

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

+ **CRL.M.C. 616/2020 & CRL.M.A. 2547/2020**

Date of Decision: 24.11.2021

IN THE MATTER OF:

SH. RAM DHAN

..... Petitioner

Through: Mr. Pratap Singh, Advocate

Versus

STATE & ORS.

..... Respondents

Through: Ms. Neelam Sharma, APP for State
with SI Kishan Vir Singh, P.S. Mehrauli

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. on behalf of the petitioner seeking setting aside of the order dated 09.10.2019 passed by the learned ASJ-03 (South), Saket Courts, New Delhi in Criminal Revision Petition No. 241/2019, vide which the order dated 01.04.2019 passed by the learned MM-05 (South), Saket Courts, New Delhi, dismissing the petitioner's application under Section 156(3) Cr.P.C. and asking him to lead evidence on his complaint under Section 200 Cr.P.C., was upheld.

2. Brief facts of the case are that the petitioner had initially preferred a complaint under Section 156(3) Cr.P.C. read with Section 200 Cr.P.C. before the learned Metropolitan Magistrate seeking registration of FIR against his brothers *Laxman* (i.e. respondent No. 2) and *Ram Phal*,

alleging that the accused persons had got registered a fabricated Will of his mother, i.e. *Late Smt. Punni Devi*, and deprived him of his share in her property with *malafide* intention.

A Status Report came to be filed, wherein it was reported that the dispute pertained to a Will executed by the deceased in relation to the ancestral property and was civil in nature. Vide order dated 01.04.2019 passed by the learned Metropolitan Magistrate, the aforesaid complaint came to be dismissed with the observation that the complainant/petitioner had control over the evidence and if an enquiry was deemed necessary subsequently, it could be initiated under Section 202 Cr.P.C. Accordingly, the relief of registration of FIR against the accused persons was declined. Against the said order, a revision petition was filed by the petitioner before the Sessions Court, which came to be dismissed vide the impugned order.

3. Learned counsel for the petitioner submits that the aforesaid complaint was filed by the petitioner against the accused persons for preparing a fabricated Will on behalf of *Late Smt. Punni Devi*, i.e. mother of the petitioner. He further submits that the said Will was got registered in the name of the accused persons on 04.11.1992. The petitioner's mother expired on 05.09.2004 and was survived by seven legal heirs, namely *Sh. Ramesh Kumar, Sh. Devi Ram, Sh. Ram Phal, Sh. Ram Dhan, Sh. Lakshman, Sh. Subhash & Smt. Laxmi Devi*.

Learned counsel submitted that the accused persons fabricated and forged the aforesaid Will in pursuance of a criminal conspiracy to illegally own the property of *Late Smt. Punni Devi*, i.e. property bearing *Khasra No. 311/8 admeasuring 150 sq. yds. (3 biswas) situated at Village Chhatarpur, Mehrauli, New Delhi*. In pursuance of the

conspiracy, the accused persons also got the said property mutated in their names by making a false averment that there were no other legal heirs of *Late Smt. Punni Devi*, besides them.

It is further contended that the fabrication of the Will is established from the fact that even though one of the attesting witnesses, i.e. *Sh. Naresh Kumar*, stated on oath that the aforesaid Will was registered in front of him, in the civil proceedings stated to be pending before the learned ADJ, while deposing as DW-4, he admitted that the Will was not executed in his presence. The said witness also stated that he was asked to append his signatures on the Will by the second witness, namely *Sh. Gian Chand*, at his shop and that he did not go to the Office of the Registrar.

4. Learned counsel for the petitioner has also invited the attention of the Court to the statement of *Sh. Kapil Dabodia*, S/o *Sh. Gian Chand Dabodia* (i.e. the second attesting witness), who was examined as DW-5 in the aforesaid civil suit, wherein he had only identified the signatures of his father on the aforesaid Will. It is submitted that in the aforesaid facts and circumstances, both the Courts below committed grave error in dismissing the petitioner's application under Section 156(3) Cr.P.C.

5. Learned APP for the State, on the other hand, has supported the impugned order. It is submitted that both the Courts below have taken a consistent view that police investigation is not required in the facts and circumstances of the present case. The dispute between the parties is essentially civil in nature, and though the genuineness and validity of the Will is disputed, it is a question which remains to be determined in the course of the civil suit pending between them. Moreover, since the complainant/petitioner had not led evidence till the time when the

complaint under Section 156(3) Cr.P.C. came to be filed, the learned Magistrate rightly refrained from invoking the power conferred by the provision, which though discretionary, must be exercised judiciously.

