

ऋषभ कपूर
RISHABH KAPOOR
महानगर दण्डाधिकारी-03
Metropolitan Magistrate-03
केन्द्रीय जिला कमरा नं. 150
Central District, Room No. 150
तीस हजारी न्यायालय, दिल्ली
Tis Hazari Courts, Delhi

Ct. Case No. 525144/2016

Vivek Sawhney vs. Achal Kumar Jain & Ors.

06.07.2020

Present: Complainant Sh. Vivek Sawhney (through VCC over Cisco Webex)

SI Sandeep (through VCC over Cisco Webex)

Matter is heard through VCC over CISCO Webex Application at 12:25 PM.

The matter was fixed for today, awaiting the status report qua investigation u/s 202 Cr.PC. The complainant had filed an application dated 04.07.2020 for taking up the case file for hearing through VCC, through email id of court. The matter is taken up for hearing through VCC in view of Circular No. 6797-6899/CMM/Central/DR/2020 dated 29.06.2020.

The Complainant was intimated about the scheduled timing of hearing through VCC over Cisco Webex, vide email dated 05.07.2020.

Scanned copy of status report under the signatures of SI Sandeep Singh with the forwarding endorsement of SHO, PS I.P Estate and ACP, Central was sent to email id of the court. Copy of same is already supplied to Complainant through email.

Status report perused.

It is stated in the report that the alleged plots allotted to proposed accused persons are not situated with the jurisdiction of PS I.P Estate. It is also stated in the report that though the offices of DDA, Vikas Minar and Land & Building Department Govt. of NCT of Delhi are situated within jurisdiction of P.S I.P. Estate but the alleged allotments were not made from either of said offices. It is further reported that complainant has approached the CVC which has transferred the matter to CVO, DDA and now the matter is transferred to CBI for investigation. It is reported that as enquiry/investigation is already been conducted by CBI, therefore nothing is left to be inquired by PS I.P Estate.

Upon query made by court, SI Sandeep Singh concedes that CBI has not lodged any FIR on the complaint which has been forwarded to it by CVO, DDA. Therefore, undisputedly no investigation into the complaint made by complainant, is being conducted by CBI.


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Complainant submits that there is no complaint pending any enquiry/investigation before CBI and the status report filed today is falsely made to misguide the court.

The perusal of order dated 17.08.20¹⁹ passed by the Ld. predecessor court is showing that the court in its wisdom, while taking into note that proposed accused no.1 is the permanent residence of Gurugram, Haryana, had postponed issuance of process u/s 202 Cr.PC. and directed the investigation to be conducted by SHO PS IP Estate or any other Inspector Level Officer of said Police Station. On 07.02.2020, while rejecting the objections qua jurisdiction raised in the status report, this court directed that order dated 17.08.2019 be complied in its letter and spirit and investigation as ordered be conducted. But from perusal of status report filed today, it clearly deciphers that the investigation as ordered vide order dated 17.08.2019 has not moved even an inch forward. Rather, on pretext of lack of territorial jurisdiction and the alleged pendency of complaint before CBI, the said order is not complied.

At this juncture, it would be apposite to mention the observations made by Hon'ble Apex Court in **Birla Corpn. Ltd. v. Adventz Investments & Holdings Ltd., 2019 SCC OnLine SC 682**, wherein it was held that under the amended sub-section (1) to Section 202 CrPC, it is obligatory upon the Magistrate that before summoning the accused residing beyond its jurisdiction, he shall inquire into the case himself or direct the investigation to be made by a police officer or by such other person as he thinks fit for finding out whether or not there is sufficient ground for proceeding against the accused. The Hon'ble Supreme Court also held that the order of the Magistrate must reflect that he has applied his mind to the facts of the case and the law applicable thereto. It was also held that the application of mind has to be indicated by disclosure of mind on the satisfaction and considering the duties of the magistrates for issuance of summons to accused in a complaint case, there must be sufficient indication of it.

The Hon'ble Supreme Court after referring to a catena of its previous judgments held that summons may be issued if the allegations in the complaint, the complainant statement and other materials would show that there are sufficient grounds for proceeding against the accused.

