



2024:DHC:8284



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

Reserved on: 2nd August, 2024
Pronounced on: 25th October, 2024

+ W.P.(CRL) 1169/2017 & CRL.M.A. 6592/2017 (Stay)

SATPAL KALRA & ANR

.....Petitioners

Through: Mr. A. Mishra, Mr. Sahil and Mr.
Nidhish Kumar, Advocates.

versus

GOVT OF NCT OF DELHI & ANR

.....Respondents

Through: Mr. Amol Sinha, ASC (Criminal) for
the State with Mr. Kshitiz Garg,
Advocate.
SI Rahul Lamba, DIU/South.
Mr. Sanjay Dewan and Mr. Anish
Dewan, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present writ petition has been filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter, 'Cr.P.C.') and seeks the quashing of FIR No. 273/2016 under Sections 420/406/506/120B of the Indian Penal Code, 1860 (hereinafter, 'IPC') registered at P.S. Chittaranjan Park, Delhi and the proceedings emanating therefrom.



BACKGROUND

2. A complaint under Section 200 Cr.P.C. and an application under Section 156(3) of the Cr.P.C. was filed at the instance of Sh. Vishal Diwan ('Complainant/Respondent No.2') on 23rd July, 2016 before the Ld. CMM, Saket Courts, Delhi against Petitioner No. 2, Varun Kalra.

3. On 27th September, 2016, the aforesaid application under Section 156(3) Cr.P.C. was withdrawn by Respondent No. 2. Subsequently, the Id. Metropolitan Magistrate *vide* order dated 09th November 2016 recorded that the abovementioned complaint was also dismissed as withdrawn at the instance of Respondent No. 2.

4. FIR No. 273/2016, which is the subject matter of the present case was registered at the instance of Respondent No. 2, Sh. Vishal Diwan at P.S. Chittaranjan Park on 18th October, 2016 under Sections 420/406/506 IPC. The allegations made in the FIR are set out as under:

- i. It is alleged by Respondent No. 2 that the Petitioners were well acquainted to him for more than 10 years, and claimed themselves to be the Directors of SPL Marketing Private Limited. Sometime in April 2014, Varun Kalra (Petitioner No. 2) had approached him to invest money in his company for the purpose of starting a new business venture of importing cooling towers and its components.
- ii. It is alleged that accused/Petitioner No. 2 induced Respondent No. 2 to firstly pay Rs. 10 lakhs by way of cash on 10th June, 2014. Later, on 04th August, 2014, Petitioner No. 2 approached him again seeking the payment of some more amount, and, accordingly, Respondent No. 2 paid an



additional sum of Rs. 9 lakhs. The payment of Rs. 9 lakhs were paid by way of Rs. 8 lakhs in cash and Rs. 1 lakh by way of Cheque bearing No. 0000012 dated 05th August 2014. In this regard, Petitioner No. 2 brought pre-printed documents as a “loan agreement” dated 04th August 2014 and “promissory note” dated 04th August 2014 on which he had signed and affixed his thumb impressions.

- iii. It was further alleged that Respondent No. 2 paid another sum of Rs. 2 lakhs by way of Cheque No. 0291721 dated 16th December, 2014 which was transferred in the account of Petitioner No. 2 bearing Account no. 16621000009250. Thus, a total sum of Rs. 21 lakhs were paid by the Complainant to Petitioner No. 2.
- iv. Further, the Complainant alleged that when he demanded from Petitioner No. 2 to return the amounts, paid by him, Petitioner No. 2 transferred a sum of Rs. 2.5 lakhs stating it to be share/return/entitlement over the investment made by Respondent No. 2. Subsequently, two cheques of Rs. 9 lakhs and Rs. 10 lakhs, bearing Nos. 000012 and 000017 respectively drawn on A/c No. 16621930003106, HDFC Bank Ltd., N-13, Kalkaji Branch, New Delhi were given to Respondent No. 2 towards discharge of the liability against the principal amount of Rs. 19 Lakhs paid by Respondent No. 2.
- v. It is stated that the aforementioned cheques were post-dated and payable in December 2015. Cheque No. 000012 was deposited on 3rd December, 2015 and Cheque No. 000017 was deposited in bank on 29th January, 2016 by Respondent No. 2. Once the cheques were presented in the bank, they were



dishonoured by the banker of the accused/Petitioner for the reason of “*drawer signature differs/AUTH TO OPERATE A/C not reached.*”

