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

CRL.M.C. 6355/2019 & CRL.M.A. 42321/2019

Reserved on : 10.12.2019

Date of Decision : 17.12.2019

IN THE MATTER OF:

PAYAL MAHESHWARI

..... Petitioner

Through: Ms. Jahanvi Worah, Advocate

versus

STATE & ANR.

..... Respondents

Through: Dr. M.P. Singh, APP for State with W/SI
Cecilia, P.S. Defence Colony

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

J U D G M E N T

1. The present petition has been filed assailing the order dated 16.09.2019 passed by learned Addl. Sessions Judge, Saket Court, New Delhi whereby the order dated 18.03.2019 passed by the Metropolitan Magistrate was upheld and it was further directed that the application filed

by the complainant under Section 156 (3) Cr.P.C be treated as a complaint and the complainant was directed to appear before the Trial Court.

2. Learned counsel for the petitioner while referring to the order of Metropolitan Magistrate has submitted that the same was passed after considering the status report filed by the Investigating Officer and it was conclusively held that there was no merit in the application and the same was ill motivated and frivolous.

3. The facts necessary for the present case, as noted by the Metropolitan Magistrate are as under :-

“Brief facts leading to the instant application are that complainant got married with Ms. Payal Maheshwari on 28.11.2014 and blessed with two kids. The complainant’s wife left India to live in Singapore in January 2014. Complainant is taking full care of his kids alone at the family house since 2004. After marriage property bearing A-353 Ground Floor, Defence Colony was purchased jointly where half investment was made by the complainant. His wife made a false complaint case alleging dowry, domestic violence and others on 25.09.2015. Subsequently, the said complaint was withdrawn on 18.10.2015 stating that the said complaint was incorrect. The father of the complainant’s wife was earlier working at Special Commissioner, Delhi Police and has a significant influence over the Delhi Police despite his retirement.”

4. Against the dismissal of his application by the Metropolitan Magistrate, the complainant filed a revision before the Addl. Sessions Judge which came to be dismissed vide the aforesaid impugned order.

5. The only grievance raised by learned counsel for the petitioner is that once Metropolitan Magistrate reached a conclusion that the complaint

filed by the petitioner is frivolous then the revisional court, while agreeing with the conclusion reached by the Metropolitan Magistrate, ought not to have directed that the complainant's application under Section 156(3) Cr.P.C be treated as complaint under Section 200 Cr.P.C.

6. Learned counsel for the petitioner has referred to the decision in Mona Panwar vs. High Court of Judicature of Allahabad through its Registrar & Anr., reported as **(2011) 3 SCC 496** and Mohd. Salim vs. State, reported as **(2010) SCC OnLine Del. 1053**.

7. A perusal of the decision in Mona Panwar (supra) shows that the same arose out of proceedings where the learned Single Judge of High Court while setting aside the order passed by the appellant Judicial Magistrate made disparaging remarks which were sought to be expunged. By the impugned order, it was further directed that the application of the respondent/wife be put before the appellant for recording the statement of the complainant. In these circumstances, it was held that the examination of the complainant and his witnesses under Section 200 Cr.P.C would be directed by the Magistrate only when a case is found to be a serious one and not as a matter of routine course. If on a reading of a complaint, the Magistrate finds that the allegations therein disclose a cognizable offence and forwarding of the complaint to the police for investigation under Section 156(3) Cr.P.C will not be conducive to justice, he will be justified in adopting the course suggested in Section 200 Cr.P.C.

8. Learned counsel for the petitioner has placed reliance on para 10 of the decision in Mohd. Salim (supra), a perusal of which shows that unless

allegations in the complaint do not disclose a cognizable offence, direction for investigation under Section 156 (3) Cr.P.C ought not to be passed.

