



2024:DHC:6206



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

% ***Reserved on : 18th July, 2024***
Pronounced on: 16th August, 2024

+ **CRL.M.C. 3630/2017, CRL.M.A. 14781/2017 &**
CRL.M.A. 14783/2017

SHUBHANKAR NAGARPetitioner

Through: Mr. Varun Goswami, Mr. Sahil
Agarwal, Mr. Shaurya Mehra,
Mr. Hritik Chaudhary & Mr.
Vansmani Tripathi, Advs.

versus

STATE & ORSRespondents

Through: Mr. Hitesh Vali, APP for the
State with Mr. Shiva Kumar,
Ms. Sarthak Kapila, Mr. Nitesh
Goyal & Ms. Ranjita Das,
Advs.

Mr. Anil Soni, CGSC with Mr.
Devrat Yadav, Adv. for R-6.

Mr. Naginder Benipal and Mr.
Subhojit Dutta, Advs. for R-7.

Mr. Jagdish Prasad advocate for
respondents no 8 to 11

Mr. M.N Dudeja & Mr. Aditya
Mishra, Advs, for R-12

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CRL.M.C. 3630/2017

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CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This petition assails judgment and order dated 13th January 2017 passed by Special Judge-IV, CBI (PC Act) Tis Hazari Courts, Delhi in Crl. Rev. No.538375/2016 [*“impugned order”*]. By order dated 12th May 2016 passed by the Metropolitan Magistrate [*“Ld. MM”*] dismissed application filed by the petitioner under Section 156 (3) Code of Criminal Procedure 1973 [*“Cr.P.C.”*]. By the impugned order, challenge to order passed by the Ld. MM was dismissed. In this petition, petitioner now assails dismissal by the Trial Court under Section 482 Cr.P.C.

Factual Matrix

2. Petitioner is son of Meena Nagar and filed a complaint on 26th December 2014 before PS Hauz Qazi that some of his relatives committed a criminal offence, by getting a Sale Deed executed and registered on 19th December 2014 at the office of the Sub-Registrar while his mother was unconscious and in illegal custody of the relatives. As per the complaint, photograph taken at the Sub-Registrar's Office showed that the eyes of his mother were closed and she was unconscious; she was 46 years old and a graduate, but there is a thumb impression on the Sale Deed; and that consideration of the property was distributed amongst the relatives. He further alleged that the Sub-Registrar had gone to the residence where the mother was



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held captive i.e. H.No.102, Parashnath Building, Tower 2, Greater Noida, Uttar Pradesh, to get the Sale Deed executed. The complaint was filed at PS Daryaganj having jurisdiction where the office of the Sub-Registrar III was located i.e. Asaf Ali Road, Delhi Gate. Subsequent complaint was made to the DCP (Central District) on 27th December 2014, which was later followed up. However, since no FIR was registered, application under Section 156 (3) Cr.P.C. was moved.

3. A Status Report was filed, as per which complaint was asked to join inquiry, but he did not. On 21st July 2015, concerned IO visited the house of complainant, but he was not found at home. Grandfather of the complainant was asked to accept the notice, which he refused. Complainant avoided any inquiry even subsequently.

4. Later, Raju Chaudhary, brother of Meena Nagar, stated that since his niece had informed about illness of her mother and no treatment was being given to her, he along with his brother Sanjay, went to their house and took her for medical treatment. They took a flat on rent in Parashnath Building, Greater Noida. Meena Nagar was diagnosed with brain tumour and she was in dire need of money for her treatment. The property was therefore sold to meet the financial need for her treatment and cost of living. He stated that their niece, daughter of Meena Nagar, also left her paternal home and came to live with her mother.

5. Sale Deed was registered properly at the office of the Sub-Registrar where Meena Nagar and her daughter was also present. He further informed that Meena Nagar had strained relations with her son



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(*complainant herein*) and had filed complaints at PS Hauz Qazi. Meena Nagar expired on 11th June 2015 and as per the *post mortem*, her death was due to lesion in the left frontal brain.

