

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

Reserved on : 27.01.2020

Pronounced on : 07.02.2020

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+ CRL.M.C. 3099/2014

REKHA CHATURVEDI & ANR

..... Petitioner

Through: Mr. Sharad K. Aggarwal, Adv.

versus

STATE & ORS

..... Respondents

Through: Ms. Rajni Gupta, APP for the State.

Insp. Satya Pal Singh and SI Sohan
Vir Singh, P.S.Karol Bagh.

Mr. Sudarshan Rajan, Ms. Anjali
Kumari, Mr. Hitain Bajaj and Mr.
Rohit Kumar, Adv. for R-3.

Mr. Vikas Yadav, Adv. for R-5 & 6.

Mr. Vivek Sood, Sr. Adv. with Mr.
Alok Kr. Pandey, Adv. for R-7 to 9..

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

1. The petitioners have filed the present petition U/s 482 Cr.P.C for quashing of order dated 10.05.2014 passed by the Ld. Metropolitan

Magistrate-01, Central, Tis Hazari Courts, Delhi in criminal complaint No. 813/1/2014 dated 10.05.2014 and for suitable directions.

2. The petitioners filed a complaint U/s 156 (3) Cr.P.C. read with section 200 Cr.P.C. against the respondents No. 2 to 9 alleging that they were cheated by them and the respondents No. 2 to 9 misappropriated around Rs. 56,97,014/- of the petitioners in various dealings. It is alleged that forged documents were manufactured by the respondents and were used as genuine in order to commit criminal breach of trust.

3. The Ld. Metropolitan Magistrate declined the request of the petitioners to refer the matter for investigation under Section 156(3) Cr.P.C, vide impugned order dated 10.05.2014, however, granted liberty to the petitioners to treat their complaint as a complaint case Under Section 200 Cr.P.C. 1973 and fixed the case for further proceeding/pre-summoning complainant evidence.

4. The petitioners did not prefer any revision petition U/s 397 Cr.P.C before the Addl. Sessions Judge challenging the impugned order dated 10.05.2014 and straightway filed his petition U/s 482 Cr.P.C for quashing of impugned order dated 10.05.2014.

5. Briefly stated, the facts of the case as mentioned in the complaint under section 156(3) Cr.P.C read with Section 200 Cr.P.C filed by the complainants (petitioners herein) are that the complainants were desirous of purchasing two properties by their daughters named Surabhi Chaturvedi and Pratika Chaturvedi employed in technical fields, so on 15.04.2011 the

complainant No. 2 visited M/s Supertech Ltd. office and met one AP Singh told to be an agent and was offered Villa R023S100131 of 90 Yds @ Rs. 2895156.58 and the daughter of complainants paid Rs. 2.92342.58 by cheques against 10% directly and subsequent installment of 10.23 lacs on 18.5.2011 for booking the same in the name of Pratika Chaturvedi. Thereafter again on 19.04.2011 another agent Mr. Shariq offered 1 BHK with cost of Rs. 1115005.98 having 625 Sq. ft. The second daughter of the complainants namely Surabhi Chaturvedi paid Rs. 112116.02 and subsequent installment of Rs 4.48 lacs on 26.6.2011.

6. It is further averred in the said complaint U/s 156 (3) Cr.P.C) that after the said investments by the complainants, the said agents of Supertech introduced accused no. 1 (respondent No. 2) herein as their associate who helped the complaints in doing documentation quickly with M/s Supertech Ltd. in favour of their daughters and hence developed faith over accused No. 1 (respondent No. 2) herein. It is further averred that accused No. 1 (respondent No. 2) herein offered a small well located plot in Developer Ameya Infrastructures Scheme and the complainants paid a sum of Rs. 1 lacs for the said booking and after the booking the complaints received an email thereby confirming the booking and the details of payment to be made by the complainants were mentioned in the said e-mail.

7. It is further averred that the complainants thereafter made further payment of Rs. 1.97 lacs on 19.05.2011 and Premium installment as per payment plan of the said offer to the tune of Rs. 99000 on 7.6.2011. It is further averred that on 23.07.2011 due to failing any progress of Ameya

Infrastructure, in nearby location, a barren undeveloped plot was purchased from one Mr. Harish Sachan through accused No. 1 (respondent No. 2) herein by cash payment of Rs. 2.3 Lakh in Registrar office of Sadar Gautam Budh Nagar and reflected in the sale deed.

