

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

Date of Decision : 06.12.2021

+ **CRL.M.C. 3147/2021, CRL.M.A. 19489/2021 & CRL.M.A. 19490/2021**

IN THE MATTER OF:

SH. NARENDRA BABU GAUTAM Petitioner

Through: Mr. Harish Chand Sharma, Advocate.

Versus

THE STATE & ANR. Respondents

Through: Ms. Neelam Sharma, APP for State.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. on behalf of the petitioner/complainant assailing the order dated 18.01.2020 passed by the learned Metropolitan Magistrate, Shahdara, Karkardooma Courts, Delhi in CC No. 1866/16, whereby the petitioner's application filed under Section 156(3) Cr.P.C. was dismissed, as well as the order dated 11.10.2021 passed by the learned Addl. Sessions Judge-04, Shahdara, Karkardooma Courts, Delhi in CR No. 34/2020, whereby the revision petition filed by the petitioner was dismissed and order dated 18.01.2020 upheld. The petitioner also seeks a direction to the learned Magistrate to send the complaint case to the concerned SHO/IO for registration of appropriate FIR, besides a stay of

the proceedings pending before the learned Magistrate in the aforesaid complaint case.

2. Vide order dated 18.01.2020, the learned Metropolitan Magistrate, while dismissing the application of the petitioner filed under Section 156(3) Cr.P.C., had taken cognizance of the offence under Section 190(1)(a) Cr.P.C. and listed the matter for pre-summoning evidence.

3. Brief facts, as borne out from the material placed on record, are that the marriage between the petitioner and respondent No. 2 was solemnized on 01.05.1995. On account of matrimonial discord, respondent No. 2 left the matrimonial home on 22.02.2008 and started residing at her parental house. A dispute arose between the parties pertaining to property bearing No. *Flat No.C-5, Gaurav Apartments, Plot No. 1, I.P. Extension, Patparganj, New Delhi* (hereinafter referred to as 'the said property'), which is stated to be owned by the present petitioner, along with his two brothers, namely *Raj Bahadur Dohare* and *Ram Naresh Dohare*.

One room of the said property was let out by the petitioner to one *Ms. Parvati Nagle* at monthly rent of Rs.4,500/- for the period commencing from 04.02.2015 to 04.12.2015. On 04.04.2015, a complaint came to be filed by the petitioner at Police Station Madhu Vihar, Delhi, which was registered vide DD No. 4B dated 04.04.2015. In the complaint, it was alleged that the petitioner's wife was trying to get the said property vacated by criminal means, in furtherance of which, two persons had come to the said property on 03.04.2015 in the petitioner's absence and broken the main lock as well as the locks of the rooms, with an intention to take forcible possession of the said property. It was further alleged that the said persons had also broken the lock of the tenant's room and committed theft of certain valuable items

of the petitioner and his tenant. When the police did not take any action on his complaint, the petitioner filed a Criminal Complaint under Section 156(3) Cr.P.C. read with Section 200 Cr.P.C. seeking direction for registration of the FIR under Sections 380/406/452/506 IPC, on the allegation that respondent No. 2 and other accused persons had taken forcible possession of the said property in his absence.

On notice being issued, an Action Taken Report (ATR) was requisitioned. In the ATR, it was stated that during enquiry, respondent No. 2 claimed to be in continuous possession of the said property, alongwith the petitioner. She also claimed to have keys of the said property. After considering the material placed on record as well as the ATR submitted on behalf of the State, the learned Metropolitan Magistrate came to the conclusion that custodial interrogation of respondent No. 2 was not required, as the entire evidence was within the control of the petitioner. Since no investigation on the part of the police was required, the petitioner's application under Section 156(3) Cr.P.C. was dismissed. However, the petitioner was permitted to lead pre-summoning evidence. On the petitioner's challenge of the aforesaid order, the learned Addl. Sessions Judge concurred with the view taken by the learned Magistrate and upheld the same.

4. Learned counsel for the petitioner submits that police investigation is required in the present case and the Courts below have erroneously dismissed the petitioner's complaint. It is contended that on the day of the incident, respondent No. 2 had illegally tried to take forcible possession of the said property in absence of the petitioner by resorting to criminal means. In this regard, learned counsel has placed reliance on certain photographs as

well as on the entry gate register of the concerned society and further submitted that the same show that respondent No. 2, alongwith *Vikas and Dharam Singh* (whose names with mobile numbers were mentioned in the entry gate register), had committed the alleged offence.

5. Learned APP for the State, on the other hand, has supported the impugned orders. It is submitted that the Courts below have rightly arrived at a consistent conclusion that the entire evidence being in possession of the petitioner, no investigation by the police is required in the present case.

6. I have heard learned counsels for the parties and perused the entire material placed on record.

7. Before proceeding to analyze the submissions made, I deem it expedient to recapitulate the position of law on the issue arising in the present case, which has been expounded by the Supreme Court in H.S. Bains, Director, Small Saving-Cum Deputy Secretary Finance, Punjab, Chandigarh v. State (Union Territory of Chandigarh) reported as **(1980) 4 SCC 631** and CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd. and Another reported as **(2005) 7 SCC 467**.

