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

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**Date of Decision: 02.03.2020**

+ **CRL. M.C. 1167/2020**

**SATISH KUMAR**

..... Petitioner

Through: Mr. Lokesh Kumar Mishra, Ms. Arti Baghel and Mr. Himanshu Sharma, Advocates.

Versus

**STATE OF NCT OF DELHI**

.....Respondent

Through: Mr. M.S. Oberoi, APP for the State.

**CORAM:  
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR**

**RAJNISH BHATNAGAR J. (ORAL)**

**CRL. M.A. 4555/2020**

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

**CRL. M.C. 1167/2020**

1. The petitioner has filed the present petition u/s 482 of the Cr.P.C. with the prayer to set aside the impugned order dated 18.01.2020 passed by Sh. Kuldeep Narayan, Ld. ASJ, East District, Karkardooma Court, Delhi in

Crl. Revision No. 119/2019 titled as "Satish Kumar Vs. State & Anr." and to direct the respondent to register the FIR against the accused persons in appropriate Section of IPC and Information Technology Act-2000.

2. The petitioner herein had instituted a criminal complaint (CC No. 4002/18) against one Khushboo Singh and Abhishek Chauhan (proposed accused persons) in the Court of Ld. ACMM (E) alleging that Khushboo Singh was her Ex-employee and Abhishek Chauhan is her husband. It is alleged by the complainant (petitioner herein) that both the said proposed accused persons have firstly defrauded him and then with the intention of defaming him have committed cyber crime by transmitting his private conversation with his girl friend to his relatives. The complaint was accompanied by an application seeking directions to the police U/s 156(3) of the Cr.P.C. to register a case and investigate the matter. The Ld. ACMM (E) vide his order dated 17.05.2019 however, declined the said prayer but granted liberty to the complainant (petitioner herein) to lead positive evidence to prove his case and held that if need arises, an inquiry U/s 202 Cr.P.C may be conducted and posted the matter for such purposes.

3. The petitioner feeling aggrieved invoked the revisional jurisdiction of the Court of Sessions and questioned the correctness, legality and propriety of the said order. But his criminal revision petition bearing No. 119/2019 was dismissed by the Ld. A.S.J. vide impugned order dated 18.01.2020 which is now challenged by the petitioner, invoking jurisdiction of this Court U/s 482 Cr.P.C.

4. It is submitted by the Ld. counsel for the petitioner that the proposed accused have hacked the email-ID of the petitioner/complainant and have stolen the customers list of the petitioner. He further argued that investigation in the matter is required to be conducted by the IT expert team of the police to substantiate the allegations of the petitioner.

5. It is submitted by the Ld. APP for the state that at the outset the present petition is not maintainable as the petitioner cannot be permitted to file a second revision petition in the garb of section 482 Cr.P.C. It is further submitted by the Ld. APP that the power U/s 482 Cr.P.C can only be exercised by the High Court in case there has been failure of justice or misuse of judicial mechanism or procedure and sentence or order was not correct which is not so in the present case. It is further argued that there is no infirmity in the impugned order dated 18.01.2020. It is further argued that the petitioner can lead his evidence before the Magistrate Court in his complaint U/s 200 Cr.P.C and in case during the course of the proceeding, the Magistrate deem it necessary, he can issue directions for further investigation by the police U/s 202 Cr.P.C.

6. Now a procedural issue has arisen, as to whether the petitioner having availed of the remedy of revision should be allowed to take recourse to section 482 Cr.P.C as a substitute for virtually initiating a second revisional challenge or scrutiny which is clearly barred U/s 397 (3) Cr.P.C which reads as follows :

"(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no

further application by the same person shall be entertained by the other of them."

7. In ***Rajinder Prasad Vs. Bashir***, (2001) 8 SCC 522, the Supreme Court referring to its earlier decision in ***Krishnan Vs. Krishnaveni***, (1997) 4 SCC 241 held that :

"...though the power of the High Court under Section 482 of the Code is very wide, yet the same must be exercised sparingly and cautiously particularly in a case where the petitioner is shown to have already invoked the revisional jurisdiction under Section 397 of the Code. Only in cases where the High Court finds that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order was not correct, the High Court may, in its discretion, prevent the abuse of the process or miscarriage of justice by exercise of jurisdiction under Section 482 of the Code. It was further held, "Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of provisions of Section 397(3) or Section 397(2) of the Code."