- vi. It is alleged that the cheques were presented by Petitioner No. 2 with different signatures to the Complainant intentionally, knowing that the cheques would not be cleared by the bank due to signatures being contrary to the approved signatures and neither did the concerned bank account had sufficient balance for the cheques to be cleared, displaying the intention to cheat and defraud Respondent No. 2.
 - vii. The Complainant also alleged that Petitioner No. 1, who is the father of accused/Petitioner No. 2 and one of the directors of SPL Marketing Private Limited avoided to accept the liability for the payment of money. He further states that he had been threatened by Petitioner No. 1 stating that if he does not withdraw his complaints against him and Petitioner No. 2, he would get the Complainant killed and his body will not be found by his family.
5. Respondent No. 2 had also filed a Complaint Case no. 632042/2016 under the Negotiable Instruments Act, 1881 before the Ld. MM (NI Act)-/SE/ND, Civil Judge, Saket Court, New Delhi.
6. It is stated that during the investigation the accused/Petitioner No. 2 was called for investigation after a notice was sent under Section 41-1(A) of the Cr.P.C., however, he did not join the investigation. Petitioner No. 1, who is the father of the accused/Petitioner No. 2 stated that his son was not present in India. Consequently, look out circular of Petitioner No. 2 was opened after which he returned to India and joined the investigation.



7. Upon completion of investigation, a chargesheet was filed *qua* the accused /Petitioner No.2 on 18th October, 2018 under Section 420 of IPC and Petitioner No. 1 was not arrayed as an accused.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

8. Learned Counsel for the Petitioners submit that the short question which requires adjudication in the present case before this Court is whether the FIR under question can be allowed to be continue or deserves to be quashed in view of the fact that a similar complaint which was filed by the Complainant/Respondent No. 2 was dismissed as withdrawn. It is also submitted by the counsel for the Petitioners that it is a settled law the withdrawal of a complaint amounts to the acquittal of the accused *qua* the said offences and, therefore, an identical complaint on the same facts is not maintainable. Insofar as Section 506 IPC alleged against Petitioner No. 1 is concerned, the investigating officer has not charge sheeted him. In support of their contention, reliance is placed on the following judgements passed by the Hon'ble Supreme Court of India in **Samta Naidu v. State of M.P., (2020) 5 SCC 378** and **BRK Athethan Vs. Sun Group & Anr. 2022 SCC OnLine SC 1705**.

9. It is stated that the allegations against the Petitioners are of civil nature. Further, he states that from the perusal of the chargesheet it is revealed that Respondent No. 2 has annexed one loan agreement which is alleged to have been executed on 04th August, 2019 wherein interest charged was 4.5% per month which comes to approximately 54% p.a. Further, as per the demand promissory note, the interest is charged at 8% per month which comes to 96% p.a.



10. It is further submitted that the entire amount of Rs. 21,00,000/- claimed to have been paid by Respondent No. 2 was allegedly paid in cash, with no receipt and no income tax return and Respondent No. 2 was aware that Petitioner No. 2, Varun Kalra had moved to California, and places reliance on Pg. 126 of the Chargesheet.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 2

11. *Per Contra*, it is submitted by the learned counsel for the Respondent No. 2, Sh. Vishal Diwan that the subject FIR registered under Section 420 IPC contains all the essential ingredients of the offence of cheating under Section 415/420 IPC i.e. deception of a person either by making a false or misleading representation or by other action or omission; fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

12. According to the Complainant/Respondent No. 2, in the present case, he was induced by the accused to part with a considerable sum of money on, *inter alia*, the dishonest/false pretext of return (12-15%) besides assuring the repayment of principal amount. Being so deceived, the Complainant had paid the amount to the accused. Later, to return the amount, Petitioner No.2, Varun Kalra had dishonestly issued two cheques, which are the subject matter of the present FIR, with different signatures. The cheques were returned unpaid/dishonoured for the reasons of “signature differ”. He also places reliance on the bank opening form



annexed with the chargesheet and states that there is sufficient material on record including the undisputed signatures of Petitioner No. 2 to show that he deliberately appended his incorrect signatures on the two cheques as he had every reason to believe that the cheques would be dishonoured.

13. Further, he submits that the accused/Petitioner No. 2 contemporaneously executed an agreement and a promissory note in favour of Respondent No. 2/Complainant. He places reliance on the FSL report submitted by the RFSL, Chanakyapuri, New Delhi of the agreement dated 4th August 2014 which bears the signatures of Varun Kalra which is enclosed to the supplementary chargesheet. It is also submitted that Petitioner No. 1, who is the father of accused/ Respondent No. 2, had assisted his son as well as threatened Respondent No. 2. He also alleges that no proper investigation as to the role of Petitioner No. 1, *i.e.*, Satpal Kalra has been done.

