

# Dr. Jesim Pais vs State Of Nct Delhi & Anr on 6 December, 2022

**Author: Anup Jairam Bhambhani**

**Bench: Anup Jairam Bhambhani**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 6554/2022 & CRL.M.A.Nos. 25531/2022, 25533/2022

DR. JESIM PAIS

Through:

Ms. Rebecca John, Sen  
with Ms.Vrinda  
Ms.Praavita Kashyap,  
Maheshwari and Mr. Ma  
Aggarwal, Advocates.

versus

STATE OF NCT DELHI & ANR.

Through:

Mr. Tarang Srivastava  
State with SI Mukesh

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% 06.12.2022 CRL.M.A.25532/2022 (Exemption) Exemption is granted, subject to just exceptions. Let requisite compliances be made within 01 week. Application stands disposed of.

By way of the present petition under section 482 of the Code of Criminal Procedure 1973 ('Cr.P.C') the petitioner impugns order dated 12.09.2022 made by the learned Metropolitan Magistrate, Patiala House Courts on an application under section 156(3) Cr.P.C, whereby the learned Magistrate has directed the registration of a First Information Report against the petitioner under sections 420, 467, 468 and 471 of the Indian Penal Code 1860 ('IPC'); with the sequitur that an investigation has been launched against the petitioner.

2. The genesis of the matter is a Memorandum of Understanding dated 20.04.2010 followed by a Research Sub-Contract dated 11.10.2010, whereby a certain research project was commenced at the Institute for Studies in Industrial Development, India ('Institute') as sub- contractor under the aegis of Massey University, New Zealand ('University'); which project was to be performed as 'sub-contractor's investigator' by one Prof. T.S. Papola. For the research to be conducted as part of the project, Massey University was to fund Prof. T.S. Papola's in the sum of £ 3020.08, equivalent to New Zealand Dollars/NZD 6480. It is noteworthy, that as part of this arrangement, the petitioner

was designated as the contact person for the investigator/sub-contractor; and the petitioner's personal e-mail ID 'jesim\_pais@yahoo.com' was given to the University for that purpose.

3. Ms. Rebecca John, learned senior counsel appearing for the petitioner submits, that in connection with the research undertaken as part of project, the petitioner corresponded with the University via his e-mail, inter-alia in relation to the money that was to be received by Prof. T.S. Papola.

4. Ms. John has taken the court through the terms of the MoU and the sub-contract, as also the e-mail correspondence exchanged between the parties. Senior counsel has also drawn attention to the relevant part of the impugned order, which reads as under:

" IO has filed the reply stating that as per the enquiry conducted, Dr. Paid (sic.) joined inquiry and stated that he disclosed all the payment received to the institute and was removed by the institute following an inquiry. It is further stated by the IO that this dispute is between an employer and an employee over terms of contract and breach of the same by Dr Jesim Pais. IO further stated that the accused has already been proceeded against departmentally and consequent upon inquiry he was removed from service. IO further stated that the present complaint has been filed after considerable delay and after the alleged exercised his legal remedy.

Detailed arguments were heard on the application under section 156 (3) Cr.P.C. This court has also perused the entire record.

On bare perusal of the application it is found that prima facie the allegations made by complainant falls U/s 420/467/468/471 IPC.

Considering the facts of the case, investigation by a specialized agency is must.

SHO concerned is directed with the register and FIR under above-said sections against the accused name Dr. Jesim Pais. "

5. Shorn-off unnecessary details, the essence of the allegation against the petitioner is that he subscribed (pasted) the facsimile of the signature of one Dr. M.R. Murthy, who had signed the sub-contract as Officiating Director of the Institute, on an invoice dated 12.09.2011 raised in the name of the Institute upon the University, seeking payment of honorarium of NZD 6480 in favour of Prof. T.S. Papola. It is further the allegation, that as a matter of a private arrangement between the two, Prof. T.S. Papola paid to the petitioner half the sum received from the University as honorarium. For clarity, it may be recorded that the money against the invoice was received by Prof. T.S. Papola directly from the University in his bank account; and half that sum was paid-out by Prof. Papola to the petitioner by cheque.

6. It is submitted, that admittedly, by reason of certain queries in this behalf being raised at the departmental level in the Institute, the petitioner subsequently refunded the money so received to Prof. T.S.Papola.

7. Ms. John submits, that on point of defence, it is the petitioner's case that the signature in question was never subscribed on the invoice by him but by someone in the accounts department of the Institute who prepared and sent the invoice to the petitioner; and the petitioner only forwarded the invoice (with the signatures of Dr. M.R. Murthy on it) to the University via his personal e-mail, since his e-mail was designated as the correspondence ID in the sub-contract.

8. But that apart, it is submitted that even proceeding solely on the allegations made and the documents on which they are based, no offence as alleged or otherwise is made-out against the petitioner inter-alia for the following reasons :

8.1. Firstly, an invoice is not a 'valuable security' within the meaning of section 30 IPC and therefore the offence under section 467 IPC of forging a valuable security is ex-facie not made-out;

8.2. Secondly, the ingredients of the offence under section 420 IPC are also completely missing inasmuch as, even as per the allegations, no case is made-out of the petitioner having induced anyone to deliver any property or valuable security to him;

8.3. Thirdly, it is submitted that since the offence of forging a valuable security under section 467 and cheating under section 420 IPC are not made-out, the question of offences under sections 468 and 471 IPC of committing forgery for the purposes of cheating, are also not made-out.

