registration of FIR. As fairly submitted by learned counsel for respondent No.1, this fact can be found out from the file of the

department which limited inquiry can obviously be conducted under Section 202 Cr.P.C.

11. Consequently, the petitions and applications are disposed of setting aside the order dated 5th May, 2012 passed by the learned Additional Sessions Judge and restoring the order dated 21st March, 2012 passed by the learned Metropolitan Magistrate who would now proceed in accordance with law.

MAY 11, 2017
‘v mittal’

(MUKTA GUPTA)
JUDGE