6. Virender Rawat, who had family relations with Meena Nagar and was a friend of her husband, stated that she was in need of money and therefore, they brokered the deal with the purchaser. At the time of registration, Meena Nagar did come to the office of the Sub-Registrar but did not go inside the office as she was unwell. Sub-Registrar made inquiries outside the office and checked her photo where she was sitting, since she was in a state of bad health, she did not sign the Sale Deed and a No Objection Certificate [*“NOC”*] was issued attesting the thumb impressions of Meena Nagar. He also informed that a complaint was filed before the Anti-Corruption Bureau, Delhi against the Sub-Registrar by complainant, and after inquiry, it was confirmed that the Sale Deed was genuine and was indeed executed by her.

Proceedings before Trial Court

7. Ld. MM adverted to parts of the Status Report and, in his order, concluded that it was not a fit case for registration of an FIR. Furthermore, complainant was in possession of evidence or could collect the same with little effort, as accused was well-known to him. The Sale Deed was a registered document. It did not appear to be a case where police assistance was required for collection of evidence. Accordingly, it was directed that complaint be proceeded with, and it was listed for pre-summoning evidence.



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Proceedings before Sessions Court

8. The said order of Ld. MM was challenged, and Sessions Court appreciated the facts and circumstances. It is noted that 3 Status Reports were filed dated 22nd August 2015, 3rd September 2015, and 29th September 2015. As per the Status Report, daughter of Meena Nagar was also examined and she confirmed the fact that since no one was taking care of her mother, she informed her maternal uncle and decided to take her away for proper medical care. Further it was also noted that petitioner had not complained about the alleged abduction and confinement of his mother, since August 2014 till December 2014. He filed a complaint only after he came to know that their mother had sold the property.

9. Citing the decision of Supreme Court in *Lalita Kumari Vs. Govt. of U.P.* (2014) 2 SCC 1, Ld. Special Judge stated that this fell into the category of family disputes / commercial offences for which preliminary inquiry is allowed to be conducted by police and, in this view of the matter, dismissal of application under Section 156 (3), Cr.P.C. by the Ld. MM stood confirmed.

Proceedings before High Court

10. Response filed by respondent nos. 2 to 6 before this Court highlights that petitioner has cleverly omitted to mention that his sister was there with the mother at the time of execution of the Sale Deed and that, out of several properties left by deceased father of petitioner, petitioner had managed to dispose all of them on his terms and it was



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only one property, which was left for maintenance of the mother, for which issue is presently being raised.

11. A response was filed on behalf of the Sub-Registrar III, respondent no.12 herein, before this Court. It was affirmed that the Sub-Registrar, in consonance with his duty, inquired from Meena Nagar that she had received consideration, to which she replied in the affirmative. Photographs had been taken, as per the procedure. He specifically denied that she was lying in a kind of virtually unconscious state and also refuted that she was unable to speak properly.

12. APP for the State vehemently objected to filing of this petition before this Court on the grounds that it would be akin to a second revision petition, an exercise significantly deprecated by the Supreme Court and this Court as well. To support this, he relied upon the following decisions:

- *Deepti @ Aarti Rai v. Akhil Rai & Ors.* decision dated 14th September 1995 SC (538);
- *Rajan Kumar Manchanda v. State of Karnataka*, 1990 (Supp) SCC 132;
- *Pooja Walia v. State and Anr.*, 2011 SCC OnLine Del 2462;
- *Surender Kumar Jain v. State & Another*, 2012 SCC OnLine Del 571.



Analysis

13. Heard counsel on behalf of parties, perused the material placed on record as well as findings of the Ld. MM and Ld. ASJ; findings and conclusion of this Court are discussed herein below.

Issue of FIR Registration

14. It is a well-settled position in law that once a complaint is presented, the Magistrate is bound to apply its mind on conspectus of the facts and not directly register an FIR mechanically, on presentation of an application under Section 156 (3) Cr.P.C. In this regard, decision of a co-ordinate Bench of this Court in ***Anjuri Kumari v. State (Govt. Of NCT of Delhi) & Ors.***, 2023:DHC:8544 is relevant. Single Judge of this Court has meticulously traversed the law on power of Magistrate under Section 156(3) CrPC and exercise thereof. Relevant observations regarding the same are extracted as under:

“17. In view of the discussions mentioned hereinabove, I am of the view that the directions for investigation under section 156 (3) of the Code cannot be given by the Magistrate mechanically. Such a direction can be given only on application of mind by the Magistrate. The Magistrate is not bound to direct investigation by the police even if all allegations made in the complaint disclose ingredients of a cognizable offence. Each case has to be viewed depending upon the facts and circumstances involved therein. In the facts and circumstances of a given case, the Magistrate may take a decision that the complainant can prove the facts alleged in the complaint without the assistance of the police. In such cases, the Magistrate may proceed with



the complaint under Section 200 of the Code and examine witnesses produced by the complainant. The Magistrate ought to direct investigation by the police if the evidence is required to be collected with the assistance of the police. In the present case, all the facts and evidence are within the knowledge of the petitioner, which he can adduce during the inquiry conducted by the learned Metropolitan Magistrate under Section 200 of the Code.”

