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

Date of Decision: 24.01.2023

+ W.P.(CRL) 209/2023, CRL.M.A. 1951/2023

RAVINDER LAL AIRI Petitioner

Through: Mr. Dhruv Dwivedi, Adv.

versus

S.SHALU CONSTRUCTION PVT. LTD AND ORS..... Respondents

Through: Mr. Rahul Tyagi, ASC for State with
Mr. Jatin, Mr. Aashish Chojar, Advs.
with SI Murari Krishan, PS NFC

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

JASMEET SINGH, J (ORAL)

CRL.M.A. 1952/2023 & CRL.M.A. 1953/2023

1. Exemption allowed, subject to all just exceptions.
2. Applications stand disposed of.

W.P.(CRL) 209/2023

3. This is a petition seeking setting aside of the impugned judgment dated 19.11.2022 passed by learned Sessions Court in Crl. Rev. 23/2020 and to restore the order dated 06.01.2020 passed by the learned ACMM.
4. In the present case, the learned ACMM vide order dated 06.01.2020 on an application u/s 156(3) Cr.P.C. filed by the petitioner was pleased to disregard the action taken report ("ATR") and direct registration of the FIR.
5. The said order was challenged by the respondents herein in a revision petition before Additional Sessions Judge who firstly discussed the legal

position and held that the revision petition is maintainable.

6. Secondly, the learned Sessions Court was of the view that once the action taken report opined that no cognizable offence is made out and the matter is civil in nature, for the learned ACMM to disagree with the opinion of the inquiry officer and order registration of FIR would require reasons.

7. The Sessions Court was of the view that the order of 06.01.2020 was devoid of reasons and hence the Sessions Court was pleased to set aside the order dated 06.01.2020 and remand the matter to ACMM to hear afresh and take a reasoned decision.

8. This order of the Sessions Court has been challenged by the petitioner.

9. It is stated by Mr. Dwivedi, learned counsel that the order directing registration of FIR is an interlocutory order and has relied upon judgment of Gujarat High Court in “*Parmar Rameshchandra Ganpatray & Ors. vs. State of Gujarat & Ors.*” in Spl. Criminal Appl. No. 5789/2016 and more particularly para 45 and 50 which read as under:

“45. The moot question is if a revision application against mere registration of F.I.R. by the police is not maintainable whether such revision would be held maintainable when the Magistrate only directs registration of FIR. In the opinion of this Court, the answer is an emphatic No. Exercise of revisory power conferred by the Court under Section 397 read with Section 401 of the Code would occasion when there is an order passed by the competent court, which is not interlocutory in nature, however, the said power cannot be exercised to quash the FIR or investigation because such power can be exercised only by the High Court under Section 482 of the Code or under Article 226/227 of the Constitution of India. If the revision application is considered to be maintainable before the Sessions Court against an order passed by the Magistrate

under Section 156(3) and if such revision is allowed it would have effect of quashing the FIR, therefore, if the Sessions Court has no such powers otherwise, it cannot do so by entertaining a revision against an order passed by the Magistrate under Section 156(3) of the Code. [See: Amor Nath vs. State of Haryana (supra)]

.....
50. *In view of the aforesaid discussion, I hold that the order under Section 156(3) of the Code of Criminal Procedure, 1973 is an "interlocutory order" and the revision under Section 397 read with Section 401 of the Cr.P.C. would not lie. At the same time, an order of the Magistrate rejecting an application under Section 156(3) of the Code for the registration of a case by the police and for investigation is not an "interlocutory order". Such an order is amenable to the remedy of a criminal revision under Sections 397 read with 401 of the Cr.P.C."*

10. He also relied on the judgment of Allahabad High Court viz., “*Father Thomas vs. State of U.P. & Ors.*” in CRL.REV. No. 1581/2001, 1640/2001, 1656/2001, 1658/2001, 1727/2001, 1731/2001 and more particularly para 46 and 54 which read as under:

“46. As the direction for investigation passed by the Magistrate under Section 156(3) is purely interlocutory in nature, and involves no substantial rights of the parties, we are of the view that the bar under Section 397(2) Code of Criminal Procedure to the entertainment of a criminal revision can also not be circumvented by moving an application under Section 482 Code of Criminal Procedure. As observed in State v. Navjot Sandhu, MANU/SC/0396/2003: (2003) 6 SCC 641, in paragraph 29:

.....
54. *As on the basis of the aforesaid reasoning we have already held the order under Section 156(3) Code of Criminal Procedure not to be amenable to challenge in a criminal revision or an application under Section 482 Code of Criminal Procedure it is not necessary for this Court to go into the further question whether the said order is administrative in*

nature as urged by Sri G.S. Chaturvedi and the learned Government Advocate or judicial in nature as contended by Sri D.S. Mishra and Sri Dileep Gupta. Following the decision of the Apex Court in Asit Bhattacharjee v. Hanuman Prasad Ojha and Ors., MANU/SC/7676/2007: (2007) 5 SCC 786, we are also not inclined to express any opinion on this issue, and leave the question open for decision in a subsequent proceeding where an answer to this question may become necessary.”