6. I have heard learned counsels for the parties and also gone through the material placed on record.

7. The law on the issue arising herein has been expounded by the Supreme Court 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** and CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd. and Another reported as **(2005) 7 SCC 467**.

8. In H.S. Bains (Supra), the Supreme Court has held:

"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."

9. Subsequently, while citing with approval the decision in H.S. Bains (Supra), the Supreme Court in Vasanti Dubey v. State of Madhya Pradesh reported as **(2012) 2 SCC 731**, has expounded on the issue under consideration as follows:-

“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 which was relied upon in Ram Naresh Prasad.”*

10. Notably, in the present case, the Sessions Court in the impugned order has noted that the petitioner has not complied with the requirements of Section 156(3) Cr.P.C., which include filing of an affidavit by the applicant as well as compliance with Sections 154(1) and (3) Cr.P.C. prior to having recourse to Section 156(3) Cr.P.C. In this regard, the learned ASJ referred to the observations of the Supreme Court in Priyanka Srivastava and Another v. State of Uttar Pradesh and Others reported as **(2015) 6 SCC 287**. Relevant excerpt from the decision is extracted hereunder:-

“20.The duty cast on the learned Magistrate, while exercising power under Section 156(3) CrPC, cannot be marginalised....

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27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order.

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29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.

30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and

also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed.”

11. Recently, the view taken in Priyanka Srivastava (Supra) has been reiterated and summarised in Vikram Johar v. State of Uttar Pradesh and Another reported as **(2019) 14 SCC 207**.

12. Adverting to the facts of the present case, it is noted that the challenge made to the impugned order is premised on the ground that the aforesaid Will is fabricated, given that the attesting witness *Naresh Kumar* has deposed in Civil Suit No. 9059/2016 that he had appended his signatures at a shop and had not gone to the Office of the Registrar. It has also been averred that *Sh. Laxman* and *Sh. Ram Phal* portrayed themselves as the only legal heirs of *Late Smt. Punni Devi* before the Sub-Registrar as well as at the time of the mutation.

13. The Will dated 04.11.1992 executed by *Late Smt. Punni Devi* is a registered document, wherein it is stated that after her death, the property bearing No. *Khasra No. 311/8 measuring about 150 sq. yds. (3 biswas)*, alongwith whatever construction or structure standing on it shall go to her sons, namely *Chi Ram Phal & Chi Lakshman* in equal shares and no other person shall have any right or claim on any part thereof. It is further stated that her 1/8th share in property bearing No. *Khasra No. 311/9, Village Chhattar Pur, New Delhi* shall go to her son *Chi Laxman*

in addition to his own share, thus raising his share to 1/4th in the said property. It is also stated that except as aforesaid, no other legal heir of the executant shall have any claim or right to any of her property. On the basis of the said Will, mutation is stated to have been carried out in the year 2006.

14. It is noted that the complaint in question came to be filed on 01.11.2017, i.e., after about 25 years of the execution of the Will. Learned Metropolitan Magistrate had requisitioned an Action Taken Report from the concerned Police Station, wherein it was opined that dispute between the parties over the stated immovable property was purely civil in nature and no cognizable offence was made out. On the basis of the said Report, learned Magistrate vide order dated 01.04.2019 dismissed the application of the petitioner under Section 156(3) Cr.P.C., while observing that all evidence was available with the complainant and if necessary, inquiry under Section 202 Cr.P.C. could be initiated. In the revision petition, the Sessions Court upheld the order of the learned Magistrate.

15. Insofar as the fact that the learned Metropolitan Magistrate asked the petitioner to lead evidence on his complaint is concerned, the order passed is in conformity with the steps outlined in H.S. Bains (Supra).

16. This Court concurs with the conclusion arrived at by both the Courts below inasmuch as the present dispute is civil in nature and the evidence is in possession of the petitioner. Further, in relation to the said Will, the civil proceedings are stated to be pending between the parties and there is also non-compliance of sub-Sections (1) and (3) of Section 154 and Section 156(3) Cr.P.C. as the petitioner has neither followed his

complaint in terms of Section 154(3) nor filed a supporting affidavit with his application under Section 156(3) Cr.P.C.

17. In view of the facts and circumstances of the case and the exposition of law outlined hereinabove, I find no illegality or perversity in the order passed by the Sessions Court.

18. Accordingly, the petition is dismissed, alongwith the pending application.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 24, 2021

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