



2026:DHC:943



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

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**Reserved on: 10<sup>th</sup> December 2025****Pronounced on: 05<sup>th</sup> February 2026**

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CRL.M.C. 8799/2024

MRS ASHA BHATIA

.....Petitioner

Through: Mr. Rajinder Singh, Mr.  
Shaurya Dogra, Mr. Vibhor  
Tyagi, Ms. Pooja Kasana & Mr.  
Navjot Birdi, Advocates

versus

STATE GOVT OF NCT OF DELHI &amp; ORS. ....Respondents

Through: Mr. Satinder Singh Bawa, APP  
with SI Ram Kishan, PS  
Defence Colony

**CORAM:****HON'BLE MR. JUSTICE RAVINDER DUDEJA****JUDGMENT****RAVINDER DUDEJA, J.**

1. The present petition has been filed, seeking quashing and setting aside of the order dated 21<sup>st</sup> October 2024, passed by the learned Additional Sessions Judge-05, South-East, Saket District Courts, New Delhi in Crl. Revision No. 247/2024 titled "*Mrs. Asha Bhatia versus State and Ors.*"

**Factual Background:**

2. Petitioner's case is that her mother late Smt. Swaran Kaur Bhatia, executed a Will dated 05<sup>th</sup> October 2021 in her favour in



respect of properties bearing Nos. A-19 & A-49, Defence Colony, New Delhi. She expired on 31<sup>st</sup> December 2021. The petitioner applied for mutation of property No. A-49 in her favour, but she could not get it done as respondent No. 2 Amarjeet Singh propounded a Will dated 27<sup>th</sup> September 2017 of late Smt. Swaran Kaur Bhatia, allegedly executed in his favour. Thereupon, the petitioner filed a probate petition bearing No. PC-51/2022 before the court of learned Principal & District Judge, South-East District for grant of Probate/Letter of Administration in respect of Will dated 05<sup>th</sup> October 2021, executed in her favour. The petitioner later came to know that Amarjeet Singh had got an FIR No. 120/2023, under Section 420/468/471/34 Indian Penal Code, 1860 [**“IPC”**] registered against her at Police Station Defence Colony, alleging forgery of Will dated 05<sup>th</sup> October 2021. The said case is still under investigation.

3. Subsequently, respondent No. 3 Ms. Ravinder Kaur, who is the wife of Amarjeet Singh (Respondent No. 2) propounded a Will dated 18<sup>th</sup> November 2021, allegedly executed by late Smt. Swaran Kaur Bhatia in respect of her other property bearing No. A-49, Defence Colony. Such Will, according to petitioner, is forged and fabricated to overcome the precedence of petitioner’s Will, being later in time.

4. Petitioner filed a complaint under Section 200 of the Code of Criminal Procedure, 1973 [**“Cr. PC”**] against both the respondents along with an application under Section 156(3) Cr. PC for registration of FIR under the relevant provisions of IPC. Vide order dated 02<sup>nd</sup> April 2024, the application filed by the petitioner under Section 156(3)



Cr. PC was dismissed. However, the learned Metropolitan Magistrate [“MM”] took cognizance and granted opportunity to the petitioner to prove her case by leading evidence.

5. Petitioner preferred revision against the said order before the learned Sessions Court. Vide order dated 21<sup>st</sup> October 2024, the said revision came to be dismissed. Feeling aggrieved, petitioner has filed the present petition impugning the orders dated 02<sup>nd</sup> April 2024 and 21<sup>st</sup> October 2024.

**Submissions made on behalf of the petitioner:**

6. Learned Counsel for the petitioner submitted that respondent Nos. 2 and 3 deliberately suppressed material facts while initiating proceedings under Section 156(3) Cr. PC, particularly the pendency and contest of the probate petition. It was argued that although objections had already been filed by Respondent No. 2 in the probate proceedings, the same were not disclosed to the Magistrate while seeking registration of an FIR against the Petitioner. It was further submitted that such suppression vitiates the entire criminal process initiated at the behest of the Respondents. On this ground alone, the registration of the FIR against the Petitioner was stated to be a clear abuse of the process of law.

7. It was further submitted that the Petitioner is a 69-year-old woman and the absolute owner, being the rightful heir to her deceased mother, of the property in question, who had sought to sell the same through a lawful agreement to sell. Pursuant thereto, a public notice



was issued in *The Hindustan Times* by the person who sought to buy the property inviting objections, in response to which Respondent No. 3 issued a legal notice claiming a Will dated 18<sup>th</sup> November 2021 in her favour. It was emphasized that no reference to such alleged Will was made in the objections filed earlier in the probate petition by Respondent No. 2. It was on account of this suspicious conduct that the Petitioner was constrained to approach the Magistrate by filing an application under Section 156(3) Cr.P.C.

