

(2016) 10 DEL CK 0049

DELHI HIGH COURT

Case No: CRL.M.C. 3678 of 2016

Himanshu Bhalla

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** Oct. 5, 2016**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3)

**Citation:** (2016) 4 JCC 2511**Hon'ble Judges:** Ms. Mukta Gupta, J.**Bench:** Single Bench**Advocate:** Mr. Sunil K. Mittal, Mr. Jaibir Singh Nagar, Mr. Vipin K. Mittal, Advocates, for the Petitioner; Mr. Ahsok Kumar Garg, APP, for the Respondents**Final Decision:** Dismissed

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### Judgement

**Mukta Gupta, J.** (Oral)—A complaint under Section 200 Cr.P.C. was filed by the petitioner against respondent No.2 and 3 stating that he was in the business of advertising for the last 4 years with his office at Yusuf Sarai, Community Centre. On 18th June, 2015 at 12.30 PM four persons raided his office claiming themselves to be officers from MIDC Police Station Mumbai and were accompanied by two personnel from Delhi Police. The search lasted for nearly two hours in which the petitioner cooperated. According to the petitioner at the same time some other people were also present in the office of the complainant stating themselves to be CBI officers and threatened the petitioner and his employees. It is alleged that four persons hatched criminal conspiracy and trespassed into his office impersonating as CBI officers and after confining his staff in a separate room, took possession of the computer systems and accessed the confidential data, copied the various files through pen drives in compact discs. Being confronted by the lawyer of the petitioner regarding authority of the three persons namely Manish Kumar, Mahima Harjai and Ankit Tigrania, they left the office of the petitioner in haste dishonestly removing confidential documents. After that four Police personnel were present at

the spot, however they failed to confirm their identity. After conclusion of the investigation petitioner was served a notice under Section 41A of Cr.P.C. asking him to be present in the MIDC Police Station on 26th June, 2015 for further investigation. On further enquiry amongst his own staff it was revealed that computer systems and e-mails of the petitioner were accessed without his consent by Shiju George (I.T. Head) and Sai Dutta Nanda (Vice President HR) M/s. Macleods Pharmaceuticals Limited (in short Macleods) and 4 ♦ 6 persons accompanying him.

2. As the complainant had been systematically treated by a group of people associated with the company M/s. Macleods Pharmaceuticals Limited who hatched criminal conspiracy and trespassed into his office impersonating as CBI officers and after confining his staff in a separate room took possession of the computer systems and accessed the confidential data, copied the various files through pen drives in compact discs he lodged a complaint with the police station. It was also stated that on 10th June, 2015 the petitioner was served with a copy of suit No. CS 3890/2015 initiated before the City Civil Court, Goregaon Mumbai from which the petitioner came to know that Macleods located at Atlanta Arcade, Andheri had filed a civil suit that the petitioner has created and circulated a Whatsapp message stating that the said company is influencing the various doctors to promote their medicines and were granted ex-parte ad-interim injunction against the petitioner, restraining the petitioner from releasing any such articles. The petitioner came to know about the said order and suit only when summons along with the copy of the plaint and injunction order was served in his office on 10th June, 2015. Since no FIR was registered petitioner filed the complaint before the learned Metropolitan Magistrate with a prayer for direction to the SHO to register FIR.

3. The learned Metropolitan Magistrate vide the impugned order dated 18th March, 2016 noted that as per the Action Taken Report received from the concerned Police Station on 18th June, 2015, Mumbai Police from Police Station MIDC along with the staff and local Police had conducted a raid at the office of the petitioner in case FIR No.331/2015 under Sections 469 IPC read with Section 66(d) Information Technology Act at PS MIDC Andheri East, Mumbai and seized two laptops from there. According to the Action Taken Report the persons mentioned in the complaint were employees of Macleods who were the complainant in the FIR noted hereinbefore and had accompanied the investigating officer for assistance in investigation.

4. The learned Metropolitan Magistrate relying upon two decisions reported as **1998 (1) Crimes 351 Arvindbhai Ravjibhai Patel v. Dhirubhai Sambhubhai** and **2002 CrI.LJ NOC 333 (Delhi) M/s. Skipper Beverages P. Ltd. v. State** held that the exercise for directing investigation under Section 156(3) Cr.P.C. could not be exercised in a mechanical manner. Further in the present case all the evidence was within the reach and knowledge of the petitioner and if at any stage assistance of the Police was required, the same can be received by resorting to provision under Section 202 Cr.P.C. hence dismissed the application under Section 156(3) Cr.P.C. and

listed the matter for pre-summoning evidence on 28th July, 2016.

5. Before this Court learned counsel for the petitioner contends that the finding of the learned Metropolitan Magistrate that the entire evidence was within his reach is wholly incorrect.

6. The contention is misconceived and deserves to be rejected. The petitioner has already named the two accused who assisted the Police in the search as noted above and have been impleaded as accused in the complaint and also as respondents No.2 and 3 in the present petition. What data was stolen from the laptop computer systems of the petitioner would also be within his knowledge and in any case as per the Action Taken Report raid was conducted and search was made by the competent Police Officer pursuant to an FIR registered and seizure memos would indicate the recoveries made from the spot.

7. In the decision reported as **(2015) 6 SCC 287 Priyanka Srivastava & Anr. v. State of Uttar Pradesh & Ors.** the Supreme Court noting the casual manner and the practise of referring applications under Section 156(3) Cr.P.C. held that the remedy available under Section 156(3) Cr.P.C. was not of routine nature and this power is required to be exercised with application of judicial mind. It was held that the Magistrate exercising the said power must remain vigilant with regard to the nature of allegations made in the application. It was further held that in an appropriate case Magistrate can verify truth and veracity of allegations having regard to the nature of allegations.

8. Having regard to the nature of allegations, it is apparent that in the present case the petitioner who is an accused in FIR No.331/2015 under Section 469 IPC read with Section 66(d) IT Act registered at PS MIDC Police Station Mumbai seeks to lodge FIR against the complainant in the said FIR despite the fact that when the search was conducted the two respondents against whom FIR is sought to be lodged accompanied the Police Officers who conducted the search. Thus in the facts of the case, I find no error in the impugned order dated 18th March, 2016 passed by the learned Metropolitan Magistrate declining to exercise jurisdiction under Section 156(3) Cr.P.C. and proceeding the complaint as per the complaint case procedure.

9. Petition is dismissed.