

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on:03.03.2023

+ **CRL. REV. P. 382/2022**

MAMTA NAGPAL

..... Petitioner

versus

STATE OF GNCTD & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner :Mr. Vikram Singh Dahiya, Advocate

For the Respondents :Ms. Priyanka Dalal, APP for the State
Ms. Mansi Gupta, Advocate for R - Baruna Madan.
Ms. Payal Jain & Mr. Sumit Kumar,
Advocate for R -Manika Madan.

CORAM

HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (**CrPC**) is filed challenging the common judgment / order dated 03.01.2022, passed by the learned Additional Sessions Judge (**ASJ**) (hereinafter referred as "**the impugned order**") in Criminal Revision No.167/2020 and Criminal Revision No.168/2020.
2. The learned Metropolitan Magistrate, in a complaint under Section 156(3) CrPC being C.C. Number 3379/2020 filed by petitioner/ complainant, by its order dated 19.12.2020 directed

registration of FIR under section 405, 406, 410, 411, 414 of the Indian Penal Code, 1860 (**IPC**), against Baruna Madan (**Respondent No. 2**), Ms. Manika Madan (**Respondent No. 3**) and Ms. Lalita Thakur. The said order was set aside by the impugned order in revision Petitions number 167/2020 and 168/2020 filed by Respondent No. 2 and 3 respectively, which has led to filing of the present petition.

Brief facts

3. The petitioner filed a complaint under Section 156(3) r/w 200 Cr.P.C. on 18.09.2020 before the Ld. Metropolitan Magistrate. It has been alleged by the petitioner in the complaint that:

3.1. Petitioner is the owner of property bearing No. A-38/1, Mayapuri Industrial Area, Phase-1, Mayapuri, New Delhi-11064 (hereinafter referred to as '**the Property**'), by virtue of the last will, dated 27.02.2012 executed by her late father Shri Baldev Raj Madan in her favour and to the exclusion of her siblings, Respondent Nos. 2 & 3. Mr. Baldev Raj Madan expired on 11.01.2013.

3.2. It was alleged that the petitioner had entrusted the Property to Mr. Meheresh Lalit, Baruna Madan (Respondent No. 2), Ms. Manika Madan (Respondent No. 3) for looking after and other ancillary works in relation to tenants in this building after the death of her father in January 2013. At the time of entrustment and dominion of the Property to above mentioned three persons, Mr. Meheresh Lalit was already

running a company by the name of M/s Prime Infotech and was a tenant at ground floor of the Property. It is also stated that the original papers of the Property were in possession of Respondent No. 2 & 3.

3.3. After the death of their father, the inter-personal relations in between the petitioner and Respondent No. 2 & 3, became strained and due to which, Respondent No. 3 with the aid of Respondent No. 2 has filed a suit bearing no. CS(OS) 1900/2015 which is pending before the court for the partition of the Property and other assets of Late Shri Baldev Raj Madan. The Court vide its order dated 07.07.2015 granted an injunction from creation of any third-party rights in the Property.

3.4. It was alleged that in the month of December 2019, while surfing internet, it came to the knowledge of the petitioner that M/s Eminent Audio Visual Pvt. Ltd. (**EAVPL**) got itself registered with the office of Registrar of Companies (**ROC**), Delhi, on 17th June 2016 by mentioning the registered office at the Property without obtaining any No Objection Certificate from the petitioner. On further enquiry with ROC Delhi, it came to the knowledge of the petitioner that Ms. Lalita Thakur, along-with others being directors of EAVPL at different periods during the usage of the Property in connivance with Respondent no. 2 & 3 got the EAVPL registered at the address of the Property, by showing herself as the owner and the same fact was never brought to the knowledge of the petitioner.

3.5. The petitioner in her complaint has alleged that Ms Lalita Thakur being the director of EAVPL and the tenant at the demised Property, got the company registered at the Property and stopped paying any rent/ occupational charges. Furthermore, the petitioner alleged that all the documents of the Property were in possession of respondents no. 2 and 3, for the regular upkeep and maintenance of the Property. It was alleged that all the requisite permissions and registration with the ROC could not have been obtained without the assistance of Respondent No.2 & 3 and therefore an illegal act with common intention to defraud the petitioner is committed. Petitioner prayed for the registration of FIR alleging offences under sections 405, 406, 410, 411 and 414 IPC.

