

\$~9

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 29th October, 2018

+ CRL.M.C. 5120/2015 and Crl. M.A. 18468/2015

ORION INFRASTRUCTURE LTD. & ANR Petitioners

Through: Mr. Sanjeev Sahai, Mr. Ankit
Anand and Mr. Shakil Ahmed, Advocates

versus

STATE & ORS

..... Respondents

Through: Mr. Sanjeev Sabharwal, APP for
State with SI Mahesh Kumar

Mr. Jayant Mehta and Mr. Ashok Jain,
Advocates for R-2

Ms. Jhum Jhum Sarkar, Adv. for R-3 to 9

Mr. Parth Sharma, Adv. for R-10

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The second respondent had approached the Metropolitan Magistrate by a criminal complaint (CC 129/1A/14) impleading the petitioner and third to tenth respondents herein as prospective accused alleging offences punishable under Sections 177, 406, 420, 465, 469, 471 read with Section 34 and 120 B of Indian Penal Code, 1860 (IPC) having been committed.

2. The complaint was accompanied by an application seeking direction to the local police (PS Tughlak Road) to investigate, such prayer having been made under Section 156(3) of the Code of Criminal Procedure, 1973. The Metropolitan Magistrate, by his order dated 13.10.2014, declined a direction to the police and instead opted to take cognizance and called upon the second respondent (complainant) to adduce evidence in pre-summoning inquiry under Sections 200 and 202 Cr. PC.

3. The complainant approached the court of Sessions invoking its revisional jurisdiction by Criminal Revision Petition (no.157/2014). The said petition was allowed, by order dated 26.09.2015, and in terms of the directions thereby issued, the Metropolitan Magistrate has been called upon to pass a fresh order on the prayer under Section 156(3), taking into consideration the law declared by the Supreme Court in its decision reported as *Lalita Kumari Vs. Government of U.P. and Ors.*, (2014) 2 SCC 1.

4. The present petition was filed invoking the inherent power and jurisdiction of this court under Section 482 Cr. PC to assail the order of the revisional court, the prime submissions being that the complaint, against the backdrop of which the proceedings have arisen, is actually a counter-blast to the first information report (no.55/2014) that had been lodged by the petitioner against the complainant on 10.05.2014, it involving offences punishable under Sections 120B, 420, 468, 471 IPC. It is the argument of the petitioner that the decision of the Supreme Court in *Lalita Kumari* (supra) was not

applicable, the revisional court not having taken into account the exceptions to the general rule that the police upon being approached with an information of cognizable offence must register a FIR under Section 154 Cr. PC. It is submitted that the dispute between the parties is in the nature of “*family dispute*” on which the Metropolitan Magistrate was not bound to give such directions. It is also the submission of the petitioner that the complaint was preferred by the second respondent after a delay of five years, it having been initially directed only against the tenth respondent and reference in this context is made to a complaint dated 04.08.2009 addressed to DCP, Crime Branch. It is the argument of the petitioner that the allegations roping in other persons shown in the array of prospective accused are false, concocted and fabricated and, therefore, not credible. It is also the argument of the petitioner that the revisional court ought not have interfered with the judicial discretion exercised by the Metropolitan Magistrate in declining the direction under Section 156(3) Cr. PC. The petitioner further argues that the second FIR is not permissible and, in this context, reliance is placed on *T.T Antony Vs. State of Kerala and Ors., (2001) 6 SCC 181*.

5. During the course of hearing, it was submitted by the petitioner’s counsel himself that investigation into the FIR (no.55/2014) of police station Tughlak Road registered at its instance has since been completed and a report under Section 173 Cr. PC submitted, not proposing any prosecution. It is not disputed that the allegations made in the said FIR, or the investigation that has been

carried out leading to such report of investigation being submitted, do not cover the version of the complainant as in the case presented by her.

6. The complainant's case, to put it simply, has been that her digital signatures were forged and fabricated and on that basis certain acts of commission have been committed leading to she and her husband losing control over the company in which the petitioner and others are involved. Though similar allegations qua certain acts of commission or omission have been made by the petitioner against the complainant of this case by the aforementioned FIR registered in 2014, it cannot be said by any stretch of reasoning or argument that it is a case of second FIR respecting the same incident being insisted upon. In these circumstances, the ruling in *T.T. Antony* (supra) does not get attracted.

7. The Metropolitan Magistrate by his order on the complaint declining a direction to the police under Section 156(3) Cr. PC had taken a certain view. But then, the revisional court by the impugned order has sought to remind the said court of the *dicta* in *Lalita Kumari* (supra). The Metropolitan Magistrate is yet to take a fresh call in the matter on the basis of guidance given by the revisional court. At this stage of the process, the petitioner herein, it being a prospective accused, has no role or say. There is no adverse order passed till date. Whether or not the allegations in the complaint of the second respondent are true or concocted is a matter of inquiry or investigation. At this stage of the process, it cannot be said with

certainty that the allegations are incredible or the complaint is in the nature of a counter blast. The submissions of the petitioner, at best, give rise to questions of facts which cannot be effectively addressed under Section 482 Cr. PC. [see *Rajiv Thapar and Ors. Vs. Madan Lal Kapoor*, (2013) 3 SCC 330]

8. For the foregoing reasons and, in these circumstances, the petition and the application filed therewith are dismissed.

R.K.GAUBA, J.

OCTOBER 29, 2018

yg



न्यायमेव जयते