

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

Judgment Reserved on: November 28, 2013

Judgment Pronounced on: December 20, 2013

+ **CRL.M.C. 2936/2012**

PARADISE CREDIT P.LTD. & ORS. Petitioners

Through: Mr. Aman Lekhi, Sr. Advocate
with Mr. Mohit Mathur, Ms. Nisha
Rohatgi, Md. Adnan and Mr. Rohit
Gupta, Advocates

versus

STATE OF NCT OF DELHI Respondent

Through: Mr. Vinod Diwakar, Additional
Public Prosecutor for Respondent-
State with Inspector Manoj Kumar
Mr. Rajiv Nayar, Sr. Avocate with
Mr. Diwakar Maheshwari and Mr.
Vinam Gupta, Advocates for
complainant

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

% **JUDGMENT**

1. Impugned order of 13th August, 2012 upholds trial court's order dismissing petitioners' application under Section 156(3) of Cr.P.C, which is under challenge in this petition.

2. The factual background of this case as noted in the impugned order is as under:-

"The revisionist filed an application under Section 156(3) of Cr.P.C before the Court of ACMM, Saket, New Delhi, praying for registration of FIR pursuant to complaint dated 26.05.2012 against Malanpur Steel Limited, alleging

that the applicant had pledged certain shares to accused no.1 as security for loan of Rs.5.00 crores, obtained by Spicejet Ltd. having its office at Cargo Complex, IGI Airport, New Delhi. Contending that said accused No.1 has sold those pawned shares belonging to the applicant for which same had no right to sell. Said accused No.1 has sold the same to accused No.2 and 3, having entered into a conspiracy with the latter, the applicant requested for issuing direction to the SHO of police officer concerned to register a case against said accused for offence punishable under Section 406, 409, 415, 420, 464, 120-B IPC and to investigate the matter and again to submit final report to the court in this regard.”

3. Impugned order takes note of the Apex Court’s decision in *Ramesh Kumari vs. State* (2006) 2 SCC 677, requiring police to mandatorily register an FIR in a complaint where cognizable offence is disclosed. But the learned Revisionist Court has chosen to rely upon a decision of a coordinate Bench of this Court in *Subhkaran Luharuka &Anr. vs. State & Anr.*, 170 (2010) DLT 516 and has held as under:-

“At the same time, the apprehension that the procedure [Section 156(3) of Cr.P.C.] may not be misused by some clever litigant by filing false complaint, against anyone merely to take revenge, cannot be ruled out, outrightly. To minimise any such misuse of process of court, it is not unjust to call ‘status report’ from the police. Calling status report does not amount investigation of the case threadbare, rather it becomes necessary for a Magistrate to know as to whether the complainant had approached the police or not or that similar complaint was made earlier or not found favour of police or the court.”

4. At the hearing, learned senior counsel for petitioners had contended that it is ex-facie apparent from the record that the Trial Court had sought “*action taken report/status report*” from the local police, but had misdirected itself in not directing registration of an FIR, although upon a bare perusal of the complaint in question (*Annexure P-3*) made to the local police, it becomes apparent that the offence of misappropriation and forgery committed by respondent/accused is cognizable offence. It was pointed out by learned senior counsel for the petitioners that neither trial court’s order nor impugned order makes any reference to the status report (*Annexure P-8*) wherein time was sought to verify the allegations and submit the report. Thus, it was contended that the impugned order is unsustainable on the face of it and deserves to be quashed and the petitioners’ application under Section 156(3) of Cr.P.C ought to be allowed. In support of above submissions, reliance was placed by learned senior counsel for petitioners upon decisions in *Dr. Rajni Palriwala vs. Dr. D. Mohan & Anr.*, CrI. M.C.6525/2006 dated 22.4.2009, *H.N. Rishbud vs. NCT of Delhi* (1955) 1 SCR 1150, *Rabindra Rai vs. State of Bihar* (1984) 32 BLJR 464, *Shanti Devi vs. State* 97 (2002) DLT 410 and *Ramesh Kumar vs. State (NCT of Delhi) & Ors.* (2006) 2 SCC 677.

5. Learned senior counsel for respondent No.2 had supported impugned order and the trial court’s order and had submitted that the entire case of petitioners/complainants, at best, makes out a civil dispute regarding repayment of loan and various civil litigations in respect thereof are pending and the evidence to prove the averments made in the complaint in question is with petitioners and no police investigation is

required and so petitioners' application under Section 156(3) Cr.P.C has been rightly declined by the Courts below and there is no substance in this petition.

6. It was pointed out that the decision in *Subhkaran Luharuka (Supra)* holds the field and recent Apex Court decision in W.P.(C) No.68/2008 in *Lalita Kumari vs. State* rendered on 12th November, 2013, deals with the powers of police to register an FIR and exception has been carved out leaving it open to the police to conduct an preliminary enquiry prior to registration of the FIR in the complaints relating to commercial offences. Thus, it was submitted that this petition deserves to be dismissed.

7. Upon hearing both the sides and on perusal of the impugned order, trial court's order, the material on record and the decisions cited, I find that the directions issued by Apex Court in *Lalita Kumari (supra)* relating to Section 154 of Cr.P.C provide valuable guidelines for the exercise of powers under Section 156(3) of Cr.P.C as well. The directions issued by the Apex Court in *Lalita Kumari (supra)* are as under:-

“111) In view of the aforesaid discussion, we hold:

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases

where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case.

The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not

exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

8. Perusal of the complaint in question, impugned order, trial court's order and the status report (*Annexure P-8*), I find that once trial court's had called for the status report and the concerned officer of the Economic Offences Wing (EOW), Crime Branch had sought time to verify the facts, then dismissal of petitioners/complainants application under Section 156(3) of Cr.P.C was unwarranted. Trial court ought to have waited for a complete status report from Crime Branch and then should have taken a decision as to whether upon considering the complaint in question and detailed status report, a cognizable offence is made out or not.

9. In view of the aforesaid, impugned order dated 13th August, 2012 (*Annexure P-1*) and trial court's order are quashed and petitioner's/complaint's application filed under Section 156(3) of Cr.P.C. is restored for hearing on merits by trial court and it is directed that after complete status report is obtained from the concerned EOW, Crime Branch, petitioner's application under Section 156 (3) Cr.P.C. be expeditiously decided afresh on merits.

10. This petition is disposed of while not expressing any opinion on the merits, lest it may prejudice either side.

(SUNIL GAUR)
JUDGE

DECEMBER 20, 2013

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