



2025:DHC:799



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

% **Date of order: 28<sup>th</sup> January, 2025**

+ CRL.M.C. 4508/2013  
HARMEET SINGH

.....Petitioner

Through: Ms. Seema Gupta, Mr. Roushan  
Choudhary and Mr. Dikyanshu  
Sharma, Advocates

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr. Raghuinder Verma, APP for the  
State with SI Vivek Kumar, PS  
Gandhi Nagar

+ CRL.M.C. 4523/2013  
HARMEET SINGH

.....Petitioner

Through: Ms. Seema Gupta, Mr. Roushan  
Choudhary and Mr. Dikyanshu  
Sharma, Advocates

versus

STATE & ORS

....Respondents

Through: Mr. Raghuinder Verma, APP for  
the State with ACP Dinesh Kumar, SI  
Vivek Kumar, PS Gandhi Nagar, ASI  
Roop Kumar and Insp. (Retd.) Raj  
Kumar  
Mr. Vikas Arora , Mr. Nishi Kant  
Pandey and Ms. Radhika Arora,  
Advocates for R-2 to 4  
Mr. Siddhartha Tanwar, Advocate for  
R-2 & 3

+ CRL.M.C. 4544/2013  
HARMEET SINGH

.....Petitioner

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KUMAR BABBAR  
Signing Date: 14.02.2025  
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**CRL.M.C. 4508/2013, CRL.M.C. 4523/2013 & CRL.M.C. 4544/2013**

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Through: Ms. Seema Gupta, Mr. Roushan  
Choudhary and Mr. Dikyanshu  
Sharma, Advocates

versus

STATE GOVT. OF NCT OF DELHI & ORS. ....Respondents

Through: Mr. Raghuinder Verma, APP for the  
State with SI Shankar Panwar  
Mr. Siddhartha Tanwar, Advocate for  
R-2 & 3

**CORAM:**

**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

### **ORDER**

#### **CHANDRA DHARI SINGH, J (Oral)**

1. Since the reliefs sought in these petitions, i.e., CRL MC No. 4508/2013, CRL MC 4523/2013, CRL MC 4544/2013, are same and similar, and arising out of the same cause of action, these petitions have been heard together and are being disposed of vide this common order for proper adjudication.

2. The captioned petitions under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter as the "Code") [now under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter as the "BNSS")] read with Article 227 of the Constitution of India have been filed on behalf of the petitioner seeking quashing of the order dated 17<sup>th</sup> July, 2013 (hereinafter as the "impugned order") passed by the learned Additional Sessions Judge-01 (East), Karkardooma Courts, Delhi (hereinafter as the "ASJ").

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***CRL.M.C. 4508/2013, CRL.M.C. 4523/2013 & CRL.M.C. 4544/2013***

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3. The brief facts of the case are that the petitioner is the owner of the property bearing No. IX/1312, Mandir Wali Gali, Gandhi Nagar, Delhi (hereinafter as the “subject property”). In the year 2007, the petitioner applied for an overdraft limit with Syndicate Bank and handed over the requisite documents to a bank agent/mediator namely Mr. Akashdeep Kapoor. However, due to alleged fraud committed by the said mediator, the petitioner filed an FIR bearing No. 259/09 against the bank officials and the mediator. Thereafter, proceedings against the petitioner before the Debt Recovery Tribunal, Delhi were initiated by the Syndicate Bank. It is further claimed by the petitioner that he was in possession of the subject property when the bank officials took symbolic possession of the 100 square yards of the subject property on 3<sup>rd</sup> July, 2010.

4. On the eventful day of 27<sup>th</sup> November, 2011, the respondent no. 2 to 6 in CRL MC No. 4544/2013 i.e., Mrs. Harvinder Kaur, Mr. Jitender Singh, Mr. Tilak Raj, Mr. Sonu and Mr. Monu (hereinafter as the “accused individuals”) entered the 3<sup>rd</sup> floor of the subject property and allegedly started damaging the premises. Accordingly, the petitioner informed the police about the same and the concerned police officials reached the premises. It is claimed by the accused individuals that the subject property is owned by them vide sale deed dated 16<sup>th</sup> September, 2010.

5. It is alleged by the petitioner that despite the accused individuals destroying various article on the subject property premises in the presence of the police, no action was taken by them against the accused individuals and no sufficient help was provided to the petitioner.



