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

+ **CRL.M.C. 6056/2022**

MARK D MARTIN

.....Petitioner

Through: **Mr. Bharat S Kumar,**
Advocate (Through V.C.).

versus

STATE OF NCT OF DELHI & ORS.Respondents

Through: **Mr. Utkarsh, APP for the**
State.

Mr. Virender Mehta & Mr.
Kunal Mehta, Advocates
for Respondent No.5 to 7.

Mr. Anirudh Bakhru, Mr.
Ayush Puri, Mr. Sultan H.
Jafri, Mr. Umang Tyagi &
Mr. Kanan Madnani,
Advocates for Respondent
No.8.

SI Prashant (P.S. Domestic
Airport).

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

13.11.2024

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1. The present petition is filed challenging the order dated 07.09.2022 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**'), Dwarka Courts, New Delhi in CR No. 255/2020 titled *Mark D Martin v. NCT of Delhi*.

2. By impugned order, the learned ASJ dismissed the revision petition filed by the petitioner and upheld the order dated 25.09.2020 passed by the learned Metropolitan Magistrate

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(‘MM’), Dwarka Court, New Delhi whereby the learned MM had declined to direct the registration of FIR under Section 156(3) of the Code of Criminal Procedure, 1973 (‘CrPC’).

3. It is the case of the petitioner/complainant that he was engaged by Respondent No. 7 *vide* agreement dated 01.03.2018 (hereafter ‘**Consulting Agreement**’) to design, develop, define and create an integrated Fixed Based terminal and also support with the entire development of New General Aviation Terminal (NGAT) Project and the scope of work included the work commencing from land plot take over, demolition land levelling and Geo Technical Analysis etcetera. This was subsequently to be used by Respondent No. 8 to construct a new Aviation Terminal for private jets in India.

4. It is the petitioner’s case that the drawings including Aircraft Apron Parking layout (‘**AAPL**’) specifically shared with Respondent Nos. 7-8 are protected under the Copyright Act, 1957, and that the petitioner has also applied for registration of such drawings which are pending registration. It is averred that in accordance with clause 10, 12 and 13 of the Consulting Agreement, the contract shall automatically cease to exist in 21 months from the date of signing of the contract. Accordingly, it is the case of the petitioner that the Consulting Agreement ceased to exist from 01.12.2019. It is further the case of the petitioner that owing to the delay in the payments, he initiated a suit for infringement of copyright and damages against Respondent No. 7 and the same is pending adjudication.

5. It is alleged that Respondent No. 2 was in constant touch with the executives of Respondent Nos. 7-8. It is alleged that in December 2019, the petitioner learnt that Respondent No. 2 was sharing aviation plans and other copyrighted details owned by the



petitioner to the executives of Respondent Nos. 7-8, and also to Respondent Nos. 3-6. The services of Respondent No. 2 were consequently dispensed with on 02.10.2019. It is alleged that thereafter, the petitioner, post going through the emails of Respondent No. 2, learnt that Respondent No. 2 was sharing data and copyrighted material to Respondent Nos. 3-6 without marking the petitioner in any of the correspondences. It is further alleged that the petitioner, upon searching his office and computers, found that some initial Aviation Plans of NGAT Project including plans and overview for helicopter operations, and certain other copyrighted material of the petitioner were missing.

6. It is alleged that Respondent No. 2 contacted the petitioner thereby apologizing for working further on the AAPL project without authorization, and also returned physical plans/drawings taken by Respondent No. 2 from the petitioner's office. It is the petitioner's case that the accused persons dishonestly misused the drawings/plans/layouts entrusted to them in accordance with the agreement dated 01.03.2018 since pursuant to the termination of contract on 01.12.2019, the sole authority to use the same was only with the petitioner. Consequently, the petitioner preferred an application under Section 156(3) of the CrPC.

7. The learned MM, *vide* order dated 25.09.2020 dismissed the application filed by the petitioner under Section 156(3) of the CrPC. The learned MM noted that insofar as the termination letter of Respondent No. 2 dated 02.10.2019 is concerned, the same appeared to be merely a recommendation letter and not a termination letter. It was noted that the Consulting Agreement under clause 18 itself specified that any work created by the petitioner in connection with the performance of services for



Respondent No. 7, shall be deemed to be work made for the use of the client, and the client had the right to use or not use the work. It was consequently noted that the need for registration of FIR in the present case was not merited. The learned MM further noted that the investigation by the police in the case was not required since the evidence was within the reach of the petitioner. Consequently, the learned MM dismissed the application filed by the petitioner under Section 156(3) of the CrPC.

8. The learned ASJ, by impugned order, dismissed the revision petition filed by the petitioner. It was noted that undisputedly a civil suit had already been filed and the same is pending adjudication, and another civil litigation is also pending adjudication before the National Company Law Tribunal, Chandigarh. The learned ASJ noting that all the allegations levelled by the petitioner were based on documentary evidence, and the fact that the circumstances in regard to the allegations were well within the knowledge of the petitioner, dismissed the revision petition filed by the petitioner.

9. The learned counsel for the petitioner submits that the learned ASJ erred in upholding the order of the learned MM whereby the application of the petitioner seeking registration of FIR under Section 156(3) of the CrPC was dismissed. He submits that since the present case involves electronic data, the same ought to be investigated by the investigating authorities. He further submits that since the allegations disclose the commission of cognizable offences, the learned MM should have directed the registration of FIR.

10. 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.

11. 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 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)

12. 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.”*



13. 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.

14. 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)

15. 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.

16. In the present case, the learned MM took into consideration the Action Taken Report filed by the police. The learned MM noted that as per clause 18 of the Consulting Agreement, any work created by the petitioner in connection with the performance of services for Respondent No. 7, shall be deemed to be “*work made for the use of the client*” under the relevant copyright law. Further, the client shall have the right to use the whole work, any part or none of work as it deemed fit. In this regard, the learned MM noted that the present case was not fit for ordering registration of FIR. It was further noted that in any event the investigation by the police was not required since the evidence was within the reach of the petitioner.

17. It is well settled that that it is not mandatory for the Magistrate to direct registration of an FIR merely because allegations disclose the commission of a cognizable offence,



unless investigation is required. (Ref. *Kailash Vijayvargiya v. Rajlakshmi Chaudhuri* : 2023 SCC OnLine SC 569).

18. From a perusal of the record, it is apparent that the allegations levelled by the petitioner are in relation to unauthorized sharing of copyrighted data of the petitioner by Respondent No. 2 with Respondent Nos. 3-8. As is evident from the narration of facts and a perusal of the record, all the pertinent facts and evidence are within the petitioner's knowledge and reach. 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. In that light, the learned ASJ rightly observed that the facts and circumstances regarding the allegations are well within the knowledge of the petitioner.

19. 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 CrPC. There is no indication of any miscarriage of justice or legal irregularity in the proceedings undertaken.

20. In view of the above, I find no infirmity in the impugned order, and the same cannot be faulted with.

21. The petition is accordingly dismissed.

AMIT MAHAJAN, J

NOVEMBER 13, 2024

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