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

+ **CRL.M.C. 8662/2024 & CRL.M.A. 33100/2024**

DR SUNNY KHANNA

.....Petitioner

Through: Mr. Jogy Scaria and Mr. Ashwani
Kumar Soni, Advocates.

versus

ROHIT KAPUR AND ANR

.....Respondents

Through: Mr. S.C. Singhal, Adv. for R-1.
Mr. Sanjeev Sabharwal, APP for the
State with Ms. Somya Narula,
Advocate.

SI Abhishek Rana and ASI
Omprakash, P.S. Dwarka South.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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07.11.2024

CRL.M.A. 33101/2024 (exemption)

Exemption granted, subject to just exceptions.

The application stands disposed of.

CRL.M.C. 8662/2024

By way of the present petition filed under section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS') read with Article 227 of the Constitution of India, the petitioner impugns order dated 30.09.2024 made by the learned Additional Sessions Judge (FTC), South-West District, Dwarka Courts, New Delhi in criminal revision petition bearing CR No.1898/2024, thereby dismissing the revision petition filed by the petitioner and upholding order dated 18.04.2024 made by the learned Metropolitan Magistrate-04, S/W Dwarka Courts, New Delhi in Ct Cases No.2051/2023.



2. By way of order dated 18.04.2024, the learned Magistrate had dismissed the petitioner's application under section 156(3) of the Code of Criminal Procedure, 1973 ('Cr.P.C.') seeking registration of an FIR.
3. Mr. Jogy Scaria, learned counsel appearing for the petitioner submits, that the essence of the allegations in the case is that respondent No.1, who is the husband of the petitioner's deceased sister, has committed an offence by encashing a cheque from an account that was held solely by the petitioner's sister, in which respondent No.1 was neither a joint-holder nor a nominee.
4. Counsel submits, that the petitioner's sister passed-away during the COVID-19 pandemic; and thereafter respondent No.1, her husband, has fraudulently withdrawn Rs.1,88,890/- which was available in the sister's salary account, though respondent No.1 had no right to do so since he was neither a joint-holder nor a nominee in the said bank account nor is he a class-I legal heir of the petitioner's deceased sister.
5. Counsel further argues that the said withdrawal was done without informing the bank about the demise of the account-holder, namely the petitioner's sister.
6. *Vide* order dated 18.04.2024, the application filed by the petitioner under section 156(3) of the Cr.P.C. has been dismissed by the learned Magistrate, based on the action taken report received from the concerned police station, which *inter-alia* said that respondent No.1 had withdrawn the money from the bank account of his deceased wife *after completing the requisite formalities* and the money withdrawn has been placed in a fixed deposit account, in which respondent No.



1's son (with his deceased wife) Rishant Kapoor was made a nominee.

7. In the circumstances, the learned Magistrate has taken the view, that no field investigation is required; that all requisite evidence is within the reach of the complainant (*i.e.* the petitioner); and that no custodial interrogation is required either. The learned Magistrate has also clarified that recourse to section 202 of the Cr.P.C. can always be taken, if the need for police investigation arises subsequently.
8. This order dated 18.04.2024 made by the learned Magistrate has been upheld by the learned Sessions Court in the revision petition *vide* order dated 30.09.2024, approving the reasons cited by the learned Magistrate for declining registration of an FIR.
9. In fact, Mr. Sanjeev Sabharwal, learned APP appearing for the State and Mr. S.C. Singhal, learned counsel appearing for respondent No.1, on advance copy, have also confirmed that respondent No.1 had duly intimated to the bank that his wife had passed-away; that the amount lying in her salary account was withdrawn only to be placed by way of a fixed deposit in the name of respondent No.1 with their minor son being the nominee; and therefore respondent No. 1 has neither committed any forgery nor fabrication nor has the amount been misappropriated in any manner.
10. Upon an overall conspectus of the foregoing circumstances, this court finds no infirmity or illegality either in order dated 18.04.2024 passed by the learned Magistrate nor in order dated 30.09.2024 passed the learned Sessions Court, that would warrant interference by the court



in exercise of its inherent powers under section 528 of the Bharatiya
Nagarik Suraksha Sanhita 2023.

11. The petition is accordingly dismissed *in-limine*.
12. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 7, 2024

V.Rawat