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

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DATE OF DECISION: 14th May, 2012

+ CRL.M.C. 1696/2012

MANOHAR LAL DHALL Petitioner
Through : Mr. Mir Akhtar Hussain, Adv.

versus

STATE & ANR. Respondents
Through : Ms.Rajdipa Behura, APP for
State – R1

**CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI**

PRATIBHA RANI, J (ORAL)

Crl.M.A. No.5935/2012 (Exemption)

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

Crl.M.C. No.1696/2012

1. The petitioner has impugned the order dated 29th February, 2012 vide which learned MM declined the prayer of the petitioner for issuance of direction for registration of FIR and get the matter investigated by the police.
2. In brief, the case of the petitioner is that he alongwith his son was co-owner of property No. FA-13 (Old) and new No.F-257, measuring 141 sq.yds. (117.89 sq.mtrs.) situated in the area of Village Basai Darapur, colony known as Mansarover Garden, New Delhi – 110015 with the free hold rights of the land under the said property. The petitioner alongwith his son entered into a collaboration agreement with one Mr.Raj Kumar Maggo (hereinafter referred to as Builder). The Builder raised the construction as per the collaboration agreement but he also additionally constructed one room set on the ground floor

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measuring 389 sq. ft. which became the property of the petitioner and he took possession of the same. ~

3. In the month of June, 2011, the Builder committed trespass in respect of the one room set portion measuring 389 sq.ft. on the ground floor and when the petitioner objected, he sought permission to park his car for sometime without claiming any 'interest' in the said property. As the Builder did not remove his car despite being requested again and again, on 01.07.2011 the Builder informed the petitioner that he was the owner of the said portion and petitioner had no business to make such request.

4. The petitioner got the documents examined from the office of Sub-Registrar, Janak Puri and then came to know that on 19.01.2010 while the petitioner had executed two sale deeds, the third sale deed was inserted in between and that was also got signed from the petitioner fraudulently. The cheque showing payment of part consideration towards this third sale deed was infact in the name of his son, the co-owner which was handed over at the time of entering into collaboration agreement. As the Builder has played fraud upon him and had never made any payment either by cash or through cheque in respect of that one room set portion measuring 389 sq.ft. on the ground floor, the matter was reported to the police. On failure of the police to take any action, the complaint was filed before learned MM with an application under Section 156(3) CrPC for necessary direction and getting the matter investigated through police.

5. Learned counsel for the petitioner has submitted that learned MM has failed to appreciate that it was not a case of civil transaction but a fraud has been played upon a senior citizen by getting the third sale deed inserted in between the two sale deeds executed by the petitioner on the same day and that he has been cheated and no payment was ever made towards sale consideration for this third sale deed. Learned counsel for the

petitioner further submitted that the recovery of the documents has to be got effected by the police and necessary evidence can be collected by the police only as the sale deed is not within the power and possession of the petitioner.

6. Learned counsel for the petitioner has referred to the status report and submitted that without even waiting for the police to complete the investigation by examining the Sub-Registrar, the witnesses to the sale deed and questioning the Builder who is a politician indulged in land grabbing, the Court has directed the petitioner to lead evidence. Learned counsel for the petitioner has also drawn the attention of this Court to the last two paragraphs of the impugned order wherein on the one hand learned MM has referred the nature of the dispute to be of civil nature and on the other hand, observed that there was no element of inducement by the alleged person for getting the sale deed executed in his favour to arrive at a conclusion that it was not a fit case for issuing direction for registration of the FIR under Section 156(3) CrPC. Learned counsel for the petitioner submitted that the status report itself indicates that the matter required investigation by the police, hence the impugned order may be set aside and direct respondent No.2 an FIR under Section 448/457/420/467/468/471/506/34 IPC on the basis of complaint.

7. On behalf of State, it has been submitted that it is a case where all the material evidence is in power and possession of the petitioner and issuing directions to the police in such type of cases unnecessarily increases the burden on the police. While supporting the impugned order, learned APP prayed for dismissal of the petition.

8. I have considered the submissions made by learned counsel for the petitioner. First of all, it is necessary to consider the legal position and then examine the legality and validity of the

impugned order and consider whether the impugned order is required to be quashed.

9. In the case **Subhkaran Luharuka s/o Late K.P.Luharuka and Shree Ram Mills LTd. vs. State (Govt. of NCT of Delhi) and Utility Premises Pvt. Ltd. MANU/DE/1646/2010**, this Court has dealt with the subject as to when the Court can direct police investigation. The relevant paragraphs of the report as extracted as under :-

'52A. For the guidance of subordinate courts, the procedure to be followed while dealing with an application under Section 156(3) of the Code is summarized as under:-

(i) Whenever a Magistrate is called upon to pass orders under Section 156(3) of the Code, at the outset, the Magistrate should ensure that before coming to the Court, the Complainant did approach the police officer in charge of the Police Station having jurisdiction over the area for recording the information available with him disclosing the commission of a cognizable offence by the person/persons arrayed as an accused in the Complainant. It should also be examined what action was taken by the SHO, or even by the senior officer of the Police, when approached by the Complainant under Section 156(3) of the Code.

(ii) The Magistrate should then form his own opinion whether the facts mentioned in the complaint disclose commission of cognizable offences by the accused persons arrayed in the Complaint which can be tried in his jurisdiction. He should also satisfy himself about the need for investigation by the Police in the matter. A preliminary enquiry as this is permissible even by an SHO and if no such enquiry has been done by the SHO, then it is all the more necessary for the Magistrate to consider all these factors. For that purpose, the Magistrate must apply his mind and such application of mind should be reflected in the Order passed by him.

