



2024:DHC:6739



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

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Reserved on: 10.07.2024
Pronounced on: 03.09.2024

+ **CRL.M.C. 2846/2005**

TEJ BHAN

.....Petitioner

Through: Mr. Bharat Chugh, Mr. Jai
Allagh and Mr. Ashok Kumar
Sharma, Advocates.

versus

STATE & ANR.

.....Respondents

Through: Ms. Rupali Bhandopadya,
ASC for the State with Mr.
Abhijeet Kumar and Mr. Sagar
Mahlawat, Advocates.

+ **CRL.M.C. 3078/2005**

H. CONSUL & ORS.

.....Petitioner

Through: Mr. Bharat Chugh, Mr. Jai
Allagh and Mr. Ashok Kumar
Sharma, Advocates.

versus

STATE & ANR.

.....Respondents

Through: Ms. Rupali Bhandopadya,
ASC for the State with Mr.
Abhijeet Kumar and Mr. Sagar
Mahlawat, Advocates.



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+ **CRL.M.C. 3229/2005**

SOMESH & ORS.

.....Petitioner

Through: Mr. Bharat Chugh, Mr. Jai
Allagh and Mr. Ashok Kumar
Sharma, Advocates.

versus

STATE & ANR.

.....Respondents

Through: Ms. Rupali Bhandopadya,
ASC for the State with Mr.
Abhijeet Kumar and Mr. Sagar
Mahlawat, Advocates.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. By way of above-captioned petitions filed under Section 482 of Code of Criminal Procedure, 1973 ('Cr.P.C.') read with Article 227 of the Constitution of India, the petitioners seek quashing of the complaint titled as '*Smt. Sudesh Kohli vs. Shri T.B. Gupta and Ors*' and the order dated 30.06.2005 passed under Section 156(3) of Cr.P.C., by the Metropolitan Magistrate, New Delhi alongwith the FIR No. 381/2005 registered at Police Station Defence Colony, Delhi and all proceedings emanating therefrom.

2. These petitions, having similar facts and contentions and common issues for consideration, were heard together and are being decided by this common judgment.



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3. **The facts of the case**, in brief, are that a complaint was filed by the complainant Smt. Sudesh Kohli, who stated that she had invested her life savings in VLS Finance Ltd., a company engaged in financial services, and controlled by the accused persons/ petitioners, who were its directors and senior officers. The accused persons had allegedly projected VLS Finance Ltd. as a highly profitable and stable company and had promised substantial returns on investments, by highlighting the company's strong earnings per share (EPS) and boasting that the company's board included distinguished retired civil servants and financial experts, such as a former finance secretary to the Government of India and a former deputy governor of the Reserve Bank of India. Based on these representations, the complainant had been induced to purchase 100 fully paid shares at Rs. 400 per share in 1993-94, alongside her son, Sh. Sanjay Mehta, who had also made a similar investment. The accused persons had allegedly collected a premium of Rs. 390 per share on a face value of Rs. 10, amassing approximately Rs. 127 crores from the public during the company's public issue. The complainant had been assured that the value of these shares would rise significantly, with projections indicating that the share price could reach Rs. 1000 to Rs. 1200 by 1999-2000. However, it is alleged that the market value of the shares had plummeted to Rs. 2 per share by March 2003, causing significant financial loss to the complainant and other investors. As alleged, the complainant had later learnt that the accused persons had misappropriated the funds raised from investors. They had manipulated the company's accounts, with the assistance of auditors



