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

\+ CRL.M.C. 7228/2023 & CRL.M.A. 26961/2023, CRL.M.A. 26962/2023

GOPAISA NETVENTURES PVT. LTD. & ORS. .....Petitioners
Through: Ms. Suruchi Mittal, Advocate.

versus

SH. ASRAF KHAN & ORS. .....Respondents
Through: Mr. Pawan Malhan, Advocate.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

O R D E R

% **07.04.2025**

1. This hearing has been done through hybrid mode.

2. The present petition under Section 482 of the Cr.P.C. seeks the following prayers:

> "a) Pass an order calling for records of Criminal Revision No. 26 of 2023 titled as "Asraf Khan & ors. Vs. Gopaisa Netventures Pvt. Ltd. & Ors;
> b) Pass an order setting aside the impugned order dated 20.09.2023 passed by the Mr. Loveleen, ASJ-03, South-East District, Saket Courts, New Delhi in Criminal Revision No. 26 of 2023 titled as "Asraf Khan & ors. Vs. Gopaisa Netventures Pvt. Ltd. & Ors.";
> AND/OR
> pass such other further Order(s) as this Hon'ble Court may deem fit and proper considering the facts and circumstances of the case."

3. Learned counsel for the petitioners submits that the impugned order was passed by the learned ASJ in a Criminal Revision Petition no. 26/2023 filed on behalf of respondent no. 5. The said petition was filed against the order dated 21.09.2022, passed by learned Metropolitan Magistrate, whereby

the application under Section 156(3) of the Cr.P.C. seeking registration of FIR was dismissed. It is submitted that during the pendency of the aforesaid petition, an application was moved by the respondents to issue notice to Enforcement Directorate and Income Tax Authorities to unearth the facts and circumstances of the case. It is submitted that the initial complaint filed by the respondents was with respect to non-payment of salary and thus, there was no occasion for the learned ASJ to pass the impugned order.

4. *Per contra*, learned counsel for the respondents submits that no interference was called for as the learned ASJ passed the order after realising the seriousness of the economic impact and in public interest.

5. Heard learned counsel for the parties.

6. A perusal of the order dated 21.09.2022 passed by the learned Metropolitan Magistrate would reflect that the complaint filed by the respondents was with respect to the petitioners' alleged illegal termination of their services and non-payment of salary. The said order further reflects that an ATR was called from the concerned Police Station and after observing the contents thereof and as well as the facts of the case, the learned Metropolitan Magistrate gave a clear finding that the matter is related to a dispute regarding termination of services and therefore no cognizable offence was made out.

7. The said order was challenged by the respondents before the learned ASJ by way of Criminal Revision Petition No. 26/2023. During the pendency of the said petition learned ASJ passed the following impugned order:

> An application has been moved by the respondents seeking direction for amendments in the memo of parties. In response, Ld. Counsel for the revisionists submits that the present petition may be treated to have been filed only by the petitioners who have affixed their signatures. In view of the above, the application stands disposed of with a direction to file a fresh memo of parties.

An application has now been moved by the revisionists to issue notice to Enforcement Directorate and Income Tax authorities in order to unearth the actual facts and circumstances. Copy supplied.

Oral submissions heard.

During the course of arguments, the Ld. Counsel for the revisionists has referred to an Action Taken Report filed by SHO, P.S.- Sarita Vihar in the Court of Ld. Metropolitan Magistrate. He also referred to the copies of Form-26 AS and the Bank Statements of revisionists available in the present file. He submits that the said documents reflect that there is a frequent transfers of funds from the bank account of the revisionists in favour of respondent no. 3 herein. He further submits that the respondent no. 1 herein has issued the said Form-26AS which reflect huge transactions being made by respondent no. 1 herein, but no such amount was ever credited in favour of the revisionists herein. He further submits that respondents herein are involved in money laundering and large scale evasion of tax.

Ld. Counsel for the respondents seeks some time to clarify the matter.

Be that as it may, the matter is very technical. It would be appropriate that assistance of Income-Tax authorities be taken in order to understand the entire issue. Accordingly, let a Court notice be issued to the Principal/Chief Commissioner, Income Tax, I.P. Estate, Delhi, who shall file the brief report on the issue on or before the next date of hearing. A brief note of the facts be prepared by the revisionists underlining the relevant facts. The same be filed within next 03 days. The same be annexed along with the Court notice to be issued to the Principal/Chief Commissioner, Income Tax.