(emphasis supplied)

15. It may be apposite to refer to the decision in **Alok Kumar v. Harsh Mander & Anr.**, 2023:DHC:5045, wherein a coordinate Bench of this Court has meticulously traversed the law relating to Section 156(3) Cr.P.C. In doing so, Court categorically encapsulated the pre-conditions while directing registration of FIR under Section 156(3). For the sake of brevity, only certain portions are being extracted as under:

“II. Essential Pre-conditions While Directing Registration of FIR under Section 156(3)

(i) Disclosure of Cognizable Offence

31. While exercising powers under Section 156(3) Cr. P.C. and directing the registration of an FIR, the Magistrate 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.

...

(ii) Application of Judicial Mind

34. It is no more res integra that power under Section 156(3) Cr. P.C. is to be exercised judiciously



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and direction for registration of FIR is to be given only after due application of judicial mind.

...

40. To summarise, a conspectus of the above-mentioned judicial precedents reveal the following:

(i) Power under Section 156(3) Cr. P.C. necessitates application of judicial mind.

(ii) Such power is to be exercised in a judicious manner, and cannot be exercised mechanically or arbitrarily.

(iii) Magistrates cannot direct registration of FIR on mere asking of complainant.

(iii) Necessity to pass Speaking Order

41. Given that the exercise of power under Section 156 Cr. P.C. falls within the realm of judicial function rather than administrative, it necessitates the application of judicial mind. Consequently, it is incumbent upon the Magistrate to pass a reasoned order directing registration of an FIR.”

16. Similar view as above has been taken by various courts in the following decisions:

- ***Ramdev Food Products Pvt. Ltd. v. State of Gujarat***, 2015:INSC:218 [Supreme Court];
- ***Anil Kumar. v. M.K. Aiyappa***, (2013) 10 SCC 705 [Supreme Court];
- ***Priyanka Srivastava v. State of Uttar Pradesh***, 2015:INSC:239 [Supreme Court];



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- ***Suresh Chand Jain v. State of Madhya Pradesh***, AIR 2001 SC 571 [*Supreme Court*];
- ***Subhkaran Luharuka v. State***, 2010:DHC:3345 [*Delhi High Court*];
- ***Mohd. Salim v. State***, 2010:DHC:1392 [*Delhi High Court*];
- ***Pandharinath Narrayan Patil v. State of Maharashtra***, 2015 SCC OnLine Bom 882 [*Bombay High Court*]; etc.

Issue related to Second Revision

17. Second leg of controversy is whether filing of present petition amounts to proceedings akin to a second revision which, as has been held by various Courts including the Apex Court and this Court, is not permissible under law. For the same, relevant portions of the decisions extracted below are instructive.

18. ***Deepti @ Aarti Rai v. Akhil Rai & Ors.*** decision dated 14th September 1995 SC (538) of the Supreme Court observed as under:

“Second revision application, after dismissal of the first one by Sessions Court is not maintainable and that inherent power under section 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code.”

(emphasis supplied)

19. ***Rajan Kumar Manchanda v. State of Karnataka***, 1990 (Supp) SCC 132;



“2. ...A second Revision did not lie at the instance of the State to the High Court in view of the provisions of Section 397(3) of Cr.P.C. Obviously, to avoid this bar, the application moved by the State before the High Court was stated to be under Section 482 Cr.P.C. asking for exercise of inherent powers. In exercise of that power, the High Court has reversed the order of the Magistrate as affirmed by the Sessions Judge. The question for consideration is as to whether the bar under Section 397(3) Cr.P.C. should have been taken note of to reject the revision at the instance of the State Government or action taken by the High Court in exercise of its inherent power has to be sustained. It is not disputed by counsel appearing for the State that the move before the High Court was really on application for revision of the order of the Magistrate releasing the truck. That is exactly what is prohibited under Section 397(3) Cr.P.C. Merely by saying that the jurisdiction of the High Court for exercise of its inherent power was being invoked the statutory bar could not have been overcome. If that was to be permitted every revision application facing the bar of Section 397(3) of the Code could be labelled as one under Section 482. We are satisfied that this is a case where the High Court had no jurisdiction to entertain the revision. The appeal is allowed and we set aside the order of the High Court. The Order of the Magistrate as affirmed by the Session Judge is upheld.”

