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

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CRL.M.C. 1788/2023

NARENDRA SHARMA

..... Petitioner

Through: Counsel for petitioner with
petitioner in person.(appearance
not given)

versus

STATE THROUGH SHO AND ORS.

..... Respondents

Through: Mr. Sanjay Lao, SC , Mr. Amit
Sahani, APP and Mr. Priyam
Agarwal, Advocate along with S.I.
Rahul Kumar, P.S. Maidan Garhi.

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Date of Decision: 16.03.2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

CRL.M.A. 6869/2023 (for exemption)

Exemption allowed subject to just exceptions.

The application stands disposed of.

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1. This is a petition filed challenging the judgment of Sessions Court dated 29.08.2022 in the Cr. NO. 193/2022. Ld. Principal District and Sessions Judge vide the impugned judgement upheld the order date 15.11.2021 of Ld. MM-04 whereby an application filed by the petitioner under section 156(3) Cr.P.C. seeking registration of FIR was dismissed. A prayer has also been

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made to set aside the order dated 15.11.2021 of the Ld. MM-05.

2. The factual matrix of the present case is a complaint under section 200 Cr.P.C. accompanied by an application under section 156 (3) Cr.P.C. was lodged at the instant of the petitioner alleging that respondent no. 2 who was supposed to remain in quarantine for 14 days had violated the Government directions and had committed an offence under sections 188/166-A/270/271/278/336/34 IPC along with other provisions of Epidemic and Delhi Disaster Management Act.

3. It was alleged in the complaint that on 20.04.2021, various newspapers in Delhi published that the wife of Respondent no. 2 namely Smt. Sunita Kejriwal had tested positive for Covid-19 and in view of this Respondent No. 2 had declared that he would remain in quarantine since has been in contact with her. However, it was stated that on 26.04.2021, respondent no. 2 along with respondent nos. 3,4,5 visited Sardar Patel Covid Hospital at Radha Swami Bhati, Chhattarpur.

4. On the aforesaid complaint, Trial Court after taking into account the Action Taken Report (ATR) dismissed the application filed by the petitioner under section 156(3) Cr.P.C. vide order dated 15.11.2021. It was observed that all the allegations made by the petitioner are his own version which can be established by him on his own if he is allowed to pursue the matter as a complaint case. It was noted that if the investigation is required thereafter an order under section 202 Cr.P.C. may be passed.

5. Aggrieved of this, a revision petition was filed by the petitioner which was dismissed vide the impugned judgment dated 29.08.2022. It was *inter alia* held that no fault was found in the order passed by the learned Trial Court



refusing to registeran FIR and it was made clear that Petitioner has an opportunity to lead evidence before the court and establish his case.

6. Learned Counsel for the petitioner submitted that the learned Sessions court dismissed the revision petition in view of the fact that there was no newspaper or medical report of Smt. Sunita Kejriwal. He submits that the reason for the non-filing of the same was that the petitioner could not collect the same. It is the case of the petitioner that the circumstances of the present matter are such that police assistance is required to collect the evidence. He submits that the petitioner cannot collect evidence regarding the Covid 19 infection report of the wife of Respondent No. 2 and neither can he collect evidence of whether respondent no. 2 and other respondents took any steps to prevent the spreading of Covid 19 Infection. He submits that he was an informant and not an eyewitness of the said incident and that the police is the specialised competent agency to collect the evidence therefore dismissal of his application was wrong and improper.

7. Learned Counsel for the petitioner has also submitted that the learned Session Court went into examining the facts of the case which were never under-challenge. It has been submitted that the petitioner has challenged the order of the Learned Trial court onlyto the aspect that the dismissal of the application under section 156 (3) Cr.P.C. on the ground that the complainant/petitioner was in full control of the evidence.

8. I have considered the submissions made and perused the material on record. Before moving forward it is necessary to briefly discuss the real purport behind the powers under Section 156(3) Cr.P.C. Section 156 Cr.P.C. reads as under:



"156. Police officer's power to investigate cognizable case. –(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."

9. A bare perusal of the section indicates that the use of the expression "may" in Sec.156(3) reveals the intention of the legislature to vest discretionary power upon the Magistrate to either direct an investigation or to refuse from doing so.

