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

+ **W.P.(CRL) 484/2020 and CRL.M.A. 3606/2020**

DINESH KUMAR SHARMA

..... Petitioner

Through: Mr Prashant Mendiratta, Mr B. Venkatraman, Ms Jahnvi Singh and Mr Prashant Bhardwaj, Advocates.

versus

STATE (NCT OF DELHI) & ORS

..... Respondents

Through: Mr Rajesh Mahajan, ASC for State with Ms Jyoti Babbar and Ms Shrutika Vedi, Advocates.

Inspector Sushma Saxena, PS Safdarjung Enclave, Delhi.

Mr Vikas Pahwa, Senior Advocate with Mr Sandeep Das, Mr Ninad Dogra, Mr Prashant Goswami, Advocates for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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26.02.2020

1. The petitioner has filed the present petition, *inter alia*, praying that FIR bearing no. 0257/2019 under Sections 66(D) of the Information Technology Act, 2000 and all proceedings emanating therefrom, be quashed.

2. The said FIR was registered at the instance of respondent no.2 through his father (respondent no.3). They had alleged that certain emails, which were relied upon by the petitioner for the alleged commission of an

offence under Sections 468A/406 of the IPC, were forged and fabricated.

3. The petitioner's daughter is married to respondent no. 2 and he had lodged an FIR – FIR No. 259/2018 under Sections 498A/406/34 of the IPC – *inter alia*, alleging demand of dowry and the commission of offences on the part of respondent no. 2 and his family members.

4. The controversy in the present case, essentially, resolves around four emails allegedly sent by respondent no.2. The said emails, in fact, substantiate all the allegations made by the petitioner regarding demand of dowry and commission of other offences.

5. The learned counsel appearing for the petitioner contends that the said FIR could not be lodged as, after lodging a complaint, respondent nos. 2 and 3 had not taken any steps to lodge a representation under Section 154(3) of the Cr.P.C. or with the police officers referred to under Section 36 of the Cr.P.C. He submits that the respondents had directly filed a petition under Section 156(3) of the Cr.P.C, which is impermissible.

6. He submits that the learned MM did not have any jurisdiction to direct registration of the FIR under Section 156(3) of the Cr.P.C., if the complainant had not exhausted their remedies under section 154(3) Cr.P.C. He relied on the decision of the Supreme Court in ***Sakiri Vasu v. State of Uttar Pradesh and Others: (2008) 2 SCC 409*** and drew the attention of this Court to Paragraph no. 26 of the said decision, in support of his contention. Paragraph no. 26 of the said decision is set out below:-

“26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to

approach the Superintendent of Police under Section 154(3) CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?”

7. It is clear from the plain reading of the above that the Supreme Court had expressed its opinion that approaching a High Court under Section 482 of the Cr.P.C. to address a grievance regarding non-filing of an FIR, without exhausting alternate remedies, was not warranted.

8. Clearly, this decision is not an authority for the proposition that a Magistrate is precluded from exercising powers under Section 156(3) of the Cr.P.C if the complainant has not exhausted the remedy under Section 154(3) of the Cr.P.C. or under Section 36 of the Cr.P.C.

9. This Court finds no infirmity with the decision of the learned MM to exercise the power under Section 156(3) of the Cr.P.C.

10. The learned counsel appearing for the petitioner further contended that the petitioner had obtained a copy of the said emails from the police authorities and they were not required to provide them the same. He further submits that the petitioner has lost faith in the investigation agency and prays that the investigation be transferred to another agency.

11. Mr Pahwa, learned senior counsel appearing for the complainant has

expressed no objection if the investigation is transferred to any other agency.

12. Without going into the allegations made by the petitioner, this Court considers it apposite to transfer the investigation in relation to FIR bearing no. 0257/2019 under Section 66D of the Information Technology Act, 2000 and FIR No. 259/2018 under Sections 498A/406/34 of the IPC to the Crime Branch. It is so directed.

13. The Commissioner of Police shall take the necessary steps for passing the necessary directions for implementing the above direction.

14. The petition is disposed of with the aforesaid directions. The pending application is also disposed of.

FEBRUARY 26, 2020
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VIBHU BAKHRU, J