

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

+ **CRL.M.C. 944/2021**

Date of Decision 15/09/2021

IN THE MATTER OF:

SH. RAMAN KAPOOR

..... Petitioner

Through: Mr. Bhrigu Dhami, Advocate.

Versus

STATE (NCT OF DELHI) & ORS.

..... Respondents

Through: Mr. Panna Lal Sharma, APP for
State with SI Rahul Singh P.S.
Connaught Place.

(VIA VIDEO CONFERENCING)

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

1. The present petition has been filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C. on behalf of the petitioner assailing the order dated 22.07.2020 passed in Crl. Rev. P. No. 121/2019 by the learned Addl. Sessions Judge-04, New Delhi District, Patiala House Courts, New Delhi, whereby the Revisional Court has upheld the order of the learned Metropolitan Magistrate vide which the closure report was accepted and the protest petition filed by the petitioner/complainant was dismissed.

2. The brief facts, as noted by the Revisional Court, are as under :-

“2. Briefly stated, the facts of the case are that the revisionist herein has registered FIR bearing No. 323/99, under Section 403/406/467/468/419/420/120-B IPC, PS Connaught Place, New Delhi for forgery of his signatures on the application forms for opening the bank accounts in Bank of Madura Ltd., and Bank of Punjab Ltd. against respondents No. 2 to 5 herein. It is stated that a partnership firms under the name and style of M/s. Ropas International and M/s. Continental Films were being run by the revisionist, his brother namely Anil Kapoor and his mother Sarla Devi as partners and in order to expand their business, revisionist had gone to abroad and remained there from the year 1989 till 30.03.1998, except for the period from 25.09.1994 to 05.10.1994.

That revisionist used to send the sale proceeds of the aforesaid partnership firms from abroad to the bank accounts of the said partnership firms and in the year 1998, when he came to India from abroad, he came to know that the accounts in the aforesaid banks were opened by his brother and mother by forging his signatures upon the account opening forms, whereas, he had not signed the same at any point of time. It further came to his knowledge that his brother and mother had also misappropriated the amounts deposited by the revisionist in the said accounts. Therefore, the revisionist preferred complaint on the basis of the FIR registered under Section 403/406/467/468/419/42/120-B IPC against respondents No. 2 to 5 herein.”

3. During the investigation, the Investigating Officer obtained specimen signatures of the petitioner as well as the accused namely Arun

Kapoor and *Sarla Devi*, the brother and mother of the complainant respectively. The signatures of the aforesaid persons were initially sent to FSL, Malviya, New Delhi however, as per the FSL Report dated 08.12.2000, the result was inconclusive. The FSL Report noted that the signatures on the applications for opening bank accounts were not of the petitioner, however no authorship could be fixed on respondents based on the specimen signatures collected and sent for examination. On the basis of the aforesaid, a closure report was filed before the learned Metropolitan Magistrate. Aggrieved by the same, the petitioner filed a protest petition dated 08.07.2004 and vide order dated 28.01.2005, the Investigating Agency was directed to conduct further investigation. Again, an investigation was carried out and expert opinion sought from FSL, Rohini, however once again, the results as per the FSL Report dated 01.02.2010 remained inconclusive. Another closure report was filed on 25.04.2013 resulting in filing of second protest petition by the petitioner. It was pointed by the petitioner that his father may have forged the signatures, and in furtherance of this suggestion, the specimen signatures of the petitioner's father were sent to CFSL, Chandigarh. On petitioner's request, the learned Metropolitan Magistrate directed CFSL, Chandigarh to examine the disputed and admitted specimen signatures of the accused persons. However, as per the results contained in FSL Report dated 20.01.2014, no conclusion could be reached that the petitioner's father had forged the signatures. This prompted the petitioner to file a third protest petition to have the specimens examined by a private forensic expert at his cost.

4. Vide order dated 01.02.2019, the learned Metropolitan Magistrate accepted the closure report and dismissed the protest petition of the petitioner. The Revisional Court, while passing the impugned order, concurred with the findings of the learned Metropolitan Magistrate.