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6. Aggrieved by the same, a complaint bearing no. 41/2011 was filed against the accused individuals and the concerned police officials and an application under Section 156(3) of the Code was moved by the petitioner before the learned Metropolitan Magistrate-1 (East), Karkardooma Courts, Delhi (hereinafter as the “MM”) seeking appropriate directions to the concerned police officials for prosecuting the involved persons in the instant matter.

7. The learned MM passed an order dated 15<sup>th</sup> March, 2011, thereby directing the DCP (East) to register an FIR in the instant matter and to handover the investigation to the DIU.

8. Aggrieved by the said order, the Government of NCT Delhi (respondent in CRL MC No. 4508/2013), the concerned police officials (respondent no. 2 to 3 in CRL MC. No. 4523/2013) and the accused individuals (respondent no. 2 to 6 in CRL MC No. 4544/2013) filed revision petitions bearing nos. 31/2013, 32/2013 and 33/2013, respectively, against the aforesaid order passed by the learned MM. Accordingly, the learned ASJ passed by the impugned order setting aside the order dated 15<sup>th</sup> March, 2011 on the ground that there is absence of any special evidence for registration of the FIR as the same can be unearthed only during an investigation, however, the learned MM passed an erroneous direction to the concerned DCP to get the FIR registered as the same is against the mandate of Section 156(3) of the Code.

9. Aggrieved by the same, the petitioner filed the instant petitions seeking setting aside of the impugned order.



10. Learned counsel for the petitioner submitted that the learned ASJ has erroneously passed the impugned order without considering the facts and material placed on record. Moreover, the learned ASJ failed to consider that the concerned police officials acted in connivance with the accused individuals.

11. It is submitted that after passing of the order dated 15<sup>th</sup> March, 2011, the petitioner approached the concerned police station for getting an FIR registered against the accused under Sections 392/395/447/448/452/453/504/506/120-B of the Indian Penal Code, 1860 (hereinafter as the “IPC”), however, no FIR was registered by the concerned police station despite the directions of the learned MM in the aforesaid order.

12. It is submitted that the concerned police officials failed to comply with the orders passed by the learned MM, thereby, establishing their contemptuous behavior. However, the same was not taken into consideration by the learned ASJ while passing the impugned order.

13. It is submitted that the learned ASJ erred in passing the impugned order as it failed to consider that the allegations pertaining to cognizable offences warrant immediate action.

14. It is further submitted that the learned MM has rightly taken into consideration the contents made in the application and passed the order dated 15<sup>th</sup> March, 2011, wherein the concerned DCP was directed to register an FIR against the accused.



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15. It is submitted that the learned MM was well within its power to not only direct for investigation or registration of FIR but also to monitor investigation. Moreover, it is submitted that while registering an FIR, the investigating agency need not go into the veracity of the information and that it is trite law that when a cognizable offence is involved, the FIR needs to be registered.

16. In support of his arguments, the learned counsel for the petitioner relied upon various judgments including the case of **Ramesh Kumari Vs. State (NCT of Delhi)**, 2006 AIR (SC) 1322, wherein it was submitted that the Hon'ble Supreme Court has observed that genuineness or credibility of the information is not a condition precedent for registration of a case and it can only be considered after registration of FIR. Therefore, a ground of alternative remedy cannot be taken for not registering a case against the police officials especially with respect to a cognizable offence.

17. It is further submitted that the learned ASJ failed to take into consideration that despite the directions passed by the learned MM in the order dated 15<sup>th</sup> March, 2011, the concerned police officials failed to register an FIR, thereby not complying with the said directions.

18. In view of the foregoing submissions, it is prayed that the instant petition may be allowed, and the impugned order may be set aside.

19. *Per contra*, learned APP for the State appearing on advance notice vehemently opposed the instant petitions submitting to the effect that the said petitions are nothing but a gross misuse of process of law.



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20. It is submitted that the learned ASJ, while passing the impugned order, was right in setting aside the order dated 15<sup>th</sup> March, 2011 wherein direction was given to the concerned DCP to file an FIR against the accused.

