



2024:DHC:6146



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

% ***Date of Decision: 09th July, 2024***

+ **CRL.M.C. 5183/2024**

SH. VARUN JAIN, ADVOCATE

.....Petitioner

Through: Mr. Manoj Kumar
Gahlaut, Adv. through
V.C.

versus

AJAY KALSI AND ANR

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J (Oral)

CRL.M.A. 19796/2024 *(seeking exemption from filing the certified copies of the annexures, dim annexures and eligible copies of the annexures)*

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The present petition is filed challenging the order dated 03.06.2024 (hereafter '**impugned order dated 03.06.2024**') passed by the learned Additional Sessions Judge-05 ('ASJ'), Tis Hazari Court, Delhi in Criminal Revision No. 383/2022 titled

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Varun Jain v. Ajay Kalsi & Anr., dismissing the said Revision Petition.

4. The said Revision Petition had been filed by the petitioner herein, challenging the order dated 27.09.2022 (hereafter '**the impugned order dated 27.09.2022**') passed by the learned Metropolitan Magistrate ('MM'), Tis Hazari Court, Delhi in Ct. Case No. 573/2022, titled *Varun Jain v. Ajay Kalsi*, dismissing the application filed by the petitioner under Section 156(3) of the CrPC, while taking cognizance on the complaint filed under Section 200 of the CrPC

5. The abovementioned complaint, that is Ct. No. 573/2022, was filed by the petitioner alleging therein that Respondent No. 2 had induced and allured the petitioner to purchase a Maruti Wagonr and had represented that the vehicle was in a good condition and had run only 72600 km approximately. It is alleged that based on the representation of Respondent No. 2, the petitioner purchased the said car from Respondent No. 1 on 18.08.2021 against payment of ₹1,88,000/.

6. It is alleged that pursuant to the purchase, the said car caused continuous complications and problems, and the petitioner had to spend ₹1,00,000/- on its repair. It is alleged that these complications were brought to the notice of Respondent No. 2, who allegedly assured that the car would be in perfect order if minor repairs were done.



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7. It is alleged that owing to the constant trouble caused by the car, the petitioner decided to purchase a new car. It is alleged that when the petitioner visited M/s. Magic Auto, Delhi for purchasing a new car, the True Value Consultant, on thoroughly checking the said car, stated that the car was allegedly serviced on 07.02.2021 at D.D. Motors, Mayapuri, Industrial Area, Delhi and at that time, the mileage/run of the said car was allegedly recorded as 190594 kilometres.

8. As noted above, the application filed by the petitioner under Section 156(3) of the CrPC was dismissed by the learned MM by the impugned order dated 27.09.2022. The learned MM, while dismissing the said application, has observed as under :

“All the evidences in the present case are in the reach of complainant. Furthermore, from the facts of the case, it is evident that accused persons are already known to the complainant and the undersigned is of the opinion that the assistance of investigating agency is not required in the present case for the collection of evidence. Thus it does not appear to be a case where the police assistance is required for the purpose of collection of evidence and the complainant has summons the witnesses on his own. Accordingly, the present application u/s 156 (3) of Code of Criminal is dismissed. In the facts of the present case, the undersigned deem it appropriate that the present application be treated as a complaint u/s 200 CrPC and the complainant be directed to prove the allegations made by him on the oath.”

9. Aggrieved by the impugned order dated 27.09.2022 passed by the learned MM, the petitioner challenged the same by way of Criminal Revision, which has been dismissed by the learned ASJ by impugned order dated 03.06.2024, observing as under :

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“15. In the instant case, Ld. Trial Court being satisfied with the Action Taken Report filed by the Investigating Officer, dismissed the application under Section 156(3) Cr. PC filed by the complainant/revisionist herein observing that the entire evidence in the present case is within the reach of complainant; that accused persons are already known to the complainant; the assistance of investigating agency is not required for the collection of evidence and the complainant has to summons the witnesses on his own.

*16. With the ratio decendi as laid by the Hon’ble superior courts in **M/s Skipper Beverages (supra)** and **Subhkaran Luharuka (supra)**, the Court is in consonance with the view taken by the Ld. Trial Court that in the present facts and circumstances since the entire evidence is within reach and control of the complainant himself, no police action is warranted.*

17. Accordingly, this Court do not find any irregularity or impropriety in the impugned order dated 27.09.2022 passed by the Trial Court. As such, revision petition is devoid of any merit and same is hereby dismissed.

