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

Reserved on: 23.10.2018
Date of Decision: 01.11.2018

\+ **<u>Crl.M.C. No.5336/2014</u>**

ANOOP KUMAR ..... Petitioner

Through Mr.Vinay Jaidka, Adv.

versus

STATE & ANR. ..... Respondents

Through Mr.Mukesh Kumar, APP.
Mr.Parmod Kr.Sharma with
Mr.Manish Kr.Sharma, Advs for R-2.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

<u>REKHA PALLI, J</u>

1. By this petition under Section 482 Cr.P.C., the petitioner seeks quashing of the order dated 13.08.2014, passed by the learned Additional Sessions Judge, Rohini Courts, dismissing Criminal Revision Petition No.63/2013 filed by the petitioner for laying challenge to the order dated 13.09.2013 passed by the learned Metropolitan Magistrate, whereunder the petitioner’s application under Section 156(3) Cr.P.C. was rejected and he was further declined any opportunity to lead pre-summoning evidence.

2. A brief statement of the relevant facts is considered necessary. It is the petitioner’s case that the respondent no.2 by claiming to be the sole and exclusive owner of a plot of land measuring 1 Bigha 4

Biswas, bearing Khasra No.651, situated in the revenue estate of Village Kadipur, Delhi, approached him for sale of the same. Based on the representation made by respondent no.2 to the effect that he was the sole and exclusive owner of the aforesaid premises, the petitioner agreed to purchase the said plot for a total consideration of Rs.1,10,000/-. Upon the petitioner duly paying the total sale consideration, the respondent no.2 executed all the requisite documents in his favour, including the Agreement to Sell, irrevocable General Power of Attorney, Will and Affidavit of Receipt all dated 24.07.1998 and handed over the possession of the plot to him.

3. The petitioner's further case is that though he enjoyed the possession of the plot for almost nine years from July, 1998, no sale deed was executed by the respondent no.2 in his favour, despite repeated requests in this regard. The petitioner further claims that in August, 2007, the labour working on his plot was forcibly removed by the respondent no. 2 and on making enquiries, he learnt that the respondent no.2 vide General Power of Attorney dated 15.01.1997 had already sold the said plot to one Shri Ashwani Maini, who in turn had sold the property to one Smt.Beena Rani Goela.

4. The petitioner further claims that on being dispossessed from the said plot, he made a complaint dated 23.10.2017 to the SHO, Police Station Swaroop Nagar, followed by repeated representations to the Commissioner of Police, but to no avail. Therefore, he was compelled to file an application under Section 156(3) Cr.P.C. before the learned Metropolitan Magistrate (hereinafter referred to as "MM"), seeking a direction to the investigating authorities to register

a FIR against respondent no.2. Along with his application under Section 156(3) Cr.P.C., the petitioner annexed copies of the following documents:-

(i) Agreement to Sell dated 24.07.1998

(ii) General Power of Attorney dated 24.07.1998

(iii) Will dated 24.07.1998

(iv) Affidavit of Receipts dated 24.07.1998

(v) Complaint dated 23.10.2007 addressed to the SHO, P.S. Swaroop Nagar

(vi) Complaint dated 23.05.2008 addressed to the Commissioner of Police, New Delhi

(vii) Letter dated 15.07.2008 addressed to the SHO, P.S. Swaroop Nagar

(viii) Reminder dated 13.06.2008 sent to the SHO, P.S. Swaroop Nagar and other authorities.

5. Upon the petitioner filing the aforesaid application under section 156(3) CrPC, the learned MM sought an Action Taken Report from the police, pursuant whereto two reports dated 05.06.2012 and 29.06.2013 were filed by the police. After considering the two reports, the learned MM vide his order dated 13.09.2013, dismissed the petitioner's application by observing that the grounds taken by the complainant for the registration of a FIR, did not seem to be genuine and the contentions raised by the complainant as also his counsel were not sufficient to term the act, if any, of the respondent no.2 as a "criminal offence". The learned MM also observed that he was not

inclined to grant any opportunity to the petitioner to lead pre-summoning evidence in the case, as he was of the opinion that no offence at all has been committed by the respondent no. 2.