21. It is submitted that upon a plain reading of the Section 156(3) of the Code, it is made out that the Magistrate may direct a concerned police station to investigate and under Section 190 of the Code, the Magistrate may order an investigation to be conducted as per the mandate of Section 156(3) of the Code. However, the learned MM erroneously directed the concerned DCP to lodge an FIR against the accused and handing over the matter to the DIU, without holding any investigation or inquiry, which is contrary to the mandate of Section 156(3) of the Code.

22. It is submitted that the learned ASJ was right in observing that the learned MM should have proceeded with the complaint filed by the petitioner under Section 200 of the Code.

23. It is submitted that while adjudicating the aforementioned criminal revision petitions filed by the accused individuals, the learned ASJ has rightly considered the matter in its entirety as well as the material available on record.

24. It is submitted that the learned ASJ was right in observing that no special evidence was produced by the petitioner for registration of an FIR as it convenient for a party to allege the police officials for not fulfilling their duty without producing any substantial proof.

25. It is submitted that although it is a settled position of law that the FIR is to be registered after due investigation, the same is not applicable to the



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facts of the instant petitions as the learned MM can only direct an officer in-charge of the police station to conduct an investigation and not an officer of a superior rank such as the DCP. Therefore, there is no illegality or error in the impugned order passed by the learned ASJ.

26. Mr. Siddhartha Tanwar, learned counsel for the respondent Nos.2 and 3 in Crl.M.C. No. 4544/2023 appearing on advance notice submitted that while passing the order dated 15<sup>th</sup> March, 2011, the learned MM has proceeded on the presumption that the possession of the property lies with the petitioner and ignored the status report filed by the police in which it is clearly stated that the possession of the property was found with Mrs. Harvinder Kaur and Mr. Jitender Singh (respondent no. 2 and 3 respectively).

27. It is submitted that the petitioner herein never filed any complaint with the SHO of the concerned police station, and he rather approached the learned Court by filing application under Section 156(3) of the Code while the mandatory requirement of Section 156(3) of Code had not been fulfilled by the petitioner. It is further submitted that the said facts have been ignored by the learned MM while passing the order dated 15<sup>th</sup> March, 2011.

28. In view of the aforementioned submissions, it is prayed that the said petitions may be dismissed.

29. Heard learned counsel for the parties and perused the record, including the contents made in the petition, application under Section 156(3) of the Code, order dated 15<sup>th</sup> March, 2011 and the impugned order.



30. As mentioned earlier, the learned MM has passed an order dated 15<sup>th</sup> March, 2011, wherein a direction was given to the concerned DCP to register an FIR against the accused and to handover the investigation to the DIU. The relevant extracts of the said order are as follows:

*“In view of above, it is required that a detailed investigation is conducted qua the allegations mentioned in the complaint to unearth the truth and to fix the culpability of wrong-doers. Since the conduct of police officials i.e. accused no. 2 to 5 has been alleged to be malafide, it is required that an independent agency investigates this matter. Accordingly, DCP (East) is directed to get registered an FIR in this matter and investigation be handed over to DIU. The involvement of police officials be also ascertained.*

*The action taken report be filed on 24.05.2011. Copy of the order be sent to the Office of DCP (East) through Naib Court, PS Gandhi Nagar forthwith for immediate compliance”*

31. Against the said direction passed by the learned MM, learned ASJ passed the impugned order, wherein the direction to the concerned DCP to register an FIR and handover the investigation to DIU was set aside. For the purpose of convenience, the relevant extracts of the impugned order are reproduced hereinunder –

*9. Heard arguments of Sh. LH. Siddiqui, Ld. Addl. PP for the State in petition No.1, Sh. Vikas Arora, Ld. counsel for the petitioner in petition No. 2, Sh. Rajesh Puri and Sh. Sidharth Tanwar, Ld. counsel for the petitioner in petition No.3. Also heard Sh. Anil Saxena, Ld. counsel for the respondent/complainant Harmeet Singh.*



10. One of the main contention raised by all the petitioners is that while passing order u/s. 156 (3) CrPC Magistrate can only direct the SHO of the PS over which he has jurisdiction and he cannot direct the DCP to get the investigation conducted from the particular agency. In support of their submissions they have relied upon **CBI Vs. State of Rajasthan and Others, 2001 (1) CC Cases (SC) 126**. Here the Apex Court has observed that magisterial power cannot be stretched under said sub section beyond directing the Officer Incharge of the PS to conduct the investigation.

