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

+ **CRL.M.C. 1989/2016**

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Decided on: 5th October, 2016

M/S GABRANI INFRASTRUCTURE PVT. LTD. Petitioner

Represented by: Mr. Anish Dhingra, Adv.

versus

M/S UNITECH HI-TECH DEVELOPERS

LIMITED & ORS

..... Respondents

Represented by: Mr. Ravi Nayak, APP for the
State/R-13

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Petitioner filed a complaint against the respondents before the learned Metropolitan Magistrate that having lured the petitioner to invest in their project and taken the amount of ₹3,84,52,150/- as advance, the respondents diverted the same to their different projects thereby committing offences punishable under Sections 406/420/467/468/471/448/454/120B/34 IPC. Before filing of the complaint, the petitioner had filed complaints before SHO, PS Saket, DCP South District, Joint Commissioner of Police EOW and Commissioner of Police requesting them for registration of the FIR. Since the police was not registering the FIR, the petitioner filed the complaint for the allegations as noted above along with an application under Section 156(3) Cr.P.C. wherein the learned Trial Court after hearing the arguments directed the SHO, PS Saket to register FIR vide order dated 26th February, 2016 resulting in registration of FIR No.256/2016.

2. Learned counsel for the petitioner states that on 1st April, 2016 when proxy counsel for the petitioner appeared before the Metropolitan Magistrate, the complaint was disposed of since FIR on the complaint of petitioner was registered. It is stated that proxy counsel mistook that an order under Section 210 Cr.P.C. was being passed by learned Metropolitan Magistrate staying the proceedings of the complaint but when the order was received by the complainant, the complaint was found to be disposed of as not pressed. The grievance of the petitioner is that there would be no monitoring of the investigation.

3. The order dated 1st April, 2016 which is challenged before this Court reads as under-

“IO/SI Rajdeep Singh is present and has filed status report.

It is stated by ld. Counsel for complainant that the complaint may be disposed of as law will take its own course.

The complaint is disposed of as being not pressed.

File be consigned to Record Room.”

4. The scope of interference of the Court at the stage of investigation is no more *res integra* as has been laid down by the Supreme Court in its various decisions. In the decision reported as AIR 1968 SC 117 Abhinandan Jha & Ors. v. Dinesh Mishra the Supreme Court considering the various provisions of the Code of Criminal Procedure held that the field of investigation of non-cognizable offences is exclusively within the domain of the Investigating Agency over which the Courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions

relating to investigation.

5. In the decision reported as AIR 1980 SC 329 State of Bihar & Anr. vs. J.A.C. Saldanha & Ors. the Supreme Court observed:

“There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively for the Executive through the police department, superintendence over which vests in the State Government. Once it investigates and finds an offence having been committed, it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the Investigating Officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 of the Code, its duty comes to an end.”

6. Thus, it is well settled that once directions for registration of FIR are given under Section 156(3) Cr.P.C., the Magistrate becomes functus officio and he has no jurisdiction to interfere in the investigation. After investigation is completed and a charge sheet is filed, the Court would summon the accused, if required and in case cancellation report is filed, the Magistrate may still issue summons to the accused on a protest petition filed by the complainant however the same would be separate cause of action for which the complaint was not required to be kept pending.

7. Finding no error in the impugned order, the petition is dismissed.

(MUKTA GUPTA)
JUDGE

OCTOBER 05, 2016
‘v mittal’