6. Aggrieved by the order passed by the learned MM, the petitioner preferred a revision petition being *Criminal Revision No. 63/2013* before the learned Additional Sessions Judge, Rohini Courts (hereinafter referred to as "ASJ"), which has also been dismissed vide order dated 13.08.2014, thus leading to the filing of the present petition.

7. Mr. Vinay Jaidka, learned counsel appearing for the petitioner submits that the orders passed by the learned ASJ and learned MM, are contrary to the record as there were specific allegations made in the complaint of cheating, preparation/execution of false and fabricated documents, criminal trespass and taking of forcible possession of the plot in question, which disclosed the commission of cognizable offences by the respondent no.2 *inter alia* under Sections 420/447/448/451/461/471/506 of the IPC. However, despite the fact that the complaint clearly discloses the commission of cognizable offences, the learned MM has failed to take cognizance of the same and the learned ASJ has erroneously upheld the order of the learned MM without appreciating the facts as also the settled legal position that once the complaint itself discloses the commission of a cognizable offence, a FIR must be registered.

8. Mr.Jaidka, further submits that the learned MM has not only wrongly rejected the petitioner's application under Section 156(3) Cr.P.C. but without any basis, has also declined to grant him an

opportunity to lead pre-summoning evidence under Section 200 Cr.P.C, despite the petitioner's specific prayer in this regard. Furthermore, the learned ASJ while upholding the order of the learned MM, has at this premature stage when no evidence has been led, come to a conclusion that the respondent no.2 did not have any dishonest intention. He submits that merely because the respondent no. 2 had executed a number of documents on 24.07.1998, in favour of the petitioner at the time of handing over possession of the property to him, it could not be presumed by the Courts below that he did not have any dishonest intention.

9. Mr.Jaidka further contends that both the learned MM and the learned ASJ, have committed a grave error in law by not affording an opportunity to the petitioner to lead pre-summoning evidence under Section 200 Cr.P.C. as it was not open to the learned MM to dismiss the petitioner's application without recording the statement of the petitioner/complainant and his witnesses.

10. On the other hand, Mr.Mukesh Kumar, learned APP and Mr.Parmod Kumar Sharma, learned counsel appearing on behalf of the respondent no.2, both support the impugned order and submit that once the learned MM on the basis of the petitioner's application under Section 156(3) Cr.P.C., was convinced that there was nothing to show that the respondent no.2 ever had any dishonest intention or at any point of time cheated the petitioner, there was no justification for either ordering any further investigation by the police or for giving an opportunity to the petitioner to lead pre-summoning evidence to show the commission of an offence by the respondent no.2.

11. Mr.Sharma further submits that the facts emerging from the record filed by the petitioner himself, clearly show that he had been handed over possession of the property in question in 1998 itself after execution of all the relevant documents and merely because the petitioner now claims that he has been dispossessed by the respondent no. 2, the same cannot at all be a ground to initiate criminal proceedings for harassing the respondent no.2 who after having sold the property to the petitioner, has no concern with the said property. In fact, the respondent no.2 even today reiterates that he had sold the property only to the petitioner and has no existing connection with the subject property. Furthermore, the respondent no.2 denies that he had executed any General Power of Attorney or, in any manner, authorised anyone to execute the sale deed dated 08.05.2007 in favour of Ms.Beena Rani Goela.

12. In the light of the aforesaid facts, both Mr.Kumar and Mr.Sharma submit that the plea of the petitioner that once the Court did not find any reason to allow the petitioner's application under Section 156(3) Cr.P.C., it was incumbent upon the learned MM to permit him to lead pre-summoning evidence, is wholly misconceived. They submit that there is no reason as to why the learned MM ought to have allowed the petitioner's prayer to lead pre-summoning evidence when the version of the petitioner taken on its face value, in itself shows that no offence of any kind had been committed by the respondent no.2. Therefore, they submit that the learned ASJ has rightly dismissed the petitioner's revision petition and the present petition is also similarly liable to be dismissed with costs.

13. I have heard the learned counsel for the parties and perused the record. At the outset, it may be noted that though the petitioner has also raised a plea that based on the evidence already available, his case was fit for directing the police to investigate the matter and register a FIR, his main submission before this Court is that even if the learned MM did not find any reason to exercise his power under Section 156(3) Cr.P.C. to direct an investigation and the registration of a FIR by the police, it was incumbent upon him to permit the petitioner to lead pre-summoning evidence in accordance with Section 200 Cr.P.C. and, only then decide the fate of the petitioner's application instead of straightaway dismissing the same by mechanically relying on the Action Taken Report filed by the Police.