11. The other contention raised by Ld. counsels for the petitioners is that before registration of a FIR, the police has power to make preliminary inquiry before resorting to full scale investigation. It is stated that after the alleged incident, respondent/complainant made the complaint to local police and since title/possession over the said property was disrupted, both the parties were directed to produce documents in their favour but respondent failed to do so. It is also stated that a civil suit for permanent mandatory injunction regarding the said property was filed by respondent/complainant against the petitioners and petitioner No. 3 and in that suit application u/s. 39 rule 1 & 2 CPC moved by respondent was dismissed by the Court of Ld. ACJ vide his order dated 17.2.11 observing in para 7 that respondent is not in possession of said property.

12. The Ld. counsel Sh. Anil Saxena for respondent/complainant has submitted that since his complaint discloses commission of cognizable offence, police refused to take any action and register FIR being in collusion with the wrong doers, the Ld. M.M passed right and appropriate order by directing the DCP (East) to get the FIR registered and get it investigated from DIU. It is stated that he has no objection if the concerned SHO of PS Gandhi Nagar be directed to conduct the investigation as the SHO and other staff who were posted in PS Gandhi Nagar at the time of this incident and are accused in



*the complaint has been transferred. It is stated that the petition filed by State favouring the police officials who are petitioners in petition No. 2 is unwarranted and liable to be dismissed. In support of his submissions, the Ld. counsel has relied upon **State Vs. Rameez & Others, 2009VAD (Delhi) 91**. In this case four juveniles who were produced before Juvenile Justice Board made a complaint before the Board that they were kept detained illegally in the PS and subjected to torture illegally. The Juvenile Justice Board took cognizance against the erring police officials under various offences of IPC. The State preferred an appeal against this order. The Court observed that in our system of criminal justice, the victims of crime trust our police to undertaken fair investigation and the State to prosecute the offenders. A trust is reposed in the State that it will prosecute the offenders. This trust will stand betrayed if the State begins to indentify itself with the accused and seek to defend them to the extent that it will not even allow a case to be registered against them.*

*13. In **Brahm Prakash Gupta Vs. State, 2008(106) DRJ 199**, the court has observed that Magistrate has to exercise power under Section 156(3) Cr.P.C only in those cases where the Magistrate feels that the nature of allegations in the complaint are such that complainant himself may not be able to collect and produce evidence before the court and feels the necessity of the police stepping in to help the complainant. Complainant cannot be allowed to misuse the provision to get police case registered even if the allegations in the complaint are not serious in nature.*

*14. In **Anjani Kumar Vs. State of Bihar & Anr., 2008(3) C.C. Cases (SC) 275**, the Apex Court has observed that protection given under Section 197 CrPC is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by*



them while they are acting or purporting to act as public servants. In **Subhakaran Loharuka & Anr Vs. State (Govt. of NCT of Delhi) & Anr, 2013[3] JCC 1972**, the Court has observed that Magistrate should pass orders under Section 156(3) Cr. P.C 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.

15. One of the main contentions raised by Ld. counsels for respondent/complainant is that police is bound to register FIR if complainant discloses cognizable offences. In **Ramesh Kumari Vs. State (NCT of Delhi), 2006 AIR (SC) 1322**, the Apex Court has observed that genuineness or credibility of the information is not a condition precedent for registration of a case and it can only be considered after registration of FIR. Ground of alternative remedy would be no substitute in law not to register a case when a citizen makes a complaint of cognizable offence against the police officials.

16. There is no doubt that Hon'ble Supreme Court has reiterated time and again in various cases that if a complaint made to the police discloses a cognizable offence, an FIR should be registered. The question however is that if the FIR is not registered on the complaint, what are other remedies available to the complainant. The complainant could move an application under Section 156(3) Cr.P.C for issuance of directions to the police for registration of FIR. Ld. MM has option either to proceed on the basis of complaint or to record the statement of complainant and other witnesses under section 202 Cr. P.C and there dismiss the complaint or issue notice to the accused as the case may be. The other option available with Ld. MM is to postpone taking of cognizance on the complaint



*under Section 200 Cr.P.C and send the application under Section 156(3) Cr.P.C to the police for inquiry.*