14. It has also been submitted that various complaints are pending against Petitioner No. 2, Varun Kalra in different courts and he was not appearing in those proceedings, as he had fled abroad since July, 2023. It is further submitted that earlier also in the initial stages of the matters he had fled to the United States of America and had returned only after the Trial Court was constrained to take coercive action against him.

15. It is therefore stated, that the conduct of Petitioner No. 2 disentitles him from any relief by this Court. Insofar as the quashing of FIR is concerned, it is stated that no case to quash the FIR has been made out, reliance has been placed on the settled legal position for the quashing of FIRs by the Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335.**



REJOINDER ON BEHALF OF THE PETITIONERS

16. It is submitted that Petitioner No. 1, who is a senior citizen, has no role *per se* and has been implicated in the present FIR with *mala fide* intentions and ulterior motives to settle score with Petitioner No. 2, Varun Kalra. Further, it was stated that the allegations made in the previous complaint by Respondent No. 2 were similar to the present FIR. The FIR in question, according to the counsel for the Petitioner, has the same contents as alleged in the previous complaint which was declined to be registered as FIR by the report of the Vigilance Department *vide* the report dated 5th April, 2016 on the grounds that it is civil in nature and no case has been made out.

17. On the question of joining the investigation at a later stage, it is stated that the Petitioners have joined the investigation as mentioned in the status report dated 27th July 2017 filed by the SHO, P.S. Chittaranjan Park. Petitioner No. 2 could not previously join the investigation as he was residing in USA and his visa had expired, which had to be renewed immediately thereon. Further, Petitioner No. 2 was advised by his attorney not to travel unless his visa was renewed, and therefore, Petitioner No. 2 joined the investigation at a later stage.

ANALYSIS AND FINDINGS

18. The primary contention on behalf of the Petitioners is that the present FIR cannot be allowed to be continued and deserves to be quashed, in view of the fact that a similar complaint filed by the Complainant herein was dismissed as withdrawn *vide* order dated 09th November, 2016 by the Id. Metropolitan Magistrate, Saket Court. It is submitted that the complaints were identical in nature



and that in fact in pursuance of order dated 27th February, 2023 passed by the Predecessor Bench of this Court, a report was placed by the Investigating Officer which demonstrates that except for the contents of allegations levelled against Petitioner No. 1 all the other allegations in the previous complaint as well as the present FIR are identical. It is further submitted that even as per the chargesheet, the allegations against Petitioner No. 1 could not be substantiated and therefore, he was not charge sheeted.

19. It is the contention on behalf of the Petitioners that since Section 506 IPC against Petitioner No. 1 stands dropped, the contents of both the complaints are identical and in view of the same, the present FIR needs to be quashed.

20. The relevant list of dates and events as detailed in the written submission filed on behalf of the Petitioners are reproduced as under:

Dates	Events
27.09.2016	Application filed by the Respondent No.2 under Section 156(3) CrPC was dismissed as withdrawn.
09.11.2016	Complaint under Section 200 Cr. P.C. was withdrawn without seeking any liberty. A statement of the Respondent No. 2 on S.A. was also recorded before the Ld. MM.
06.10.2018	After about two years of withdrawal of the said complaint, a fresh complaint <i>vide</i> D.D. Entry No. 25B with identical facts have been filed by adding the allegations u/s 506 IPC against the Petitioner No. 1. The rest of the contents of the complaint is exactly similar to the earlier complaint.
18.10.2018	The present FIR under question got to be registered under Section 406, 420, 506 IPC against the Petitioners.

However, the date of registration of FIR as per record is 18th October, 2016.



21. Reliance has been placed on the following judgments:

- (i) **Kamal Singh v. Sumer Singh, 2022 SCC OnLine P&H 4055** passed Hon'ble High Court of Punjab and Haryana (relevant para 18).
- (ii) **Supinder Singh v. Provident Fund Inspector, 1997 SCC OnLine P&H 1016** passed Hon'ble High Court of Punjab and Haryana (relevant paras 11,12,13 & 14).
- (iii) **Samta Naidu v. State of M.P., (2020) 5 SCC 378** passed by Hon'ble Supreme Court.
- (iv) **BRK Athethan v. Sun Group & Anr., 2022 SCC OnLine SC 1705** passed by Hon'ble Supreme Court (relevant paras 9, 12 ,14 & 17).
- (v) **Joseph Salvaraj A. v. State of Gujarat, (2011) 7 SCC 59** passed by Hon'ble Supreme Court (relevant para 24).