8. Learned Counsel assailed the reasoning of the Ld. Trial Court in dismissing the Petitioner's application on the ground that an FIR had already been registered on similar facts. It was argued that the cause of action for the Petitioner's complaint arose subsequently, nearly two years later, upon disclosure of a second alleged Will dated 18<sup>th</sup> November 2021, which was never disclosed earlier despite all parties residing in the same household. It was further submitted that the investigation pursuant to the earlier FIR was conducted only against the Petitioner, while Respondent Nos. 2 and 3 were not subjected to any meaningful inquiry. Such selective investigation, it was submitted, renders the impugned order perverse and unsustainable.

9. Lastly, it was submitted that the impugned order dated 21<sup>st</sup> October 2024 is arbitrary, mechanical, and reflects complete non-application of judicial mind. The complaint clearly discloses cognizable offences of forgery and criminal conspiracy involving two suspicious Wills dated 27<sup>th</sup> September 2017 and 18<sup>th</sup> November 2021, necessitating police investigation and forensic examination. The Ld.



Trial Court erred in holding that the evidence was within the reach of the Petitioner, overlooking that such investigation cannot be effectively undertaken in a private complaint under Sections 200 and 202 Cr.P.C.

**Submissions made on behalf of the State:**

10. Learned APP for the State submitted that during the course of investigation, several notices were issued to the Petitioner calling upon her to join the investigation and to furnish relevant documents, including the chain of ownership, which she failed to comply with. It was argued that the probate proceedings are admittedly pending and all three alleged Wills have already been placed before the competent probate court. Furthermore that, the probate court is the appropriate forum to adjudicate upon the genuineness and validity of the three Wills, and therefore no separate FIR is warranted on the same subject matter. It was lastly submitted that the earlier FIR had already been registered pursuant to an application under Section 156(3) Cr. PC filed by Respondent No. 2 against the present Petitioner, and in view thereof, the registration of another FIR was rightly declined.

**Submissions made on behalf of the Respondent Nos. 2 and 3:**

11. Learned counsel for the respondents submitted, at the outset, that all allegations and averments made by the petitioner are false, misleading, vexatious, and unsustainable in law. It was submitted that the deceased/testatrix, late Smt. Swaran Kaur Bhatia was not being looked after by the petitioner, who had been residing separately in



Gurugram, whereas, respondents were taking care of her in her advanced age. It was submitted that respondent No. 2 inherited ownership of property No. A-49, Defence Colony, New Delhi through a registered Will dated 27<sup>th</sup> September 2017, executed out of love and affection and has been in possession and running a shop on the ground floor of the said property since 2014.

12. It was further submitted that after the death of the testatrix on 31.12.2021, petitioner attempted to usurp the property by setting up a false and fabricated Will dated 05<sup>th</sup> October 2021 to counter the genuine registered Wills in favour of respondents. Furthermore, petitioner herself admitted that she used to sign on behalf of her mother, including in bank records and audio and video recordings, evidencing the same, form part of the probate record.

13. It was further submitted that all the three Wills are the subject matter of pending probate proceedings and their genuineness is to be conclusively determined by the competent probate court, rendering the registration of a second FIR wholly unnecessary. It was lastly submitted that one FIR is already under investigation and that all the three Wills propounded by the parties may be covered under the same investigation, and in view thereof, the impugned orders do not suffer from any illegality or infirmity.

### **Analysis and Conclusion:**

14. The law is well settled that Section 156(3) Cr.P.C. is not to be invoked mechanically or as a matter of course, particularly where the



complainant is in possession of relevant evidence and the accused are identifiable. As and when any information is received by a police officer about the alleged commission of offence, which is cognizable, it is the duty of the police officer to register an FIR. Sub Section (1) of Section 156 confers power to the police to investigate a cognizable offence without the order of the Magistrate. The police may investigate the cognizable offence either on information under Section 154 Cr. PC or on their own motion, on their own knowledge or from other reliable information. If a person has the grievance that FIR has not been registered by the police, the remedy is to approach the Superintendent of Police under Section 154(3) Cr.PC or other police officer referred to in Section 36 Cr.PC. If despite approaching the Superintendent of Police or the officer referred to in Section 36, his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.PC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 Cr.PC. This statutory right to investigate the cognizable offence cannot be interfered with or controlled by the courts.

