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

+ CRL.REV.P. 135/2016

M/S YU FONG TECHNOLOGIES CO. LTD.
THR ITS AUTHORIZED REPRESENTATIVE
HSIEH CHANG CHENG

..... Petitioner

Through: Mr.Sermon Rawat & Mr.Maninder
Singh, Advocates

versus

M/S MACROFRANCESCO SHOES
INDIA P. LTD. & ORS.

..... Respondents

Through: Mr.Ajay Digpaul & Mr.Kunal
Gosain, Advocates for R-1 to R-3
Mr.Sudershan Joon, APP for the State

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER
29.03.2016

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CRL.M.A.2761/2016

1. For the reasons stated in the application, the delay of 60 days in filing the revision petition is condoned.
2. The application stands disposed of.

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1. This revision petition has been filed by the petitioner Company impugning the order dated 14th September, 2015 whereby the learned Metropolitan Magistrate declined the prayer of the petitioner to get the matter investigated by police and directed the petitioner to lead pre-summoning evidence.

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2. The petitioner herein had filed a complaint being CC No.19/1/15 before the learned Metropolitan Magistrate alleging that the complainant Company entered into an agreement with respondent Nos.1, the company for supply of 32015 pairs of unbranded shoes for total consideration amount of US Dollar 282,607.80. Though the complainant Company supplied the required goods as per the terms of agreement by sending three consignments which were duly received by the respondent No.1 yet the respondent No.1 failed to make the payment to the complainant Company. The complainant Company did not receive any payment though bank guarantee was also furnished. Respondent no.2 and 3 were impleaded as Directors of the respondent no.1.

3. Since the payment was not made either by the respondent No.1 or by the bank despite legal notice being sent, the complaint case was filed and an application under Section 156(3) Cr.P.C. was also moved praying for issuance of direction to the police for registration of the FIR and investigate the matter.

4. After calling for the action taken report, the learned Metropolitan Magistrate observed that the order for registration of FIR cannot be passed in a casual manner. Relying upon the earlier decisions reported as *M/s Skipper Beverages Vs. State* 2001 (2) JCC (Delhi) 67; *Gulab Chand Upadhyaya Vs. State of U.P.* 2002 CRI.L.J. 2907; *Sukhwasi Vs State of Uttar Pradesh* 2008 CRI.L.J.472; *Ram Babu Gupta* 2001 (43) ACC 201; *Aleque Padamsee Vs. Union of India* 2007 CRI.L.J. 3729 (SC) and *Hari Singh Vs. State of U.P.* 2006 CRI.L.J. 3283 (SC), the learned Magistrate was of the opinion that the matter appeared to be a case of breach of agreement and the evidence is within the reach of the complainant and also

that the case did not require custodial interrogation. Thus, while dismissing the application under Section 156 (3) Cr.P.C., the complainant was directed to lead evidence in the matter.

5. Aggrieved by the said order the petitioner has invoked the revisional jurisdiction of this Court with a prayer to set aside the impugned order and direction to respondent No.4 for registration of the case against respondent Nos. 2 and 3 herein.

6. Learned counsel for the petitioner has submitted that in this case the goods ordered have been supplied by the complainant Company in three consignments. The complainant/petitioner herein is a foreign Company and the goods supplied being case property, need to be recovered from the respondents which cannot be done by the complainant. It is further submitted that the Court had already taken the cognizance while calling for the action taken report. It being a case of cheating wherein after receiving the consignments the payment was not made by the respondent Nos. 2 and 3 herein, learned Metropolitan Magistrate ought to have directed the police to register FIR and investigate the matter.

7. 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.

8. 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 are 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 Complaint. 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.'

9. In the case ***Gulab Chand Upadhyaya vs. State of U.P. & Ors. 2002 Crl.L.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.'

10. 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:

"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**, (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 1996 (11) SCC 582. It was specifically observed that a writ petition in such cases is not to be entertained.”

12. Since the impugned order has been passed by the learned Metropolitan Magistrate after considering the legal position on the subject and examining the facts mentioned in the complaint in right perspective, the impugned order does not suffer from any illegality, infirmity or perversity, warranting any interference by this Court.

13. The revision petition is dismissed.

PRATIBHA RANI, J.

MARCH 29, 2016

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