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

+ CRL.M.C. 2325/2025

NEETA SARDA

.....Petitioner

Through: Mr. Mudit Jain, Advocate
(through VC) with Mr.
Ashok Kumar Jain and
Mr. Ankit Kohli,
Advocates.

versus

STATE GOVT. OF NCT
OF DELHI AND ORS.

.....Respondents

Through: Ms. Kiran Bairwa, APP
for the State.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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07.04.2025

CRL.M.A. 10439/2025 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.M.C. 2325/2025 & CRL.M.A. 10438/2025 (Stay)

3. The present petition has been filed challenging the order dated 20.09.2024 (hereafter "**impugned order**") passed by the learned Additional Sessions Judge ('ASJ'), Patiala House Courts, New Delhi, whereby the Revision Petition (Crl.) bearing No. 629/ 2019 filed by the petitioner, was dismissed.
4. The revision petition was filed by the petitioner against the order dated 05.08.2019 passed by the learned Metropolitan Magistrate ('MM') whereby the application filed by the petitioner under Section 156(3) of the Code of Criminal Procedure, 1973 ('CrPC') was dismissed.
5. Brief facts of the case are that the petitioner along with her

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husband namely– Sh. Ghanshyam Sarda, were Directors in M/s Orion Infrastructure Ltd./ Respondent No. 2 that owns about 286 acres of land at Bhandwari, Gurgaon is valued at Rs. 500 crores or more. It is alleged that Respondent Nos. 3 to 11 in collusion with each other forged the Digital Signature Certificate (DSC) of the petitioner and Sh. Ghanshyam Sarda. It is further alleged that the forged DSC were used to remove them from the Board of Directors by fabricating documents and also to remove and appoint other directors to wrongfully control the majority shareholding of Respondent No. 2 and reduce that of the petitioner.

6. The application of the petitioner under Section 156 (3) of the CrPC was dismissed on an earlier occasion by the learned MM *vide* order dated 13.10.2014, following which the petitioner preferred a revision petition before the learned Court of Sessions, wherein the learned Court of Sessions passed the order dated 26.09.2015 setting aside the order dated 13.10.2014 with a direction to the learned MM to pass a fresh order after considering the judgement passed by the Apex Court in ***Lalita Kumari v. Govt. of U.P. : (2014) 2 SCC 1***. The learned MM, after re-hearing the application of the petitioner under Section 156(3) of the CrPC, dismissed the same *vide* order dated 05.08.2019.

7. The petitioner is aggrieved by the dismissal of the Revision Petition (Crl.) *vide* impugned order dated 20.09.2024, wherein the learned ASJ while upholding the order dated 05.08.2019 passed by the learned MM, held that there was no ground for issuing a direction under Section 156 (3) of the CrPC since the evidence in the present case was documentary in nature and could be procured by the petitioner herself. The learned ASJ
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further relied on various judgements passed by the Hon'ble Apex Court to note the scope of revisional jurisdiction.

8. The learned counsel for the petitioner submits that the impugned order has been passed mechanically and without application of mind.

9. He submits that the learned ASJ erred in holding that the present case does not require investigation, when the DSC of the petitioner is still not traceable and has been used to fabricate various documents causing wrongful loss to the petitioner. He submits that some of the respondents are located out of town and the petitioner does not have the means to unearth their real motive and identity.

10. He submits that the Action Taken Report dated 04.06.2014 clearly shows that the Police has not been able to seize and collect necessary evidence because of non-cooperation by the accused persons.

11. He submits that the learned ASJ failed to consider the order dated 29.10.2018 passed by this Court dismissing a petition filed by Respondent No. 2, against the order dated 26.09.2015 directing the learned MM to re-hear the application of the petitioner and pass a fresh order.

12. He submits that the learned ASJ and the learned MM have failed to appreciate that it is a clear case of offence committed under Sections 177/406/420/465/469/479 read with Sections 34 and 120-B of the Indian Penal Code, 1860 ('IPC') and is a fit case for directions under Section 156 (3) of the CrPC.