Put up for further proceedings on 18.10.2023.

8. The learned ASJ, while passing the impugned order, was exercising the powers under Section 399 read with Section 401 of the CrPC. The learned ASJ, while exercising such power, was examining the correctness, legality or propriety of the order challenged by respondent no.5. The impugned order, without examining the order challenged, proceeded to pass an order directing agencies which were not party to the petition and even beyond its jurisdiction.

9. Section 399 of the CrPC provides that in case of any proceedings, the

record of which has been called by the learned Sessions Judge, the latter may exercise any of the powers which may be exercised by the High Court under Section 401(1) of the CrPC which provides as under:

> "**401. High Court's powers of revision.-**(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307, and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392."

10. Section 386 of the CrPC lays down the powers of the appellate court, in the following manner:

> "**386. Powers of the Appellate Court.-**After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-
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> (a) in an appeal from an order or acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;
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> (b) in an appeal from a conviction-
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> (i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or
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> (ii) alter the finding, maintaining the sentence, or 168 (iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same-
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> (c) in an appeal for enhancement of sentence-
>
> (i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to

try the offence, or

(iii) alter the finding maintaining the sentence, or (iii) with or without altering the finding, alter the nature or the extent, or, the nature and extent, of the sentence so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order;

e) make any amendment or any consequential or incidental order that may be just or proper:

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal."

10. Section 389 of the CrPC provides for suspension of sentence pending appeal and release of the appellant on bail. Sections 390 and 391 of the CrPC provide for arrest of the accused in an appeal from acquittal and for power of the appellate court to take further evidence, respectively. A perusal of the aforesaid provisions demonstrates that the learned ASJ, while examining the petitions challenging the order under Section 156(3) of the CrPC, had no jurisdiction to pass the impugned order.

11. The limited issue before the learned ASJ was with regard to the correctness or legality of the order dated 21.09.2022, passed by learned Metropolitan Magistrate. The scope of the jurisdiction was therefore limited to the said order and the same could not have been enlarged on an application filed on behalf of the respondents seeking notice to the Enforcement

Directorate and Income Tax Authorities. A perusal of the record reflects that the dispute between the respondents and petitioners is with respect to the termination of services and non-payment of salary. While passing the impugned order the learned ASJ has sought to exercise power under Section 156(3) of the CrPC vested with learned Metropolitan Magistrates.

12. Even otherwise, it is noted that the powers under Section 156(3) of the Cr.P.C. can be exercised by the learned Metropolitan Magistrate with respect to the police station within his jurisdiction. Directions under the said section can only be passed by the learned Metropolitan Magistrate to such a police station and not to any other agency.

13. The Hon'ble Supreme Court in ***Central Bureau of Investigation v. State of Rajasthan and Another, (2001) 3 SCC 333,*** observed and held as under:

> "**16.** As the present discussion is restricted to the question whether a Magistrate can direct CBI to conduct investigation in exercise of his powers under Section 156(3) of the Code it is unnecessary for us to travel beyond the scope of that issue. We, therefore, reiterate that the magisterial power cannot be stretched under the said sub-section beyond directing the officer in charge of a police station to conduct the investigation."

14. The power under Section 156(3) CrPC is restricted to the officer in charge of the police station under jurisdiction of the concerned learned Metropolitan Magistrate. The learned ASJ while examining the order dated 21.09.2022 passed by the learned Metropolitan Magistrate under Section 156(3) CrPC cannot pass directions to an agency which is otherwise beyond the original jurisdiction of the learned Metropolitan Magistrate.

15. In these circumstances, the impugned order dated 20.09.2023 cannot be sustained. Accordingly, the same is set aside. The learned ASJ is directed to dispose of the revision petition in accordance with law.

16. The petition is disposed of along with pending application(s), if any.

17. Copy of this order be sent to the learned ASJ for necessary information and compliance.

AMIT SHARMA, J

APRIL 7, 2025/bsr/pr

Click here to check corrigendum, if any