



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

% **Pronounced on: 20th May, 2022**

+ **CRL.M.C. 1738/2020**

RAJ BALA Petitioner

Through: Mr. Shiv Ram Singh, Advocate

Versus

STATE OF NCT & ORS.Respondents

Through: Mr.G. M. Farooqui, APP for R-1/State
Mr.Rajinder Pal Singh, Adv. for R-2
Ms.Akanksha Choudhary, Adv. for R-3

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. This petition has been filed under Section 482 Cr.P.C., by the applicant before the learned Metropolitan Magistrate (for short, “**learned MM**”) being aggrieved by the order dated 28th February, 2020, passed in C.C. No.24567/2019.

2. The petitioner had, along with her complaint, filed an application under Section 156(3) of the Code of the Criminal Procedure, 1973 (for short, “**Cr.P.C.**”) seeking directions to the police for the registration of an FIR for the commission of offences under Sections 379/420/406/465/467/468/471/506/120B IPC against the respondents No.2 and 3 herein.



3. Mr. Shiv Ram Singh, learned counsel for petitioner, submitted that the learned MM had fallen into error in dismissing the application under Section 156(3) Cr.P.C. on the ground that on an earlier occasion, a similar application had been dismissed. It was submitted by the learned counsel that the fact situation was different when the earlier application had been dismissed, as the petitioner was not in possession of any document to substantiate her allegations. That was also the reason why she had withdrawn her first complaint. It was submitted that in a civil suit filed by the respondent No.2, he had filed copies of certain documents on the basis of which, the respondent No.2 claimed that he had purchased a part of the property from the petitioner. It was submitted that admittedly, the full consideration has not been paid by the respondent No.3, despite having been put in possession and the petitioner was thus defrauded of her valuable property. Her original documents were also stolen by the respondent No.3 and his associates. Despite these important facts, the learned MM had declined to direct the registration of the FIR to initiate police investigations. It was submitted that the respondents were not co-operating with the inquiry that the police had sought to make from them, as was evident from the Status Reports that they had submitted to the learned Trial Court. Thus, on the basis of new facts, the complaint being maintainable, the application also ought to have been entertained by the learned MM and directions issued to the police for the registration of the FIR and conduct investigations.

4. Mr.Rajinder Pal Singh, learned counsel for respondent No.2 and Ms.Akanksha Choudhary, learned counsel for respondent No.3, on the



other hand, submitted that the second application under Section 156(3) Cr.P.C. was rightly dismissed by the learned MM as the facts, on the basis of which investigations were sought, were identical in both applications. It was also contended that the order dismissing the first application under Section 156(3) Cr.P.C. was a speaking order on merits and therefore, the second application could not have been entertained by the learned MM and hence, it was rightly dismissed. In the replies of the respondents No.2 and 3, it was further submitted that the first complaint had also been withdrawn by the present petitioner, without leading any evidence. Therefore, the dismissal of the second application under Section 156(3) Cr.P.C. was justified.

5. Mr.G.M.Farooqui, learned APP for the State also submitted that no cognizable offence was disclosed and therefore, the learned MM has rightly declined to issue directions for registration of the FIR.

6. While exercising the inherent powers under Section 482 Cr.P.C., the court must be conscious of the scope of such powers. In a petition under Section 482 Cr.P.C., interference by this court, in exercise of its discretionary power can be only when clear perversity or error is disclosed on the face of the record.

7. In ***Dhruvaram Murlidhar Sonar Vs. State of Maharashtra***, (2019) 18 SCC 191, the Supreme Court has held as under :

“8. It is well settled that exercise of powers under Section 482 CrPC is the exception and not the rule. Under this section, the High Court has inherent powers to make such orders as may be necessary to give effect to any order



under the Code or to prevent the abuse of process of any court or otherwise to secure the ends of justice. But the expressions “abuse of process of law” or “to secure the ends of justice” do not confer unlimited jurisdiction on the High Court and the alleged abuse of process of law or the ends of justice could only be secured in accordance with law, including procedural law and not otherwise.”

8. It may be noted, at this juncture, that CrI.M.A.6332/2022 has been filed by the petitioner to bring on record certain additional documents, being Legal Notice and the response thereto, which allegedly, disclosed the mal-intent of the respondent No.3 as the respondent No.3, instead of agreeing to pay the balance amount in the transaction, has offered to pay a meager amount as sale consideration, though he was already in possession of the suit premises.

9. Even if these documents were to be considered, it is clear that the case of the petitioner does not get strengthened. The order of the learned MM dated 31st October, 2018 with regard to the first application under Section 156(3) Cr.P.C. has been placed on the record by the petitioner as Annexure P-18. The said order is a detailed one, recording all the submissions and contentions of the petitioner and noting the various civil cases that were pending between the parties. Thereafter, it recorded that the complainant had made a false plea of loss of the original documents of the properties with some ulterior motives and therefore, material facts had been concealed. Moreover, the possession of the petitioner of the suit property was also doubted on the basis of the observations made by the



learned Civil Judge and the learned Additional District Judge in appellate proceedings.

10. On these counts, the learned MM found no ground to direct registration of an FIR, as no cognizable offence was disclosed. However, the petitioner was granted an opportunity to lead her pre-summoning evidence under Section 200 Cr.P.C.. Interestingly, the petitioner chose to withdraw that complaint. It may also be noticed that the revision filed against this dismissal order was also rejected by the learned Additional Sessions Judge on 22nd May, 2019. It is to be noticed that in the judgment of the learned Additional Sessions Judge, a reference has been made to the allegations of the petitioner regarding the theft of the documents by the respondent No.3. It is also recorded that it was claimed that the possession of the suit property had been taken under coercion and undue influence by the respondent No.3 and that only a sum of Rs.38 lakhs had been paid and the outstanding sale consideration was of Rs.2,42,00,000/-.

11. These are all noticed only to underline that all contentions raised in the second application moved before the learned MM under Section 156(3) Cr.P.C. were agitated on the previous occasion as well. To say that now as the documents have been supplied in the civil matter, a fresh cause has arisen to file an application under Section 156(3) Cr.P.C., is misplaced.

12. If the learned MM chose to be cautious about not issuing directions for the registration of the FIR, no fault can be found with it. There appears to be no additional fact that justifies the filing of the second application under Section 156(3) Cr.P.C.. At the same time, the interest of the



petitioner seems to have been taken care of by the learned MM by permitting her to lead evidence in her complaint case.

13. The petitioner was aware of the existence of the documents in favour of the respondents No.2 and 3, which is why she allegedly lodged a complaint regarding theft of the documents. Now she claims that the photocopies of the documents supplied in the civil suit in March, 2019, revealed about the documents being forged. If on the earlier occasion, she did not have the copies and therefore, she had to withdraw the first complaint case, today, she apparently has those photocopies, supplied to her, as also the response to her Legal Notice, which she has sought to bring on record in these proceedings, to help substantiate her complaint. Thus, dismissal of her second application under Section 156(3) Cr.P.C. has caused no miscarriage of justice.

14. Thus, this Court finds no merit in the present petition, which is accordingly dismissed.

15. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

MAY 20, 2022

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