(emphasis supplied)

20. *Pooja Walia v. State and Anr.*, 2011 SCC OnLine Del 2462;

“8. At the very outset, I must state that the present petition is in essence a second revision filed by the petitioner raising the same set of grievances which were raised by her before the learned Additional Sessions Judge. Although, the Section 482 Cr.P.C.



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starts with a non-obstante clause that would mean merely on account of the fact that a person has preferred a revision in the Sessions Court, he need not be necessarily debarred from assailing the order in High Court in exercise of its power in Section 482 Cr. P.C. in order to prevent abuse of process of law or to secure the ends of justice, but ordinarily in the absence of this, the Court would discourage a party to have a petition under Section 482 Cr.P.C.”

(emphasis supplied)

21. *Surender Kumar Jain v. State & Another*, 2012 SCC OnLine Del 571.

“5. The issue regarding filing of petition before the High Court after having availed first revision petition before the Court of Sessions has come up before the Supreme Court and this Court repeatedly. While laying that section 397(3) Cr.P.C. laid statutory bar of second revision petition, the courts have held that High Court did enjoy inherent power under section 482 Cr.P.C. as well to entertain petitions even in those cases. But, that power was to be exercised sparingly and with great caution, particularly, when the person approaching the High Court has already availed remedy of first revision in the Sessions Court. This was not that in every case the person aggrieved of the order of the first revision court would have the right to be heard by the High Court to assail the same order which was the subject matter of the revision before Sessions Court. It was all to depend not only on the facts and circumstances of each case, but as to whether the impugned order bring about a situation which is an abuse of process of court or there was serious miscarriage of justice or the mandatory provisions of law were not complied with. The power could also be exercised by this Court if there was an apparent mistake



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committed by the revisional court. Reference in this regard can be made to the judgments of the Supreme Court in Madhu Limaye Vs. State of Maharashtra (1977) 4 SCC 551, State of Orissa Vs. Ram Chander Aggarwal, AIR SC 87, Raj Kapoor Vs. State (Delhi Administration) 1980 Cri.L.J. 202, Krishnan & Anr. Vs. Krishnaveni & Anr and Kailash Verma Vs. Punjab State Civil Supplies Corporation and Anr (2005) 2 SCC 571.”

(emphasis supplied)

22. In *Kailash Verma v. Punjab State Civil Supplies Corporation*, (2005) 2 SCC 571, the Supreme Court made the following pertinent observations:

“5. It may also be noticed that this Court in Rajathi v. C. Ganesan [(1999) 6 SCC 326 : 1999 SCC (Cri) 1118] said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilised as a substitute for second revision. Ordinarily, when a revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to revision before the High Court under Section 397(1) of the Criminal Procedure Code as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law are not complied with and when the High Court feels that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.”

(emphasis supplied)



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Conclusion

23. This Court has perused the impugned judgment as also the order of the Ld. MM and finds no reason to set aside or interfere with the order of the Trial Court, as it has given valid and cogent reasons and have taken into account all factors which were put before it. **Firstly**, statements of Raju Chaudhury (*brother of Meena Nagar*) and Virendra Rawat (*family friend*) were, in unison, relating to the circumstances; **secondly**, statement of the Sub-Registrar was endorsed by the Anti-Corruption Bureau; and **thirdly**, the sister was present at the time of execution of Sale Deed. In these circumstances, there is no reason that an FIR ought to have been registered. Accordingly, this Court does not find any infirmity or illegality in the said assessment. Grounds which have been taken up in the petition before this Court are same, as those before the Revisional Court.

24. In light of the above discussion and assessment, present petition is dismissed along with pending applications.

25. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

AUGUST 16, 2024/SM/sc