15. Sub Section (3) of Section 156 Cr. PC empowers the Magistrate to direct the police to register the FIR and investigate the cognizable offence but there is a restriction on the power of the Magistrate before directing the police to investigate under sub Section (3), inasmuch as, the Magistrate should form an opinion that the complaint filed by the complainant before him discloses a cognizable offence. However, the Magistrate must also ensure that this provision is not misused by the



complainants to get the police case registered in those cases which are not very serious in nature and do not require the assistance of the investigating agency for conducting investigation. The use of expression “may” in sub Section (3) of Section 156 Cr. PC leaves no room for doubt that the power conferred upon the Magistrate is discretionary and he is not bound to direct investigation by police even if the allegations made in the complaint disclose the commission of a cognizable offence. Thus, if in a given case, the Magistrate feels 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 the investigation by the police, straight away can take cognizance of the alleged offence and proceed under Section 200 of the Code by examining the complainant and his witnesses, if any. 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. This position has been reiterated by this Court in the case of ***Skipper Beverages Pvt. Ltd. vs. State***, 2001 (59) DRJ 129. The relevant paras of the judgment read as under:-

*“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 help the complainant. The police assistance can be taken by a Magistrate even under Sec. 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 v. State of Madhya Pradesh & Ors.”*

*10. Section 156(3) of the Code aims at curtailing and controlling the arbitrariness on the part of the police authorities in the matter of registration of FIRs and taking up investigations, even in those cases where the same are warranted. The Section empower the Magistrate to issue directions in this regard but this provision should not be permitted to be misused by the complainant to get police cases registered even in those cases which are not very serious in nature and the Magistrate himself can hold enquiry under Chapter XV and proceed against the accused if required. Therefore a Magistrate, must apply his mind before passing an order under Section 156(3) of the Code and must not pass these orders mechanically on the mere asking by the complainant. These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of complaint or custodial interrogation appears to be necessary for some recovery of article or discovery of fact.”*

16. That being so, the Magistrate is not expected to mechanically direct the 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 straight forward and simple, the court may straight away proceed to conduct the trial. If the Magistrate decides to proceed under Section 200 Cr. PC, then also, the Magistrate has the power to call for a police report before issuing the process under Section 202 Cr. PC. The Division Bench of Karnataka High Court in the case of **Guru Dutt**



***Prabhu & Ors. Vs. M.S. Krishna Bhat & Ors. 1999 CrL LJ 3909***, expressed the fear that if every complaint under Section 156 (3) Cr. PC is sent for police investigation without application of mind, there is likelihood that the provision would be used as a tool of harassment at the hands of unscrupulous complainant and the provision can be highly misused if orders are passed under Section 156 (3) Cr. PC in a routine manner, even where a complaint is filed under Section 200 Cr.P.C.

17. Upon consideration of the rival submissions and applying the aforesaid principles in the facts and circumstances of the present case, this Court finds no infirmity in the impugned order dated 21<sup>st</sup> October 2024, warranting interference under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023. It is undisputed that proposed accused are well known to the petitioner and their identities are not in question. The dispute essentially revolves around the genuineness of three Wills, all of which are already placed on record before the probate court. The evidence required to be adduced is thus within the reach of the petitioner. In such circumstances, the assistance of the police is not required for any investigation.

18. Significantly, the core issue raised by the petitioner pertains to the validity and genuineness of the disputed Wills, which will be determined by the probate court. The Will dated 05<sup>th</sup> October 2021, propounded by the petitioner, is already a subject-matter of FIR registered at the instance of respondent No. 2. The learned Magistrate, vide impugned order dated 02<sup>nd</sup> April 2024, noted that IO shall



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investigate the veracity of claims made by the petitioner in this matter. Moreover, the trial court has already taken cognizance of offence. If during evidence of the petitioner under Section 200 Cr. PC, the trial court still considers it expedient for the ends of justice, it may invoke the provision of Section 202 Cr. PC for taking assistance of the police for collecting evidence.

19. Hence, in view of the aforesaid discussion, this Court is of the view that learned MM has exercised its judicial discretion properly and in accordance with law by declining the request of the petitioner to make over the investigation to the police under Section 156(3) Cr. PC. Thus, there is no ground to interfere with the well-reasoned and justified orders passed by the learned MM and the learned Sessions Judge. Both the courts below have correctly appreciated that petitioner's complaint does not warrant registration of a separate FIR.

20. The petition accordingly stands dismissed.

**RAVINDER DUDEJA, J.**

**05<sup>th</sup> February 2026/na**