Upon a preliminary satisfaction, unless there are exceptional circumstances to be recorded in writing, a status report by the police is to be called for before passing final orders.

iii) The Magistrate, when approached with a Complaint under Section 200 of the Code, should invariably proceed under Chapter XV by taking cognizance of the Complaint, recording evidence and then deciding the question of issuance of process to the accused. In that case also, the Magistrate is fully entitled to

postpone the process if it is felt that there is a necessity to call for a police report under Section 202 of the Code.

(iv) Of course, it is open to the Magistrate to proceed under Chapter XII of the Code when an application under Section 156(3) of the Code is also filed along with a Complaint under Section 200 of the Code if the Magistrate decides not to take cognizance of the Complaint. However, in that case, the Magistrate, before passing any order to proceed under Chapter XII, should not only satisfy himself about the pre-requisites as aforesaid, but, additionally, he should also be satisfied that it is necessary to direct Police investigation in the matter for collection of evidence which is neither in the possession of the complainant nor can be produced by the witnesses on being summoned by the Court at the instance of complainant; and the matter is such which calls for investigation by a State agency. The Magistrate must pass an order giving cogent reasons as to why he intends to proceed under Chapter XII instead of Chapter XV of the Code.'

10. In the case **Gulab Chand Upadhyaya vs. State of U.P. & Ors. 2002 CrL.J. 2907** in para 23, it was held as under :-

'23. But where the complainant is in possession of the complete details of all the accused as well as the witnesses who have to be examined and neither recovery is needed nor any such material evidence is required to be collected which can be done only by the police, no "investigation" would normally be required and the procedure of complaint case should be adopted. The facts of the present case given below serve as an example. It must be kept in mind that adding unnecessary cases to the diary of the police would impair their efficiency in respect of cases genuinely requiring investigation. Besides even after taking cognizance and proceeding under Chapter XV the Magistrate can still under Section 202(1) CrPC order investigation, even though of a limited nature.'

11. In **Vikrant Kapoor vs. The State & Ors. 187 (2012) DLT 241**, it was held as under:-

"9. In *Meenakshi Anand Sootha Vs. State*, 2007 (4) JCC 3230 Delhi, the learned M.M. dismissed the application under Section 156(3) Cr.P.C for giving direction to SHO to investigate the matter and instead took cognizance of the case and proceeded with the complaint case of the complainant. On facts the following observations were made by this Court:

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"10. It is well settled that under Section 156(3), Cr.P.C, the Magistrate has not to pass the order mechanically and has to apply his judicial mind. On this point, decision of this Court, **M/s. Skipper Beverages Pvt. Ltd. v. State** 2001 IV AD (Del) 625, may be referred to in which it was held:

It is true that Section 156(3) of the Code empowers to Magistrate to direct the police to register a case and initiate investigation 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 order under Section 156(3) of the Code."

11. In case of *Minu Kumari and Another Vs. State of Bihar and Others*, MANU/SC/8098/2006 : (2006) 4 SCC 359, the Supreme Court observed thus:

When the information is laid with the Police, but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and would issue process to the accused. These aspects have been highlighted by this Court in *All India Institute of Medical Sciences Employees' Union (Reg.) through its President v. Union of India and others* MANU/SC/1769/1996 : 1996 (11) SCC 582. It was specifically observed that a writ petition in such cases is not to be entertained."

12. In the instant case, the petitioner does not dispute his signature on the third sale deed in respect of one room set portion measuring 389 sq. ft. on the ground floor which he claims that was inserted in between the other two sale deed executed

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by him on the same day. This fact can well be proved by him by summoning the relevant record from the office of Sub-Registrar, Janak Puri, Delhi. The factum of third sale deed being without any consideration and that the cheque referred to was towards payment of part sale consideration in respect of that one room set, can also be proved by summoning the record from the bank as to when the payment was made, to whom it was made and the stage it was made i.e. the collaboration agreement. When the entire evidence is in power and possession of the complainant i.e. petitioner before this Court, the impugned order directing the complainant to lead pre-summoning evidence does not suffer from any illegality.

13. So far as obtaining of status report by learned MM is concerned, as per direction given by this Court in case ***Subhkaran Luharuka s/o Late K.P.Luharuka and Shree Ram Mills LTd. vs. State (Govt. of NCT of Delhi) and Utility Premises Pvt. Ltd. MANU/DE/1646/2010***, it was obtained on the complaint submitted to the SHO by the petitioner. The status report does not amount to investigation for the purpose of Section 156(3) CrPC and by considering the status report before passing the impugned order, learned MM has just followed the guidelines laid down by this Court.

14. Learned MM in the impugned order has rightly come to the conclusion that dispute seems to be more of a civil nature as the complainant has alleged that he has been defrauded by the alleged person who got executed three sale deed whereas, only two sale deed in respect of first and second floor were actually intended to be executed.

15. The complainant has approached this Court for exercise of the power under Section 482 Cr.P.C. No doubt, the powers vested in High Court under Section 482 Cr.P.C. are very wide and the very plenitude of the power requires great caution while

exercising the same. In ***Santosh De and Anr. vs. Archana Guha and Ors. 1994 (1) SCALE 423***, the Apex Court observed that unless a grave illegality is committed, the superior Courts should not interfere and they should allow the Court which is seized up with the matter to go on with it.

16. There is no merit in the petition and the same is hereby dismissed.


PRATIBHA RANI, J

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