5. It is noted that during the investigation, a letter dated 12.01.2001 from Bank of Punjab was received according to which export documents like invoice, bill of lading etc. were sent by the Bank to the buyer's bank i.e., *M/s Continental De Commercio LTDA, Bagota (Columbia)*. The buyer is none other than the petitioner himself. The aforesaid letter also indicated that the Bank did not receive any complaint from the petitioner during the time the transactions were carried out in the account. The contents of the aforesaid letter are in teeth of the petitioner's claim that he was not aware of the opening of the bank account and the transactions carried in the same. The petitioner was depositing sale proceeds of the partnership firms in the two bank accounts alleged to have been opened without his consent. It is also noted that during the investigation, a notice under Section 160 Cr.P.C. was given to the petitioner along with telephonic request, but he failed to join the investigation and also did not provide any further information in support of his allegations. The FSL as well as CFSL reports have remained inconclusive. The petitioner's father has expired in the meantime. In the aforementioned circumstances, both the courts were right in accepting the closure report.

6. However, the acceptance of closure report and dismissal of the protest petition did not leave the petitioner remediless. Nothing precluded the petitioner from pursuing the complaint as a private complaint under Section 200 Cr.P.C. which would have been considered

on its own merits. At this juncture, this Court deems it profitable to refer to the decision in Gopal Vijay Verma v. Bhuneshwar Prasad Sinha and Others reported as (1982) 3 SCC 510, wherein in similar circumstances, the Supreme Court observed as under:

“1. The High Court was clearly in error in thinking that the Magistrate could not take cognizance of a case upon complaint because he had earlier refused to take cognizance of the case on a police report. The order of the High Court is set aside. The matter is remitted to the Chief Judicial Magistrate, Patna for disposal according to law. If the accused have any further objections to raise, they may do so before the Chief Judicial Magistrate.”

7. Later, the aforesaid view was reiterated in Kishore Kumar Gyanchandani v. G.D. Mehrotra reported as AIR 2002 SC 483, wherein while answering the reference, the Supreme Court observed as follows:-

“4. When the matter was listed before a two-Judge Bench of this Court, thinking that there is some divergence of views, it referred the matter to a three-Judge Bench. On examining the different provisions of the Code of Criminal Procedure as well as the decisions of this Court relevant on the question, we see no divergence in the matter.

5. It is too well settled that when police after investigation files a final form under Section 173 of the Code, the Magistrate may disagree with the conclusion arrived at by the police and take cognizance in exercise of power under Section 190 of the Code.

The Magistrate may not take cognizance and direct further investigation in the matter under Section 156 of the Code. Where the Magistrate accepts the final form submitted by the police, the right of the complainant to file a regular complaint is not taken away and in fact on such a complaint being filed the Magistrate follows the procedure under Section 200 of the Code and takes cognizance if the materials produced by the complainant make out an offence. This question has been raised and answered by this Court in the case of Gopal Vijay Verma v. Bhuneshwar Prasad Sinha¹ whereunder the view of the Patna High Court to the contrary has been reversed. The Court in no uncertain terms in the aforesaid case has indicated that the acceptance of final form does not debar the Magistrate from taking cognizance on the basis of the materials produced in a complaint proceeding.”

8. Coming back to the facts of the case, it is observed that the decision taken by the learned Magistrate in accepting the closure report is consistent with the judicial dicta on Magistrate's power to take cognizance under aforementioned circumstances. Reference is taken of the Supreme Court's decision in H.S. Bains, Director, Small Saving-cum-Deputy Secretary Finance, Punjab, Chandigarh v. State (Union Territory of Chandigarh) reported as **1980 (4) SCC 631**, which sheds light on the subject and was also lately cited with approval in Vasanti Dubey v. State of Madhya Pradesh reported as **(2012) 2 SCC 731**, in the following terms:

“20. ...

- '1. When a Magistrate receives a complaint, he may, instead of taking cognizance at once under Section 190(1)(a) direct a police investigation under Section 156(3) ante;*
- 2. Where, after completion of the investigation, the police sends an adverse report under Section 173(1), the Magistrate may take any of the following steps:*
- (i) If he agrees with police report, and finds that there is no sufficient ground for proceeding further, he may drop the proceeding and dismiss the complaint.*
- (ii) He may not agree with the police report and may take cognizance of the offence on the basis of the original complaint, under Section 190(1)(a) and proceed to examine the complainant under Section 200.*
- (iii) Even if he disagrees with the police report, he may either take cognizance at once upon the complaint, direct an enquiry under Section 202 and after such enquiry take action under Section 203. However, when the police submits a final report or closure report in regard to a case which has been lodged by the informant or complainant, the Magistrate cannot direct the police to straightway submit the charge-sheet as was the view expressed in *Abhinandan Jha*³ which was relied upon in *Ram Naresh Prasad*⁴."*

9. Keeping in view the facts and circumstances of the case and the conclusion arrived at by the courts below, I find no ground to interfere with the same. Consequently, the petition is dismissed.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 15, 2021
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