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

+ **CRL.M.C. 4167/2016**

MOHD AJAZ

..... Petitioner

Represented by: Mr. Kaushal Yadav, Mr.
Nandlal Mishra, Ms. Sunita
Yadav, Advs.

versus

STATE NCT OF DELHI & ORS

..... Respondent

Represented by: Ms. Meenakshi Chauhan, APP
with SI Sanjay Kaushik PS
Lahori Gate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

17.11.2016

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1. The petitioner filed a complaint before the learned Metropolitan Magistrate along with an application under Section 156 (3) Cr.P.C. The allegations in the complaint were that the petitioner was interested in purchasing shop No.577 situated at Gandhi Cloth Market, Katra Allah Diya, Chandani Chowk, Delhi (in short the shop). The respondent No.2 in connivance with other accused represented to the petitioner that the owner of the shop was not interested in selling the property to a Muslim and hence they will have to first purchase the shop in the name of respondent No.5 from the money of the complainant and thereafter shop would be transferred

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in the name of the petitioner. Thus induced by the representations, the petitioner transferred a sum of ₹36,76,500/- for purchase of the shop in the name of respondent No.5. Despite taking the money, the respondents did not transfer the property in the name of the petitioner. Thus the petitioner lodged a complaint before the Police Station, however no FIR was registered.

2. Vide the order dated 6th September, 2016 the learned Metropolitan Magistrate following the decisions in M/s. Skipper Beverages Pvt. Ltd. Vs. State 2001 IV AD (Delhi); Subh Karan Luharuka & Anr. Vs. Stae & Anr. 2010 (3) JCC 1972 and Gulab Chand Upadhyay Vs. State of U.P. 2002 CrL.L.J. 2907 held that since the complainant was in possession of the evidence which was required to be adduced, no case for directing registration under Section 156 (3) Cr.P.C. was made out and taking cognizance on the complaint, the petitioner was granted liberty to lead pre-summoning evidence. It was also noted that in case there was any requirement of any investigation at a later stage qua some disputed facts provision of Section 202 Cr.P.C. could be resorted to. Aggrieved by the order dated 6th September, 2016 the petitioner filed a revision petition which was dismissed by the learned Additional Sessions Judge vide the impugned order dated 4th October, 2016. Hence the present petition.

3. Learned counsel for the petitioner submits that despite the investigating officer stating in his report that the petitioner has been cheated no FIR had been registered.

4. As noted above, at this stage the averments of the complainant cannot be disputed and the evaluation thereof would be after the complainant is

examined on oath or thereafter during trial. The sole question is whether directions for registration of FIR was required to be made or not.

5. The allegations of the petitioner in the complaint are limited that misrepresenting the petitioner that the owner of the shop will not sell the shop to a Muslim the respondents 2 to 5 induced him to part money so that the shop could be purchased in the name of respondent No.5. However despite having transferred the money in the name of respondent No.5 the shop was not transferred in the name of the petitioner. Thus the evidence required to be adduced by the petitioner is primarily oral in nature within his possession. No material investigation is required to be done to unravel the facts which are in the knowledge of the petitioner. As noted above, the learned Metropolitan Magistrate has already held that if Police investigation is required enquiry under Section 202 Cr.P.C. would be resorted to.

6. As noted above the evidence is primarily in the possession of the petitioner who can adduce the same by examining him and his witnesses and limited enquiry if required can be ordered under Section 202 Cr.P.C. Finding no error in the two orders the present petition is dismissed.

MUKTA GUPTA, J.

NOVEMBER 17, 2016

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