

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

% **Pronounced on: 13th April, 2022**

+ **CRL.M.C. 1729/2020, CRL.M.A. 11942/2020**

SHERRY GEORGE Petitioner

Through: **Mr. Ankur Mittal and Mr. Abhay
Gupta, Advocates.**

versus

GOVT. OF NCT OF DELHI Respondent

Through: **Ms. Manjeet Arya, APP.**

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. This petition under Section 482 Cr.P.C. has been filed for setting aside the order dated 16th July, 2020, passed by the learned Special Judge (PC Act), in Complaint Case No.06/2019. Directions for registration of FIR have also been sought.

2. Mr. Ankur Mittal, learned counsel for the petitioner, submits that the petitioner/Sherry George is the Director and authorized representative of the Indian Fitness Connect Pvt. Ltd, a company incorporated under the Companies Act. Ozone Spa Pvt. Ltd. through one Jitendra Agnihotri (Chief Accountant of the said company) filed an application under Section 156(3) Cr.P.C., which was numbered as CC No. 6589/2017, against the petitioner and other Directors of India Fitness Connect Pvt. Ltd. which is pending before the learned Metropolitan Magistrate, Saket Courts.

3. It is the allegation of the petitioner that the said complainant had sought to influence the court of the learned Metropolitan Magistrate, as in the order dated 17th August 2017 it was so recorded. Learned counsel submitted that thereafter, since a grave offence had been committed i.e., the interference with the administration of justice, as well as an offence under Section 12 of the Prevention of Corruption Act read with Section 186 IPC and other penal provisions, the petitioner lodged a complaint dated 15th February 2018 at Police Station Saket, but no FIR was registered, despite requests to superior police officers.

4. As a consequence, the petitioner filed an application under Section 156(3) of Cr.P.C. before the learned Special Judge (PC Act) (ACB)-01, Rouse Avenue District Courts, Delhi seeking registration of FIR against five named persons and other unknown persons. The learned Special Judge, however, dismissed the application vide the impugned order dated 16th July 2020 holding that no investigations were warranted as the identity of the accused persons was well within the knowledge of the complainant and the assistance of the police was not required to collect evidence at that stage. Learned counsel insisted that since the concerned Metropolitan Magistrate had held that influence had been sought to be exerted through “unknown” persons, the identity of those unknown persons was required to be established, which only the police could do. Hence, it was submitted that this Court may issue directions for registration of a case.

5. Ms. Manjeet Arya, learned Additional Public Prosecutor for the State, however, submitted that there was no merit in the present petition

and that the same ought to be dismissed forthwith. Furthermore, the learned Special Judge had also granted an opportunity to the complainant to lead evidence and therefore, no prejudice had been caused to her.

6. Having heard the learned counsel for the petitioner as also the learned APP for the State, this Court finds that there is absolutely no merit in the present petition. The learned Special Judge was justified in disallowing the application under Section 156(3) Cr.P.C. and directing the registration of an FIR, as no police investigation was required in the matter. However, it is the view of this Court that the learned Special Judge erred in allowing the petitioner to lead evidence in the complaint filed by her.

7. The order of the learned Metropolitan Magistrate dated 17th August, 2017 before whom the complaint case against the petitioner was pending, is clearly a recusal order. The Supreme Court in ***Association and another vs. Union of India***, 2016 5 (SCC) 1, while dealing with the issue of recusal had observed as under :

“A Judge may recuse at his own, from a case entrusted to him by the Chief Justice. That would be a matter of his own choosing. But recusal at the asking of a litigating party, unless justified, must never to be acceded to. For that would give the impression that the Judge had been scared out of the case, just by the force of the objection.....”

8. Taking a cue from these observations, it would be proper to hold that an investigation into the cause/reason for recusal by a judge, particularly, by a litigant, would itself be an interference with the course of justice. When a judge recuses, no litigant or third party has any right to

intervene, comment or enquire. The recusal has to be respected, whether a reason has been spelt-out in detail or not. Had a judge refrained from giving a reason for recusal, no one can insist on the judge making such disclosures. The discretion of the concerned judge in the matter of disclosure is absolute.

9. By means of the application under Section 156(3) Cr.P.C., the petitioner is seeking full disclosures by forcing the police to make inquiries from the learned Metropolitan Magistrate who, in order to ensure fairness in the trial, chose to recuse.

10. In the present case, the learned court was approached by someone “known”, since it is recorded in the order *“in the present case, the petitioner has tried to influence the court through some known person”*. Therefore, no police inquiry was required to determine the identity of the persons who had sought to influence her.

11. It was for the concerned Metropolitan Magistrate to decide whether to initiate any contempt or other criminal proceedings against the petitioner and the “known person”. The learned Metropolitan Magistrate did not find any need to do so and it is not for the petitioner to question that decision, which is what she is seeking to achieve by insisting on the registration of an FIR and filing a complaint case under Section 200 Cr.P.C. To that extent the refusal of the police to register the FIR and the refusal of the learned Special Judge to advise the registration of the FIR are both proper.

12. It would be setting out on a precipice, if a Judge who recuses for disclosed or undisclosed reasons, was then sought to be examined on oath

in a complaint case which a litigant before the court chooses to initiate, on the pretext of enquiring into a possible corruption case, and to be compelled to make disclosures under oath that in its considered view were not required while recusing.

13. In these circumstances, this Court is of the view that the complaint case also ought to have been dismissed by the learned Special Judge.

14. Exercising the inherent powers of this Court under Section 482 Cr.P.C., therefore, this Court quashes all proceedings in Complaint Case No.06/2019 titled 'Sherry George v. Ozone Spa Pvt Ltd & Ors' which is presently pending before the Special Judge at the stage of complainant's evidence.

15. The petition filed by the petitioner seeking registration of the FIR and quashing of the order of the learned Special Judge dated 16th July, 2020 is dismissed along with the pending application with a cost of Rs.10,000/- to be deposited with the 'Delhi High Court Legal Services Committee' within a week and the receipt be filed in the Registry.

16. In the event, the receipt is not filed within the date fixed, the Registry is directed to place this matter again before the court.

17. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

APRIL 13, 2022

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