13. He further submits that power of the Magistrate under Section 156 (3) of the CrPC cannot be said to be discretionary and is an extension of the power of the Police and therefore when a cognizable offence is made out, the Magistrate should direct the



Police to investigate into the matter.

14. At the outset, a reference can be made to Section 156 of the CrPC, which reads as under :

*“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.”*

15. Thus, while exercising powers under Section 156(3) of the CrPC and directing the registration of an FIR, the Magistrate/Special Court 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.

16. The Action Taken Report (ATR) filed by the Police on 04.06.2014 before the learned MM contained an account of preliminary inquiry conducted by the police, the conclusion of which is reproduced as under:

“Conclusion:

*The office of RK Solution Pvt. Ltd. where the alleged forged registration form was submitted, to get the digital signature of Ms. Neeta Sarda, is not in our jurisdiction. That is in Rajendra place, New Delhi. However enquiry of the complaint is in process. In 2009 the same complaint was filed by Ms. Neeta Sarda with same allegation but the complaint was closed as the matter was mutually compromised between both the parties. The said company i.e. Orion Infrastructure Ltd. is a family concerned of both the parties. The matter, in this regard is also pending with Company Law Board, New Delhi Bench and the matter will be listed on 28.08.2014 in CLB, New Delhi. In this view of the above submission, it is requested that the above said complaint is under inquiry. However the under signed will abide by any direction passed by the Hon'ble Court.
Submitted Please.”*



(emphasis supplied)

17. As noted above, the application filed by the petitioner under Section 156(3) of the CrPC was first dismissed by the learned MM *vide* the order dated 13.10.2014 after going through the complaint, annexures as well as the ATR.

18. On perusal of the material on record, it is apparent that the present dispute is in regard to a family concern and is predominantly civil in nature for which appropriate remedy has already been taken by the petitioner. It is the petitioner's own admitted position that her husband has already approached the Civil Court by filing a suit for partition and have also approached the Company Law Board seeking relief for their wrongful removal, for reducing the share of the petitioner's family in the company and also for wrongfully removing and appointing other Directors.

19. The application of the petitioner was re-heard by the learned MM in view of the judgement passed in ***Lalita Kumari v. Govt. of U.P. : (2014) 2 SCC 1***, pursuant to the order dated 26.09.2015 passed by the learned Court of Sessions, following which the learned MM dismissed the application of the petitioner *vide* order dated 05.08.2019. The relevant portion of the order dated 05.08.2019 is reproduced hereunder:

“Per the ruling in Lalita Kumari v. Govt. of U.P. & Ors., Hon’ble SC had observed that registration of FIR is mandatory under Section 154 of the code. If the information discloses commission of cognizable offence and that no preliminary inquiry is permissible in such a situation. It has been further ruled that the police officer cannot avoid his duty of registering FIR if a cognizable offence is disclosed and that action must be taken against erring official who do not register FIR in such cases.

Having due regard to the decision of the Hon’ble Apex Court in Lalita Kumari, and also in simultaneous perusal of the complaint herein, in that light, scenario that all the facts herein leading to the complaint are well within the knowledge



of the Complainant in the instant case the identity of the accused is known to the Complainant and evidence is within her reach and also no custodial investigation is required.

In view of the facts, as stated, I do not deem to order registration of FIR.

My this view is further forfeited by the judgment titled as *M/s Skipper Beverages P. Ltd. v. State* [2002 CRI L.J. NOC. 333 (Delhi)] in which Hon'ble Justice R.C. Chopra has illustrated that the power under section 156(3) is to be exercised a magistrate judiciously and not in a mechanical manner. He has observed as under:-

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In the present case, also as there is no justification for directing the police for registering the FIR, request under Section 156(3) CrPC is declined. All facts and circumstances are within the knowledge of the Complainant including identity of the accused. Further, if at any stage the Court is of the opinion that investigation in the matter is required, the Court will be within its power to order investigation under Section 202 CrPC.

