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

Reserved on : 04.08.2023
% Pronounced on : 29.11.2023

\+ **W.P.(CRL) 1210/2023 AND CRL.M.A. 11298/2023**

ANJURI KUMARI ..... Petitioner

Through: Mr. Jai Subhash Thakur, Advocate along with petitioner in person.

versus

THE STATE GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Sanjay Lao, Standing Counsel with Mr. Priyam Aggarwal, Mr. Shivesh Kaushik and Mr. Abhinav Kumar Arya, Advocates.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

J U D G M E N T

RAJNISH BHATNAGAR, J.

1. The petitioner has preferred the present petition under Article 226 of the Constitution of India read with Section 482 Cr.P.C with the following prayers:

(a) To Direct the S.H.O. of P.S.Shahbad Dairy through D.C.P. of Outer District to register the FIR in the complaint sent through speed post no.ED048342242IN on dated 23/04/2022 at P.S.Shahbad Dairy under appropriate provisions of law.

(b) To Direct the S.H.O. of P.S.Shahbad Dairy through D.C.P. of Outer North District to provide protection to the petitioner in the interest of justice.

(c) Pass any other and further order as this Hon'ble Court may deem fit and proper in the present facts and circumstances of the case."

2. The facts in brief are that petitioner herein had filed an application under Section 156(3) of Cr.P.C seeking registration of the FIR and investigation of the case. It was alleged by the complainant/petitioner herein that he had given written complaint to SHO PS Shahbad Dairy against the accused persons/Respondent no.1 to 3 and further given written complaint to DCP stating that he had come in contact with respondent no.1 during lockdown as they are neighbours. The respondent no.1 along with respondent no.2 and respondent no.3 proposed to start core binding business with low investment of Rs.3.5 lacs. Believing the respondent/accused persons, the petitioner herein invested an amount of Rs.2,20,000/- in installments in the manner as detailed in para-10 of his complaint. However, thereafter, the respondent no.1 stopped coming to his shop and refused to give machine. They also stopped picking up his phone calls and stopped replying to his messages. Thus, he has been cheated by the accused persons. Since no action was taken on his complaints, he moved an application under Section 156(3) Cr.P.C before the court of learned MM. The said application was dismissed vide the impugned order dated 14.09.2022. Feeling aggrieved by the same, the petitioner challenged the order dated 14.09.2022 passed by learned MM in a complaint case no. 2116/2020 by filing a revision petition before the Court of Sessions but learned Session Judge vide order dated 11.01.2023 upheld the order passed by the learned MM and dismissed the revision petition.

3. I have heard the learned counsel for the petitioner and learned APP for the State.

4. The Ld. counsel for the petitioner submitted that the inherent power of this Court U/s 482 Cr.P.C is still available and for continuous superintendence, the Court would be justified in interfering with the order which has led to the miscarriage of justice. He further submitted that the object of introduction of the bar in Section 397(3) Cr.P.C is to prevent a second revision so as to avoid frivolous litigation, but the doors of the High Court to a litigant who had failed before the Court of Sessions are not completely closed, and if a "special case" is made out, then such bar ought to be lifted.

5. On the other hand, it is submitted by the Ld. APP for the State that there is no infirmity in the impugned order. It is further submitted that the petition is liable to be dismissed as this Court U/s 482 of the Cr.P.C shall not upset the concurrent findings of the two courts below in the absence of any perversity and the petitioner cannot be allowed to initiate a second revision petition in the garb of Section 482 Cr.P.C.

6. Now a procedural issue has arisen, as to whether the petitioner having already availed the remedy of revision should be allowed to take recourse to Section 482 Cr.P.C as a substitute for virtually initiating a second revisional challenge or scrutiny which is clearly barred U/s 397 (3) Cr.P.C which reads as follows :

> *"(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."*

7. In ***Rajinder Prasad Vs. Bashir***, (2001) 8 SCC 522, the Supreme Court referring to its earlier decision in ***Krishnan Vs. Krishnaveni***, (1997) 4 SCC 241 held that :