8. It is further averred that thereafter for more than one year there was no response on either development scheme or Ameyya allotment and accused No. 1 (respondent No. 2) herein kept on assuring the complainants that soon the area will develop or he will arrange for adjustment in various investments. It is averred that after flow of money ended with fresh extra cash transaction deal with one Sachan @ Rs. 230000/-, the balance amount remained with the accused No. 1 (respondent No. 2) herein unadjusted.

9. It is further averred that accused No. 1 (respondent No. 2) herein proposed to convert outstanding balance of Ameyya by further supplementing of Rs 971250/- as premium to be paid for fresh dealing by way of re-sale unit of Earth Towne no. X0001 purported to be owned by accused No. 2 (respondent No. 3) herein. Accused No. 1 (respondent No. 2) herein further took a cheque of Rs. 1 Lac and could not transfer the same even though he confirmed the payments by mail and cheque amount was accepted in the bank account of accused No. 2 (respondent No. 3) herein but informed that owner of X0001 is away from India, hence he could not do any paper work.

10. It is further averred that accused No. 1 (respondent No. 2) herein offered new unit with Earth Towne N1201 but could not merge rates and premium of earlier offer accepted by the complainants. Rs. 50,000/-

deposited with the accused No. 6 (respondent No.7) herein and generated a suspense account as ETR5505. Thereafter accused No. 1 (respondent No. 2) herein converted it to new deal of re-sale of a flat from the accused No. 4 and 5 (respondent No. 5 and 6 herein) in order to materialize the deal firstly asked installment amount in the name of accused No. 6 (respondent No. 7 herein) to the tune of Rs. 4,16,000/- alongwith Rs. 1,38,888/- (to include Rs. 50,000/- already paid to balance Rs. 1,88,888/- as second installment) reflected in allotment letter of accused No. 6 (respondent No. 7 herein) issued to accused No. 4 and 5 (respondent No. 5 and 6 herein).

11. It is further averred that accused No. 1 (respondent No. 2) herein further collected transfer fee at the rate of Rs. 200 per sq. feet for 1295 sq. feet stating that when offer was initiated accused No. 6 (respondent No. 7 herein) was not charging but now they have introduced so the accused No. 1 (respondent No. 2) herein has to collect from the complainants so that all is deposited with Earth Towne Scheme for getting transfer document in the name of the complainant No. 1 by getting sale affidavit transfer deed and other co-related documents signed by accused no. 4 and 5 (respondent No. 5 and 6 herein) and notarized and confirming their submission and acceptance by accused No. 6 and 7 (respondent No. 7 and 8 herein).

12. It is further averred in the complaint U/s 156 (3) Cr.P.C that as such total money with the accused persons (respondent No. 2 to 9 herein) is Rs. 6,54,500/- as balance of Ameya, further a sum of Rs. 9,71,250/- being of Earth Towne scheme premium, further a sum of Rs. 1 Lac given to accrued No. 2 (respondent No. 3 herein) and further a sum of Rs. 2,59,000/-

collected as transfer fee, Rs. 6,48,888/- as payment in Earth Towne scheme, Rs. 12,30,250/- paid to accused No. 4 and 5 (respondent No. 5 and 6 herein) in Towne, Rs. 6,87,187 promised by accused No. 1 (respondent No. 2) herein to pay the accused No. 6 (respondent No. 7 herein) directly under written undertaking. As such a sum of Rs. 45,51,075/- is legitimately liable to be recovered from the accused persons (respondent No. 2 to 9 herein). It is further averred that document still held up because on 31st Jan the accused No. 6 (respondent No. 7 herein) management informed that fresh forged application carries complainant No. 1 money in new unit ETR 5505 and for accused No. 4 and 5's (respondent No. 5 and 6 herein) unit B203 transfer amount has not deposited by accused No. 1 (respondent No. 2 herein) and Rs. 12 Lacs interest on delay on dues against unit is outstanding against accused No. 4 and 5 (respondent No. 5 and 6 herein).

13. It is further averred in the complaint U/s 156 (3) Cr.P.C that thereafter came Earth Copia offer at the rate of Rs. 3750 psf for 1835 sq. ft initially booked for Rs. 5000 psf in their record without intimating reduced to Rs. 4374.49 psf and reflected in BBA while booking cash of Rs. 687187 was not deposited yet. Ultimately the complainants have spent in place Rs. 3750 psf booked at Rs. 4374.49 thereby paying extra amount at the rate of Rs. 624.49 psf for 1835 sft. Extra cost taken by the accused no. 6 (respondent no. 7 herein) amount to (624.49 multiplied by 1835 sft) Rs. 1145939.15. The amount of Rs. 687187/- lying with the accused no. 1 (respondent No. 2) herein but despite undertaking given not returned to the accused No. 6 (respondent No. 7 herein).