8. In ***Kailash Verma vs. Punjab State Civil Supplies Corporation & Anr.***, (2005) 2 SCC 571, the Supreme Court observed thus :-

"5. It may also be noticed that this Court in *Rajathi v. C. Ganesan* [(1999) 6 SCC 326 : 1999 SCC (Cri) 1118] said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilised as a substitute for second revision. Ordinarily, when a revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to revision before the High Court under Section 397(1) of the Criminal Procedure Code as it is prohibited under Section

397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law are not complied with and when the High Court feels that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.”

(emphasis supplied)

9. The Ld. counsel for the petitioner submitted that inherent power of this Court U/s 482 Cr.P.C is still available and for continuous superintendence the Court would be justified in interfering with the order which has led to the miscarriage of justice. He further submitted that the object of introduction of the bar of section 397(3) Cr.P.C is to prevent a second revision so as to avoid frivolous litigation, but the doors of the High Court to a litigant who had failed before the Court of Sessions are not completely closed, and if a "special case" is made out then such bar ought to be lifted.

10. On the other hand, it is submitted by the Ld. APP for the State that there is no infirmity in the impugned order. It is further submitted that the petition is liable to be dismissed as this court U/s 482 of the Cr.P.C shall not upset the concurrent findings of the two courts below in the absence of any perversity and the petitioner cannot be allowed to initiate a second revision petition in the garb of section 482 Cr.P.C.

11. A learned single judge of this court in ***Surender Kumar Jain vs. State & Anr.***, ILR (2012) 3 Del 99 accepted such objections in another similarly placed petition under Section 482 Cr. PC observing thus :-

“5. The issue regarding filing of petition before the High Court after having availed first revision petition before the Court of Sessions has come up before the Supreme Court and this Court repeatedly. While laying that section 397(3) Cr. P.C. laid statutory bar of second revision petition, the courts have held that High Court did enjoy inherent power under section 82 (sic) Cr. P.C. as well to entertain petitions even in those cases. But, that power was to be exercised sparingly and with great caution, particularly, when the person approaching the High Court has already availed remedy of first revision in the Sessions Court. This was not that in every case the person aggrieved of the order of the first revision court would have the right to be heard by the High Court to assail the same order which was the subject matter of the revision before Sessions Court. It was all to depend not only on the facts and circumstances of each case, but as to whether the impugned order bring about a situation which is an abuse of process of court or there was serious miscarriage of justice or the mandatory provisions of law were not complied with. The power could also be exercised by this Court if there was an apparent mistake committed by the revisional court. Reference in this regard can be made to the judgments of the Supreme Court in *Madhu Limave v. State of Maharashtra*(1977) 4 SCC 551, *State of Orissa v. Ram Chander Aggarwal*, (1979) 2 SCC 305 : AIR 1979 SC 87, *Rai Kapoor v. State (Delhi Administration)*1980 Cri. L.J. 202, *Krishnan v. Krishnaveni and Kailash Verma v. Punjab State Civil Supplies Corporation* (2005) 2 SCC 571.”

(emphasis supplied)

12. In the instant case, the magistrate was not satisfied with the prayer made by the petitioner for directions to the police for investigation U/s 156 (3) Cr.P.C holding as follows :

"Status report was called. I have perused the status report. Considering that a number of litigation are already pending

between the parties. I am not inclined to allow the present application.

The allegations in the complaint clearly shows that the proposed accused are known to the complainant. There is no ground for directing the police to investigate the matter at this stage. The request to refer the matter for investigation U/s 156(3) Cr.P.C is accordingly declined.

Complainant is at liberty to lead positive evidence to prove his case. Needless to say, after leading CE, if need arises an inquiry U/s 202 Cr.P.C may be conducted."

13. The said view of the magistrate has been affirmed by the Court of Sessions while dismissing the revision petition vide impugned order dated 18.01.2020.