> *"...though the power of the High Court under Section 482 of the Code is very wide, yet the same must be exercised sparingly and cautiously particularly in a case where the petitioner is shown to have already invoked the revisional jurisdiction under Section 397 of the Code. Only in cases where the High Court finds that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order was not correct, the High Court may, in its discretion, prevent the abuse of the process or miscarriage of justice by exercise of jurisdiction under Section 482 of the Code. It was further held, "Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of provisions of Section 397(3) or Section 397(2) of the Code."*

8. In ***Kailash Verma vs. Punjab State Civil Supplies Corporation & Anr.***, (2005) 2 SCC 571, the Supreme Court observed thus :-

> *"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."*

9. A learned single judge of this court in ***Surender Kumar Jain vs. State & Anr.***, ILR (2012) 3 Del 99 accepted such objections in another similarly placed petition under Section 482 Cr. PC observing thus :-

> *"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 82 (sic) 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 committed by the revisional court. Reference in this regard can be made to the judgments of the Supreme Court in* ***Madhu Limave v. State of Maharashtra(1977) 4 SCC 551, State of Orissa v. Ram Chander Aggarwal, (1979) 2 SCC 305 : AIR 1979 SC 87, Rai Kapoor v. State (Delhi Administration)1980 Cri. L.J. 202, Krishnan v. Krishnaveni and Kailash Verma v. Punjab State Civil Supplies Corporation (2005) 2 SCC 571****."*

10. In the instant case, learned Magistrate was not satisfied with the prayer made by the petitioner for directions to the police for investigation

under Section 156(3) Cr.P.C, and learned MM observed that on the basis of the enquiry report and material on record there was no need to invoke Section 156(3) Cr.P.C for issuing directions to the SHO to register an FIR and learned MM enumerated the following grounds for arriving to such a conclusion:

a) The identity of proposed accused persons is ascertained.

b) No facts are needed to be unearthed as the same are well within the knowledge of the complainant and can be proved by complainant himself or through summoned witnesses.

c) Custodial interrogation of alleged accused persons is not necessary.

d) The evidence is well within the reach of complainant and no assistance of police is required to gather the same.

e) The facts of the case are not such that would warrant detailed and complex investigation to be carried out by the State Agency.

11. The said view of the magistrate has been affirmed by the Court of Sessions while dismissing the revision petition vide impugned order dated 18.01.2020.

12. In ***M/s Skipper Beverages Pvt. Ltd. Vs. State***, *2001 IVAD Delhi 625"* in para 6 and 7 it has been observed as under :

> *Para-6: Chapter XII of the Code deals with information to the police and its power to investigate the offences. Section 156 of*

the Code included in this chapter speaks of the power of the police officers to investigate cognizable cases and sub clause (3) thereof lays down that any Magistrate empowered under Section 190 of Code may order such an investigation. Chapter XV of the Code deals with complaints to a Magistrate and the procedure to be adopted by the Magistrate after taking cognizance of an offence. This chapter provides an alternative as well as additional remedy to a complainant whose complaint is either not entertained by the police or who does not feel satisfied by the investigations being conducted by the Police.

Para-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 held 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 Vs. State of Madhya Pradesh & Ors."

13. In *"**Subhkaran Luharuka & Anr. Vs. State***, III(2003) DLT (Crl.) 194" wherein it has been observed as follows :

"52A. For the guidance of subordinate Courts, the procedure to be followed while dealing with an application under Section 156(3) of the Code is summarized as under

> *.....Magistrate, before passing any order to proceed under Chapter XII, should not only satisfy himself about the pre-requisites as aforesaid, but, additionally, he should also be satisfied that it is necessary to direct Police investigation in the matter for collection of evidence which is neither in the possession of the complainant nor can be produced by the witnesses on being summoned by the Court at the instance of complainant, and the matter is such which calls for investigation by a State agency. The Magistrate must pass an order giving cogent reasons as to why he intends to proceed under Chapter XII instead of Chapter XV of the Code."*

