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

+ CRL.M.C. 1363/2024

SUNIL KUMAR SAXENA

.....Petitioner

Through: Mr. Mohd. Shamikh, Adv.

versus

STATE THROUGH SHO GNCT OF DELHI & ORS.

.....Respondents

Through: Mr. Raghuvinder Varma, APP for the
State and SI Shantanu, PS Amar
Colony.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

10.07.2024

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1. The present petition has been filed under Section 482 Cr.P.C. for setting aside the impugned order dated 20.11.2023 passed by Ld. ASJ, South East, Saket Courts, New Delhi in Criminal Revision No. 143/2020 and order dated 11.03.2020 passed by Ld. MM in CC No. 3394/2018.
2. Learned counsel for the petitioner submits that the impugned order dated 20.11.2023 whereby the revision petition filed against the order of Ld. MM dated 11.03.2020 was dismissed, is erogenous and is liable to be dismissed.
3. Ld. MM vide order dated 11.03.2020 after taking into account the case of the complainant inter alia dismissed the application under Section 156(3) Cr.P.C and posted the matter for evidence of complainant.



4. Petitioner aggrieved of this, filed a revision petition bearing No. 143/2020 titled *Sunil Kumar Saxena vs. State and Others*. Ld. Sessions court vide a detailed order dismissed the revision petition of the petitioner and upheld the order of Ld. MM inter alia dismissing the application under Section 156(3) Cr.P.C.
5. The petitioner aggrieved of this has filed the present petition.
6. Learned counsel for the petitioner submits that Ld. MM has fallen into grave error by rejecting the application under Section 156(3) Cr.P.C. despite the fact that cognizable offences were made out in the complaint filed by the complainant before Ld. MM.
7. Learned counsel for the complainant has relied upon ***Lalita Kumari vs. State of UP*** (2014) 2 SCC 1 and has submitted that in this case, it has been categorically held by the Apex Court that if the complaint filed by the complainant discloses commission of cognizable offence, the police is mandatorily required to register the FIR. Learned counsel submits that in view of this settled position of law, Ld. MM and Ld. Session Judge had committed an illegality by rejecting the application of the petitioner for registration of case.
8. Learned APP for state has countered the submissions of the learned counsel for the petitioner and has submitted that Ld. MM has merely declined the application under Section 156(3) Cr.P.C. exercising its jurisdiction under Section 190 of Cr.P.C and has posted the matter for the evidence of complainant. Learned APP for State submits that there is no illegality or perversity in the order of the Ld. Trial Court.
9. The revisional jurisdiction of the court is very limited. It has been held in various cases that the revisional jurisdiction can be exercised only



when there is illegality or perversity of the Ld. Trial Court.

10. In **V.K. Verma v. CBI** CRL.REV.P. 830/2017 it has been inter alia held as under:

“66. The revisional jurisdiction is not meant to test the waters of what might happen in the trial. The Revisional Court has to consider the correctness, legality or propriety of any finding inter se an order and as to the regularity of the proceedings of the court below. While doing so, the Revisional Court does not dwell at length upon the facts and evidence of the case, rather it considers the material only to satisfy itself about the legality and propriety of the findings, sentence and order and refrains from substituting its own conclusion on an elaborate consideration of evidence. In the instant case, the Petitioner has failed to make out a case for exercise of the revisional jurisdiction since there is no patent error in the impugned order on the face of record.

67. Further, as per the settled position of law the jurisdiction under Section 482 has to be exercised sparingly, with circumspection and in rarest of the rare cases, only to prevent abuse of the process of any Court or to secure the ends of justice. In the instant case, there is no such abuse of process or that the ends of justice warrant the exercise of the said jurisdiction, therefore there is no cogent reason warranting the exercise of the jurisdiction.”

11. In **Sunil v. State** CRL.REV.P 514/2022 it was inter alia held as under:

“7. The scope of revisional jurisdiction is very limited. The Courts can exercise its revisional jurisdiction only if there is patent illegality, perversity, jurisdictional error, or an error apparent on the face of the record. In revisional jurisdiction, the Courts cannot substitute its opinion with that of the Courts below. Where two views are possible and the trial court has taken one view which is a plausible view, merely because another view is possible, the High Court should not interfere, and would be in error in interfering with the findings of the trial court in its revisional



jurisdiction. High Courts cannot reappraise evidence and come to a different conclusion. The revisional jurisdiction operates within narrow contours and can be exercised only in exceptional cases where the interest of public justice so requires such an interference, to rectify a gross miscarriage of justice. In absence of any manifest error of law or procedural defects, the High Courts should refrain from interfering with the order of trial court in its revisional jurisdiction. The revisional court does not function as a court of appeal and the Court cannot reappraise evidence. Revisional jurisdiction is normally exercised only in exceptional cases where there is a glaring defect in the procedure or there is a manifest error of law and consequently there has been a flagrant miscarriage of justice. The High Court cannot interfere with findings of fact of the learned trial Court which have been arrived at after due consideration and appreciation of evidence and material on record.”