9. Ms. John further submits, that the impugned order directing registration of an FIR under section 156(3) Cr.P.C. suffers from complete non-application of mind, since a perusal of the order will show that after simply narrating the contents of the complaint, the learned Magistrate himself records that as per the reply filed by the Investigating Officer after conducting an enquiry, the I.O. has said that the dispute is essentially between an employer and employee arising from alleged breach of contract, for which the Institute has already proceeded departmentally against the petitioner; implying thereby that no criminality is disclosed. After recording that however, without any discussion or reasoning whatsoever, the learned Magistrate concludes in the impugned order that prima-facie allegations under sections 420, 467, 468 and 471 IPC are made-out and proceeds to direct registration of an FIR.

10. Ms. John also points-out that the complaint relates to events that had transpired more than 07 years ago; and, as detailed in the petition, the FIR is evidently informed by mala-fides.

11. Upon a prima-facie conspectus of the averments contained in the petition, the submissions made, as also on a perusal of the documents filed with the petition, this court is impelled to draw the following inferences :

11.1. The foundational offence that is subject matter of the present case is an offence under section 467 IPC, viz. of forging a valuable security. Prima-facie it would appear

that such an allegation must relate to forgery committed by a person to create a document that in itself contains some monetary value;

and also, is of value to that person. From the invoice in question it is seen, that payment under it was solicited from the University in favour of Prof. T.S. Papola directly to the account of the said person. This would, at least on first blush, negate the allegation of the invoice being a valuable security in itself, or of being of value to the petitioner in any case;

11.2. The documents also show that in the course of departmental proceedings, the within-named Prof. T.S. Papola (since deceased) has, in his own hand-writing, given a detailed statement to the effect that he had himself shared the honorarium received from the University with the petitioner since the project was jointly undertaken by the two persons and Prof. T.S.Papola considered it '... only fair that it (viz. the honorarium) is shared with Dr. Pais, as he has substantially contributed to the study.', thereby negating anything sinister in the transaction between Prof. T.S.Papola and the petitioner. Furthermore, if any malicious intent was to be discerned in the transaction, the fact is that on 05.09.2013, way before any criminal complaint came to be filed, the petitioner had refunded the share of the honorarium received from Prof. T.S.Papola, to obviate any misgivings on the part of the Institute. 11.3. Furthermore, a perusal of the impugned order shows the evident disconnect between the reply filed by the Investigating Officer, which said that the enquiries made did not reflect any criminality, and the view taken by the learned Magistrate to say that prima-facie allegations are made-out against the petitioner under sections 420, 467, 468 and 471 IPC.

11.4. There is not a whisper of a discussion in the impugned order as to the factual transactions or of any ingredients of the offences alleged; and the conclusion proceeds purely upon a rote repetition of the contents of the complaint. In assessing the position, reference is made to the mandate of the Supreme Court in Ramdev Food Products (P) Ltd. vs. State of Gujarat:

"19. Thus, this Court has laid down that while prompt registration of FIR is mandatory, checks and balances on power of police are equally important. Power of arrest or of investigation is not mechanical. It requires application of mind in the manner provided. Existence of power and its exercise are different. Delicate balance had to be maintained between the interest of society and liberty of an individual. Commercial offences have (2015) 6 SCC 439 been put in the category of cases where FIR may not be warranted without enquiry.

"20. It has been held, for the same reasons, that direction by the Magistrate for investigation under Section 156(3) cannot be given mechanically. In Anil Kumar v. M.K. Aiyappa 2 it was observed:

11. "The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed case [Maksud Saiyed v. State of Gujarat] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the

Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order.

The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."

The above observations apply to category of cases mentioned in para 120.6 in Lalita Kumari<sup>3</sup> (emphasis supplied) 11.5. In the present case, no application of mind on the part of the learned Magistrate is discernible from the impugned order. 11.6. Reference may also be made to the observations of the Supreme Court in Lalita Kumari vs. Government of Uttar Pradesh and (2013) 10 SCC 705 (2008) 5 SCC 668 Ors 4, where in para 120.6, the Supreme Court has said that inter-alia in cases where there is abnormal delay in initiating criminal prosecution (and in that case there was only a 3-month delay) without satisfactory explanation of the delay, at least a preliminary enquiry is to be conducted. In the present case, it is noted that there is a delay of more than 07 years in filing of the complaint. And, what is more, the enquiry conducted by the investigating officer has concluded that there is no criminality involved in the disputes.

12. The registration of an FIR against a person has serious consequences, since it exposes the person to a protracted criminal process, which at times can be punishment in itself. Once the ball of the criminal process is set-rolling by directing registration of an FIR, a person is exposed to several procedures and processes, including those that are coercive and that may restrict personal liberty; which processes may go on for decades, in view of the constraints and compulsions of our criminal justice system.

13. In view of the foregoing discussion, issue notice.

14. Mr. Tarang Srivastava, learned APP appears for the State on advance copy; accepts notice; and seeks time to file status report.

15. Let status report be filed within 06 weeks; response thereto, if any, be filed within 04 weeks thereafter; with copies to the opposing counsel.

(2014) 2 SCC 1

16. Upon the petitioner taking requisite steps, let notice be sent to respondent No. 2, by all permissible modes, returnable for the next date.

17. Let the notice indicate that reply to the petition be filed within 06 weeks of service; rejoinder thereto, if any, be filed within 04 weeks thereafter; with copies to the opposing counsel.

18. In the above view of the matter, further proceedings in CC No. 13221/2018 titled Institute for Studies in Industrial Development vs. JesimPais before the learned Metropolitan Magistrate arising from FIR No. 407/2022 registered u/s 420, 467, 468, 471 IPC at P.S.:

Vasant Kunj North, shall remain stayed until further orders.

19. Re-notify on 15th March 2023.

ANUP JAIRAM BHAMBHANI, J.

DECEMBER 6, 2022/uj