

**Vikrant Kapoor Vs. the State and ors**

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**Court :** Delhi

**Decided On :** Jan-27-2012

**Appellant :** Vikrant Kapoor

**Respondent :** The State and ors

**Judgement :**

\* THE HIGH COURT OF DELHI AT NEW DELHI + CrI.M.C. No. 3918/2009  
Reserved on: 12.01.2012 Pronounced on: 27.01.2012 VIKRANT KAPOOR .....  
PETITIONER Through: Mr. Harpreet Singh, Mr. Sanjay Bhardwaj, Mr. Rajinder  
Singh, Advocates. Versus THE STATE and ORS. .... RESPONDENT Through:  
Ms.Fizani Husain, APP. Mr.Manish Sharma, Advocate. CORAM: HON'BLE MR.  
JUSTICE M.L. MEHTA M.L. MEHTA, J..

1. This petition is filed under Section 482 Cr PC read with Article 227 of the Constitution of India challenging the order dated 8.9.2009 of learned ASJ in CrI.Rev.P. 254/2009 whereby the revision petition filed by the petitioner was dismissed and also challenging the order dated 10.7.2009 of learned Metropolitan Magistrate where the application of the petitioner filed under Section 156(3) Cr PC was dismissed..

2. The petitioner herein had filed a complaint on 25.5.2008 with P.S. Kotla Mubarakpur alleging that the respondent No.

2. in connivance with respondent Nos. 3, 4 and 5 had conspired to misappropriate Flat No. 505, Ground Floor, Sunhari Bagh Apartments, Sector 13, Rohini, Delhi by Crl.M.C. 3918/2009 *Page 1 of 5* applying for mutation of the said property in DDA. The petitioner had alleged that the property belonged to late Mrs. Swaran Kapoor (grandmother of the petitioner) and was bequeathed to the petitioner exclusively. The petitioner alleged that respondent No.

2. while applying for said mutation in DDA concealed the second page of the will wherein the fact of the property being bequeathed to the petitioner was mentioned. However, no FIR was registered by the police..

3. On 15.7.2008, the petitioner addressed a letter to the concerned DCP about non-registration of FIR by the police. On 24.3.2009, the petitioner filed before the Metropolitan Magistrate a complaint under Section 200 Cr PC along with an application under Section 156(3) Cr PC. The application of the petitioner was dismissed by the learned M.M., vide his order dated 10.7.2009 expressing the view that it was not a case where investigation was required by the police and asked the petitioner to lead pre-summoning evidence..

4. Aggrieved by the said order, the petitioner filed a criminal revision before the court of ASJ which came to be dismissed vide the impugned order dated 8.9.2009..

5. The impugned orders have been assailed by the petitioner on the ground that the application of the petitioner has been dismissed without assigning any reason as to why the case was not a fit case for investigation by the police and the evidence showing the commission of cognizable offences by respondent Nos.

2. to 5 are the part of the record maintained by DDA and Sub-Registrar, Amritsar which cannot be collected by the petitioner and can only be unearthed through the police investigation..

6. I have heard learned counsel for the petitioner and respondent and perused the record. Crl.M.C. 3918/2009 Page 2 of 5.

7. The main grievance of the petitioner is that learned M.M. ought to have issued directions under Section 156(3) Cr PC for the registration of the FIR instead of taking cognizance of the complaint and adjourning the case for pre-summoning evidence..

8. In Mohd. Yusuf Vs. Afaq Jahan and Anr., AIR 2006 SC 705, the difference between investigation as envisaged under Section 156(3) Cr PC and one under Section 202 Cr PC are highlighted and it was also explained that the Magistrate need not order any such investigation under Section 156(3) Cr PC if he proposes to take cognizance of the offence. Once he takes cognizance of the offence, he has to follow the procedure envisaged in Chapter XV Cr PC..

9. In Meenakshi Anand Sootha Vs. State , 2007 (4) JCC 3230 Delhi, the learned M.M. dismissed the application under Section 156(3) Cr PC for giving direction to SHO to investigate the matter and instead took cognizance of the case and proceeded with the complaint case of the complainant. On facts the following observations were made by this Court: "10. It is well settled that under Section 156(3), Cr PC, the Magistrate has not to pass the order mechanically and has to apply his judicial mind. On this point, decision of this Court, M/s. Skipper Beverages Pvt. Ltd. v. State 2001 IV AD (Delhi) 625, may be referred to in which it was held: It is true that Section 156(3) of the Code empowers to Magistrate to direct the police to register a case and initiate investigation 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 order under Section 156(3) of the Code." CrI.M.C. 3918/2009 Page 3 of 5.

10. In the light of Meenakshi Anand case (Supra), the learned M.M. and ASJ have exercised judicial discretion and taken cognizance of the offence and adjourned the matter for pre-summoning evidence..

11. In case of Minu Kumari and Another Vs. State of Bihar and Others, (2006), 4 SCC 359, the Supreme Court observed thus: "When the information is laid with the Police, but no action in that behalf is taken, the complainant is given power under

Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in *All India Institute of Medical Sciences Employees' Union (Reg.) through its President v. Union of India and others* (1996 (11) SCC 582). It was specifically observed that a writ petition in such cases is not to be entertained".

12. In the light of the above pronouncements, it cannot be said that the learned M.M. and ASJ committed any illegality by rejecting the application of the petitioner for registration of FIR..

13. The plea of the petitioner that the documentary evidence that needs to be adduced by him cannot be recovered without the help of the police is without any merit as this record being known to the petitioner can be summoned and got produced in evidence by the petitioner before the learned M.M..

14. The powers of High Court under Section 482 Cr PC are to be exercised sparingly and not as a matter of routine. Inherent powers of High Court under CrI.M.C. 3918/2009 *Page 4 of 5* Section 482 Cr PC are meant to add ex debita justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of court..

15. In *Janata Dal Vs. H.S.Chowdhary*, (1992) 4 SCC 305, the Supreme Court observed that in what circumstances the inherent powers should be exercised: "132 The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be

exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plentitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles" ..

16. Further, in B.S.Joshi Vs. State of Haryana, (2003) 4 SCC 675, the Supreme Court reiterated the legal position that the Court's inherent powers have no limit, but should be exercised with utmost care and caution. Inherent powers must be utilized with the sole purpose to prevent the abuse of the process of the court or to otherwise secure the ends of justice..

17. In the light of the above judicial pronouncements and the facts and circumstances of the case, I do not find any illegality or impropriety in the impugned orders of the courts below..

18. The petition is accordingly dismissed. M.L. MEHTA, J. JANUARY 27, 2012/akb  
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