4. The Investigating Officer filed an Action Taken Report (**ATR**), before the Metropolitan Magistrate, which revealed the following:

4.1. It was submitted by the Investigating Officer that both the Respondents i.e., 2 and 3, commanded high respect and reputation in the Society since they held positions in the Indian Army and Indian Navy. It was revealed that the primary dispute arose after the death of their father.

4.2. It was stated that the father of the petitioner by his last will dated 13.05.2011 bequeathed his Properties in three equal proportions to his daughters Ms. Mamta Nagpal, as well as respondent no. 2 and 3. It was informed to the Investigating Officer by the respondents that a suit for partition of properties

bearing case No CS(OS) 1900/2015 and a Test Case No 4/2016 for Probate of Registered will dated 13.05.2011 of Late Sh. Baldev Raj Madan is pending before the court in which the petitioner as well as the respondents are parties.

4.3. It was also informed that a stay with respect to the Property is operating vide order dated 07.07.2015. The Court *vide* its orders dated 06.12.2016 and 03.02.2017, passed in CS(OS) 1900/2015, has also directed that all dues towards the rent were to be deposited in the account of the M/s Madan Printers.

4.4. At the time of investigation Ms. Lalita Thakur submitted that EAVPL never operated their office from the Property, and therefore no loss was caused to the owners. It was further submitted by her that due to an error a wrong affidavit was filed by her office before the ROC. Ms. Thakur during investigation also submitted that she is present in the Property solely as a tenant and no other interest lies in the Property other than that.

4.5. The Investigating Officer in the ATR also stated that the Respondent No. 2 had informed the Investigating Officer that the subject matter of the ownership of the Property was sub judice and informed that the petitioner is a habitual litigator and has filed several cases/complaints/petitions regarding the ownership of the Property.

4.6. Ms. Lalita Thakur also informed that the address of the Property was being used by her only as a registered office, however, the company was never operating from there per say.

She provided a rent agreement which was signed by EAVPL for another property located in Naraina. She further submitted that the address of the Property was made the registered address only due to an error on part of her office staff and her Chartered Accountant and she was inadvertently shown as the owner of the Property. It was however clear that a relationship of a landlord and tenant between Late Sh. Baldev Raj Madan and Ms. Lalita Thakur existed and a tenant would be well within its rights to register a company at their leased premises.

4.7. Since commission of no cognizable offence was disclosed, and since the petitioner had already informed the ROC, and availed other available civil remedies, the Investigating Officer was not of the view that an FIR should be registered.

5. The learned Metropolitan Magistrate thereafter by order dated 19.12.2020 directed the SHO, PS Mayapuri to register a FIR under appropriate provisions of law.

6. The learned Metropolitan Magistrate was of the view that the matter requires thorough investigation and as per the allegations, a cognizable offence is clearly disclosed.

7. The revision petition was thereafter filed by respondents.

8. It was argued on behalf of the complainant that the orders passed by the learned Metropolitan Magistrate under Section 156(3) CrPC, on 19.12.2020 are interlocutory in nature and hence the revision petitions challenging the said order is not maintainable.

9. The learned ASJ, relying upon the judgment passed by this Court in the case of *Nishu Wadhwa vs Siddarth Wadhwa and Anr.* in *WP(Crl.) 1253/2016* held that the order which substantially affects the right of the accused cannot be said to be an interlocutory order to bar filing of the revision petition.

10. The learned ASJ further held that the learned Metropolitan Magistrate has blindly believed the allegations made against the respondents and not a single document was placed on record to even *prima facie* suggest that there was connivance or conspiracy between the respondents.

11. Relying upon the judgment passed by this Court in the case of *Subhakaran Loharuka & Anr. Vs. State (Govt. of NCT of Delhi): 2010 (3) JCC 1972*, it was held that the order passed by the learned MM reflects non-application of mind. The order passed by the learned Metropolitan Magistrate directing registration of FIR was set aside which brought the petitioner before this court.

12. Learned counsel for petitioner has assailed the order passed by the learned ASJ essentially on two counts. One, it is argued that the order passed by the learned MM under Section 156(3) CrPC is an interlocutory order and hence, revision petition under Section 397 CrPC is not maintainable against the same. Second, that the allegations clearly disclose the commission of cognizable offence for which there is need for investigation.