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and chartered accountants, by falsifying transactions and inflating the value of assets, thereby converting the public investments into their personal gains. The accused had allegedly engaged in insider trading, artificially inflating the share prices before the public issue, and then siphoning off the funds to their personal accounts and subsidiary companies. The fraudulent activities included the bogus purchase of cinematographic films at grossly inflated prices, which were shown in the company's accounts to claim false depreciation. It is further alleged that in 1998, the Income Tax Department had conducted a raid on the offices of VLS Finance Ltd. and the premises of the directors. The subsequent appraisal report had revealed the extent of the financial irregularities, including the siphoning off of approximately Rs. 198 crores. The report had detailed how the accused persons had manipulated the share prices, engaged in insider trading, and conducted fictitious transactions to misappropriate funds. It had been noted that the company had over-assessed the value of assets, such as cinematographic films, by 1000 times their actual value to claim false depreciation, thus defrauding both investors and the tax authorities. The complainant, concerned about the mismanagement and fraudulent activities, had attended the Annual General Meeting of VLS Finance Ltd. on 25.09.2003 at Shri Satya Sai International Centre Auditorium, Delhi, accompanied by her younger son, Sh. Deepak Mehta, who had acted as a proxy for her elder son. During the meeting, the investors, including the complainant, had raised concerns about the financial mismanagement and the drastic decline in the value of their investments. However, the



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accused had deployed 40-50 private security guards inside the hall and 2-3 police constables outside, who had prevented the investors from voicing their grievances. The accused had further threatened and intimidated the investors, with some being physically manhandled. The complainant had been shocked by the behavior of the accused, who had openly declared that they had misappropriated the investors' money, and had dismissed the meeting without addressing any of the investors' concerns. Following these events, the complainant had lodged several complaints with the police, but no FIR had been registered, and no action had been taken against the accused. The Complainant had also received threats over the phone, warning her and her family of dire consequences if they continued to pursue the matter. The accused had used abusive language and had threatened the complainant to withdraw her complaints. It was alleged that the accused persons had committed multiple cognizable offences, including criminal breach of trust, cheating, forgery, and conspiracy, under Sections 406, 409, 420, 421, 422, 467, 468, 471, 477(a), 506(ii), and 120B of IPC. The complainant had sought the registration of an FIR, a thorough investigation into the matter, and the prosecution of the accused for their criminal activities.

4. Based on the aforesaid complainant, an order dated 30.06.2005 was passed by the learned Metropolitan Magistrate, New Delhi (*'learned Magistrate'*) directing the SHO, P.S. Defence Colony, New Delhi to register an FIR against the accused persons. Thereafter, in compliance with order dated 30.06.2005 passed by learned



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Magistrate, the FIR No. 381/2005 was registered against the petitioners herein.

5. The petitioners thus pray for quashing of FIR No. 381/2005, registered at P.S. Defence Colony, pursuant to order dated 30.06.2005.

6. During the pendency of these petitions, unfortunately, eleven out of the fourteen petitioners in *CRL.M.C. No. 3229/2005* passed away.

7. **Learned counsel appearing on behalf of the petitioners** has argued that the impugned order dated 30.06.2005, passed under Section 156(3) of Cr.P.C. is bereft of any reasons, and it is not stated in order as to which particular offence of IPC and/or of any other statute is disclosed, and it is also totally silent as to whether any cognizable or non-cognizable offence is disclosed. It is submitted that no time was given by the learned Magistrate to conduct preliminary enquiry before directing registration of FIR.

8. It is argued that there are major concealments and suppressions, by the complainant/respondent no. 2 in her complaint, to obtain an order under Section 156(3) of Cr.P.C. by playing fraud upon the Court. It is stated that the complainant was just 1 of the 30,000 shareholders of VLS Finance Limited and she had purchased just 100 shares of VLS @ Rs 400/- way back in the year 1994, and had *inter alia* alleged in 2003 for the first time to have suffered loss due to fall in share price. It is submitted that she had made the present complaint at different jurisdictions i.e. EOW, Lodhi Road, Shahdara, Defence Colony, etc. between the period 2003 to 2005, without



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disclosing the enquiry reports in the previous cases, in the present complaint. It is argued that the present complaint was made at the behest of and as proxy of S.P. Gupta & Associates, of the Sunair Hotels Limited.

