



2024:DHC:9649



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

Date of decision: 10th DECEMBER, 2024

IN THE MATTER OF:

+ **CRL.M.C. 6197/2024**

AMARJEET SINGH CHATHA

.....Petitioner

Through: Mr. R.K. Handoo and Mr. Yoginder
Handoo, Advocates.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Yudhvair Singh Chauhan, APP for
the State.

SI Ramavtar (D-5469), Hauz Khas

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has approached this Court seeking quashing of the Order dated 31.07.2023, passed by the learned Additional Sessions Judge – 05, South District, Saket Courts, in CRL.APPEAL No.89/2023. By the said Impugned Order, the learned Sessions Judge has rejected the appeal filed by the Petitioner herein which was filed against the Order dated 07.03.2023, passed by the learned Metropolitan Magistrate – 06, South Saket Courts, in CT No.31421/2019, dismissing an application filed by the Petitioner herein under Section 340 Cr.P.C.

2. Shorn of unnecessary details, the facts, in brief, leading to the filing of the present Petition are as under:

- a) It is stated that an application under Section 156(3) was filed by the Respondent No.2 herein who sold his property bearing No. A-16, Anand Niketan, New Delhi-110027 to M/s. Uppal Housing Pvt. Ltd. *vide* registered Sale Deed dated 23.08.2018



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for a sum of Rs.49.80 Crores. It is stated that ten Demand Drafts were issued to the Respondent No.2 by M/s. Uppal Housing Pvt. Ltd. It is further stated that the said Demand Drafts were handed over by the Respondent No.2 to his employee at his residence at Panchsheel Park. It is stated that on 20.03.2019, the Respondent No.2 herein received a legal notice from the Petitioner herein claiming that by way of security for some undisclosed liability, the Respondent No.2 herein had handed over the demand drafts to the Petitioner herein. It is stated that on enquiry, the Respondent No.2 came to know that out of ten Demand Drafts, seven Demand Drafts amounting to Rs.34,30,20,000/- were misplaced. Alleging that the Petitioner herein has stolen seven Demand Drafts to extort money from the Respondent No.2, Respondent No.2 made an attempt to lodge an FIR against the Petitioner herein. However, the FIR was not registered. Respondent No.2, thereafter, filed an application under Section 156(3) Cr.P.C before the learned Metropolitan Magistrate. The learned Metropolitan Magistrate *vide* Order dated 01.05.2019 came to the conclusion that cognizable offence is made out against the Petitioner. The learned Metropolitan Magistrate, therefore, directed the SHO to register the FIR against the Petitioner herein under relevant Sections to carry out investigation.

- b) The said Order was challenged by the Respondent No.2 by filing a Revision Petition, being Criminal Revision No.186/2019. The learned Additional Sessions Judge, *vide* Order dated 20.07.2019, after hearing the Respondent No.2



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herein, set aside the Order dated 01.05.2019, passed by the learned Metropolitan Magistrate directing for registration of FIR against the Petitioner herein. The learned ASJ also directed the learned Metropolitan Magistrate to treat the application filed by the Respondent No.2 herein as a complaint under Section 200 Cr.P.C and proceed further in accordance with law.

- c) It is stated that the Petitioner herein filed an application before the learned Metropolitan Magistrate under Section 340 Cr.P.C for initiating criminal action against the Respondent No.2 for making false averments in the application filed under Section 156(3) Cr.P.C. The learned Metropolitan Magistrate dismissed the application filed by the Petitioner herein under Section 340 Cr.P.C *vide* Order dated 07.03.2023 on the ground that an application under Section 340 Cr.P.C applies only in respect of documents produced or documents given in the proceedings before the Court. The learned Metropolitan Magistrate was of the opinion that cognizance has yet not been taken on the complaint under Section 200 Cr.P.C and, therefore, application under Section 340 Cr.P.C is not made at this juncture.
- d) Dissatisfied by the dismissal of the application under Section 340 Cr.P.C, the Petitioner herein filed an appeal, being Criminal Appeal No.89/2023, before the learned ASJ. The learned ASJ affirmed the view taken by the learned Metropolitan Magistrate since that the proceedings under Section 200 Cr.P.C are still pending and it cannot be ruled out by filing an application under Section 340 Cr.P.C. The learned ASJ noted that the attempt of the Petitioner in filing the



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application under Section 340 Cr.P.C, when an application under Section 200 Cr.P.C is still pending, is to prejudice the mind of the learned Metropolitan Magistrate.

e) It is this Order which is under challenge in the present Petition.