13. It is stated that the reliance of the learned ASJ on the judgement passed by this Court in the case of *Nishu Wadhwa vs Siddarth Wadhwa and Anr.* (*supra*) was misplaced.

14. It was contended that in view of the subsequent judgment passed by the Hon'ble Apex Court in the case of *Girish Kumar Suneja vs. Central Bureau of Investigation : 2017 SCR 544*, the order passed under Section 156(3) CrPC cannot be called to be in the nature of final order so as to be eligible for challenge under Section 397 of the CrPC.

Conclusion

15. In *Girish Kumar Suneja vs. Central Bureau of Investigation (supra)*, the Hon'ble Apex Court, while considering the filing of the revision petition in relation to the orders arising out of the Coal Block Allocation cases, wherein the Hon'ble Apex Court by its earlier order had specifically directed that any petition for stay or impeding the progress in investigation / trial can be made only before the Hon'ble Apex Court and no other Court, interpreted the power of the Courts exercising revisional jurisdiction. It was held that there are three categories of orders that a Court can pass – final, intermediate, and interlocutory. In respect of final orders, revisional jurisdiction can be exercised as specifically mentioned in CrPC.

16. It is also not in doubt that in respect of interlocutory order, the Court cannot exercise its revisional jurisdiction. It was, however, held that as far as an intermediate order is concerned, the Court can exercise its revisional jurisdiction since it is not an interlocutory order.

17. It was held that when an order taking cognizance and summoning an accused is reversed, it has the effect of terminating the proceedings against the person resulting in final order in his / her

favour. Therefore, it was held that an intermediate order is one which if passed in a certain way, would terminate the proceedings, but if passed in another way, the proceedings would continue.

18. It was held that “the feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not merely be interlocutory in nature as envisaged in Section 397(2) of the Code.”

19. This Court feels that the judgement passed by the Hon’ble Apex Court in the case of ***Girish Kumar Suneja vs. Central Bureau of Investigation*** (*supra*) is of no help to the petitioners.

20. Admittedly, the order of a Metropolitan Magistrate refusing to exercise jurisdiction under Section 156(3) of the CrPC would have an effect of termination of such proceedings, thus cannot be termed as interlocutory. Such an order can be challenged by way of an application for revision.

21. This Court, in the case of ***Nishu Wadhwa vs Siddarth Wadhwa and Anr.*** (*supra*) relying upon the judgment passed by the Hon’ble Apex Court in ***Raghu Raj Singh Rousha v. Shivam Sundaram Promoters Private Limited And Another : (2009) 2 SCC 363*** and other judgments, categorically came to the conclusion that the order passed under Section 156(3) of the Code is in the nature of a final order terminating the proceedings under Section 156(3) of the Code and the same is revisable under the revisional powers of the Sessions Court.

22. This Court does not find any merit in the objection raised by the

petitioner to the maintainability of the revision petitions against the order passed by the learned Metropolitan Magistrate under Section 156(3) of the CrPC and the same is rejected.

23. In so far as the power of the learned Metropolitan Magistrate under Section 156(3) CrPC is concerned, the learned ASJ relied upon ***Subhakaran Luharuka & Anr. Vs. State (Govt. of NCT of Delhi)*** (*supra*).

24. It is contended that in terms of the judgment passed by the Hon'ble Apex Court in ***Lalita Kumari v. Govt. of U.P. : (2014) 2 SCC 1***, the learned ASJ ought not to have disturbed the order passed by learned MM ordering registration of FIR.

25. It is submitted that learned ASJ fell in error by relying upon the judgement in the case of ***Subhakaran Luharuka & Anr. Vs. State (Govt. of NCT of Delhi)*** (*supra*), which was passed prior in time to the judgement passed by the Hon'ble Apex Court in ***Lalita Kumari v. Govt. of U.P.*** (*supra*).

26. The Constitution Bench of the Hon'ble Supreme Court in ***Lalita Kumari v. Govt. of U.P.*** (*supra*), had laid down certain guidelines in relation to the registration of FIR. It was held as under:

“Thus, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is

credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR”.