*17. The relevant portion of the impugned order is reproduced as follows:*

*"In view of above, it is required that a detailed investigation is conducted qua the allegations mentioned in the complaint to unearth the truth and to fix the culpability of wrong-doers. Since the conduct of police officials i.e. accused no. 2 to 5 has been alleged to be malafide, it is required that an independent agency investigates this matter. Accordingly, DCP (East) is directed to get registered an FIR in this matter and investigation be handed over to DIU. The involvement of police officials be also ascertained.*

*The action taken report be filed on 24.05.2011. Copy of the order be sent to the Office of DCP (East) through Naib Court, PS Gandhi Nagar forthwith for immediate compliance."*

*18. Now the pertinent question to be considered is whether course adopted by Ld. M.M was not justified and whether the registration of the FIR should not have been insisted. The sole grievance of the respondent/complainant is that accused No. 6 to 10 unauthorizedly damaged the property in his possession and illegally took possession of it. The police officials who are accused No. 2 to 5 (in the complaint) being in collusion with the remaining accused persons did not take any action deliberately. It is admitted case of the respondent/complainant that a civil suit filed by him regarding the said property is pending between him and accused No. 6 to 10 (as per complaint) and is subjudice. Whether respondent/complainant is the owner of said property and is in possession of it, the same being subjudice, the Civil Court will look into it and give its findings.*



19. *The alleged incident had taken place on 27.1.11. Under the facts of this complaint no such special evidence has to be dug out which respondent/complainant cannot produce before the Court and if for collection of that evidence investigation by the police is required. Under the circumstances of this case, in my opinion Ld. M.M fell in error by directing the police to register a FIR, since no special evidence has to be dug out, which is only possible during police investigation. The right course before Ld. M.M was to proceed with the complaint u/s. 200 CrPC and thereafter pass an appropriate order.*

20. *In view of the aforesaid reasons, the impugned order directing DCP (East) to get register an FIR and get it investigated from DIU is set-aside. The Ld. M.M is directed to proceed with the complaint u/s. 200 CrPC as per law. Copy of this order with TCR be sent to the concerned Court. Respondent/complainant is directed to appear before Ld. Trial Court on 1.8.13 for further proceedings in his complaint.*

21. *Petition No. 2 and 3 are accordingly allowed. In view of the observation of the High Court in **State Vs. Rameez (Supra)**, it is held that it is not appropriate on the part of State to exonerate its officials without their involvement being properly investigated and when Court is ceased with the matter. Accordingly, petition No. 1 is partly allowed. The record of all the three petitions be consigned to record room."*

32. Upon perusal of the impugned order, it is observed that the reasoning given by the learned ASJ that the learned MM has not acted within its powers under Section 156(3) of the Code to direct a superior officer to



register an FIR as the provision mandates an officer in-charge of the police station to conduct investigation, and not any other person.

33. Therefore, the limited question for adjudication before this Court is whether the learned ASJ was right in setting aside the order dated 15<sup>th</sup> March, 2011, passed by the learned MM.

34. Adverting to the instant case, it is pertinent to note the contentions of the respondents herein that under Section 156(3) of the Code, a Magistrate has no power to direct the concerned DCP to get the investigation conducted from DIU and as per the statutory provision, a Magistrate can only direct the SHO concerned to conduct the investigation.

35. It is also the contention of the respondent-State that if any allegations or contentions made by anyone by filing the complaint against any government official, the settled law is that in such eventuality, a preliminary inquiry against such official should be conducted or if there is specific material available which may establish the involvement of any government official. Mere allegations against the police officials cannot be taken as sufficient evidence to disbelieve an entire institution.

36. Upon perusal of the impugned order, it is observed that no special evidence is produced before the learned ASJ for registering the FIR as the same can be unearthed only during an investigation. However, the learned MM directed the concerned DCP to register an FIR against the accused, which is not the mandate of Section 156(3) of the Code. The reasoning given by the learned ASJ in setting aside the direction to the concerned DCP to register an FIR is that under Section 156(3) of the Code, the Magistrate has



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the power only to direct an officer of the police station to conduct investigation. However, the learned MM erred in passed a direction directing the concerned DCP, an officer of a superior rank, to handover investigation to DIU and register an FIR against the accused. Therefore, the learned ASJ was of the opinion that the learned MM must have proceeded with the complaint under Section 200 of the Code.

37. While passing the impugned order, the learned ASJ dealt with two aspects of law, wherein it stated that *firstly*, the learned MM cannot pass directions to the concerned DCP to register an FIR against the accused and *secondly*, the remedy available with the learned MM given the facts of the present case.