12. Furthermore in **Anjuri Kumar v. State Govt. NCT of Delhi & ors.**
W.P.(CRL) 1210/2023 it was inter alia held as under:

“17. In view of the discussions mentioned hereinabove, I am of the view that the directions for investigation under section 156 (3) of the Code cannot be given by the Magistrate mechanically. Such a direction can be given only on application of mind by the Magistrate. The Magistrate is not bound to direct investigation by the police even if all allegations made in the complaint disclose ingredients of a cognizable offence. Each case has to be viewed depending upon the facts and circumstances involved therein. In the facts and circumstances of a given case, the Magistrate may take a decision that the complainant can prove the facts alleged in the complaint without the assistance of the police. In such cases, the Magistrate may proceed with the complaint under Section 200 of the Code and examine witnesses produced by the complainant. The Magistrate ought to direct investigation by the police if the evidence is required to be collected with the assistance of the police. In



the present case, all the facts and evidence are within the knowledge of the petitioner, which he can adduce during the inquiry conducted by the learned Metropolitan Magistrate under Section 200 of the Code.

18. Therefore, this Court is of the view that no special case has been made out for this Court to exercise its extraordinary jurisdiction under Section 482 Cr.P.C. or under Article 226 of the Constitution of India. There is no miscarriage of justice or illegality in the approach adopted by the two courts below nor any such has been pointed by the petitioner.”

13. There cannot be any dispute to the settled preposition that if in a complaint filed before the police, there is a commission of cognizable offence, the police is required to register an FIR. The credence or the reliability of such allegations are not to be seen by the police at the time of registration of FIR. However, in the present case, the facts are different. Complainant invoked the jurisdiction of the court under Section 200 of Cr.P.C.
14. If we see the scheme of Cr.P.C as contained in Chapter-15 which deals with “Complaints to magistrates.” It provides that upon filing of a private complaint by the complainant, Section 190 of Cr.P.C. provides condition for initiation of proceedings.
15. Section 190 of Cr.P.C. provides as under:

“190. Cognizance of offences by Magistrates.

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence -

(a) upon receiving a complaint of facts which constitute such offence;



- (b) upon a police report of such facts;*
- (c) upon information received from any person other than a police officer or upon his own knowledge, that such offence has been committed.*
- (2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.”*

16. Section 156 Cr.P.C. provides as under:

“(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.”

- 17. Perusal of Section 190 and Section 156(3) Cr.P.C. makes it clear that upon receipt of a private complaint the Magistrate may either take the cognizance or refer the case to the police for investigation under Section 156(3) of the Cr.P.C at the pre-cognizance stage.
- 18. If the Magistrate takes the cognizance of the offence it proceed with the recording of the evidence of the complainant as required under Section 200 Cr.P.C.
- 19. In the present case, Ld. MM has adopted the procedure prescribed after taking the cognizance and listed the matter for recording of evidence of complainant. Such an order is duly permissible by the law and therefore



cannot be held to be illegal.

20. In order to assail such an order, which has duly been upheld by the Ld. Session Court there has to be some perversity. The perversity would come into the play only when the order has been passed contrary to the record or on the basis of material which is not on record. The allegation against the present case is that the complainant deposited money with the respondents for a property. However, the property was not delivered. The material on record has duly been appreciated by the Ld. MM and Ld. Sessions Court. This court cannot substitute its view only if another view is possible. The view taken by the court below can only be set-aside if it is preposterous. In the present case, this court finds the order(s) challenged in sync with the law. The order challenged does not reveal any perversity.
21. This court considers that all these evidence would be available with the complainant. Thus, the court does not find any illegality or perversity in the order of the Ld. Trial Court.
22. In view of the above, the present revision petition stands dismissed.

DINESH KUMAR SHARMA, J

JULY 10, 2024/AR..