The provisions of section 202(1) makes it obligatory upon the magistrate that before summoning the accused residing beyond his jurisdiction, he shall enquire into the case himself or direct the investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused. This has been done to see that innocent persons are not harassed by unscrupulous persons. Therefore, it clearly emanates that compliance of provisions of Section 202 Cr.PC. is mandatory, as soon as it is disclosed that the accused is residing beyond the territorial jurisdiction of a court and a magistrate is empowered to order either enquiry or investigation to be conducted by police or any other person.


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The above discussion is clearly suggestive of the fact that the investigation as ordered by Court cannot be evaded to be conducted by police by raising pleas qua lack of territorial jurisdiction.

Accordingly, taking note of the fact that despite the directions issued on 17.08.2019^h and 07.02.2020, the order qua investigation of case u/s 202 Cr.PC. has not been complied till date, I deem it appropriate to issue notice to DCP concerned to personally look into the matter and ensure that investigation u/s 202 CrPC in terms of order dated 17.08.2019, is being conducted either by SHO PS I.P Estate or by any other officer not below the rank of Inspector. In case of non compliance, the concerned DCP shall remain present in person on the next date of hearing.

Let report be awaited on 04.08.2020.

Scanned copy of this order is being sent to Sh. Awdhesh Kumar Rai (Reader) through whatsapp/email for uploading on CIS and for necessary compliance. Let Scanned copy of this order be also sent to DCP concerned through all permissible modes including email, for necessary information and compliance.

Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.



(RISHABH KAPOOR)

MM-03 (Central), THC, Delhi

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केन्द्रीय जिला कमरा नं. 150
Central District, Room No. 150
तीस हजारी न्यायालय, दिल्ली
Tis Hazari Courts, Delhi

State Vs. Arindam Chaudhaary
FIR No. 141/20116
PS Rajender Nagar

06.07.2020

Present: Sh. Vakil Ahmad, Ld. APP for State (through VCC over Cisco Webex)

Sh. Roshan Lal Saini Ld. Counsel for complainant (through VCC over Cisco Webex)

IO/Inspector Devender Singh (through VCC over Cisco Webex)

Matter is heard through VCC over CISCO Webex Application at 12:48 PM.

The matter was fixed for today, for consideration on Supplementary charge sheet, through VCC over Cisco webex. The matter is taken up for hearing through VCC in view of Circular No. 6797-6899/CMM/Central/DR/2020 dated 29.06.2020.

The Ld. Counsel for Complainant was telephonically informed about the scheduled timing of hearing through VCC over Cisco Webex, Sh. Awdhesh Kumar Rai (Reader).

Heard. Record perused.

The perusal of supplementary charge-sheet is revealing that upon further investigation conducted in furtherance of order dated 25.10.2017, now accused persons namely Sourav Chatterjee, Sanjeev Kumar Mishra and Centre for Vocational and Entrepreneurship Studies, have been charge sheeted by IO.

The perusal of supplementary charge-sheet further reveals that no conclusive opinion could be given by qua specimen signatures of accused Sanjeev Kumar Mishra and thereupon notice was served upon ICICI Bank, Narayana for obtaining the admitted signatures of accused on his original bank account opening form.

IO submits that accused Sanjeev Kumar Mishra has been charge-sheeted on the basis of his disclosure made vide interrogation dated 03.06.2020 at page nos. 436-438 of supplementary report.

Upon query made by the court, IO submits that he has obtained the original bank account opening form of accused Sanjeev KKumar Mishra, from ICICI Bank, Narayana Branch and same would be sent to FSL in 15 days from today.


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Upon further query made by court qua MAC Id details of case property (laptops), the Ld. Counsel for complainant intends to seek assistance from complainant for answering such query.

Accordingly, put for clarifications on aforementioned aspects on next date. Meanwhile, IO/Inspector Devender Singh is directed to expedite the impending further investigation qua accused Sanjeev Kumar Mishra and file status report on next date of hearing.

Put up for purpose fixed on 05.08.2020.

Scanned copy of this order is being sent to Sh. Awdhesh Kumar Rai (Reader) through whatsapp/email for uploading on CIS and for necessary compliance.

Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.


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