3. Learned Counsel appearing for the Petitioner firmly contends that the Respondent No.2 herein has come up with a completely false statement before the Court that the demand drafts in question had been stolen wherein in reality the demand drafts were given by the Respondent No.2 to the Petitioner herein. Learned Counsel for the Petitioner places reliance on the Judgment passed by the Apex Court in James Kunjwal v. State of Uttarakhand, **2024 SCC OnLine SC 1943**, to contend that the Respondent No.2 has given a false statement in a judicial proceeding and, therefore, proceedings under Section 340 Cr.P.C should be initiated against the Respondent No.2. In the aforementioned Judgment, the Apex Court has observed as under:

“16. What we may conclude from a perusal of the above-noticed judicial pronouncements is that:—

(i) The Court should be of the prima facie opinion that there exists sufficient and reasonable ground to initiate proceedings against the person who has allegedly made a false statement(s);

(ii) Such proceedings should be initiated when doing the same is “expedient in the interests of justice to punish the delinquent” and not merely because of inaccuracy in statements that may be innocent/immaterial;

(iii) There should be “deliberate falsehood on a matter of substance”;



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(iv) The Court should be satisfied that there is a reasonable foundation for the charge, with distinct evidence and not mere suspicion;

(v) Proceedings should be initiated in exceptional circumstances, for instance, when a party has perjured themselves to beneficial orders from the Court.”

4. Heard the Counsels for the Petitioner and perused the material on record.

5. The short question which arises for consideration in the present Petition is as to whether the Orders of two Courts below warrant any interference or not.

6. The facts of the case reveal that a complaint has been given to the Police by the Respondent No.2 stating that demand drafts have been stolen by the Petitioner herein. Since the FIR was not registered, an application was filed under Section 156(3) Cr.P.C and the Ld. Metropolitan Magistrate ordered to register the FIR. In the revision Petition filed by the Respondent No.2 herein, the learned ASJ directed the learned Metropolitan Magistrate that the application filed by the Respondent No.2 under Section 156(3) Cr.P.C be treated as a complaint under Section 200 Cr.P.C.

7. In the considered opinion of this Court, an application filed under Section 156(3) Cr.P.C is not a statement on oath. It is only in the form of narration of facts given to the Magistrate praying that the Police be directed to register an FIR on the given facts stating that a cognizable offence has taken place and the police is not registering the FIR. While considering an application under Section 156(3) Cr.P.C., the Magistrate only looks into the application and the complaint as to whether a cognizable offence is made out or not and as to whether an FIR should be registered or not. If the



learned Metropolitan Magistrate finds out that an FIR cannot be registered on the facts of the case then the Magistrate even reject the application and can convert the application under Section 156(3) Cr.P.C to one under Section 200 Cr.P.C and proceed further.

8. Statement given in an application under Section 200 Cr.P.C or under Section 156(3) Cr.P.C is not made in oath and is only a gist of the complaint. At this juncture, it cannot be said that Respondent No.2 has given any false statement. It can only be proved after the complaint is processed further and after evidence is lead. Accordingly, the Order passed by the learned Magistrate in the application filed by the Petitioner herein under Section 340 Cr.P.C. and as affirmed by the Appellate Court, cannot be said to be erroneous at this juncture.

9. The Apex Court in Mahesh Chand Sharma v. State of U.P., (2009) 15 SCC 519, has observed as under:

“21. Finally, while interpreting the provision of Section 195 CrPC the Bench held as under in para 10 of the said judgment: (Meenakshi Marwah case [(2005) 4 SCC 370 : 2005 SCC (Cri) 1101] , SCC pp. 380-81, para 10)

“10. The scheme of the statutory provision may now be examined. Broadly, Section 195 CrPC deals with three distinct categories of offences which have been described in clauses (a),(b)(i) and (b)(ii) and they relate to (1) contempt of lawful authority of public servants, (2) offences against public justice, and (3) offences relating to documents given in evidence. Clause (a) deals with offences punishable under Sections 172 to 188 IPC which occur in Chapter X IPC and the heading of the Chapter is — ‘Of Contempts of the Lawful Authority of Public Servants’. These are offences which directly affect the functioning of or



*discharge of lawful duties of a public servant. Clause (b)(i) refers to offences in Chapter XI IPC which is headed as — ‘Of False Evidence and Offences Against Public Justice’. The offences mentioned in this clause clearly relate to giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a court of justice or before a public servant who is bound or authorised by law to receive such declaration, and also to some other offences which have a direct correlation with the proceedings in a court of justice (Sections 205 and 211 IPC). This being the scheme of two provisions or clauses of Section 195 viz. that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression ‘when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court’ occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the court. The situation or contingency where an offence as enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in court, does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of Section 195 CrPC. **This indicates that clause (b)(ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any court.**”*

23. The law on the point is too well settled in the light of the abovesaid two judgments of this Court that Section 195(1)(b)(ii) CrPC contemplates a situation



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where offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any court.

24. The learned Single Judge further committed a gross error in resorting to Section 340 CrPC as provisions of the said section can be invoked only when it is established that offence of forgery had already been committed.” (emphasis supplied)

10. Applying the law laid down by the Apex Court to the facts of the present case, it cannot be said that it has been established that the Respondent No.2 has given false evidence on oath in Court. As stated earlier, a complaint cannot be said to be evidence as it only sets the criminal law in motion.

11. In the present case, the cognizance is yet to be taken and, therefore, the proceedings under Section 340 Cr.P.C are not warranted at this juncture.

12. In view of the above, the Petition is dismissed along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J

DECEMBER 10, 2024

Rahul