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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 6922/2024, CRL.M.A. 26482/2024**

SMT SUDESH

.....Petitioner

Through: Mr. Himanshu Jain, Advocate.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Sanjeev Sabharwal, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

03.09.2024

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1. By way of present petition filed under Section 528 of BNSS, 2023, the petitioner seeks to assail the order dated 12.04.2024 vide which the Ld. Sessions Court has upheld the order dated 27.09.2022, passed by the learned Judicial Magistrate, whereby the petitioner's application filed under 156(3) Cr.P.C. was dismissed.

2. The present proceedings arise out of a sale transaction vide which the petitioner sold a property bearing *No.61A measuring 100 Sq. yds out of khasra No.786 situated in the abadi/colony known as Kailash Vihar near Tula Ram Public School, Kirari, Suleman Nagar* by virtue of GPA, Agreement to Sell, Affidavit, Receipt and Registered Will, all dated 15.10.1997, for a total sale consideration of Rs.40,000/-, to the husband of the complainant. It is claimed that subsequent thereto, the petitioner's husband died intestate leaving behind the present petitioner and their minor children, whereafter a relinquishment deed came to be registered in favour



of the petitioner by all her children. It is alleged that the possession of the property was taken away in pursuance of the execution proceedings pending against the respondent, a fact which was concealed at the time of executing the said sale transaction. Ld. Judicial Magistrate while dismissing the application under Section 156(3) Cr.P.C., proceeded under Section 200 Cr.P.C. During the pendency of the abovestated application, an Action Taken Report (ATR) was requisitioned, as per which, it was observed that no cognizable offence was made out. It was stated that one *Suresh Chand Sharma* had purchased a plot measuring 208 square yards; thereafter, he had expired on 31.01.1994. Subsequently, his nephew, namely *Prem Kumar Sharma* claimed that *Suresh Chand Sharma* had executed a Will in his favour and on this basis, sold the property in question to *Yogesh Vats*, the respondent herein, who, in turn, sold a portion of it to the petitioner's husband. It was also stated that one *Mithilesh Kumari* had filed a Civil Suit against *Prem Kumar Sharma* and *Yogesh Vats* and by the order of the Court, the Will of *Suresh Chand Sharma* came to be declared as null and void. In the aforesaid background, the learned Judicial Magistrate was of the opinion that the entire chain of documents was in the possession of the present petitioner and that no police investigation or recovery was, thus, required to be affected. The Ld. Sessions Court concurred with the view taken by the Ld. Judicial Magistrate.

3. It is a settled position in law that the power under Section 156(3) Cr.P.C. to order registration of FIR has to be exercised judiciously and not in a mechanical manner. The Trial Court has rightly placed reliance on this Court's decision in M/S Skipper Beverages Pvt. Ltd. vs. State, reported as (2001) 92 DLT 217, and the relevant paragraph is reproduced hereinunder:



“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 complaint 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 complaint 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 complaint. The police assistance can be taken by a Magistrate even under Sec. 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 & Ors.”

4. As noted above, the present case arises out of proceedings in relation to sale transaction documents. It is the petitioner’s case that the respondent had not informed the petitioner’s late husband of the pendency of the civil suit with respect to the property in question, at the time of the sale transaction. However, the entire chain of documents is in the possession of the present petitioner and accordingly, I find no ground to interfere with the orders of the Id. Trial Court and Id. Sessions Court. Consequently, the petition is dismissed alongwith pending application.

MANOJ KUMAR OHRI, J

SEPTEMBER 3, 2024

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