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

+ **CRL.M.C. 3211/2024**

RAMESH KUMAR

..... Petitioner

Through: Mr. Shiv Chopra, Ms. Aadhyaa
Khanna, Mr. Siddharth Arora and Mr. Akshaj
Rohmetra, Advocates

versus

STATE (NCT OF DELHI) & ORS.

..... Respondents

Through: Mr. Digam Singh Dagar, APP for
State.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **25.04.2024**

CRL.M.A. 12377/2024 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

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3. This petition has been filed on behalf of the Petitioner under Section 482 Cr.P.C. challenging order dated 15.02.2024 passed by the Revisional Court in Criminal Revision No. 494/2023 and order dated 08.05.2023 passed by learned CMM, South District, Saket Courts, in CT Case No.1388/2021. Direction is sought for registration of FIR against the accused persons.
4. The facts in brief are that Petitioner herein filed a complaint under Section 156(3) Cr.P.C. alleging that on 01.04.2021 around 9:00 PM when he along with his friend Jagdish was at a liquor shop at Pushpa Bhawan to buy



liquor, two policemen/Respondents No.2 and 3 herein, caught them by their necks and pushed them into an auto-rickshaw to take them to police station, Ambedkar Nagar. On resisting, both were assaulted and abused by the policemen. One of the policemen, namely, Constable Naresh gave a fist blow on the face of the complainant and called them thieves and took away the liquor bottle and attempted to extort money. Complainant suffered an injury on his eye and went to AIIMS Trauma Centre for his medical check-up. It is the case of the Petitioner that on the very next day of the incident, he went to give a written complaint at PS: Ambedkar Nagar but nobody was willing to accept it and thus on 06.04.2021 he gave a complaint in the office of the concerned DCP. No action was taken against the erring policemen, constraining the Petitioner to file an application under Section 156(3) Cr.P.C. before the learned CMM for direction to the Police to register an FIR.

5. After the complaint was filed, learned CMM called for an Action Taken Report ('ATR') and after examining the respective stands, dismissed the application vide order dated 08.05.2023 in CT Case No.1388/2021, declining to pass a direction to register an FIR. The order was challenged before the Revisional Court and vide order dated 15.02.2024, the revision petition was dismissed, whereafter the present petition was filed.

6. Learned counsel for the Petitioner assails both the orders, essentially on the ground that the complaint dated 06.04.2021 disclosed commission of serious cognizable offences under Sections 325/329/342/347/352/34 IPC, mandating a direction for registration of FIR against the erring policemen, who allegedly abused and hit the complainant and also attempted to extort money from him and his friend. Reliance is placed on the observations of



the Supreme Court in *Lalita Kumari v. Government of Uttar Pradesh and Others*, AIR 2014 SC 187, reiterated in *XYZ v. State of Madhya Pradesh and Others*, 2022 SCC OnLine SC 1002. It is further argued that both the Courts have erred in law in holding that the law itself recognizes that where an FIR is not registered, aggrieved person has an option to approach the Court under Section 200 Cr.P.C. Section 200 Cr.P.C. is not a necessary corollary of Section 156(3) Cr.P.C. as the latter is an independent remedy available to a complainant to seek registration of FIR in case of commission of a cognizable offence. Both Courts have failed to appreciate that custodial interrogation and arrest of the police officials were required in the present case to avoid similar instances of harassment to a common man at the hands of the policemen, who abuse and beat people, without any fear of law.

