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

+ CRL.M.C. 2957/2016

RAJ PAL

..... Petitioner

Through Mr. U. Subramanian T R and
Mr. Rahat Bansal, Advocates

versus

STATE (NCT OF DELHI) & ORS

..... Respondent

Through Mr. M S Oberoi, , APP for State

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **20.09.2017**

The petitioner along with his brothers, namely, Ajay Pal and Radhey Shyam filed a complaint under Section 200 of the Code of Criminal Procedure (hereinafter referred to as 'the Code' in short) against the respondent nos. 2 to 7 before the trial court praying therein that respondent nos. 2 to 7 be summoned and punished under Sections 402/406/420/423/424/467/468/471 & 120B IPC. Along with this complaint, the complainants (petitioner and his brothers) filed an application under Section 156(3) of the Code praying therein that concerned police station be directed to register the FIR. Vide order dated 24th July, 2013, learned Metropolitan Magistrate dismissed the said application and decided to proceed with the complaint under Section 200 of the Code and fixed the complaint for 27th November, 2013, for pre-summoning evidence.

It is noted that the complainants, including the petitioner, did not pursue the complaint diligently and failed to lead evidence despite opportunities granted to them, inasmuch as, did not appear before the Metropolitan Magistrate, consequently, the complaint was dismissed for non-prosecution on 3rd December, 2016.

The petitioner and his brother Ajay Pal challenged the order dated 24th July, 2013 passed by the Metropolitan Magistrate by filing a Revision Petition under Section 397 of the Code before the learned Additional Sessions Judge (03) PHC, New Delhi, which has been dismissed vide order dated 27th February, 2016.

That is how petitioner is before this Court by way of present petition under Section 482 of the Code. Petitioner has prayed that order dated 27th February, 2016 be quashed and police authorities be directed to register an FIR.

Brothers of the petitioner are stated to have died. However, their legal representatives have not assailed the impugned orders. Even Revision Petition was preferred only by the petitioner and his brother Ajay Pal. As regards present Revision Petition, the same has been filed only by the petitioner.

A perusal of the complaint shows that grievance of the petitioner was that respondent nos. 2 to 7 had conspired with each other and got executed a sale deed in respect of his property admeasuring 3 bighas 15 biswas, forming part of khasra no. 98/9 (4-16), 12 (4-16) and 22 (4-16) situated in revenue estate of Village Mehrauli, New Delhi in favour of respondent no.2. As per the petitioner, in the year 2010, respondent no. 7 introduced him with respondent no. 5, who was interested in purchasing the property of petitioner

and his brothers for ₹99 lacs. A civil suit was pending in respect of this property. Respondent no. 7 agreed to purchase the disputed property on as is where basis is. Respondent no. 7 handed over three cheques for ₹8 lacs each, which were subsequently dishonoured. On 10th May, 2010, respondent no.5 and 7 again approached the complainant and offered to purchase the land. They asked the complainants to come to Noida on 13th May, 2010 for execution of the agreement to sell in favour of respondent no.3. Accordingly, complainants including the petitioner visited Sub Registrar Office, Noida along with R-6 & 7. Respondent nos. 3 and 5 also reached there. Six demand drafts of ₹4 lacs each were given to the complainants, which were deposited by them in their respective accounts. They agreed to pay the balance sale consideration of ₹74 lacs within two months, however, same was not paid. In July, 2012 complainants visited the said property and were shocked to find out that respondent no.2 had got the property mutated in his name. He claimed to have purchased the property from respondent no. 4. Instead of getting Agreement to Sell registered at Noida, the said persons got a GPA executed from the complainants in favour of respondent no. 3. In the above facts it was alleged that respondent nos. 2 to 7 had cheated the petitioner.

Learned Metropolitan Magistrate has held that all the facts were within the knowledge of the complainants, inasmuch as, documents were available with them. The allegations pertaining to offences in question against respondent nos. 2 to 7 could have been proved by the complainants by leading evidence. No police assistance was required for investigation or collection of evidence. It is not necessary that in every case, where a complaint under Section 200 CrPC has been filed, Metropolitan Magistrate should direct the

police to investigate the crime; merely because an application has been filed under Section 156(3) CrPC. Magistrate has to form an opinion as to whether collection of evidence by police is necessary or not. It is to be considered as to whether evidence is in the possession of complainant or can be produced by the witnesses on being summoned by the court, at the instance of the complainant. Further, before passing any order on the application under Section 156(3) CrPC, the magistrate must call for status report from the police and then form an opinion as to whether complaint discloses commission of cognizable offence or not. He should satisfy himself about the need of investigation by the police. He must also satisfy himself with regard to necessity to direct the police to investigate the matter for collection of evidence, which is neither in possession of complainant nor can be produced by witnesses on being summoned by court at the instance of complainant or that matter is such which calls for intervention by a State agency. Reliance was placed on Subhkaran Loharika & Anr. Vs State 2010 (3) LRC 120 (Delhi).

Learned ASJ has concurred with the trial court. Revisional Court has also held that a perusal of record clearly indicated that entire evidence was within the reach of complainants and investigating agency was not required for the purpose of investigation or collection of evidence.

I do not find any perversity in the impugned orders so as to invoke the inherent jurisdiction of this court under Section 482 of the Code which has to be exercised sparingly and in rare cases, in order to prevent the abuse of the process of the inferior court or to prevent miscarriage of justice; more so when second revision is barred under Section 397(3) of the Code.

In this case, the disputes between the parties had arisen in respect of the

sale transaction of an immovable property. The case of the petitioner is that instead of an agreement to sell, respondent nos. 3 to 7 colluded with each other and got GPA registered in Sub Registrar Office, by taking advantage of the fact that petitioner is an illiterate person. Receipt of ₹2,40,000/- (Rupees Two Lacs Forty Thousand Only) has not been disputed; execution of documents is also not in dispute. The relevant documents are in the possession of petitioner; all the facts within the knowledge of petitioner. Other documents with respect to mutation etc. are in the office of Revenue Department and / or with the Sub Registrar Office and could have been summoned in the complaint case. The petitioner or LR's of the complainant did not initiate any civil litigation so as to get the GPA declared null and void. Learned Magistrate has not to order for registration of FIR under Section 156 (3) of the Code in a mechanical manner and has to apply mind. No police intervention was required in the facts of the present case, therefore, I do not find any illegality or perversity in the impugned orders.

Petition is dismissed with the cost of ₹25,000 (Rupees Twenty Five Thousand Only) to be deposited by the petitioner with the Delhi High Court Legal Services Committee within four weeks.

A.K. PATHAK, J

SEPTEMBER 20, 2017

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