22. A perusal of the record reflects that the Complainant/Respondent No. 2 had earlier approached the Vigilance Department and *vide* report dated 05th April, 2016, the complaint was filed stating that the same was of a civil nature. Subsequently, the complaint under Section 200 Cr.P.C. along with application under Section 156(3) Cr.P.C. was filed by Respondent No. 2 on 23rd July, 2016 before the concerned learned Metropolitan Magistrate, Saket Courts. An action taken report was filed by P.S. Chittaranjan Park dated 16th August, 2016 stating that the dispute is civil in nature and no cognizable offence is made out. On 27th September, 2016, the application under Section 156(3) Cr.P.C. was dismissed as withdrawn by the learned Metropolitan Magistrate, Saket Courts. On 18th October, 2016, the present FIR was registered at P.S. Chittaranjan Park and, thereafter, on



09th November, 2016, the complaint under Section 200 Cr.P.C. was dismissed as withdrawn by the learned Metropolitan Magistrate, Saket Courts. There is no dispute with regard to the fact that the allegations made in the complaint before the learned Metropolitan Magistrate as well as in the present FIR are similar except for an additional allegation *qua* Petitioner No. 1 for offence punishable under Section 506 IPC.

23. It is also now a matter of record that the complaint under Section 200 Cr.P.C. before the learned Metropolitan Magistrate was dismissed as withdrawn after the registration of FIR. Thus, the contention of learned counsel for the petitioners that the FIR was registered after the dismissal of the complaint is factually incorrect. What was withdrawn was the application under Section 156(3) Cr.P.C. seeking direction for registration of FIR and, therefore, whether the same could be a bar for registration of FIR by the S.H.O. under Section 154 Cr.P.C. is the issue in the present matter.

24. It is a well settled legal position that the Cr.P.C., 1973, provides for registration of FIR by two means. First and foremost, the powers of the S.H.O. under Section 154 of the Code to register the FIR. The said section provides that every information relating to commission of cognizable offence, if given orally to the Officer-in-charge of the police station, shall be reduced in writing by him and the same is referred to as First Information Report. The Code further provides that the Id. Metropolitan Magistrate of the concerned Police Station can order investigation of an offence under Section 156(3) of the Cr.P.C. Section 156 of the Code provides 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.”

24.1. The Hon’ble Supreme Court in **Lalita Kumari vs Govt. of U.P. & Ors., AIR 2014 SC 187**, held that the registration of FIR is mandatory under Section 154 of the Cr.P.C, if the information discloses a commission of cognizable offence.

24.2. Section 156(3) of the Cr.P.C. operates at pre-cognizance stage of a complaint, giving power to any Magistrate empowered to take cognizance of offences under Section 190 of the Cr.P.C. to order investigation into any cognizable offence. This position of law was laid down by the Hon’ble Supreme Court in **Tula Ram v. Kishore Singh, (1977) 4 SCC 459**, wherein it was held as under:-

“**15.** In these circumstances we are satisfied that the action taken by the Magistrate was fully supportable in law and he did not commit any error in recording the statement of the complainant and the witnesses and thereafter issuing process against the appellants. The High Court has discussed the points involved thread-bare and has also cited a number of decisions and we entirely agree with the view taken by the High Court. Thus on a careful consideration of the facts and circumstances of the case the following legal propositions emerge:

- “1. That a Magistrate can order investigation under Section 156(3) only at the pre-cognizance stage, that is to say, before taking cognizance under Sections 190, 200 and 204 and where a Magistrate decides to take cognizance under the provisions



of Chapter 14 he is not entitled in law to order any investigation under Section 156(3) though in cases not falling within the proviso to Section 202 he can order an investigation by the police which would be in the nature of an enquiry as contemplated by Section 202 of the Code.

2. Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives:

(a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightaway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.

(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.

(c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

3. In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.

4. Where a Magistrate orders investigation by the police before taking cognizance under Section 156(3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightaway issue process against the accused or apply his mind to the complaint filed before him and take action under Section 190 as described above.”

24.3. In the present case, it is not the case of the Petitioners that the learned Magistrate had taken cognizance when the application under Section 156(3) of the Cr.P.C. was dismissed as withdrawn. It is pertinent to note that no observations were made by the learned Metropolitan Magistrate on the merits of the case.

25. There is no bar under the Cr.P.C. for registration of an FIR while a complaint is pending before the Metropolitan Magistrate. In fact, the Code



provides for a procedure to be followed when there is a complaint and a police investigation in respect of the same offence. Section 210 of the Cr.P.C. provides as under:

“210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.