14. In *M/s Skipper Beverages Pvt. Ltd. Vs. State, 2001 IVAD Delhi 625*" in para 6 and 7 it has been observed as under :

*Para-6: Chapter XII of the Code deals with information to the police and its power to investigate the offences. [Section 156](#) of the Code included in this chapter speaks of the power of the police officers to investigate cognizable cases and sub clause (3) thereof lays down that any Magistrate empowered under [Section 190](#) of Code may order such an investigation. Chapter XV of the Code deals with complaints to a Magistrate and the procedure to be adopted by the Magistrate after taking cognizance of an offence. This chapter provides an alternative as well as additional remedy to a complainant whose complaint is either not entertained by the police or who does not feel satisfied by the investigations being conducted by the Police.*

*Para-7: It is true that [Section 156\(3\)](#) of the Code empowers a Magistrate to direct the police to register a case and initiate*

*investigations but this power has to be exercised judiciously on proper grounds and not in a mechanical manner. In those cases where the allegations are not very serious and the complainant himself is in possession of evidence to prove his allegations there should be no need to pass orders under [Section 156\(3\)](#) of the Code. The discretion ought to be exercised after proper application of mind and only in those cases where the Magistrate is of the view that the nature of the allegations is such that the complainant himself may not be in a position to collect and produce evidence before the Court and interests of justice demand that the police should step in to help the complainant. The police assistance can be taken by a Magistrate even Under [Section 202\(1\)](#) of the Code after taking cognizance and proceeding with the complaint under Chapter XV of the Code as held by Apex Court in 2001 (1) Supreme Page 129 titled " Suresh Chand Jain Vs. State of Madhya Pradesh & Ors."*

15. In "**Subhkaran Loharuka & Anr. Vs. State**, III(2003) DLT (Cr1.) 194" wherein it has been observed as follows :

*"52A. For the guidance of subordinate Courts, the procedure to be followed while dealing with an application under [Section 156\(3\)](#) of the Code is summarized as under .....Magistrate, before passing any order to proceed under Chapter XII, should not only satisfy himself about the pre-requisites as aforesaid, but, additionally, he should also be satisfied that it is necessary to direct Police investigation in the matter for collection of evidence which is neither in the possession of the complainant nor can be produced by the witnesses on being summoned by the Court at the instance of complainant, and the matter is such which calls for investigation by a State agency. The Magistrate must pass an order giving cogent reasons as to why he intends to proceed under Chapter XII instead of Chapter XV of the Code."*

16. In Ramdev Food Products Private Limited vs. State of Gujarat, MANU/SC/0286/2015, appellant sought directions for investigation under Section 156(3) of the Code. However, Magistrate instead of directing investigation as prayed, thought it fit to conduct further inquiry under Section 202 of the Code and sought report of the Police Sub-Inspector within 30 days. Grievance of the appellant before the High Court was that in view of the allegation that documents had been forged with a view to usurp the trademark, which documents were in possession of the accused and were required to be seized, investigation ought to have been ordered under Section 156(3) of the Code, instead of conducting further inquiry under Section 202 of the Code. In Ramdev (supra), Supreme Court considered Latika Kumari and in paras 20 and 22 held as under:-

“20 It has been held, for the same reasons, that direction by the Magistrate for investigation Under Section 156(3) cannot be given mechanically.

In Anil Kumar v. M.K.Aiyappa  
MANU/SC/1002/2013: (2013) 10 SCC  
705, it was observed:

11. The scope of Section 156(3) Code of Criminal Procedure came up for consideration before this Court in several cases. This Court in Maksud Saiyed case [MANU/SC/7923/2007 : (2008) 5 SCC 668] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction Under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section

156(3) or Section 200 Code of Criminal Procedure, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter Under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation Under Section 156(3) Code of Criminal Procedure, should be reflected in the order, through a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.

The above observations apply to category of cases mentioned in Para 120.6 in **Lalita Kumari** (supra)."

