

\$~13

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 24th July, 2018

+ CRL. M.C. 2095/2015

S.P. GUPTA

..... Petitioner

Through: Mr. Mohit Mathur, Sr. Adv.
with Mr. Manoj Pant & Mr.
Sumit Misra, Advs.

versus

STATE OF NCT & ANR.

..... Respondents

Through: Mr. Akshai Malik, APP for the
State.
Mr. Avdesh Kumar Singh, Mr.
Rajendra Kumar Singh, Mr.
Chandra Shekhar Suman, Ms.
Harsha & Mr. Puneet, Advs. for
complainant.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The second respondent had lodged a criminal complaint case (CC No. 896/1/2014) with the Metropolitan Magistrate alleging offences punishable under Section 120 B read with Sections 406, 408, 409, 419, 420, 467, 468, 471 of Indian Penal Code, 1860 (IPC) and under the Prevention of Corruption Act, 1988 having been committed by certain persons including the petitioner qua the management of Kirori Mal College of Delhi University where he (the petitioner) was statedly working at the relevant point of time as the Vice Principal and

also as the Acting Principal. The Metropolitan Magistrate called for action taken report (ATR) from the police in the context of complaint that statedly had been filed with it earlier. On 14.10.2014 he considered the application that had been filed with the complaint seeking direction to the police under Section 156 (3) of the Code of Criminal Procedure (Cr.P.C.) and passed the following order:-

“14.10.2014

*Present: complainant in person along with counsel.
EO/SI Ram Chander is present.
ATR filed on record.*

Heard. Perused.

It has been stated on behalf of concerned SHO that legal opinion from the prosecution branch was also obtained in this case but certain queries are yet to be clarified from the University of Delhi. It is to be noted that serious allegations of cheating and forgery have been levelled by the complainant against the officials of Kirori Mal College and the prosecution has already opined for registration of FIR in this case but the police authorities have not yet registered the FIR.

In the facts and circumstances as revealed on record, the court is satisfied that a prima-facie case is made out which requires thorough investigation by the police. Hence, the application u/s 156 (3) Cr.P.C. is hereby allowed and the concerned SHO is directed to register the FIR and investigate the matter in accordance with the law. Compliance report be furnished within one week from today and status report be filed for further proceedings on 01.12.2014

*(HARUN PRATAP)
MM-01/THC
DELHI/14.10.2014”.*

2. The petitioner feeling aggrieved challenged the said order in the court of Sessions invoking its revisional jurisdiction by filing petition (Criminal Revision 144/14), which, however, was dismissed by order dated 10.11.2014. It may be added here that pursuant to the directions of the Magistrate in the afore-mentioned order dated 14.10.2014, the police registered FIR No. 204/2014 in police station Maurice Nagar to take up the case for investigation into offences allegedly committed under Sections 120B/409/419/420/467/468/471/477A IPC and Sections 13 (2) and 13(1) of Prevention of Corruption Act, 1988. The FIR was registered on 20.10.2014.

3. The petition at hand was filed invoking the inherent jurisdiction of this Court under Section 482 Cr.P.C. with the grievance that the complaint is false and motivated and the proceedings are unauthorized, the application under Section 156 (3) Cr.P.C. being bad in law.

4. Though reliance is placed by the petitioner also on the decision of the Supreme Court in *Anil Kumar & Ors. vs. M.K. Aiyappa & Anr.* (2013) 10 SCC 705 on the ground that no prior sanction has been obtained before lodging the criminal complaint involving offences under the Prevention of Corruption Act, 1988 against a public servant, the learned senior counsel, at the hearing, focused on another fundamental issue that goes to the root of the matter, it concerning jurisdictional error.

5. As noted above, the criminal complaint which was entertained by the Metropolitan Magistrate alleged offence also under the Prevention of Corruption Act, 1988. The jurisdiction to deal with the

offences under the said special law vests in the court of Special Judge. The court of Metropolitan Magistrate cannot be equated with the court of Special Judge under the Prevention of Corruption Act, 1988 which is a special law with its own special machinery. The Metropolitan Magistrate had no power or jurisdiction “to inquire into or try” the offences under the said special law. It necessarily follows that the Magistrate had no jurisdiction to direct such FIR to be registered under Section 156 (3) Cr.P.C. The proceedings before the Magistrate being unauthorized, the impugned order directing registration of FIR and investigation cannot be allowed to stand.

6. The learned counsel for the respondents made a feeble attempt to argue that the case also involves offences punishable under IPC. But then, the allegation in the complaint are interlinked and have to be considered and construed in their entirety. The FIR is “an inseparable corollary to the impugned order” which, given the above noted lack of jurisdiction, is a nullity [*State of Punjab vs. Davinder Pal Singh Bhullar & Ors. (2011) 14 SCC 770*].

7. For above reasons, the petition is allowed. The impugned orders of the Metropolitan Magistrate dated 14.10.2014, of the Court of Sessions dated 10.11.2014 and the FIR No. 204/2014 of police station Maurice Nagar, registered thereupon are hereby quashed.

R.K.GAUBA, J.

JULY 24, 2018

nk