11. I am unable to agree with the two judgments.
12. The Delhi High Court in “Nishu Wadhwa vs. Siddharth Wadhwa & Anr.” in W.P.(CRL) 1253/2016 on 10.01.2017 observed as under:

*“13. The issue that since the accused has not been summoned as an accused and has no right to file a revision petition is alien, while deciding an application under Section 156(3) Cr.P.C. The said issue crops up when the Magistrate entertains the complaint and on taking cognizance proceeds as a complaint case. In case directions are issued for registration of FIR immediately, on registration of FIR, the person against whom allegations are made in the FIR attains the status of an accused. His rights in so far as the Police can summon him for investigation, arrest him without warrants for allegations of cognizable offences are duly affected. In a situation where the fundamental right of freedom and liberty of a person is affected, it cannot be held that he has no right to be heard at that stage. Thus to hold that since directions only have been issued under Section 156(3) Cr.P.C. and no cognizance has been taken thus no revision would lie would be an erroneous reading of the decisions of the Supreme Court. Therefore, **an order dismissing or allowing an application under Section 156 (3) Cr.P.C. is not an interlocutory order and a revision petition against the same is maintainable.”***

13. I am of the view that the registration of FIR affects the fundamental right and freedom of the accused person. He can be summoned for investigation, arrested without warrants for allegations of cognizable offences. Therefore, an order directing registration of FIR u/s 156(3) Cr.P.C. is not an interlocutory order and the revision petition against the same would be maintainable as the accused has a valuable right to be heard.

14. It is further stated by Mr. Dwivedi that only brief reasons are required for registration of an FIR which was done, which has been given by the learned MM.

15. The operative portion of the order dated 06.01.2020 reads as under:

“Per contra, as per the ATR, it is denied that any cognizable offence is made out. It is stated that the collaboration agreement has not been fabricated as alleged and full & final payment of Rs. 85,00,000/- is acknowledged by receipt dated 06.01.2013 and another undated receipt.

The complainant has denied his signature on the undated receipt and fabricated pages of collaboration agreement. It is conceded by the IO that verification of transfer of RS. 40. 00 Lacs through cheques to the account of the Complainant per the undated receipt was not verified.

In these facts and circumstances, this Court deems it appropriate to order registration of FIR under relevant Sections as commission of cognizable offences are made out and complainant is not equipped to collect evidence by himself. SHO concerned is directed to register the same and file compliance report, within a week. He shall investigate/get the matter investigated, as per law.”

16. In “Harpal Singh Arora and Ors. vs. State and Anr.” 2008 (103) DRJ 282 this Court formulated the relevant question which reads as under:

“(b) Is a Magistrate, when approached thereafter by a complainant with a complaint under Section 190 read with Section 200 CrPC along with an application under Section 156 (3) Cr.PC seeking a direction for investigation by the police, bound to deal with the said report before disposing of the application under Section 156 (3) CrPC and proceeding with the complaint under Section 200 CrPC?”

....

16. Considering the fact that the learned MM called for the report of the CAW Cell, which is fairly detailed, the proper course of action before ordering an investigation under Section 156 (3) would have been to examine that report before deciding to issue a direction for investigation. When the police in the CAW Cell has come to conclusion that no cognizable offence is made out, the Magistrate cannot brush aside that conclusion lightly. Although that the said conclusion of the CAW Cell is not binding on the Magistrate at that stage, since his order is a judicial one he must give reasons, however brief, why he is inclined to order investigation notwithstanding the said report. Question (b) is answered accordingly.”

17. In ‘Arvinbhai Ravjibhai Patel vs. Dhirubhai Sambhubhai’ 1998(1) Crimes 351, the Gujarat High Court took exception to the growing tendency of asking the police to investigate cases u/s 156(3) of the Code and advised Magistrate not to pass orders mechanically. It was held:-

“Magistrates should act under Section 156 (3) of the Code only in those cases where the assistance of the police is essentially required and the Magistrate is of the considered view that the complainant on his own may not be in a position to collect and produce evidence in support of the accusation”.

18. I am of the view that the ATR has not been considered by the learned MM.

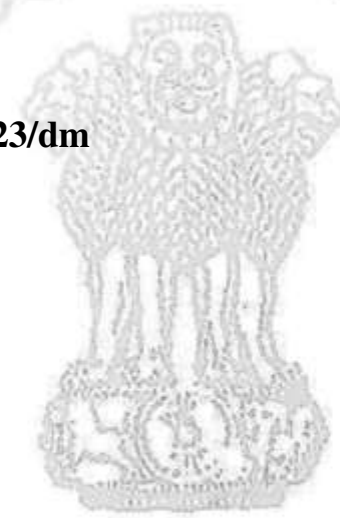
19. The MM directed that *“in these facts and circumstances this Court*

deems it appropriate to order registration of FIR...” This order is not showing application of mind as to why and how the ATR has been considered and the reasons as to why the learned MM has not agreed with the opinion expressed by the IO that no cognizable offence has been made out. This aspect has been correctly analysed by the learned Sessions Court in its revisional jurisdiction.

20. In this view of the matter, I find no merit in the petition and the same is dismissed.

JASMEET SINGH, J

JANUARY 24, 2023/dm



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