7. Heard learned counsel for the Petitioner and examined the contentions raised.

8. Order passed by the learned CMM on 08.05.2023 reflects that the Court relying on the judgments of the Supreme Court, laying down principles required to be followed by a Court while deciding an application under Section 156(3) Cr.P.C. and in light of the facts before it came to a conclusion that there was nothing on record or in the facts and circumstances of the case, which necessitated police investigation or intervention and observed that if required, inquiry under Section 202 Cr.P.C. could be directed at the appropriate stage. Revisional Court examined the complaint in detail and exercising the revisional jurisdiction within the scope and ambit of Section 397 Cr.P.C. dismissed the petition noting that the ATR indicated that on 01.04.2021 Constable Naresh Kumar and Constable Bijender were on patrolling duty and when they reached near the wine shop,



revisionist and his friend were standing without a mask and when asked to pay a fine of Rs.2,000/- each as challan for violating COVID-19 guidelines, they refused to do so and fled from the spot, warning the policemen of dire consequences. DD No. 66A dated 01.04.2021 was lodged in this regard at PS: Ambedkar Nagar. Basis the material on record and the ATR, Court concluded that specialised investigation was not required in the facts of the case. All facts were within the knowledge of the revisionist and nothing further was required to be unearthed by the police and reiterated that if necessary, an inquiry under Section 202 Cr.P.C. could be directed at the appropriate stage.

9. First and foremost, this Court finds that Petitioner has already exhausted the remedy of revision *albeit* unsuccessfully. Indisputably, High Court enjoys inherent powers under Section 482 Cr.P.C., but that power must be exercised sparingly and with great caution, where a person approaching the High Court has already availed the remedy of first revision before the Sessions Court, as observed by this Court in ***Surender Kumar Jain v. State & Anr., 2012 SCC OnLine Del 571***. In the said judgment, the Court had relied on the judgments of the Supreme Court in ***Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551***; ***State of Orissa v. Ram Chander Agarwala and Others, (1979) 2 SCC 305***; and ***Rajan Kumar Manchanda v. State of Karnataka, 1990 Supp SCC 132***, wherein the Supreme Court has consistently observed that bar under Section 393(3) Cr.P.C. cannot be overcome merely by stating that the petition was filed invoking inherent powers of the High Court under Section 482 Cr.P.C. In ***Rajinder Prasad v. Bashir and Others, (2001) 8 SCC 522***, the Supreme Court held as follows:-



“7. though the power of the High Court under Section 482 of the Code is very wide, yet the same must be exercised sparingly and cautiously, particularly in a case where the petitioner is shown to have already invoked the revisional jurisdiction under Section 397 of the Code. Only in cases where the High Court finds that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order was not correct, the High Court may, in its discretion, prevent the abuse of the process or miscarriage of justice by exercise of jurisdiction under Section 482 of the Code. It was further held: (SCC p. 248, para 10)

“10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person — accused/complainant — cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code.”

10. In ***Kailash Verma v. Punjab State Civil Supplies Corporation and Another***, 2005 SCC OnLine SC 120, the Supreme Court observed as under:-

“5. It may also be noticed that this Court in Rajathi v. C. Ganesan [(1999) 6 SCC 326 : 1999 SCC (Cri) 1118] said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilised as a substitute for second revision. Ordinarily, when a revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to revision before the High Court under Section 397(1) of the Criminal Procedure Code as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law are not complied with and when the High Court feels that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.”

11. In ***Rajan Kumar Manchanda (supra)***, the Supreme Court held as under:

“2. ...A second Revision did not lie at the instance of the State to the High Court in view of the provisions of Section 397(3) of Cr. P.C. Obviously, to avoid this bar, the application moved by the State before the High Court was stated to be under Section 482 Cr. P.C. asking for exercise of inherent powers. In exercise of that power, the High Court has reversed the order of the Magistrate as affirmed by the Sessions Judge. The question for



consideration is as to whether the bar under Section 397(3) Cr. P.C. should have been taken note of to reject the revision at the instance of the State Government or action taken by the High Court in exercise of its inherent power has to be sustained. It is not disputed by counsel appearing for the State that the move before the High Court was really on application for revision of the order of the Magistrate releasing the truck. That is exactly what is prohibited under Section 397(3) Cr. P.C. Merely by saying that the jurisdiction of the High Court for exercise of its inherent power was being invoked the statutory bar could not have been overcome. If that was to be permitted every revision application facing the bar of Section 397(3) of the Code could be labelled as one under Section 482. We are satisfied that this is a case where the High Court had no jurisdiction to entertain the revision. The appeal is allowed and we set aside the order of the High Court. The Order of the Magistrate as affirmed by the Session Judge is upheld.”