27. The Hon’ble Apex Court, in the case of ***Sakiri Vasu v. State of U.P. : (2008) 2 SCC 409*** in relation to the Magistrate’s power under Section 156(3) CrPC, held as under:

*“11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 CrPC, then he can approach the Superintendent of Police under Section 154(3) CrPC by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) CrPC before the learned Magistrate concerned. **If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.***

xxxx

xxxx

xxxx

13. The same view was taken by this Court in Dilawar Singh v. State of Delhi [(2007) 12 SCC 641 : JT (2007) 10 SC 585] (JT vide para 17). We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156(3) CrPC, and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order(s) as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) CrPC.

xxxx

xxxx

xxxx

*15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII CrPC. **In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.***

xxxx

xxxx

xxxx

17. In our opinion Section 156(3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

xxxx

xxxx

xxxx

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 CrPC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?"

(emphasis supplied)

28. The Hon'ble Apex Court in a recent decision in the case of **XYZ v. State of Madhya Pradesh and Others : 2022 SCC OnLine SC 1002** held as under:

"24. Therefore, in such cases, where not only does the Magistrate find the commission of a cognizable offence alleged on a prima facie reading of the complaint but also such facts are brought to the Magistrate's notice which clearly indicate the need for police investigation, the discretion granted in Section 156(3) can only be read as it being the Magistrate's duty to order the police to investigate. In cases such as the present, wherein, there is alleged to be documentary or other evidence in the physical possession of the accused or other individuals which the police would be best placed to investigate and retrieve using its powers under the CrPC, the matter ought to be sent to the police for investigation."

29. It is thus settled that the Magistrate is not bound in each and every case to pass an order to register a case and investigate. The Magistrate is to exercise his discretion judicially and considering the

facts of the case, has to consider whether such facts need further police investigation. In case the facts are of such nature where it is not possible for the complainant to produce important evidence regarding a complaint and it would not be possible to arrive at the truth of the matter, in the absence of such evidence, the police investigation has to be ordered.

30. At the same time, if the complaint, *ex facie*, does not disclose the commission of a cognizable offence and appears to be an abuse of the process of Court, such application should not be entertained. Whether a complaint discloses commission of cognizable offence or not, depends on the facts and circumstances which are peculiar to each case.

31. This Court, in the case of ***Subhakaran Loharuka & Anr. Vs. State (Govt. of NCT of Delhi)*** (*supra*), also emphasised that the Magistrate has to satisfy himself as to the necessity for directing investigation by the police for the purpose of collection of evidence. However, first and foremost, the complaint has to *ex facie* disclose commission of cognizable offence by the persons complained against.

32. The role of the Magistrate is not that of a mere postman or a medium for the purpose of registration of FIR. He must apply his mind to the facts of the case and come to a conclusion whether the allegations disclose commission of a cognizable offence by the suspect which would need further investigation by the police.

33. In the present case the allegation is that M/s EAVPL mentioned the address of the Property as a registered office without the complainants NOC and that Ms Lalita Thakur wrongly mentioned that

she is the owner of the Property.

34. First and foremost it is not understood as to how mere mentioning the address of a rented premises as registered office an offence. A tenant has a right to show the address of the rented premises as its registered office. If the same violates any condition of the lease, it may give rise to a separate cause of action to the landlord but the same by no stretch of imagination be termed as an offence under various provision as mentioned in the complaint.

35. Second, Lalita Thakur admitted that due to inadvertence a wrong affidavit was filed with the ROC stating that she is the owner of the Property. Filing of false Affidavit, as rightly observed by Learned ASJ, is an offence punishable under Section 198, 199 and 200 of IPC which are non-cognizable offences. Even if the allegations are believed, the same do not disclose either any connivance and conspiracy or commission of any cognizable offence as no overt act has been alleged against Respondent No.2 & 3 in that respect.

36. Other aspect which the petitioner tried to argue is that by showing Lalita Thakur as owner, Respondent No.2 & 3 and Lalita Thakur are trying to take some advantage qua the Property. The argument is bereft of any logic and legal principles. It is not clear from perusal of complaint as how the complainant reached such conclusion. It is an admitted fact that Lalita Thakur is a tenant in the Property and that Respondent No.2 & 3 are litigating with the petitioner with respect to ownership of the Property. It is not alleged that the said affidavit has been produced by Lalita Thakur before the civil court as an evidence to show ownership over the Property. Admittedly various

cases are pending before the civil courts for determination of the parties rights over the Property. The allegation even otherwise does not in any manner discloses commission of any cognizable offence.

37. I, therefore, find no infirmity in the order passed by the learned ASJ.

38. The petition is, therefore, dismissed.

MARCH 3, 2023

SK/KDK/RS

AMIT MAHAJAN, J

