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

+ **CRL.M.C. 6481/2023**

RAJESH KUMAR

..... Petitioner

Through: Mr. Tanishq Panwar and Mr.
Deepanjali Choudhary, Advocates.

versus

THE STATE & ORS.

..... Respondents

Through: Mr. Aman Usman, APP for the State
with SI Anil Kumar, P.S. Vijay Vihar.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

07.03.2024

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1. By way of the present petition filed under Article 227 of the Constitution of India read with Section 482 Cr.P.C., petitioner seeks to assail the order dated 11.07.2023 passed by learned ASJ whereby the revision petition being Cr.Rev. No.140/2023 filed thereby challenging the order dated 19.01.2023 passed by learned MM came to be dismissed.

2. The petitioner had initially filed an application seeking direction under Section 156(3) for registration of case against the respondent No.2, the estranged wife of the present petitioner.

3. Pithily put, the petitioner has alleged that he and respondent No.2 namely *Sanjana Singh* were married to each other and had two minor sons. In the month of February, 2020, the petitioner came to know that respondent No.2 was having illicit relationship with another man namely *Rajan Mishra @ Narendra Kumar Mishra @ Rohit @ Raj*/respondent No.3. Sometime



later, while the petitioner was looking for some cash in his safe, he realized that cash totaling to Rs.1,11,000/- was missing. When he confronted respondent No.2 about the same, she admitted that she had stolen the cash pursuant to a plan hatched with respondent No.3 and that the cash had been given to the latter. Due to threat of criminal prosecution, respondent Nos.2 and 3 agreed to return the stolen money and some of the money was indeed returned, however, despite lapse of about 1 and ½ years, the rest of the amount was not returned. Further, in March 2020, petitioner's mother realized that some of her ancestral jewellery was missing and it was suspected that the same had also been stolen by respondent Nos.2 and 3. Although respondent No.2 initially feigned ignorance about the same, however, she later stated that the jewellery had been stolen alongwith the abovementioned amount. Consequently, the petitioner/complainant gave a complaint dt. 14.03.2020 to SHO, P.S. Vijay Vihar for initiation of appropriate action. However, upon the failure of police officials to take appropriate action, the petitioner was constrained to file the said application/complaint before the learned MM.

4. In the present fact situation, the decision of this Court in Shri Subhkaran Luharuka and Anr. v. State & Anr.¹ is relevant to take note of. In the said case, it was observed

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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

¹ 2010 SCC OnLine Del 2324



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.

xxx”

Among the other grounds raised, the prime ground raised is that of non-appreciation of the letters statedly written by the respondent no.2. A perusal of the order passed by the learned MM would show that the order came to be passed after due consideration of the entire factual situation as well as the material placed on record including the said letters. Learned ASJ, vide the impugned order, upheld the order passed the learned MM. It was further observed that the petitioner already had in possession all the requisite evidence and would be at liberty to proceed with criminal complaint under Section 200 Cr.P.C.

5. Both the Courts below have observed that the entire material in support of his case is in the possession of the petitioner. The mode and manner of the offence as well as the identity of the accused persons are already known to the complainant. Keeping in mind the same, it was observed that the police intervention is not required inasmuch as there is nothing more required to be investigated into or to prove any offence.



6. While the entire factual matrix has already been clearly laid down above, the only issue that arises for consideration is whether any investigation is required to be undertaken w.r.t the said case. The present petition is accompanied with the letters as well as the complaints filed before the police officials. Considerably, the petitioner is having the entire record relating to his complaint alongwith the relevant evidence.

7. While considering a petition under Section 482 Cr.P.C, this court only has to satisfy itself of the fact that the impugned order has taken note of all material facts placed on record. In the present case, this Court is of the considered opinion that both the courts have rightly rejected the petitioner's application, and the orders require no interference.

8. Accordingly, the present petition is dismissed alongwith miscellaneous applications.

MANOJ KUMAR OHRI, J

MARCH 7, 2024/MR