38. Coming to the first aspect, it is a settled position of law that as per Section 156(3) of the Code, the Magistrate has the power to order an “officer of the police station” to conduct requisite investigation. However, the ambit of the said expression i.e., “officer of the police station” has often been misunderstood while exercising the powers under the said provision. Nonetheless, the Hon’ble Supreme Court has passed catena of judgments, including the case of ***CBI v. State of Rajasthan, (2001) 3 SCC 333***, wherein the ambit of Section 156(3) of the Code as well as the said expression has been elaborately discussed. The relevant portion of the said judgment is as follows –

*“6. If the power of a Magistrate to order an investigation by CBI in non-cognizable cases cannot be traced in the above provision, it is not possible to trace such power in any other provision of the Code. What is contained in sub-section (3) of*



*Section 156, is the power to order the investigation referred to in sub-section (1), because the words “order such an investigation as abovementioned” in sub-section (3) are unmistakably clear as referring to the other sub-section. Thus the power is to order an “officer in charge of a police station” to conduct investigation.*

*7. The two expressions “police station” and “officer in charge of a police station” have been given separate definitions in the Code. Section 2(o) of the Code defines “officer in charge of a police station” as under:*

*“ 2. (o) ‘officer in charge of a police station’ includes, when the officer in charge of the police station is absent from the station house or unable from illness or other cause to perform his duties, the police officer present at the station house who is next in rank to such officer and is above the rank of Constable or, when the State Government so directs, any other police officer so present;”*

*8. Section 2(s) defines a “police station” as under:*

*“2. (s) ‘police station’ means any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf;”*

*9. It is clear that a place or post declared by the Government as police station, must have a police officer in charge of it and if he, for any reason, is absent in the station house, the officer who is next in the junior rank present in the police station, shall perform the function as officer in charge of that police station. The primary responsibility for conducting investigation into offences in cognizable cases vests with such police officer. Section 156(3) of the Code empowers a Magistrate to direct such officer in charge of the police station to investigate any cognizable case over which such Magistrate has jurisdiction.*

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*11. This means any other police officer, who is superior in rank to an officer in charge of a police station, can exercise the same powers of the officer in charge of a police station and when he so exercises the power he would do it in his capacity as officer in charge of the police station. But when a Magistrate orders investigation under Section 156(3), he can only direct an officer in charge of a police station to conduct such investigation and not a superior police officer, though such officer can exercise such powers by virtue of Section 36 of the Code. Nonetheless, when such an order is passed, any police officer superior in rank of such officer, can as well exercise the power to conduct an investigation, and all such investigations would then be deemed to be the investigation conducted by the officer in charge of a police station. Section 36 of the Code is not meant to substitute the magisterial power envisaged in Section 156(3) of the Code, though it could supplement the powers of an officer in charge of a police station. It is permissible for any superior officer of police to take over the investigation from such officer in charge of the police station either suo motu or on the direction of the superior officer or even that of the Government.*

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*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.”*

39. In the foregoing extract, it is observed that as per the statutory mandate under Section 156(3) of the Code, the Magistrate is only empowered to direct the in-charge officer of the police station to conduct



investigation and not any officer of a superior rank. It is further observed even if the superior officer proceeds with the investigation, it can be done only if the same is taken *suo moto*, or a direction is passed by a superior officer to do so or by the Government. In either of the situations, the power is not entrusted on the Magistrate under Section 156(3) of the Code to direct a superior officer to conduct investigation and to register an FIR.

40. Therefore, this Court is of the view that the learned ASJ was right in observing that the learned MM was not its power under Section 156(3) of the Code to issue directions to the concerned DCP, who is a senior official, to register an FIR and handover the investigation to the DIU.

41. Adverting to the second aspect of law, it is the contention of the petitioner that the allegations against the concerned police officials involves cognizable offences and therefore, an FIR ought to be registered against them.

42. It is well-settled in law that if the complaint made by the police discloses a cognizable offence, an FIR should be registered. However, if the said FIR is not registered by the police, the remedy available for the complainant is to file an application under Section 156(3) of the Code seeking issuance of direction to the police for registration of the FIR.

