

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

% **Decided on: 17th October, 2016**

+ **CRL.M.C. 2312/2016 & Crl.M.A. 9684/2016 (stay)**

BHARAT BHUSHAN @ BHAGWAN DAS Petitioner
Represented by: Mr. S.C. Singhal, Adv.

versus

RAJESH & ANR Respondent
Represented by: Mr. Ashok Kumar Garg, APP.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. The petitioner filed a complaint before the learned Metropolitan Magistrate seeking directions under Section 156(3) Cr.P.C. as no FIR was registered on the complaint of the petitioner by the SHO of PS Palam on the complaint dated 30th May, 2014.

2. In the complaint filed under Section 200 Cr.P.C. against one Rajesh the respondent No.1 herein, the petitioner alleged that he had purchased property in khasra No.89/1/1 of village Palam bearing No.89/1/5 having two shops constructed vide Agreement to Sell, GPA, Affidavit, Receipt dated 29th November, 1988 which was duly notarized by its erstwhile owner Smt. Prem Lata for a total consideration of ₹95,000/-. Thereafter the petitioner/complainant constructed a temporary room with a tin shed and let out the same on a monthly rent of ₹3,000/- to the father of Rajesh who passed away in the year 2005. Thus the property came in possession of Rajesh as a tenant. However Rajesh never paid the rent on one pretext or the other. The

complainant terminated the tenancy vide notice dated 30th December, 2009 and thereafter filed a suit for possession, arrears of rent, damages and mesne profit before the Additional Senior Civil Judge, District South-West, New Delhi. In the said suit a written statement was filed by Rajesh claiming that his father had purchased the property from one Ishwar Singh, who purchased it from its original owner Shri Diwan Chand for a consideration of ₹81,000/- in the year 1987. Photocopies of the documents were also filed.

3. Claiming that the documents of sale dated 6th February, 1994 and 3rd March, 1987 comprising of Agreement to Sell, Affidavits, Will, Receipt etc. were forged and fabricated documents, the petitioner sought registration of FIR against Rajesh by lodging a complaint to SHO PS Palam on 30th May, 2014. Due to the inaction of the SHO, the complaint was filed before the learned Metropolitan Magistrate.

4. Vide order dated 19th February, 2015 the learned Metropolitan Magistrate noted that the documents which are alleged to be forged and fabricated by the petitioner are subject matter of a civil suit where a trial is going on and thus the petitioner/ complainant being in possession of the evidence, no directions under Section 156(3) Cr.P.C. were warranted and the matter was listed for the complainant to lead the pre-summoning evidence.

5. This Court in the decision reported as 92 (2001) DLT 217 *Skipper Beverages Pvt. Ltd. vs. State* held that in a case where no investigation is required to be done by the police, the matter should be proceeded as a complaint case and after examining the complainant the Court can proceed to summon the accused. It was held:

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

investigations 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 orders under Section 156(3) of the Code. The discretion ought to be exercised after proper application of mind and only in those cases where the Magistrate is of the view that the nature of the allegations is such that the complainant himself may not be in a position to collect and produce evidence before the Court and interests of justice demand that the police should step in to help the complainant. The police assistance can be taken by a Magistrate even Under Section 202(1) of the Code after taking cognizance and proceeding with the complaint under Chapter XV of the Code as held by Apex Court in 2000¹ (1) Supreme Page 129 titled "Suresh Chand Jain Vs. State of Madhya Pradesh & Ors.

10. Section 156(3) of the Code aims at curtailing and controlling the arbitrariness on the part of the police authorities in the matter of registration of FIRs and taking up investigations, even in those cases where the same are warranted. The Section empowers the Magistrate to issue directions in this regard but this provision should not be permitted to be misused by the complainants to get police cases registered even in those cases which are not very serious in nature and the Magistrate himself can hold enquiry under Chapter XV and proceed against the accused if required. Therefore a Magistrate, must apply his mind before passing an order under Section 156(3) of the Code and must not pass these orders mechanically on the mere asking by the complainant. These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of complainant or custodial interrogation appears to be necessary for some recovery of article or discovery of fact."

6. Undoubtedly, when there is a grievance of an offence being committed, whether cognizable or non-cognizable, the complainant has a right to file a complaint before the Magistrate on which the learned Magistrate is required to exercise his discretion judicially. If the allegations disclose commission of a cognizable offence and warrant Police investigation, then a direction under Section 156(3) is required to be issued. However, if the allegations can be proved on the basis of statements of the complainant and his witnesses and only a limited enquiry is required to ascertain some facts which can be got conducted in 202 Cr.P.C., the Court would be within its jurisdiction to proceed as a complaint case instead of directing registration of FIR.

7. As noted in the complaint, the allegations are of forgery and fabrication of the sale deed and the purported documents of sale, copies whereof has been filed in the written statement to the civil suit by the petitioner. Thus evidence to be led by the petitioner is either oral or documentary which can be summoned from the concerned Court and in case need arises to ascertain whether the document is forged, a limited enquiry can be got conducted by the learned Trial Court under Section 202 Cr.P.C. even from the Police. Hence I find no error in the impugned order dismissing the application of the petitioner under Section 156(3) Cr.P.C. and proceeding the complaint as per the complaint case procedure.

8. Petition and application are accordingly dismissed.

(MUKTA GUPTA)
JUDGE

OCTOBER 17, 2016
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