9. The law on the subject as to the course available to the Magistrate on receipt of a complaint under Section 156(3) Cr.P.C was summarized in H. S. Bains v. State, reported as **(1980) 4 SCC 631** wherein it was held as follows :

“6. It is seen from the provisions to which we have referred in the preceding paras that on receipt of a complaint a Magistrate has several courses open to him. He may take cognizance of the offence and proceed to record the statements of the complainant and the witnesses present under Section 200. Thereafter, if in his opinion there is no sufficient ground for proceeding he may dismiss the complaint under Section 203. If in his opinion there is sufficient ground for proceeding he may issue process under Section 204. However, if he thinks fit, he may postpone the issue of process and either enquire into the case himself or direct an investigation to be made by a police officer or such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. He may then issue process if in his opinion there is sufficient ground for proceeding or dismiss the complaint if there is no sufficient ground for proceeding. On the other hand, in the first instance, on receipt of a complaint, the Magistrate may, instead of taking cognizance of the offence, order an investigation under Section 156(3). The police will then investigate and submit a report under Section 173(1). On receiving the police report the Magistrate may take cognizance of the offence under Section 190(1)(b) and straight away issue process. This he may do irrespective of the view expressed by the police in their report whether an offence has been made out or not. The police report under Section 173 will contain the facts discovered or unearthed by the police and

the conclusions drawn by the police therefrom. The Magistrate is not bound by the conclusions drawn by the police and he may decide to issue process even if the police recommend that there is no sufficient ground for proceeding further. The Magistrate after receiving the police report, may, without issuing process or dropping the proceeding decide to take cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record the statements upon oath of the complainant and the witnesses present under Section 200 of the Criminal Procedure Code and thereafter decide whether to dismiss the complaint or issue process. The mere fact that he had earlier ordered an investigation under Section 156 (3) and received a report under Section 173 will not have the effect of total effacement of the complaint and therefore the Magistrate will not be barred from proceeding under Sections 200, 203 and 204. Thus, a Magistrate who on receipt of a complaint, orders an investigation under Section 156(3) and receives a police report under Section 173(1), may, thereafter, do one of three things: (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence under Section 190 (1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (3) he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. If he adopts the third alternative, he may hold or direct an inquiry under Section 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be.”

The same view was reiterated by a co-ordinate Bench of this Court in the case of Rajni Palriwala v D. Mohan & Ors. reported as **162 (2009) DLT 126.**

10. In Srinivas Gundluri and Ors. v. SEPCO Electric Power Construction Corporation and Ors. reported as **(2010) 8 SCC 206**, Supreme Court reaffirmed the decision in Devarapalli Lakshminarayana Reddy v. Narayana Reddy, reported as **1976 3 SCC 252**, in which it was held as under:

“13. It is well settled that when a Magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint, disclose the commission of an offence. This is clear from the use of the words ‘may take cognizance’ which in the context in which they occur cannot be equated with ‘must take cognizance’. The word ‘may’ gives a discretion to the Magistrate in the matter. If on a reading of the complaint he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence, himself.

14. This raises the incidental question: What is meant by ‘taking cognizance of an offence’ by a Magistrate within the contemplation of Section 190? This expression has not been defined in the Code. But from the scheme of the Code, the content and marginal heading of Section 190 and the caption of Chapter XIV under which Sections 190 to 199 occur, it is clear that a case can be said to be instituted in a court only when the court takes cognizance of the offence alleged therein. The ways in which such cognizance can be taken are set out in clauses (a), (b) and (c) of Section 190(1). Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted, and the nature of the preliminary

action, if any, taken by the Magistrate. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding under Section 200 and the succeeding sections in Chapter XV to the Code of 1973, he is said to have taken cognizance of the offence within the meaning of Section 190(1)(a). If, instead of proceeding under Chapter XV, he has, in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under Section 156(3), he cannot be said to have taken cognizance of any offence.”

11. In view of above enunciation of law, the impugned order does not suffer from any illegality or infirmity. There is no bar in treating the application under Section 156 (3) Cr.P.C as a complaint under Section 200 Cr.P.C. The petition does not disclose any action which indicates non-application of mind either by the impugned order or by any subsequent event. The petition is rather premature and is accordingly dismissed. The pending application bearing CrI.M.A. No.42321/2019 is also dismissed.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 17, 2019

SSC