9. It is also argued that the complainant herein is an accused in the FIR No. 148/2002, which was lodged at the behest of VLS Finance Ltd. and the chargesheet filed in that case reveals that the respondent no. 2, being a school teacher at Government School in East Delhi, was present in school from 6.50 AM till 12.40 PM on 25.09.2003 and the attendance register of the school shows her signature at time of arrival and her departure. It is stated that this evidence clearly shows that she was not present at the annual General Meeting of Shareholders, held at Lodhi Road on 25.09.2003 at 10:30 AM, however, she had misled the learned Magistrate to believe that she was present in the meeting and was manhandled and abused, which is contrary to records.

10. It is argued that a plain and simple reading of the complaint does not disclose any cognizable offence and essential ingredients of cheating, criminal breach of trust, forgery, etc., as are flimsily alleged in complaint, are missing and not made out. It also stated that a criminal complaint cannot be permitted to be lodged on the basis of fall /fluctuations in share price of listed companies. Therefore, it is argued that the impugned order is perverse, does not show application of mind, is without jurisdiction, non-reasoned and non speaking order, passed without conducting preliminary enquiry and without calling for Action Taken report and therefore, the complaint



/FIR and all subsequent actions are liable to be set aside. In support of these arguments, reliance has been placed on several case laws by the learned counsel for petitioners, which have been filed on record by way of different compilations.

11. **On the other hand**, there has been no appearance by any counsel on behalf of the respondent no. 2 for, at least, last two years, i.e. since this Bench has been hearing this matter. Later, this Court was informed that respondent no. 2 has already passed away. Thus, neither any arguments have been addressed on his behalf nor have any written submissions been filed.

12. This Court has **heard** arguments on behalf of the petitioners, and has perused material filed on record.

13. In the present case, this Court notes that the allegations against the accused persons/petitioners herein, in a nutshell, are that that the complainant/respondent no. 2 had been induced to invest her life savings in VLS Finance Ltd., based on false promises of substantial returns and the company's purported financial stability. However, she had later discovered significant financial irregularities, including the manipulation of accounts and misappropriation of funds, which had led to a drastic decline in the value of her investment, ultimately causing her substantial financial loss. In this manner, she was duped of her hard-earned money by the accused.

14. Pursuant to hearing arguments on behalf of the complainant and perusing the material placed on record along with the complaint, the learned Magistrate had ordered the registration of FIR. The order



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dated 30.06.2005 passed by the learned Magistrate under Section 156(3) of Cr.P.C. is extracted hereunder:

“Heard filed perused. The SHO P.S. Def. Colony is directed to get the case registered & investigate the matter U/s. 156(3) Cr.P.C. The compliance report be filed for 7.09.2005”

15. During the course of arguments, the learned counsel appearing on behalf of the petitioners had taken this Court through various documents, running into thousands of pages, including: the MOU entered into between the VLS Finance and Sunair Hotels Ltd.; copies of earlier complaints/FIRs/chargesheets filed in criminal cases initiated by the petitioners herein against the Sunair Hotels Ltd and its directors/promoters, since the respondent no. 2 herein has been alleged to have acted on their instructions to initiate criminal action against the petitioners; copies of all the petitions/appeals etc. filed by the accused persons in the previous criminal cases and the orders/judgments passed by different Courts; orders passed by the Company Law Board; orders of Income Tax Department; financial documents/statements of the companies; minutes of the meetings; and civil proceedings filed/pending before other Courts/Tribunals. However, this Court is conscious of its power and the scope of inquiry it can conduct into the allegations levelled by the complainant and the documents placed on record in the present petitions.

16. On the strength of above documents and material, the petitioners have sought to persuade this Court that the order, under Section 156(3) of Cr.P.C., directing registration of FIR has been passed without application of mind and in a mechanical manner, and



the complaint/FIR in question does not disclose the commission of any criminal offence whatsoever and, therefore, the said order as well as the FIR must be quashed and set aside.