Relist for pre-summoning evidence for 30.9.19.”

(emphasis supplied)

20. The learned MM rightly placed reliance on the judgment delivered by this Court in the case of *Skipper Beverages Pvt. Ltd. v. State* : 2001 SCC OnLine Del 448, wherein it was held as under :

“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 complainant 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 complainant 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 complainant. The police assistance can be taken by a Magistrate even Under Section 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”

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10. Section 156(3) of the Code aims at curtailing and controlling the arbitrariness on the part of the police



*authorities in the matter of registration of FIRs and taking up investigations, even in those cases where the same are warranted. **The Section empower the Magistrate to issue directions in this regard but this provision should not be permitted to be misused by the complainants to get police cases registered even in those cases which are not very serious in nature and the Magistrate himself can hold enquiry under Chapter XV and proceed against the accused if required.** Therefore the Magistrate, must apply his mind before passing an order under Section 156(3) of the Code and must not pass these orders mechanically on the mere asking by the complainant. These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of complainant or custodial interrogation appears to be necessary for some recovery of article or discovery of fact.*

(Emphasis supplied)

21. Thus, once a complaint/application under Section 156(3) of the CrPC is filed, the Magistrate can exercise the option of applying his own judicial mind to the entire material on record and 'may' direct registration of FIR. However, at times, the Magistrate also calls for a report from the police as to why no action had been taken on an earlier complaint filed by the complainant with the police, and thereafter, once a report is filed by the police, the Magistrate applies his mind to the material before him i.e. the complaint as well as the Action Taken Report which constitutes a 'preliminary inquiry' conducted by the police. After this, the Magistrate may make up his mind to either order registration of FIR or otherwise.

22. The learned MM had also noted in the order dated 05.08.2019 that in case any fact was required to be unearthed, the same could be enquired into by the Court under Section 202 of the CrPC. In ***Subhkaran Luharuka & Anr. vs. State : (2010) 170 DLT 516***, it was observed as under:

"42. Thus, there are pre-requisites to be followed by the complainant before approaching the Magistrate under Section 156 (3) of the Code which is discretionary remedy as the provision proceeds with the word 'May'. The Magistrate



*is required to exercise his mind while doing so. He should pass the orders only if he is satisfied that the information reveals commission of cognizable offences and also about necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without the assistance of the police. **It is thus not necessary that in every case where a complaint has been filed under Section 200 of the Code the Magistrate should direct the police to investigate the crime merely because an application has also been filed under Section 156 (3) of the Code even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, may be with the assistance of the Court or otherwise,....."***

(Emphasis supplied)

23. The said order dated 05.08.2019 passed by the learned MM was challenged by the petitioner in a revision petition, which was dismissed by the learned ASJ *vide* the impugned order.

24. Keeping in perspective the aforesaid observations, this Court has carefully perused and examined the records of the case including the order impugned before this Court.

25. It is apparent that the petitioner is merely seeking the assistance of the police to conduct a fishing and roving inquiry. As is evident from the above narration of facts and the Action Taken Report filed by the Police before the learned MM, all pertinent facts and evidence are within the petitioner's knowledge or reach, and she can present such information during the inquiry conducted by the learned MM pursuant to Section 200 of the CrPC. Given these factors, the need for police involvement in evidence collection appears to be minimal, as the complainant/ petitioner is well-equipped to facilitate the presentation of evidence on her own behalf.

26. In the instant case, this court is of the opinion that no exceptional circumstances have been presented to warrant the



exercise of its extraordinary jurisdiction under Section 482 of the CrPC. There is no indication of any miscarriage of justice or legal irregularity in the proceedings undertaken.

27. In view of the above, I find no infirmity in the impugned order, and the same cannot be faulted with.

28. The petition, is, therefore, dismissed.

AMIT MAHAJAN, J

APRIL 7, 2025