18. The Trial Court Record along with the copy of this order be sent back to the learned Trial Court. The file of this revision petition be consigned to record room after due compliance.”

10. The learned counsel for the petitioner submits that sufficient material exists for allowing the application under Section 156(3) of the CrPC. He submits that the learned ASJ failed to consider that the police officials of Police Station Moti Nagar intentionally did not discharge their obligation to register the case despite the fact that the averments made in the complaint and documentary evidence placed on record clearly satisfy the conditions and ingredients for invoking the applicability of Sections 415/418/420/464/465/468/471/120B/34 of the IPC.

11. He submits that the police officials have deprived the petitioner of the benefit under Section 154 of the CrPC despite

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the fact that the respondents have committed a cognizable and non-bailable offence.

Analysis

12. The first issue that falls for the consideration of this Court is whether the petitioner having already availed the remedy of revision should be allowed to take recourse to Section 482 of the CrPC as a substitute for initiating a second revisional challenge which is clearly barred under Section 397(3) of the CrPC which reads as follows:

“(3) If an application under this section has been made by any person either to the High court or to the Sessions Judge, no further application by the same person shall be entertained by the either of them.”

13. At the outset, it is relevant to note that while it is settled law that a second revision cannot be filed in terms of the bar under Section 397 of the CrPC, the inherent power of this Court under Section 482 of the CrPC has a wide ambit and can be exercised in the interest of justice. It is settled law that the power under Section 482 of the CrPC is to be exercised cautiously and sparingly, especially when Sessions Judge has already exercised revisional power under Section 397 of the CrPC. The Hon’ble Apex Court, in the case of ***Krishnan v. Krishnaveni : (1997) 4 SCC 241***, had observed as under:

“8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete

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out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order.”

(emphasis supplied)

14. At the outset, a reference can be made to Section 156 of the CrPC, which reads as under :

“156. Police officer's power to investigate cognizable case.—

(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.”

15. Thus, while exercising powers under Section 156(3) of the CrPC and directing the registration of an FIR, the Magistrate/Special Court needs to ensure that a cognizable offence is disclosed from the allegations mentioned in the application and the essential elements of the alleged offences, thereof, are *prima facie* satisfied.

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16. In the judgment delivered by this Court in the case of ***Skipper Beverages Pvt. Ltd. v. State*** : 2001 SCC OnLine Del 448, it was held as under :

7. It is true that Section 156(3) of the Code empowers a Magistrate to direct the police to register a case and initiate investigations but this power has to be exercised judiciously on proper grounds and not in a mechanical manner. In those cases where the allegations are not very serious and the complainant himself is in possession of evidence to prove his allegations there should be no need to pass orders under Section 156(3) of the Code. The discretion ought to be exercised after proper application of mind and only in those cases where the Magistrate is of the view that the nature of the allegations is such that the complainant himself may not be in a position to collect and produce evidence before the Court and interests of justice demand that the police should step in to help the complainant. The police assistance can be taken by a Magistrate even Under Section 202(1) of the Code after taking cognizance and proceeding with the complaint under Chapter XV of the Code as held by Apex Court in 2001 (1) Supreme Page 129 titled “Suresh Chand Jain v. State of Madhya Pradesh”

10. Section 156(3) of the Code aims at curtailing and controlling the arbitrariness on the part of the police authorities in the matter of registration of FIRs and taking up investigations, even in those cases where the same are warranted. The Section empower the Magistrate to issue directions in this regard but this provision should not be permitted to be misused by the complainants to get police cases registered even in those cases which are not very serious in nature and the Magistrate himself can hold enquiry under Chapter XV and proceed against the accused if required. Therefore the Magistrate, must apply his mind before passing an order under Section 156(3) of the Code and must not pass these orders mechanically on the mere asking by the complainant. These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of complainant or custodial interrogation appears to be necessary for some recovery of article or discovery of fact.