17. Insofar as grievance of the petitioners regarding order passed under Section 156(3) of Cr.P.C. is concerned, it would be apt to first take note of the statutory provision, which reads as follows:

“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.”

18. There are no two views about the fact that the power and the discretion under Section 156(3) of Cr.P.C. has to be exercised judiciously and after application of mind, and not arbitrarily, by the Magistrate.

19. In addition, the necessity of applying judicial mind to the allegations levelled by a complainant and the material placed on record to support those allegations, understanding as to how the ingredients of the alleged offences are *prima facie* made out, recording of reasons, etc. have been held as some of the requirements while passing an order under Section 156(3) of Cr.P.C. by the Hon’ble Supreme Court of India in various judgments, also relied



upon by the learned counsels for the petitioners [Ref: *Maksud Saiyed v. State of Gujarat* (2008) 5 SCC 668; *Anil Kumar v. MK Aiyappa* (2013) 10 SCC 705; *Priyanka Srivastava v. State of UP* (2015) 6 SCC 287; *Shri Subhkaran Luharuka v. State ILR* (2010) VI Delhi 495].

20. Though this Court is conscious of the fact that the order impugned herein was passed in the year 2005 i.e. at a time when none of the judgements cited on behalf of the petitioners had been penned down for the benefit of the learned Magistrates by either this Court or by the Hon'ble Supreme Court, yet the basic principle of law, that the discretion under Section 156(3) of Cr.P.C. cannot be exercised mechanically but after application of mind, was well-settled.

21. Having considered the records of the case, this Court finds merit in the argument of the petitioners that the impugned order herein, extracted in paragraph no. 14, has been passed in a mechanical manner. This Court notes that, apart from the phrase '*heard file perused*', the learned Magistrate has neither mentioned the allegations in the complaint in brief nor indicated what arguments were presented before the Court. In fact, the learned Magistrate did not even observe that a cognizable offence was *prima facie* made out from the perusal of the complaint.

22. While it is understood that a Magistrate, when passing an order under Section 156(3) of Cr.P.C., is not required to provide detailed reasons or reiterate the entire contents of the complaint, however, the impugned order in this case lacks any observation whatsoever, except for the words '*heard*' and '*perused*'. Consequently, it cannot be



inferred from the impugned order as to why the learned Magistrate found it necessary to initiate criminal proceedings by directing the registration of an FIR. The absence of any reason or reference to the substance of the complaint leaves this Court unable to discern the basis upon which the criminal law was set into motion.

23. As far as the allegation that the complainant was subjected to abuse, ill-treatment, and manhandling while attending the Annual General Meeting of VLS Finance Ltd. on 25.09.2003 is concerned, the learned counsel for the petitioners had drawn this Court's attention to the contents of chargesheet filed in FIR No. 148/2002, wherein the respondent no. 2 had been arrayed as an accused. The contents of the said chargesheet indicate that it was revealed during investigation that respondent no. 2 herein, who was a school teacher, was present in the concerned school on 25.09.2003 at the relevant point of time, as revealed from the school records, and thus, she could not have attended the Annual General Meeting of VLS Finance Ltd. on 25.09.2003.

24. At this juncture, it is also to be noted, at the cost of repetition, that the complainant in this case/respondent no. 2 herein has unfortunately passed away way back, and neither any arguments have been addressed nor any reply and written submissions have been filed on behalf of the respondent no. 2, to rebut the contentions raised on behalf of the petitioners.

25. Having observed so, and without delving deeply into the allegations levelled in the complaint, this Court is of the considered opinion that the impugned order dated 30.06.2005, being devoid of



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any reasoning capable of being inferred from even a bare perusal of the order, cannot be sustained in law and is, thus, liable to be set aside. As a necessary consequence, all proceedings emanating therefrom, including the FIR No. 381/2005 registered at Police Station Defence Colony, Delhi, are also quashed and set aside.

26. Accordingly, the present petitions, alongwith pending applications, if any, are disposed of in above terms.

27. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 3, 2024/zp