



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

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Date of Decision: 27.03.2024

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CRL.M.C. 4408/2023

PRIYANKA GUPTA

..... Petitioner

Through: Mr. Vijay Shukla, Advocate.

versus

STATE OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Sanjeev Sabharwal, APP for State with SI Monu, P.S. Mangolpuri.
Mr. Bijendra Singh, Mr. Raj Kr. Barthwal, Mr. Rohit Rana and Mr. Surabhi Rawal, Advocates for respondent Nos. 2 and 3.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present petition filed under Section 482 Cr.P.C., the petitioner seeks setting aside of the order dated 16.02.2023 passed by the learned ASJ/Special Judge (NDPS) in Crl.Rev. 46/2021, whereby the order dated 06.01.2021 passed by learned MM in CC No.8457/2017 dismissing petitioner's application under Section 156(3) Cr.P.C., came to be upheld.
2. The facts, in a nutshell, are that the petitioner filed an application under Section 156(3) Cr.P.C. before the learned MM seeking registration of FIR. It is alleged that in the month of June 1999, respondent Nos.2 and 3, being the petitioner's relatives, offered her to purchase the flat to be bought by them from one *Dr. H.D. Manka*. In this regard, an Agreement to Sell dated 03.02.2000 was entered into and the petitioner paid a sum of Rs.5.50 lacs through bank drafts in the name of Respondent No.2. Subsequently,



another sum of Rs.1.30 lacs was paid in cash by the petitioner to respondent Nos.2 and 3. Thus, a total sum of Rs.6.80 lacs was received by the respondent Nos.2 and 3 and a receipt dated 05.07.2006 was issued by respondent Nos.2 and 3 for the said amount. However, despite repeated requests, the subject flat was not transferred in favour of the petitioner. Subsequently, a fresh Agreement to Sell was executed on 04.08.2009 w.r.t the said flat, however no transfer was made. It is alleged that later on, it came within petitioner's knowledge that respondent Nos.2 and 3 had sold the said flat to a third person.

3. Learned counsel for the petitioner contends that in the present case, the respondent Nos. 2 and 3 had intended to transfer the said property inasmuch as they had executed agreement and also received the money in this regard. As such, an FIR is required to be registered and investigation is required to be carried out.

4. In the present case, the understanding was arrived at between the parties in the year 2000. The two agreements came to be executed in the years 2000 and 2009. As per the petitioner, the subject flat was sold to a third party in the year 2014 and the subject application came to be filed in the year 2017. Indisputably, the petitioner is in the possession of entire documents relating to the transaction of sale meant to have taken place between her and respondent Nos. 2 and 3.

5. Considering the factual situation, this Court deems it apposite to take note of the decision of a Coordinate Bench of this Court in in Shri Subhkaran Luharuka and Anr. v. State & Anr.¹, wherein it has been observed:-

¹ 2010 SCC OnLine Del 2324



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(iv) 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 alongwith 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.

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As noted above, on an application filed under Section 156(3), the Magistrate has two options: he may apply his mind for the purpose of proceeding under Section 200 Cr.P.C. or may direct registration of FIR.

6. In the present case, learned Magistrate has proceeded with the former option.

7. Pertinently, the application was accompanied by copy of the Will, Agreement to Sell, Special Power of Attorney, General Power of Attorney, Affidavit, Receipt and Possession Letter. The only grievance raised by the petitioner is that despite having received the entire sale consideration, respondent Nos. 2 and 3 did not execute the sale deed.

The impugned order records that the petitioner was already in possession of the requisite documents in favour of her case and that the



identity of the accused persons were already known to her. It was further stated that considering the facts of the case, non-registration of FIR would not lead to miscarriage of justice. Even learned ASJ upheld the impugned order. Insofar as the question of discovery of the subsequent buyers, which the petitioner claimed could only be done by a police investigation, is concerned, the same could also be done under the inquiry to be conducted under Section 202 Cr.P.C.

8. While considering a petition under Section 482 Cr.P.C, this Court only has to satisfy itself of the fact that the impugned order came to be passed after due consideration of the entire facts and material place on record. In the present case, no such infirmity can be found in the impugned order as well as the order passed by the learned MM inasmuch as the same have been passed upon considering the facts and material presented before them. Petitioner has failed to point out any infirmity in the said orders and has also failed to point out any such material which could be seized or brought on record only upon police investigation.

9. Considering the aforesaid, this Court is of the considered opinion that the impugned order as well as the order passed by the learned MM merit no interference. Consequently, the petition is dismissed.

MANOJ KUMAR OHRI
(JUDGE)

MARCH 27, 2024

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