1. When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such enquiry or trial and call for a report on the matter from the police officer conducting the investigation.
2. If a report is made by the investigating police officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.
3. If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code”

26. What is prohibited is a second FIR on the same cause of action, which is not a counter case as held by the Hon’ble Supreme Court in **TT Anthony vs State of Kerala, (2001) 6 SCC 181**. The provision of Section 210 of the Cr.P.C. provides for a procedure where the Magistrate shall enquire into trial in a complaint case as well as a case arising out of police report and treat both of them as cases instituted on a police report. However, in the present case, as pointed out hereinabove, Respondent No. 2 subsequently withdrew his complaint under



Section 200 of the Code vide order dated 09.11.2016, *i.e.*, after registration of the present FIR on 18.10.2016.

27. In **Samta Naidu** (*supra*), the Hon'ble Supreme Court was dealing with the situation wherein a complaint was filed and the same was dismissed by the learned Metropolitan Magistrate on merits under Section 203 of the Cr.P.C. The Complainant being aggrieved filed a revision before the learned Additional Sessions Judge and the same was dismissed as withdrawn and liberty was sought to file a fresh complaint. However, the learned ASJ while disposing of the petition noted that a new complaint can be filed at any time on basis of new facts and for which no permission was required from the Court and simply dismissed the petition on the ground that the Complainant does not wish to press the said petition anymore. Thereafter, a fresh complaint was filed by the Complainant on the same allegations but relying on additional material in the complaint. On the basis of the complaint cognizance was taken by the learned Metropolitan Magistrate. The issue before the Hon'ble Supreme Court was whether a second complaint was maintainable or not. After discussing, all the judgments passed by the Hon'ble Supreme Court on the issue, it was observed and held as under:

“13. The application of the principles laid down in **Taluqdar** and in **Jatinder Singh** shows that “a second complaint is permissible depending upon how the complaint happened to be dismissed at the first instance”. It was further laid down that “if the dismissal of the complaint was not on merit but on default of the complainant to be present there is no bar in the complainant moving the Magistrate again with a second complaint on the same facts. But if the dismissal of the complaint under Section 203 of the Code was on merits the position could be different”. To similar effect are the conclusions in **Ranvir Singh** and **Poonam Chand Jain**. Para 16 of the **Poonam Chand Jain** also considered the effect of para 50 of the majority judgment in **Talukdar**. These cases,



therefore, show that if the earlier disposal of the complaint was on merits and in a manner known to law, the second complaint on “almost identical facts” which were raised in the first complaint would not be maintainable. What has been laid down is that “if the core of both the complaints is same”, the second complaint ought not to be entertained.

14. If the facts of the present matter are considered in the light of these principles, it is clear that paragraphs 3, 4 and 5 in the first complaint contained the basic allegations that the vehicle belonging to the father was sold after the death of the father; that signatures of the father on Form 29 and 30 were forged; that signatures on the affidavit annexed with Form 29 and 30 were also forged; and that on the basis of such forged documents the benefit of “sale consideration of the vehicle” was derived by the accused. The order dated 5.7.2013 passed by the Judicial Magistrate First Class, shows that after considering the evidence and documents produced on behalf of the complainant, no prima facie case was found and the complaint was rejected under Section 203 of the Code of Criminal Procedure, 1973. The stand taken before the Revisional Court discloses that at that stage some new facts were said to be in possession of the complainant and as such liberty was sought to withdraw the Revision with further liberty to file a fresh complaint. The liberty was not given and it was observed that if there were new facts, the complainant, in law would be entitled to present a new complaint and as such there was no need of any permission from the Court. The Revisional Court was definitely referring to the law laid down by this Court on the basis of the principles in **Taluqdar**. Thereafter a complaint with new material in the form of a credit note and Registration Certificate was filed. The core allegations, however, remained the same. The only difference was that the second complaint referred to additional material in support of the basic allegations. Again, in terms of principle laid down in para 50 of **Taluqdar** as amplified in para 16 in Poonam Chand Jain, nothing was stated as to why said additional material could not be obtained with reasonable diligence.

15. Reliance was, however, placed by Ms. Meenakshi Arora, learned Senior Advocate, on para 18 of the decision of this Court in **Shivshankar Singh**. In that case a Protest Petition was filed by the complainant even before a final report was filed by the police. While



said Protest Petition was pending consideration, the final report was filed, whereafter second Protest Petition was filed. Challenge raised by the accused that the second Protest Petition was not maintainable, was accepted by the High Court. In the light of these facts the matter came to be considered by this Court as under:-

“7. Shri Gaurav Agrawal, learned counsel appearing for the appellant has submitted that the High Court failed to appreciate that the so-called first protest petition having been filed prior to the filing of the final report was not maintainable and just has to be ignored. The learned Magistrate rightly did not proceed on the basis of the said protest petition and it remained merely a document in the file. The second petition was the only protest petition which could be entertained as it had been filed subsequent to the filing of the final report......