14. It is further averred that over and above the said recovery of Rs. 45,51,075/- further extra charges to the tune of Rs. 11,45,939/- in the deal of Earth Copia, was also to be recovered for the sole negligence on the part of all the accused persons (respondent No. 2 to 9 herein). Hence as on date a total recovery of Rs. 56,97,014/- is to be effected from the accused persons (respondent No. 2 to 9 herein) in favour of the complainants.

15. It is further averred that the accused persons (respondent No. 2 to 9) herein are jointly as well as severally liable to pay for the said recovery and therefore the complainants have filed a suit for recovery.

16. It is further averred that the complainants even issued a letter and also issued a reminder letter to accused No. 2 (respondent No. 3 herein), calling for the explanation but no satisfactory reply was given. It is averred that the complainants even issued a letter to accused No. 4 and 5 (respondent No. 5 and 6 herein) thereby calling for the explanation but no satisfactory reply was given. It is further averred that the said facts were brought in the knowledge of accused No. 7 and 8 (respondent No. 8 and 9 herein) who tried to resolve the matter but did not took any effective action as they are hand in glove with the other accused persons (respondents herein). It is further averred that a complaint was sent to police but no action was taken till date.

17. It has been mainly argued by the Ld. counsel for the petitioners that the impugned order has been passed by the Ld. Magistrate in a mechanical manner and without going through the records of this case because the Ld. Magistrate has stated in the impugned order that the complainant has not

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approached the police station Karol Bagh for registration of FIR in this case which is factually incorrect and this observation shows that the order has been passed in a very casual manner.

18. The Ld. counsel for the petitioners has drawn the attention of this court to a complaint addressed to the Commissioner of Police, Deputy Commissioner of Police, Economic Offence Wing, Deputy Commissioner of Police, Central District, Station House Officer, Police Station Karol Bagh dated 12.04.2014 which according to the counsel for the petitioners was sent to these officers through speed post, postal receipts of which were placed on record alongwith the complaint which was filed before the Ld. Metropolitan Magistrate.

19. On the other hand, the Ld. counsels for the respondents No. 2 to 9 have submitted that there is no infirmity in the impugned order. They further urged that even if the Ld. MM has wrongly mentioned that the petitioners had not filed the complaint with the police, the same does not vitiate the impugned order. They further urged that the Ld. Trial Court has rightly not directed for the registration of the FIR U/s 156(3) of the Cr.P.C in the facts of the present case as detailed hereinabove. They further urged that the Ld. MM while deciding the application U/s 156(3) Cr.P.C has granted liberty to the petitioners to lead pre-summoning evidence U/s 200 Cr.P.C.

20. The Ld. Metropolitan Magistrate relied upon the judgment titled as ***"M/s Skipper Beverages Pvt. Ltd. Vs. State"*** reported as **2001 VI AD (Delhi)-625** in which it has been held as follows :

"In case where the allegations are not very serious and the complainant himself is in possession of evidence to prove the allegation, there should be no need to pass order U/Sec. 156(3) Cr.P.C."

21. The Ld. MM has also relied upon "***Gulab Chand Upadhaya Vs. State of U.P. and others***" 2002 CrL. L.J. 2907, Allahabad High Court in which in para 24 it was observed that where accused with his name and address are known to the Complainant, the evidence of the witnesses are also known to him and it is not a case where any other material evidence is required to be collected or to be preserved, then it is not a case where any investigation was required by the police for launching a successful prosecution.

22. Relying upon the said judgments, the Ld. MM held that the identity of the accused persons is known to the complainant and all the incriminating evidence is well within the reach of the complainant hence he opined that there was no ground for police investigation.

23. Learned Metropolitan Magistrate is not bound to direct investigation by the police in each and every case in a routine manner and it is open for him to direct the petitioner to lead pre-summoning evidence, more so, in the cases where the evidence sought to be led is in possession of the complainant and there is no need for custodial interrogation of the accused.

