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

+ W.P.(CRL) 3254/2016

RAISA BEGUM

..... Petitioner

Through: Mr.H.R.Suhel, Mr.Ankit Mishra and
Mr.Anil Thomas, Advocates.

versus

STATE

..... Respondent

Through: Ms.Kamna Voha, ASC for the State
with SI Sumit Thakran, PS Bhalswa
Dairy.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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25.10.2017

1. The petitioner has filed this writ petition under Article 226 of the Constitution of India read with Sections 482 & 483 Cr.P.C. with the following prayers:-

(a) Issue the writ of mandamus to the Commissioner of Delhi Police, the DCP concerned and the SHO, PS Bhalswa Dairy so that the order dated 9th October, 2015 passed by this Court may be properly enforced by the Investigating Agencies and that too in a speedy and effective manner.

(b) Monitor the investigation and seek timely report from the Investigating Officer concerned.

2. Learned counsel for the petitioner has relied upon Babubhai Jamnadas Patel vs. State of Gujarat & Ors. 2010 CriLJ 2249 in support of the prayer made in the petition. In para 51 of the report, it was held as under:-

'51. There is, therefore, no doubt that in appropriate cases, the Courts may monitor an investigation into an offence when it

is satisfied that either the investigation is not being proceeded with or is being influenced by interested persons.'

3. Earlier the writ petitioner herein has filed Crl.M.C. No.4172/2015 for issuance of directions to the police to register an FIR and investigate the matter as per law. Crl.M.C. No.4172/2015 was allowed by this Court vide order dated 9th October, 2015 which reads as under:-

'1. Vide the present petition, petitioner seeks directions thereby setting aside the order dated 19.08.2015 passed by ld. MM, Rohini Courts, Delhi and consequently directs the Police to register an FIR in the case and investigate the matter as per law.

2. The facts of the case in brief are that on 29.08.1970, 4/9th share of property Khasra No. 299/226 measuring 48 Bighas and 19 Biswas was released in favour of Sh. Aftab Ahmad (husband of the petitioner) and his uncle Sh. Gulam Mustafa. The Jamabandi record of 1991-92 shows that the petitioner was the co-owner of the property. Thereafter, to utter surprise of the petitioner on 18.11.2005 a false and fabricated sale deed was executed, by personating petitioner and Haji Mohd. Ismail, in favour of Smt. Mamta Jain for the portion of land ad-measuring 10½ Bigha out of Khasra No. 299/226 situated in Village Mukundpur, Tehsil-Civil Lines, District-North, Delhi whereas, Lt. Haji Mohd Ismail expired on 01.09.1996.

3. Thereafter, on 22.11.2005, another false and fabricated sale deed by personating the petitioner and her husband was executed in favour of Smt. Raj Kumari for the portion of land ad-measuring 10½ Bigha out of the Khasra mentioned above. Accordingly, petitioner made a complaint to SHO, PS-Bhalaswa Dairy through Smt. Sufia Ismail and Smt. Arabia Khan regarding the execution of false and fabricated sale deed as mentioned above. Thereafter on 26.03.2012, another complaint was sent by the petitioner to Deputy Commissioner of Police (North).

4. On 22.11.2012 another complaint was filed before Deputy

Commissioner of Police (North) by the petitioner through Gulam Mohd. and Arabia Khan stating inter alia that the applicant had not received any action taken report on the previous complaints.

5. On 03.03.2013, the petitioner filed another complaint before the Commissioner of Police containing the copies of previous complaints. Thereafter on 13.05.2013, the petitioner through her power of attorney holder filed an application before ld. MM, New Delhi seeking directions to the police under Section 156 (3) Cr.P.C. for registration of FIR. Same was dismissed vide order dated 17.04.2014 and directed the petitioner to proceed with Section 200 Cr.P.C.

6. Being aggrieved, the petitioner challenged the aforesaid order before this Court by preferring Crl.M.C. 3186/2014. Same was allowed vide order dated 21.05.2015 thereby quashing the impugned order dated 17.04.2014 passed by ld. MM. Accordingly, the petitioner approached the trial court for passing a fresh order. However, having the shelter of the judgment passed by the Apex Court in the case of Priyanka Srivastava and Anr. v. State of UP and Ors. 2015 6 SCC 287, the complaint of the petitioner filed under Section 156 (3) Cr.P.C. was dismissed on 19.08.2015 being not maintainable for the reason that the petitioner has failed to place on record the receipt regarding the sending of the complaint to the DCP concerned to comply with Section 154 (3) Cr.P.C. despite specific order dated 04.08.2015.

7. Ld. Counsel appearing on behalf of the petitioner has drawn the attention of this Court to the copy of the complaint filed by the petitioner before the Commissioner of Police (Delhi Police Headquarter) on 03.03.2013, which is at Page 207 of the petition and the acknowledgement thereto of 04.03.2013. Thus, the order passed by the ld. Trial Court is contrary to the record produced by the petitioner. Moreover, the case of Priyanka Srivastava (Supra) did not give any bar to the Magistrate to direct for lodging the FIR under Section 156 (3), however the said judgment is given just to stop any misuse or harassment caused to the other side.

8. Keeping in view the facts recorded above and the submission of the counsel for the petitioner and the allegations made in the complaint which are very serious in nature, I am of the opinion that a cognizable offence has been committed by the accused persons, who had executed the sale deed by impersonating the petitioner which can be unearth during investigation. Therefore, the investigation has to be carried out by the Police.

9. Consequently the order dated 19.08.2015 is set aside and the concerned SHO is directed to register the FIR and investigate the matter and report to the ld. Trial Court accordingly.

10. Accordingly, the petition is allowed.'

4. It is admitted case of the petitioner that the direction given by this Court while disposing of Crl.M.C.No.4172/2015 to the concerned SHO to register the FIR, has already been complied with.

5. In the garb of filing this writ petition, the petitioner is seeking monitoring of the investigation by this Court by placing reliance on Babubhai Jamnadas Patel vs. State of Gujarat & Ors. 2010 CriLJ 2249.

6. The facts of the instant case which have already been noted by this Court while disposing of Crl.M.C.No.4172/2015 are not such so as to require monitoring of investigation by this Court.

7. The writ petition is dismissed.

PRATIBHA RANI, J.

OCTOBER 25, 2017

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