43. As already mentioned earlier, a criminal complaint bearing no. 41/2011 was filed along with the application under Section 156(3) of the Code by the petitioner before the learned MM.

44. At this juncture, the learned MM has two options to proceed with the issue at hand – *firstly*, to proceed with the complaint filed, or to record the



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statement of the complainant and other witnesses under Section 202 of the Code and accordingly, dismiss the complaint, or issue notice to the alleged accused as the case may be. *Secondly*, to postpone taking cognizance of the complaint under Section 200 of the Code and send the application under Section 156(3) of the Code to the concerned police station for inquiry or investigation.

45. However, upon perusal of the order dated 15<sup>th</sup> March, 2011, the learned MM did not choose either of the aforementioned available remedies and instead, passed a direction to a superior officer to register an FIR, which is also against the statutory mandate of Section 156(3) of the Code.

46. Furthermore, a perusal of the contents made in the complaint reveals that the petitioner has admitted that he requested the Hon'ble Lieutenant Governor to give sanction to prosecute the respondents herein and accordingly, sent a legal notice under Section 140 of the Delhi Police Act, 1978. The learned MM had the option to call for a report in this regard before passing the impugned order, however, it failed to do so.

47. Moreover, the documents on record as well as the contents of the Status Report reveal that there are civil disputes pending before the concerned Civil Court between the petitioner and the accused individuals *qua* the subject property. It is observed that the filing of criminal complaint by way of application under Section 156(3) of the Code by the petitioner herein is nothing but an attempt to pressurize the concerned police officials to take requisite action.



48. Moreover, it is also the case of the petitioner that the accused individuals unauthorizedly damaged the property in his possession and illegally trespassed the same. Furthermore, the allegations against the concerned police officials, i.e., respondent Nos.2 to 5 in CrI.M.C. 4523/2013, are that they are in collusion with the remaining accused individuals and therefore, no action with respect to the registering of the FIR was taken.

49. Upon perusal of the record, no sufficient evidence to that effect was brought forward by the petitioner and the learned MM was incorrect in passing the direction vide order dated 15<sup>th</sup> March, 2011.

50. Therefore, in view of the foregoing discussion, it is observed that the learned MM has alternate remedies to proceed with the instant matter, especially given the peculiar facts of the case. However, the learned MM erroneously proceeded to dispose of the application by directing the concerned DCP to register an FIR against the accused and handover the investigation to the DIU. It is observed that the said direction cannot be passed as the same is contradictory to the mandate of Section 156(3) of the Code and therefore, the learned MM, instead, had the option of proceeding with the complaint under Section 200 of the Code.

51. Therefore, the learned ASJ was right in directing the learned MM to proceed with the complaint under Section 200 of the Code as no direction can be given to an officer of a superior rank under Section 156(3) of the Code by the Magistrate. It is further observed that the learned ASJ was right in observing that no special evidence has been brought on record for



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registering an FIR against the accused i.e., the individuals involved in the commission of the alleged offence as well as the concerned police officers, as the same can be unearthed during an investigation.

52. This Court, under Section 482 of the Code (now Section 528 of the BNSS), has plenary powers to prevent abuse of process of court and to secure the ends of justice. However, the Court must exercise its powers sparingly, cautiously and in exigent cases.

53. Therefore, taking into consideration the foregoing discussions, this Court is of the considered view that the learned ASJ has not committed any error or illegality in passing the impugned order and therefore, this Court does not find any reason to exercise its inherent powers under Section 528 of the BNSS to grant the reliefs as prayed for.

54. In view of the foregoing discussion, the impugned order dated 17<sup>th</sup> July, 2013 passed by the learned Additional Sessions Judge-01 (East), Karkardooma Courts, Delhi in criminal revision petitions bearing no. 31/2013, 32/2013 and 33/2013, is , hereby, upheld.

55. Accordingly, the instant petitions, being devoid of any merit, stand dismissed along with the pending applications, if any.

56. This order will be uploaded on website forthwith.

**CHANDRA DHARI SINGH, J**

**JANUARY 28, 2025**

Rt/mk/st

*Click here to check corrigendum, if any*

Signature Not Verified

Digitally Signed By: PRAVEEN  
KUMAR BABBAR  
Signing Date: 14.02.2025  
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**CRL.M.C. 4508/2013, CRL.M.C. 4523/2013 & CRL.M.C. 4544/2013**

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