(Emphasis supplied)

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17. Thus, once a complaint/application under Section 156(3) of the CrPC is filed, the Magistrate can exercise the option of applying his own judicial mind to the entire material on record and 'may' direct registration of FIR. However, at times, the Magistrate also calls for a report from the police as to why no action had been taken on an earlier complaint filed by the complainant with the police, and thereafter, once a report is filed by the police, the Magistrate applies his mind to the material before him i.e. the complaint as well as the Action Taken Report which constitutes a 'preliminary inquiry' conducted by the police. After this, the Magistrate may make up his mind to either order registration of FIR or otherwise.

Preliminary Inquiry in Present Case :

The Action Taken Report filed by the police before the learned Magistrate contained a detailed account of preliminary inquiry conducted by the police. To summarise, a perusal of contents of the Action Taken Report reveals as under:

- (i) No cognizable offence was disclosed from the contents of complaint;
- (ii) The documentary evidence is already on record;
- (iii) The accused persons are already known to the complainant ; the assistance of investigating agency is not required for the collection of the evidence.
- (iv) The terms and conditions of the contract sale between the parties mentions that the car dealer did not have any



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responsibility regarding the correctness of kilometers reading in Odometer.

17. Keeping in perspective the aforesaid observations, this Court has carefully perused and examined the records of the case including the orders impugned before this Court.

18. In ***Subhkaran Luharuka & Anr. vs. State : (2010) 170 DLT 516***, it was observed as under:

"42. Thus, there are pre-requisites to be followed by the complainant before approaching the Magistrate under Section 156 (3) of the Code which is discretionary remedy as the provision proceeds with the word 'May'. The Magistrate is required to exercise his mind while doing so. He should pass the orders only if he is satisfied that the information reveals commission of cognizable offences and also about necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without the assistance of the police. It is thus not necessary that in every case where a complaint has been filed under Section 200 of the Code the Magistrate should direct the police to investigate the crime merely because an application has also been filed under Section 156 (3) of the Code even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, may be with the assistance of the Court or otherwise,....."

19. In ***Gulab Chand Upadhyaya vs. State of U.P. : (2002) 44 ACC 670***, the Hon'ble Allahabad High Court held that:

"22. But where the complainant is in possession of the complete details of all the accused as well as the witnesses who have to be examined and neither recovery is needed nor any such material evidence is required to be collected which can be done only by the police, no "investigation" would normally be required and the procedure of complaint case should be adopted. The facts of the present case given below serve as an example. It must be kept in mind that adding unnecessary cases to the diary of the police would impair their efficiency in respect of cases genuinely requiring

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investigation. Besides even after taking cognizance and proceeding under Chapter XV the Magistrate can still under [Section 202\(1\)](#) Cr.P.C. order investigation, even thought of a limited nature."

(Emphasis supplied)

20. It is apparent that the petitioner is merely seeking the assistance of the police to conduct a fishing and roving inquiry. As is evident from the above narration of facts and the Action Taken Report filed by the Police before the learned ASJ, all pertinent facts and evidence are within the petitioner's knowledge and reach, and he can present such information during the inquiry conducted by the learned MM pursuant to Section 200 of the CrPC. Given these factors, the need for police involvement in evidence collection appears to be minimal, as the complainant is well-equipped to facilitate the presentation of evidence on his own behalf.

21. In my opinion, the learned MM and the learned ASJ have rightly relied upon the judgments in ***Subhakaran Luharuka v. State (Govt. of NCT of Delhi) : 2010 :DHC:3345*** and ***Skipper Beverages Pvt. Ltd. v. State (supra)***, wherein it was held that when the allegations are not particularly severe, and the complainant already possessed sufficient evidence to support their claims, there may be no necessity to pass orders under Section 156(3) of the CrPC.

22. In the instant case, this court is of the opinion that no exceptional circumstances have been presented to warrant the exercise of its extraordinary jurisdiction under Section 482 of the



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CrPC. There is no indication of any miscarriage of justice or legal irregularity in the proceedings undertaken by the two lower courts, and the petitioner has not pointed out any such deficiencies.

23. In view of the above, I find no infirmity in the impugned order dated 03.06.2024 passed by the learned ASJ, and the same cannot be faulted with.

24. The petition, is, therefore, dismissed.

AMIT MAHAJAN, J

JULY 9, 2024

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