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

+ **CRL.M.C. 5104/2022**

HARISH DUTT SHARMA

..... Petitioner

Through: Mr.Deepak Gandhi, Mr.Bhavneet
Arora and Mr.Sumit Kumar Jha,
Advts. (through VC)

versus

STATE (NCT OF DELHI) & ANR.

..... Respondents

Through: Mr.HemantMehla, APP for the State.
SI Pushpender, PS Begumpur

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Date of Decision: 17.08.2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. Present petition has been filed under section 482 CrPC challenging the order dated 06.05.2022 in CR No.75/21 passed by the learned Additional Sessions Judge, whereby the order dated 27.02.2021 passed by learned MM dismissing the application of the petitioner filed under Section 156 (3) Cr.P.C. has been upheld.
2. Briefly alleged the facts are that on 19.09.2016, 4-5 persons dressed in civil clothes posing themselves to be police officers from Crime

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Branch, Bhopal, MP went to the Dera of the Guruji of the petitioner at Alipur, GT Karnal Road along with one Amit Rohatgi, F/o Rishabh Rohatgi. They then took the petitioner to his house and threatened him to hand over the custody of his son Ankur, else they would take the petitioner to Bhopal. It has been alleged that these persons neither showed their ID cards nor any warrant/summons. It has been alleged that despite the petitioner pleading with them that his son does not reside with him, they forcibly took the petitioner with them to Bhopal on 19.09.2016, whereby they threatened and tortured him till 22.09.2016. It has been alleged that the petitioner was told to arrange for 4-5 lakhs to settle the matter regarding his son for which he was allowed to make calls to his wife and daughter once or twice a day during his stay in Bhopal. It has been further alleged that while the petitioner was in Bhopal he was taken to one Mr. Chauhan, ASP, everyday, who would threaten him to arrange for the demanded money and hand over the custody of his son. Allegedly, on 23.09.2016 the petitioner also gave Rs. 15,000/- to three officers namely M.S. Patel, Rajpal Rajput, Mr. Singh and two others (names unknown). It has been alleged that on 19.09.2016 when the petitioner was abducted, his wife went to the local police station i.e. PS Begumpur to enquire regarding the whereabouts of the petitioner and thereafter again upon his return on 23.09.2016, the petitioner along with his wife went to PS Begumpur to lodge a written complaint, however to no avail.

3. Aggrieved the petitioner moved an application under section 156 (3) CrPC before the Ld. MM praying for the registration of the FIR basis



the above allegations. ATR was called for, which revealed that a case bearing FIR No. 01/16 was lodged u/s 420 IPC at PS Crime Branch Bhopal against the son of the petitioner. The ATR further stated that the petitioner was not taken forcibly but was briefed about the facts of the said case and was directed to cooperate in the investigation. The learned MM vide order dated 27.02.2021 *inter alia* taking a view that since the evidence in the present case is within the reach and knowledge of the complainant and nothing new is to be collected for which assistance of police agency is required and since even the identity of the accused persons were known to the complainant, held that there is no ground to exercise jurisdiction under Section 156 (3) Cr.P.C and dismissed the application of the petitioner under 156 (3) Cr.P.C thereby posting the matter for pre summoning evidence.

4. This order on being challenged before the learned Additional Sessions Judge, has also been upheld vide a detailed and reasoned order.
5. Ld. Additional Sessions Judge passed the impugned order dated 06.05.2022 after carefully examining the order of the Ld. MM and considering the material on record. The status report revealed that a case was lodged qua the son of the petitioner for creating fake companies and duping over 100 people. The status report also stated that the petitioner was briefed about the said case and directed to cooperate and that he was not taken forcibly. With respect to the averment that the wife of the petitioner went to the police station to lodge a complaint, the learned Court held that it is an admitted fact that no written complaint was filed at PS Begumpur by any family



member of the petitioner. Ld. Court held that the same was verbally stated by the petitioner in the order of the Ld. MM dated 27.02.2018. Further, the petitioner admitted that none of his family members made a call on 100 and nor any complaint was made to the DCP. The learned Court after considering all these aspects held that the before passing an order on an application under section 156(3) CrPC it is imperative for the Courts to satisfy itself that it is necessary to direct for police investigation for collection of evidence, which is neither in the possession of the complainant nor can be produced by witnesses upon being summoned by the Court at the instance of the complainant. Ld. Court held that the Ld. MM after considering all material on record rightly held that the evidence is within the reach and knowledge of the petitioner and nothing new is to be collected which necessitates the assistance of the police agency. Even the identity of the accused persons is known to the petitioner. Thus, dismissed the revision petition.

6. Mr. Deepak Gandhi learned counsel for the petitioner states that the learned MM as well as the learned ASJ have fallen into a grave error by not directing registration of the case FIR. Learned counsel submits that the petitioner was abducted by the police officials of Bhopal and they made a demand of ransom from the petitioner. Learned counsel submits that in view of a Constitutional Bench judgment of the Hon'ble Supreme Court in ***Lalita Kumari vs. Government of Uttar Pradesh & Ors.***, (2014) 2 SCC 1, the learned MM was under a legal duty to direct for registration of the FIR. Learned counsel for the



petitioner submits that even for passing an order under Section 156 (3) Cr.P.C., the learned MM took five years. Learned counsel also submits that it will be practically impossible for him now to prove his complaint before the learned trial court.

7. Submissions Considered.
8. Proceeding further, it would be advantageous to refer to the procedure for filing the complaint to Magistrates as prescribed under Chapter XV of CrPC. Section 200 of the Cr.P.C., reads as under:

“200. Examination of complainant.—A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.”

9. Thus, after filing of the complaint before the learned MM, the learned MM has two options, either to take cognizance and to proceed with the recording of the statements of the complainant and the witnesses produced before him, or to refer the matter to the police for



investigation under Section 156 (3) Cr.P.C.

10. The provisions contained under Cr.P.C. provide a discretion to the Magistrate either to take cognizance and proceed with the matter or at the pre-cognizance stage direct for investigation of the matter by the police. In the present case, the learned MM has exercised the discretion of taking the cognizance and posting the matter for recording of the evidence.
11. The inherent power under Section 482 Cr.P.C., even though wide, has to be exercised sparingly and with circumspection, only to prevent abuse of the process of the courts or to secure the ends of justice. This Court cannot enter into appreciation of evidence and can only interfere with the order of the Trial Court if there is an infirmity, perversity, or manifest illegality. In the absence of any such infirmity, this Court should refrain from exercising its inherent power.
12. In the present case, the order of the learned MM dismissing the application under section 156(3) CrPC and the order of the revisional court affirming the same are both detailed and well-reasoned orders based on settled principles of law.
13. I consider that there is a consistent view taken by the learned MM and learned ASJ. There is no reason to interfere with the impugned order. Thus, the orders dated 06.05.2022 and 27.02.2021 are upheld. The petition is dismissed.

DINESH KUMAR SHARMA, J



AUGUST 17, 2023
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