8. In H.S. Bains (Supra), the Supreme Court had held:-

"6. It is seen from the provisions to which we have referred in the preceding paras that on receipt of a complaint a Magistrate has several courses open to him. He may take cognizance of the offence and proceed to record the statements of the complainant and the witnesses present under Section 200. Thereafter, if in his opinion there is no sufficient ground for proceeding he may dismiss the complaint under Section 203. If in his opinion there is sufficient ground for proceeding he may issue process under Section 204. However, if he thinks fit, he may postpone the issue of process and either enquire into the case himself or direct an investigation to be made by a police officer or such other person as he thinks fit for the

purpose of deciding whether or not there is sufficient ground for proceeding. He may then issue process if in his opinion there is sufficient ground for proceeding or dismiss the complaint if there is no sufficient ground for proceeding. On the other hand, in the first instance, on receipt of a complaint, the Magistrate may, instead of taking cognizance of the offence, order an investigation under Section 156(3). The police will then investigate and submit a report under Section 173(1). On receiving the police report the Magistrate may take cognizance of the offence under Section 190(1)(b) and straight away issue process. This he may do irrespective of the view expressed by the police in their report whether an offence has been made out or not. The police report under Section 173 will contain the facts discovered or unearthed by the police and the conclusions drawn by the police therefrom. The Magistrate is not bound by the conclusions drawn by the police and he may decide to issue process even if the police recommend that there is no sufficient ground for proceeding further. The Magistrate after receiving the police report, may, without issuing process or dropping the proceeding decide to take cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record the statements upon oath of the complainant and the witnesses present under Section 200 of the Criminal Procedure Code and thereafter decide whether to dismiss the complaint or issue process. The mere fact that he had earlier ordered an investigation under Section 156 (3) and received a report under Section 173 will not have the effect of total effacement of the complaint and therefore the Magistrate will not be barred from proceeding under Sections 200, 203 and 204. Thus, a Magistrate who on receipt of a complaint, orders an investigation under Section 156(3) and receives a police report under Section 173(1), may, thereafter, do one of three things: (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence under Section 190 (1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (3) he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. If he adopts the third alternative, he may hold or direct an inquiry under Section 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be."

9. While citing with approval the decision in H.S. Bains (Supra), the Supreme Court in Vasanti Dubey v. State of Madhya Pradesh reported as **(2012) 2 SCC 731**, had also expounded on the issue under consideration as follows:-

“20. ...

‘1. When a Magistrate receives a complaint, he may, instead of taking cognizance at once under Section 190(1)(a) direct a police investigation under Section 156(3) ante;

2. Where, after completion of the investigation, the police sends an adverse report under Section 173(1), the Magistrate may take any of the following steps:

(i) If he agrees with police report, and finds that there is no sufficient ground for proceeding further, he may drop the proceeding and dismiss the complaint.

(ii) He may not agree with the police report and may take cognizance of the offence on the basis of the original complaint, under Section 190(1)(a) and proceed to examine the complainant under Section 200.

(iii) Even if he disagrees with the police report, he may either take cognizance at once upon the complaint, direct an enquiry under Section 202 and after such enquiry take action under Section 203. However, when the police submits a final report or closure report in regard to a case which has been lodged by the informant or complainant, the Magistrate cannot direct the police to straightway submit the charge-sheet as was the view expressed in Abhinandan Jha which was relied upon in Ram Naresh Prasad.”

10. In Madhao and Another v. State of Maharashtra and Another reported as **(2013) 5 SCC 615**, it was further held as under:

“18. When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a

matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence itself. As said earlier, in the case of a complaint regarding the commission of cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3)."

11. Adverting to the facts of the present case, it is noted that at the time of the incident, there existed matrimonial discord as well as a prior dispute with respect to possession of the said property between the petitioner and respondent No. 2. Both the parties have claimed ownership of the said property and as per the aforementioned ATR, both the petitioner as well as respondent No. 2 were in possession of keys thereof.

12. It is worthwhile to note that by way of an application filed on 20.05.2017, the petitioner had sought to bring on record a pen drive containing CCTV footage of the incident and alleged that four persons in total, i.e., respondent No. 2, her daughter and two persons, namely *Vikas* and *Dharam Singh*, had committed the offence.

13. During arguments, learned counsel for the petitioner has submitted that the identity of the two persons/assailants, who had accompanied respondent No.2 and her daughter on 03.04.2015, needs to be ascertained and police investigation is required for the same. However, as noted above, in the application dated 20.05.2017 filed by the petitioner himself, the names of the two persons/assailants were mentioned as *Vikas* and *Dharam Singh*. Further, for establishing the identity of the aforesaid two persons, the petitioner himself has placed reliance on the entry gate register of the

concerned society, wherein the names as well as mobile numbers of the said persons are mentioned. Noticing the same, the learned Metropolitan Magistrate had concluded that neither custodial interrogation nor police investigation was required in the present case, more so, as the entire evidence was in possession of the petitioner. In revision, the Sessions Court also reached the same conclusion and upheld the order of the learned Magistrate.

14. In view of the foregoing analysis and the exposition of law cited hereinabove, this Court is also of the view that the learned Magistrate rightly dismissed the petitioner's complaint, took cognizance under Section 190(1)(a) Cr.P.C. and proceeded to examine the petitioner under Section 200 Cr.P.C. by listing the matter for pre-summoning evidence. There is no gainsaying that if any enquiry is required at a later stage, the concerned Court will be empowered to hold the same under Section 202 Cr.P.C.

15. Accordingly, as no illegality or perversity in the impugned orders is discernible, the same are upheld. The present petition, being devoid of any merits, is dismissed. Miscellaneous applications are disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 06, 2021

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