14. In ***Ramdev Food Products Private Limited vs. State of Gujarat***, MANU/SC/0286/2015, appellant sought directions for investigation under Section 156(3) of the Code. However, Magistrate instead of directing investigation as prayed, thought it fit to conduct further inquiry under Section 202 of the Code and sought report of the Police Sub-Inspector within 30 days. Grievance of the appellant before the High Court was that in view of the allegation that documents had been forged with a view to usurp the trademark, which documents were in possession of the accused and were required to be seized, investigation ought to have been ordered under Section 156(3) of the Code, instead of conducting further inquiry under Section 202 of the Code. In ***Ramdev (supra)***, Supreme Court considered ***Latika Kumari*** and in paras 20 and 22 held as under:-

> *"20 It has been held, for the same reasons, that direction by the Magistrate for investigation Under Section 156(3) cannot be given mechanically.*
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> *In Anil Kumar v. M.K.Aiyappa MANU/SC/1002/2013: (2013) 10 SCC 705, it was observed:*
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> *11. The scope of Section 156(3) Code of Criminal Procedure came up for consideration before this Court in several cases. This Court in Maksud Saiyed case [MANU/SC/7923/2007 :*

(2008) 5 SCC 668] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction Under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Code of Criminal Procedure, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter Under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation Under Section 156(3) Code of Criminal Procedure, should be reflected in the order, through a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.

The above observations apply to category of cases mentioned in Para 120.6 in **Lalita Kumari** (supra)."

"22. Thus, we answer the first question by holding that the direction Under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of

process are cases where the Magistrate has yet to determine "existence of sufficient ground to proceed". Category of cases falling under Para 120.6 in Lalita Kumari (supra) may fall Under Section 202. Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case."

15. In ***Shri Subhkaran Luharuka & Anr. Vs. State & Anr***. ILR (2010) VI Delhi 495, a Bench of coordinate jurisdiction of this court has held thus:-

"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 a discretionary remedy as the provision proceeds with the word „May". The magistrate is required to exercise his mind while doing so. He should pass 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. The issue of jurisdiction also becomes important at that stage and cannot be ignored."

16. In ***Mohd. Salim vs. State*** 175(2010) DLT 473, a learned Single Judge of this court, in para 11, has held thus:-

"11. The use of the expression "may" in Sub-section (3) of Section 156 of the Code leaves no doubt that power conferred upon the Magistrate is discretionary

and he is not bound to direct investigation by the Police even if the allegations made in the complaint disclose commission of a cognizable offence. In the facts and circumstances of a given case, the Magistrate may feel that the matter does not require investigation by the Police and can be proved by the complainant himself, without any assistance from the Police. In that case, he may, instead of directing investigation by the Police, straightaway take cognizance of the alleged offence and proceed under Section 200 of the Code by examining the complainant and his witnesses, if any. In fact, the Magistrate ought to direct investigation by the Police only where the assistance of the Investigating Agency is necessary and the Court feels that the cause of justice is likely to suffer in the absence of investigation by the Police. The Magistrate is not expected to mechanically direct investigation by the Police without first examining whether in the facts and circumstances of the case, investigation by the State machinery is actually required or not. If the allegations made in the complaint are simple, where the Court can straightaway proceed to conduct the trial, the Magistrate is expected to record evidence and proceed further in the matter, instead of passing the buck to the Police under Section 156(3) of the Code. Of Course, if the allegations made in the complaint require complex and complicated investigation of which cannot be undertaken without active assistance and expertise of the State machinery, it would only be appropriate for the Magistrate to direct investigation by the Police. The Magistrate is, therefore, not supposed to act merely as a Post Office and needs to adopt a judicial approach while considering an application seeking investigation by the Police."

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.

18. Therefore, this Court is of the view that no special case has been made out for this Court to exercise its extraordinary jurisdiction under Section 482 Cr.P.C. or under Article 226 of the Constitution of India. There is no miscarriage of justice or illegality in the approach adopted by the two courts below nor any such has been pointed by the petitioner.

19. In these facts and circumstances, I do not find any palpable absurdity or perversity in the impugned order, which may require to be corrected or set right by this Court, in exercise of its inherent jurisdiction U/s 482 Cr.P.C. The petition is, therefore dismissed.

RAJNISH BHATNAGAR, J

NOVEMBER 29, 2023/ib