18. Thus, it is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, the second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit.

19. The protest petition can always be treated as a complaint and proceeded with in terms of Chapter XV CrPC. Therefore, in case there is no bar to entertain a second complaint on the same facts, in exceptional circumstances, the second protest petition can also similarly be entertained only under exceptional circumstances. In case the first protest petition has been filed without furnishing the full facts/particulars necessary to decide the case, and prior to its entertainment by the court, a fresh protest petition is filed giving full details, we fail to understand as to why it should not be maintainable.”

(Emphasis supplied)



16. As against the facts in *Shivshankar*, the present case stands on a different footing. There was no legal infirmity in the first complaint filed in the present matter. The complaint was filed more than a year after the sale of the vehicle which meant the complainant had reasonable time at his disposal. The earlier complaint was dismissed after the Judicial Magistrate found that no prima facie case was made out; the earlier complaint was not disposed of on any technical ground; the material adverted to in the second complaint was only in the nature of supporting material; and the material relied upon in the second complaint was not such which could not have been procured earlier. Pertinently, the core allegations in both the complaints were identical. In the circumstances, the instant matter is completely covered by the decision of this Court in *Taluqdar* as explained in *Jatinder Singh* and *Poonam Chand Jain*. The High Court was thus not justified in holding the second complaint to be maintainable.”

28. In **Joseph Salvaraj** (*supra*), the Hon’ble Supreme Court was dealing with a situation where the Complainant therein had filed a criminal complaint under Sections 499/500 of the IPC, which was dismissed by the Id. Judicial Magistrate on merits. Criminal Revision was filed against the said order which was withdrawn by the Complainant and thereafter filed a second complaint before the Id. Judicial Magistrate for the same offence against the same accused. In these circumstances, again after discussing the judicial precedents, the Hon’ble Supreme Court held the second complaint was not maintainable.

29. In **Supinder Singh** (*supra*), the Hon’ble Punjab and Haryana High Court was dealing with a situation where the Provident Fund Inspector had filed a complaint which was withdrawn and, subsequently, filed a second complaint on the same cause of action before learned Chief Judicial Magistrate, which was held to be not maintainable.



30. The aforesaid judicial precedents do not apply to the facts of the present case. As pointed out hereinafter, the present FIR was registered while a complaint case was pending before the learned Metropolitan Magistrate. The application under Section 156(3) Cr.P.C. was dismissed as withdrawn and there was no observation on the merits of the case by the learned Metropolitan Magistrate. Further, the Code itself provides for the situation where there is a complaint case and FIR registered on the same cause of action against the same accused. Therefore, in the considered opinion of this Court there was no legal bar for registration of the impugned FIR.

31. Insofar as the merits of the allegations in the present FIR is concerned, it is noted that the chargesheet has been filed before the Court of competent jurisdiction after obtaining the FSL report. It is the case of Respondent No. 2 that Petitioner No. 2 had dishonestly induced him to invest in a new business venture of importing cooling towers and its components. It is alleged by Respondent No. 2 that on the basis of said dishonest inducement, he paid a sum of Rs. 21 lakhs to Petitioner No. 2 and the latter had also signed documents purported to be a loan agreement and a promissory note to show his *bonafides*, on which, Petitioner No. 2 had affixed his signatures as well as thumb impressions. It is alleged that over the period of time, Respondent No. 2 had paid total sum of Rs. 21 lakhs to Petitioner No. 2. It is alleged that when Respondent No. 2 demanded his money back, Petitioner No. 2 transferred a sum of Rs. 2,50,000/- and also handed over two cheques of Rs. 9 lakhs and 10 lakhs each. The aforesaid two cheques which were post-dated, when presented were dishonoured for the reason "*drawer signatures differ.*" It is the case of Respondent No. 2 that Petitioner No. 2 intentionally signed on the cheques



in a manner which is different from his records on the bank, and thus during the course of the investigation, it has come on record that the signatures on cheques as well as the admitted signatures of Petitioner No. 2 on various documents were different. The said report has been filed by way of supplementary chargesheet before the concerned competent Court.

32. Petitioner No. 2, however, in his petition has taken a stand in the following manner:

“6. That Respondent No. 2 (Sh.Vishal Diwan) along with his associates runs a racket of extortion and blackmailing, wherein, under the false pretext of and illegal Chit fund/Committee, innocent people from humble family background are duped and induced by them into the business of Committee investment by promising huge returns on investment. Petitioner No. 2 (Sh. Varun Kalra), is also one of the victim of their racket as he was tricked/induced by Respondent No. 2 and has handed over him money to the tune of Rs 18-19 Lacs (approx.).

