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

+ CRL.M.C. 978/2017

ARUN KUMAR LUMBA

..... Petitioner

Represented by: Mr. Vishal Bhatnagar with Mr.
Nitin Sharma, Advs.

versus

STATE & ANR.

..... Respondent

Represented by: Mr. Ashok Kumar Garg, APP
with SI Pradeep Sharma, PS
Rajinder Nagar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

09.03.2017

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Crl.M.A. 4073/2017

Exemption allowed, subject to all just exceptions.

Crl.M.C. 978/2017 & Crl.M.A. 4072/2017

1. By the present petition, the petitioner seeks quashing of the complaint case No.1/6/14 and setting aside of order dated 12th September, 2013 and 10th May, 2016 passed by learned Metropolitan Magistrate.
2. Complaint case No.1/6/14 now numbered as 523790/2016 titled as Anil Lumba Vs. Arun Lumba was filed by respondent No.2 brother of the petitioner along with an application under Section 156(3) Cr.P.C. praying for directions to register FIR against the petitioner for preparing a forged Will dated 20th October, 1985 allegedly executed by the late father of petitioner and respondent No.2. On the application under Section 156(3) Cr.P.C. the learned Metropolitan Magistrate vide the impugned order dated 12th September, 2013 held that no case was made out for directing the SHO to register the FIR and dismissed the application under Section 156(3) Cr.P.C. The said order being in

favour of the petitioner, this Court finds no reason why the petitioner seeks quashing of the said order.

3. Pursuant to taking cognizance on the above noted complaint, the learned Trial Court directed respondent No.2 to examine his witnesses. After examination of the respondent No.2 and on hearing the learned counsel, vide order dated 10th May, 2016 learned Trial Court did not issue summons to the petitioner rather directed conducting of inquiry under Section 202 Cr.P.C. and sought a report from the SHO for 4th October, 2016.

4. The case of the petitioner is that since a probate case is already pending before the District Judge, whether the Will is genuine or not can only be decided by the learned District Judge and a criminal court cannot adjudicate the same. It is further contended that respondent No.2 deliberately concealed material facts including the factum of pendency of the probate case before the learned District Judge in the complaint filed.

5. As noted above, no summons have been issued by the learned Metropolitan Magistrate to the petitioner as yet. The very purpose of getting a limited inquiry under Section 202 Cr.P.C is that in case some material is concealed by the complainant, the same be brought to the notice of the Court. Since the petitioner has not been summoned as an accused, this Court finds that the order directing limited inquiry under Section 202 Cr.P.C. cannot be held to be an order adverse to the petitioner.

6. Present petition and application are dismissed as premature. Needless to state that in case the petitioner is summoned in the above-noted complaint he would be at liberty to avail the remedies available in law.

MUKTA GUPTA, J.

MARCH 09, 2017/'v mittal'