

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 3809 OF 2017
WITH
WRIT PETITION NO. 3810 OF 2017
WITH
WRIT PETITION NO. 3811 OF 2017
WITH
WRIT PETITION NO. 3812 OF 2017
WITH
WRIT PETITION NO. 3813 OF 2017
WITH
WRIT PETITION NO. 3814 OF 2017

L & T Housing Finance Ltd.

..Petitioner

v/s.

State of Maharashtra & Ors.

..Respondents

Mr.Rohit Gupta with Victor Basu i/b. HSA Advocates for the
Petitioner.

Mr.H.J.Dedia, APP for the Respondent-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : OCTOBER 03, 2017.**

P.C.

1. The petitioner herein has challenged the Order dated 5th November, 2016 whereby the learned Addl. Chief Metropolitan Magistrate, 26th Court, Borivali, has refused to send the matter for police investigation under Section 156(3) of Cr.P.C. and fixed the matter for verification under Section 200 of Cr.P.C.

2. The petitioner has relied upon the judgment of the ***Apex Court in Ramdev Food Products Pvt. Ltd. vs. State of Gujrat (2015) 6 SCC 439.***

3. Perused record and considered the submissions advanced by the learned Counsel for the respective parties. In the case of Ramdev (supra) the question before the Apex Court was :

(i) Whether the discretion of the Magistrate to call for report under Section 202 of Cr.P.C. instead of directing investigation under Section 156(3) of Cr.P.C. is controlled by any defined parameters.

(ii) Whether in the course of investigation in pursuance of a direction under Section 202 Cr.P.C. the police officer is entitled to arrest an accused, and

(iii) Whether in the present case, the Magistrate erred in seeking a report under Section 202 Cr.P.C. instead of directing investigation under Section 156(3) Cr.P.C.

4. The Apex Court, while considering the said question has held thus:

22.1. The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone the issuance of process and

finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued.

22.2. The cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine “existence of sufficient ground to proceed”. Category of cases falling under para 120.6 in *lalita Kumari* may fall under Section 202.

22.3. Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case.”

5. In the instant case, the Magistrate considering the facts of the case has declined to exercise powers under Section 156(3) of Cr.P.C. and instead chosen to proceed under Section 200 of Cr.P.C. It is submitted that the Magistrate has not yet recorded the statement under Section 200 of Cr.P.C. I do not find any infirmity in the impugned order as the Magistrate is not bound to hand over the case for investigation under Section 156(3) of Cr.P.C. in each and every case. The Magistrate has ample powers to take cognizance of an offence and to examine the complainant and the witnesses present,

in exercise of power under Section 200 of Cr.P.C. and if necessary, direct inquiry under Section 202 of Cr.P.C. and call for the report. The petition, in my view, is premature and has no substance. The petition is therefore dismissed.

6. Nevertheless, considering the fact that the impugned Order was passed in November 2016 and till date statement under Section 200 Cr.P.C. is not yet recorded, the Magistrate is directed to record the statement under Section 200 of Cr.P.C. within a period of six weeks from the date of receipt of this Order.

7. The petitioner is directed to appear before the learned Addl. Chief Magistrate, 26th Court, Borivali, Mumbai on 13th October, 2017 at 11 a.m.

(ANUJA PRABHUDESSAI, J.)