"22. Thus, we answer the first question by holding that the direction Under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered

appropriate to straightaway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed". Category of cases falling under Para 120.6 in Lalita Kumari (supra) may fall Under Section 202. Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case.”  
(emphasis supplied)

17. In Shri Subhkaran Luharuka & Anr. Vs. State & Anr. ILR (2010) VI Delhi 495, a Bench of coordinate jurisdiction of this court has held thus:-

“42 Thus, there are pre-requisites to be followed by the complainant before approaching the Magistrate under Section 156(3) of the Code which is a discretionary remedy as the provision proceeds with the word „May“. The magistrate is required to exercise his mind while doing so. He should pass orders only if he is satisfied that the information reveals commission of cognizable offences and also about necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without the assistance of the police. It is thus not necessary that in every case where a complaint has been filed under Section 200 of the Code the Magistrate should direct the Police to investigate the crime merely because an application has also been filed under Section 156(3) of the Code even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, may be with the assistance of the court or otherwise.

The issue of jurisdiction also becomes important at that stage and cannot be ignored.”

18. In Mohd. Salim vs. State 175(2010) DLT 473, a learned Single Judge of this court, in para 11, has held thus:-

“11. The use of the expression “may” in Sub-section (3) of Section 156 of the Code leaves no doubt that power conferred upon the Magistrate is discretionary and he is not bound to direct investigation by the Police even if the allegations made in the complaint disclose commission of a cognizable offence. In the facts and circumstances of a given case, the Magistrate may feel that the matter does not require investigation by the Police and can be proved by the complainant himself, without any assistance from the Police. In that case, he may, instead of directing investigation by the Police, straightaway take cognizance of the alleged offence and proceed under Section 200 of the Code by examining the complainant and his witnesses, if any. In fact, the Magistrate ought to direct investigation by the Police only where the assistance of the Investigating Agency is necessary and the Court feels that the cause of justice is likely to suffer in the absence of investigation by the Police. The Magistrate is not expected to mechanically direct investigation by the Police without first examining whether in the facts and circumstances of the case, investigation by the State machinery is actually required or not. If the allegations made in the complaint are simple, where the Court can straightaway proceed to conduct the trial, the Magistrate is expected to record evidence and proceed further

in the matter, instead of passing the buck to the Police under Section 156(3) of the Code. Of Course, if the allegations made in the complaint require complex and complicated investigation of which cannot be undertaken without active assistance and expertise of the State machinery, it would only be appropriate for the Magistrate to direct investigation by the Police. The Magistrate is, therefore, not supposed to act merely as a Post Office and needs to adopt a judicial approach while considering an application seeking investigation by the Police.”

19. In view of the discussions mentioned hereinabove, I am of the view that the directions for investigation under section 156 (3) of the Code cannot be given by the Magistrate mechanically. Such a direction can be given only on application of mind by the Magistrate. The Magistrate is not bound to direct investigation by the police even if all allegations made in the complaint disclose ingredients of a cognizable offence. Each case has to be viewed depending upon the facts and circumstances involved therein. In the facts and circumstances of a given case, the Magistrate may take a decision that the complainant can prove the facts alleged in the complaint without the assistance of the police. In such cases, the Magistrate may proceed with the complaint under Section 200 of the Code and examine witnesses produced by the complainant. The Magistrate ought to direct investigation by the police if it feels that the evidence is required to be collected with police assistance. In the present case, all the facts and evidence are within the knowledge of the petitioner, which he can adduce during the inquiry conducted by the learned Metropolitan Magistrate under Section 200 of the

Code. Even otherwise, the order dated 17.05.2019 passed by the Magistrate states that even if after leading the complainant evidence, if need arises, an inquiry U/s 202 Cr.P.C may be conducted. So the Magistrate has totally not shut out the police investigation.

20. Therefore, this Court finds that no special case has been made out for this Court to exercise extraordinary jurisdiction U/s 482 Cr.P.C. There is no miscarriage of justice or illegality in the approach adopted by the two courts below nor any such has been pointed by the petitioner.

21. In these facts and circumstances, I do not find any palpable absurdity or perversity in the impugned order, which may require to be corrected or set right by this Court, in exercise of its inherent jurisdiction U/s 482 Cr.P.C. The petition is, therefore dismissed.

**RAJNISH BHATNAGAR, J**

**March 02, 2020**

*Sumant*

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