7. That somewhere in the month of January, 2014 the Petitioner No. 2 was approached by Respondent No. 2, when Respondent No. 2 introduced / explained Petitioner No. 2 about, Chit fund/committee scheme with huge returns, Respondent No. 2 also disclosed that the chit fund/committee organised by him is absolutely legal and organised by the local authority but did not produce any documents to establish the same. Therefore, the proposition to invest in the scheme was denied by Petitioner No. 2 at that very instance.

8. Thereafter, again in the end of April 2014, Respondent No. 2 contacted Petitioner No. 2 with the ulterior motive and malicious intentions to cheat and extract money from Petitioner No. 2 by investing /participating in the chit fund/ committee (monthly). However, Petitioner No. 2 was apprehensive about the entire concept of investing in the committee, but Respondent No. 2 repeatedly assured Petitioner No. 2 that by investing/participating in the chit fund committee and investing sum of Rs 2 lacs per month, he will be earning huge returns every month, upto 10% approx. of the investment amount. Lured by the assurances given by the Respondent No. 2, Petitioner No. 2 finally agreed to participate in the chit fund/ Committee. It is pertinent to



mention here that Respondent No. 2 asked Petitioner No. 2 to pay only for the first committee and thereafter, he need not have to pay any money because being the committee organiser he will get first or second committee in Petitioner No. 2 name and the rest of the monthly committee will be paid from the interest of the same amount (Size of the committee Rs. 40 lacs).

9. During this course in time Petitioner No. 2 handed Respondent No. 2 sum of Rs. 2 lacs towards the first committee of Rs. 40 lacs, as asked by Respondent No. 2. That on the basis of these false assurances by Respondent No. 2, Petitioner No. 2 is still unaware of Conspiracy hatched against him, paid amount upto Rs. 7-8 lacs(approx.) by now.

10. It is pertinent to mention here that Petitioner No.2 has shifted and has been residing in U.S.A since 5th May, 2015 with his family. It is also pertinent to mention that Petitioner No. 2 prior to moving abroad informed Respondent No. 2 about his immigration to the USA and showed his unwillingness to continue with the committee, on which Respondent No. 2 assured Petitioner No. 2 that his presence is not required and also asked him to issue some Signed, Blank Cheques; Blank papers. In furtherance to that Respondent No. 2 also assured Petitioner No. 2 that within a month, committee will pay him the entire sum which Respondent No. 2 has invested in the second committee which was drawn/issued in Petitioner No. 2 name. It is relevant to mention here that all the particulars of 10-11 cheques approx. issued by Petitioner No. 2 were left blank except the signatures and on two cheques amounts were filled of Rs. 20 Lacs and Rs. 40 Lacs, accordingly with signatures however, the same were undated and unnamed.

12. That after Petitioner No. 2 shifted to U.S.A., in the year 2015, aforementioned blank and signed cheques were distributed by Respondent No. 2 to his associates and on the basis of same cheques, false and frivolous cases are registered against Petitioner No. 2, under Negotiable Instruments Act, 1881 in Saket Court at New Delhi before Metropolitan Magistrate titled as (1) VISHAL DIWAN VS VARUN KALRA; (2) MUNISH RAHEJA VS VARUN KALRA; (3) CHANDERKANT MISHRA VS VARUN KALRA ; (4) VIKRAM DIWAN VS VARUN KALRA.”

(emphasis supplied)



33. The concerned Investigating Officer after investigating the matter has filed the chargesheet *qua* Petitioner No. 2 wherein it has been recorded as under:

“During investigation Sh. Satpal Kalra joined the investigation and stated that he never met Vishal Diwan regarding the matter and he is nothing got to do with the case and allegations made by Vishal Diwan are false and pressurize to me only. He denied for the allegation of threat. From the investigation allegations could not be substantiate against the company M/s SPL Marketing Private Limited and Satpal Kalra. No money was credited in account of the company. Regarding the allegation of life threat no date of incident mentioned. Complainant not informed about any PCR call in this regard.

From the investigation it is found that accused Varun Kara intentionally appended differ signatures so that the cheques would never get cleared and that Varun Kalra intended to cheat and defraud the complainant. The accused Varun Kalra induced the complainant to part with his money and intentionally forged different signatures on his cheques issued, having full knowledge that the signatures appended by him are not the original signatures as maintained by him with his bankers.