14. Thus, the sole and short issue which needs to be determined in the present petition is whether in every case it is incumbent upon a Magistrate to allow a complainant to lead pre-summoning evidence, even when after examining an application under section 156(3) CrPC and the materials placed on record in support thereof, he comes to a conclusion that no offence is made out as per the averments of the complainant himself/herself. In other words, while considering an application under Section 156(3) Cr.P.C., is it incumbent upon a Magistrate to record the statements of the complainant and his witnesses in accordance with Section 200 Cr.P.C. before dismissing the said application on the ground that the averments made therein alongwith the supporting documents, do not disclose the commission of any cognizable offence?

15. Before dealing with the aforesaid issue, it may be useful to refer

to Sections 156 and 200 of the Code of Criminal Procedure, 1973, which read 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.*
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> ***200. Examination of complainant.***
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> *A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate.*
>
> *Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-*
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> *(a) if a public servant acting or- purporting to act in the discharge of his official duties or a Court has made the complaint; or*
>
> *(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192.*
>
> *Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them."*

16. I have given my anxious consideration to the plea of the learned counsel for the petitioner that it is incumbent upon the Magistrate in every case to permit the complainant to lead pre-summoning evidence in order to arrive at a conclusion as to whether any offence is made out, but I am unable to persuade myself to agree with the same. A bare perusal of Section 200 itself reveals that it is only imperative for a Magistrate to record the statements of the complainant and his/her witnesses when he has taken cognizance of the offence(s) in question. However, when no such cognizance has been taken, neither Section 156(3) nor Section 200 can be read to caste a binding mandate on the Magistrate to record pre-summoning evidence before dismissing an application under section 156(3) Cr.P.C., when the averments made in the said application alongwith the documents in support thereof make it crystal clear that there is no ground for putting the investigative machinery into motion. To hold anything to the contrary would, in my opinion, lead to a situation where the Courts would be unnecessarily burdened and precious judicial time would be wasted in recording evidence qua facts that are already apparent from the record.

17. In the facts of the present case, the documents relied upon by the petitioner in his application under section 156(3) CrPC, in themselves make it abundantly clear that the respondent no.2 had executed all the relevant documents in favour of the petitioner on 24.07.1998 and had also contemporaneously handed over possession of the plot to him. The factum of the respondent no.2 having handed over possession of the plot to the petitioner in July 1998 itself, is not denied by the petitioner and, therefore, merely because the petitioner

claims that he was forcibly dispossessed from the plot almost after 10 years, can in no manner show any dishonest intention on the part of the respondent no.2 or lead to any presumption that the respondent no.2 had already sold the property to someone else in 1997 itself, as is sought to be contended by the petitioner. In fact, the consistent stand of the respondent no. 2 before this Court has been that he had transferred his rights and interest in the property only to the petitioner and thereafter, he has had no concern with the subject property whatsoever.

18. It is, thus, evident that the documents filed by the petitioner himself, show that there were no mala fides on the part of the respondent no. 2 and there is nothing to show the commission of any criminal offence by him. Therefore, in my opinion, once the documents filed by the petitioner in support of his application under Section 156(3) Cr.P.C. clearly showed that respondent no. 2 could not be charged with any cognizable offence, there was no binding mandate on the learned MM to still permit him to lead pre-summoning evidence in order to demonstrate what was already evident from the record, i.e., there is nothing to show the commission of a cognizable offence by respondent no. 2. On the contrary, I am of the view that once the petitioner's complaint and the documents relied upon in support thereof failed disclose any dishonest intention or criminality on the part of the respondent no. 2, the Courts below were justified in not prolonging the matter by unnecessarily allowing the petitioner to lead any pre-summoning evidence.

19. For the aforementioned reasons, the petition being meritless is dismissed with no order as to costs. However, it is clarified that the dismissal of the present petition will not effect the rights of the petitioner to pursue his civil remedies, as may be advised.

(REKHA PALLI)
JUDGE

NOVEMBER 01, 2018
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