10. The law governing the exercise of discretion by the learned Magistrate granted under section 156(3) is very well settled. This Court in ***M/s. Skipper Beverages Pvt. Ltd. vs. State***, 2001 SCC OnLine Del 448 has held that a Magistrate must apply his mind before passing an order under Section 156(3) Cr.P.C. and must not pass these orders mechanically on the mere asking by the complainant. These powers ought to be exercised primarily 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. 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. Reliance may also be placed on ***Kusum Lata v. State of NCT of Delhi and Others*** 2021 SCC OnLine Del 2546



11. The well-settled guidelines are laid down by this Court in respect of invoking provisions of Section 156(3) Cr.P.C. in ***Subhkaran Luharuka vs. State***, (170) 2010 SCC OnLine Del 2324. The guidelines have been summarized as under:

"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:-|

(i) Whenever a Magistrate is called upon to pass orders under Section 156(3) of the Code, at the outset, the Magistrate should ensure that before coming to the Court, the Complainant did approach the police officer in charge of the Police Station having jurisdiction over the area for recording the information available with him disclosing the commission of a cognizable offence by the person/persons arrayed as an accused in the Complaintant. It should also be examined what action was taken by the SHO,

(ii) or even by the senior officer of the Police, when approached by the Complainant under Section 154(3) of the Code.

(iii) The Magistrate should then form his own opinion whether the facts mentioned in the complaint disclose commission of cognizable offences by the accused persons arrayed in the Complaint which can be tried in his jurisdiction. He should also satisfy himself about the need for investigation by the Police in the matter. A preliminary enquiry as this is permissible even by an SHO and if no such enquiry has been done by the SHO, then it is all the more necessary for the Magistrate to consider all these factors. For that purpose, the Magistrate must apply his mind and such application of mind should be reflected in the Order passed by him. Upon a preliminary satisfaction, unless there are exceptional circumstances to be recorded in writing, a status report by the police is to be called for before passing final orders.

(iv) The Magistrate, when approached with a Complaint under Section 200 of the Code, should invariably proceed under Chapter XV by taking cognizance of the Complaint, recording evidence and then deciding the question of issuance of process to the accused. In that case also, the Magistrate is fully entitled to postpone the process if it is felt that there is a necessity to call for a police



report under Section 202 of the Code.

(v) Of course, it is open to the Magistrate to proceed under Chapter XII of the Code when an application under Section 156(3) of the Code is also filed along with a Complaint under Section 200 of the Code if the Magistrate decides not to take cognizance of the Complaint. However, in that case, the 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.”

12. It is true that Section 156(3) of the Code empowers the Magistrate to issue directions in regard to registration but this provision should not be permitted to be misused by the complainants to get police cases registered even in those cases which are not very serious in nature and the Magistrate himself can hold an enquiry under Chapter XV and proceed against the accused if required. Therefore a Magistrate must apply his mind before passing an order under Section 156(3) of the Code and must not pass these orders mechanically on the mere asking by the complainant. These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of the complainant or custodial interrogation appears to be necessary for some recovery of the article or discovery of the fact.

13. It is also pertinent to note that section 482 Cr. P.C States that nothing in Cr.P.C. shall be deemed to limit or affect the inherent powers of the High Court to make such orders as it is necessary to give effect to any order under



Cr.P.C. or to prevent the abuse of the process of any Court or otherwise to secure ends of justice. It is true that this Court has inherent powers but the same are required to be exercised sparingly caution and only in the event when on examination of the record, it comes to the conclusion that either a grave miscarriage of justice is caused or it is an abuse of process in passing the impugned orders or the required statutory procedure was not followed by the courts below. The object behind the exercise of such power is to do real and substantial justice for the administration of which the courts exist.

14. In the instant case, the evidence on which the petitioner relies is within his knowledge and control. If the need were to arise for investigation, such possibility is not precluded as the learned trial court has observed that further investigation may be ordered as per Section 202 Cr.P.C. This court does not find any illegality or perversity in the discretion exercise by Learned M.M. and further order passed by Learned Session Judge. The present petition does not make out a fit case for the exercise of the inherent powers of this court under Section 482 Cr.P.C.

15. In view of the aforesaid discussion, the petition along with the pending applications is hereby dismissed as being devoid of any merit.

DINESH KUMAR SHARMA, J

MARCH 16, 2023

Rk..



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