12. In ***Ritu Sethi v. State and Another, 2023 SCC OnLine Del 35***, this Court has observed as under:

“10. The grounds taken in the present petition as well as during the course of the arguments are the same which were taken by the petitioner before the learned Appellate Court. The grounds raised before the learned Appellate Court were dealt by a detailed threadbare analysis of the prosecution evidence on record and finding of the learned trial Court. It was for the petitioner to demonstrate the perverseness in the impugned judgment passed by the learned Appellate Court in order to cause interference by this Court with two concurrent findings of acquittal qua the present respondent. The Hon'ble Supreme Court in Manju Ram Kalita v. State of Assam, (2009) 13 SCC 330, while dealing with the scope of reappreciation of evidence by higher court in criminal revision observed in para 9 as under:

“9. ...It is a settled legal proposition that if the courts below have recorded the finding of fact, the question of reappreciation of evidence by the third court does not arise unless it is found to be totally perverse...”

11. Following the aforesaid judgment, the Hon'ble Supreme Court recently in ***Malkeet Singh Gill v. State of Chattisgarh, (2022) 8 SCC 204***, has held as under:

“10. Before advertng to the merits of the contention, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction alike to the appellate court and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short “CrPC”)



vests jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be well-founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.””

13. Keeping in mind the principles laid down in the aforesaid judgments, this Court is of the view that the present petition is in essence a second revision filed by the Petitioner raising the same set of grievances as raised before the Revisional Court. Each of the grounds raised by the Petitioner have been threadbare dealt with by the Revisional Court, whereafter conclusion was arrived at that no fact or evidence is to be collected or unearthed by the police as all facts were well within the knowledge of the revisionist and therefore, there was no requirement for police investigation. Petitioner cannot be permitted a third inning for the same cause of action. Indisputably, High Court enjoys inherent power under Section 482 Cr.P.C. but the same must be exercised with great caution where a person has already availed and exhausted the remedy of first revision. Petitioner has been unable to make out a special circumstance warranting interference by this Court, after being unsuccessful before the Revisional Court.

14. As per the ATR, complainant and his friend Jagdish were found at the liquor shop by Respondents No.2 and 3 without a mask, in violation of the COVID-19 guidelines and on being asked to pay the fine of Rs.2,000/- each, both refused and ran away, threatening the policemen, who were doing their duty. Trial Court came to a finding that it was not expedient to order investigation under Section 156(3) Cr.P.C. as there was nothing in the case



necessitating police investigation. This finding has been upheld by the Revisional Court. In *Skipper Beverages Pvt. Ltd. v. State, 2001 SCC OnLine Del 448*, this Court observed that it is true that Section 156(3) Cr.P.C. empowers the Magistrate to direct the police to register a case and initiate investigation but this power has to be exercised judiciously, on proper grounds and not mechanically. In cases where allegations are not very serious and complainant is in possession of evidence to prove his allegations, there should be no need to pass orders under Section 156(3) Cr.P.C. This Court finds no reason to interfere in the concurrent findings of the Trial Court and the Revisional Court, that facts and circumstances of the case do not require police investigation and registration of an FIR.

15. At this stage, learned counsel for the Petitioner submits that since the complaint under Section 202 Cr.P.C. is pending, learned Trial Court be directed to look into DD No.54A, while considering the complaint.

16. Accordingly, petition is dismissed. Trial Court is requested to take into consideration DD No.54A, while considering the pending complaint on merits, in accordance with law.

JYOTI SINGH, J

APRIL 25, 2024/kks/shivam