The account opening form of the accused Varun Kalra reflecting his signatures with his bankers A comparison of the two brings to light the difference in the signatures of the accused Varun Kalra in his accounts maintained with his bankers, as compared to the signatures appended by the accused Varun Kalra on the cheques issued by him to the complainant. The degree of difference in the signatures of the accused Varun Kalra across these two documents prove the case. Such difference would not have been possible unless the accused Varun Kalra always intended to cheat and defraud the complainant. From the investigation, enquiries made with Complainant and alleged Satpal Kalra, documents obtained during investigation allegations against Satpal Kalra and the Company could not be substantiated regarding cheating and threat, hence Satpal Kalara not Charge sheeted. As per allegation money was given to Varun Kalra in cash and through cheques in the personal account of Varun Kalra. Original Loan Agreement along with Promissory Note along with admitted signature of Varun Kalra and specimen signature of Varun Kalra have been sent to RFSL, Chanakyapuri, New Delhi for expert opinion regarding the signature of Varun Kalra on the documents vide acknowledgement of case acceptance no. RFSL (CH.P)-2018/DOC-1012 dated:- 28.09.2018. After obtaining the result from RFSL, Chanakyapuri, New Delhi supplementary Charge sheet of the case will be filed u/s 173.8



CrPC. From the investigation conducted, statements of witnesses recorded, report/documents received from the Bank Manager of HDFC Bank there are sufficient evidences on record that accused Varun Kalra S/o Sh. Satpal Kalra R/o A-4/237, Konark Apartments, Kalkaji Extention, New-Delhi 110019, has intentionally signed the differ signature on the cheque no. 000012 and 000017 A/c no. 16621930003106 and handed over the same to the Complainant and on representation the cheques were returned unpaid. Accused Varun Kalra who has joined the investigation as and when he was called for the same. He is a permanent resident of Delhi. He has been kept in column no. 11 of the Charge sheet. Accused Varun Kalra may kindly be called through notice and cognizance against him may please be taken. Witnesses may be called through summons to depose their respective evidences before the Hon'ble Court and the trial may kindly be commenced upon."

34. As can be seen from above, the stand of Petitioner No. 2 that he was induced to invest with Respondent No. 2 in some committee is a matter of trial. Admittedly, Petitioner No. 2 does not dispute his signature and thumb impression on loan agreement as well as the promissory note but takes a stand that the said documents were got signed by Respondent No. 2 which were blank. This again is a disputed question of fact and is a matter of trial. The promissory note placed on record by Respondent No. 2 shows that the Petitioner No. 2 has signed on the revenue stamp on the as well as had affixed his thumb impression on the promissory note. The stand of Petitioner No. 2, that he had signed the blank promissory note as well as cheques is difficult to comprehend, in view of the fact, that he is an educated business man and well-versed with the functioning of monetary transactions in ordinary course of the business that he was pursuing. Therefore, the said stand cannot be a *bonafide* claim. In fact, *prima facie*, the case of Petitioner No. 2 would be covered by the following illustration of Section 415 of the IPC which reads as under: -



“415. Cheating.-

(f) A Intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.”

35. Be that as it may, the aforesaid are disputed question of facts which this Court in the exercise of the jurisdiction under Article 226 of the Constitution of India cannot go into. The Hon’ble Supreme Court, in **Mahendra K.C. v. State of Karnataka, (2022) 2 SCC 129**, held as under:

“19. The High Court has the power under Section 482 to issue such orders as are necessary to prevent the abuse of legal process or otherwise, to secure the ends of justice. The law on the exercise of power under Section 482 to quash an FIR is well-settled. In *State of Orissa v. Saroj Kumar Sahoo* [*State of Orissa v. Saroj Kumar Sahoo*, (2005) 13 SCC 540 : (2006) 2 SCC (Cri) 272], a two-Judge Bench of this Court, observed that : (SCC pp. 547-48, para 8)

“8. ... While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and



whether any offence is made out even if the allegations are accepted in toto.”

36. The facts and circumstances of the case, as discussed hereinabove, do not warrant exercise of jurisdiction under Article 226 of the Constitution of India for quashing of FIR No. 273/2016 under Sections 420/406/506/120B of the IPC registered at P.S. Chittaranjan Park and the consequent chargesheet against Petitioner No. 2 pending before the Court of competent jurisdiction. It is further clarified that since Petitioner No. 1 was not chargesheeted, therefore, no observation has been made with respect to him.

37. The petition is accordingly dismissed and disposed of.

38. Pending applications, if any, also stand disposed of.

39. Nothing stated hereinabove shall be construed as an opinion on the merits of the case and observations made are only for the purpose of adjudication of the present petition.

40. Judgment be uploaded on the website of this Court, *forthwith*.

41. Copy of the judgment be sent to the concerned learned Trial Court for necessary information and compliance.

AMIT SHARMA
JUDGE

OCTOBER 25, 2024/bsr/sn