24. Learned Counsels for the respondents No. 2 to 9 have further contended that, in the instant case, there is no legal infirmity or miscarriage of justice caused by the manner in which the learned Magistrate has

exercised his discretion under Section 156(3) of the Code, by dismissing the application of petitioner.

25. In Ramdev Food Products Private Limited vs. State of Gujarat, MANU/SC/0286/2015, appellant sought directions for investigation under Section 156(3) of the Code. However, Magistrate instead of directing investigation as prayed, thought it fit to conduct further inquiry under Section 202 of the Code and sought report of the Police Sub-Inspector within 30 days. Grievance of the appellant before the High Court was that in view of the allegation that documents had been forged with a view to usurp the trademark, which documents were in possession of the accused and were required to be seized, investigation ought to have been ordered under Section 156(3) of the Code, instead of conducting further inquiry under Section 202 of the Code. In Ramdev (supra), Supreme Court considered Latika Kumari and in paras 20 and 22 held as under:-

“20 It has been held, for the same reasons, that direction by the Magistrate for investigation Under Section 156(3) cannot be given mechanically.

In Anil Kumar v. M.K.Aiyappa
MANU/SC/1002/2013: (2013) 10 SCC
705, it was observed:

11. The scope of Section 156(3) Code of Criminal Procedure came up for consideration before this Court in several cases. This Court in Maksud Saiyed case [MANU/SC/7923/2007 : (2008) 5 SCC 668] examined the requirement of the application of mind by the Magistrate before exercising

jurisdiction Under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Code of Criminal Procedure, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter Under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation Under Section 156(3) Code of Criminal Procedure, should be reflected in the order, through a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation.

The above observations apply to category of cases mentioned in Para 120.6 in **Lalita Kumari** (supra)."

"22. Thus, we answer the first question by holding that 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 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. 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 (supra) may fall Under Section 202. 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."

(emphasis supplied)

26. In Shri Subhkaran Luharuka & Anr. Vs. State & Anr. ILR (2010) VI Delhi 495, a Bench of coordinate jurisdiction of this court has held thus:-

"42 Thus, there are pre-requisites to be followed by the complainant before approaching the Magistrate under Section 156(3) of the Code which is a discretionary remedy as the provision proceeds with the word „May“. The magistrate is required to exercise his mind while doing so. He should pass orders only if he is satisfied that the information reveals commission of cognizable offences and also about necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without the assistance of the police. It is thus not necessary that in every case where a complaint has been filed under Section 200 of the Code the Magistrate should direct the Police to investigate the crime merely because an application has also been filed under Section 156(3) of the Code even though the evidence to be led by the complainant is in his possession or

can be produced by summoning witnesses, may be with the assistance of the court or otherwise. The issue of jurisdiction also becomes important at that stage and cannot be ignored.”

27. In Mohd. Salim vs. State 175(2010) DLT 473, a learned Single Judge of this court, in para 11, has held thus:-

“11. The use of the expression “may” in Sub-section (3) of Section 156 of the Code leaves no doubt that power conferred upon the Magistrate is discretionary and he is not bound to direct investigation by the Police even if the allegations made in the complaint disclose commission of a cognizable offence. In the facts and circumstances of a given case, the Magistrate may feel that the matter does not require investigation by the Police and can be proved by the complainant himself, without any assistance from the Police. In that case, he may, instead of directing investigation by the Police, straightaway take cognizance of the alleged offence and proceed under Section 200 of the Code by examining the complainant and his witnesses, if any. In fact, the Magistrate ought to direct investigation by the Police only where the assistance of the Investigating Agency is necessary and the Court feels that the cause of justice is likely to suffer in the absence of investigation by the Police. The Magistrate is not expected to mechanically direct investigation by the Police without first examining whether in the facts and circumstances of the case, investigation by the State machinery is actually required or not. If the allegations made in the complaint are simple, where the Court can straightaway

proceed to conduct the trial, the Magistrate is expected to record evidence and proceed further in the matter, instead of passing the buck to the Police under Section 156(3) of the Code. Of Course, if the allegations made in the complaint require complex and complicated investigation of which cannot be undertaken without active assistance and expertise of the State machinery, it would only be appropriate for the Magistrate to direct investigation by the Police. The Magistrate is, therefore, not supposed to act merely as a Post Office and needs to adopt a judicial approach while considering an application seeking investigation by the Police.”

28. I am of the view that the directions for investigation under section 156 (3) of the Code cannot be given by the Magistrate mechanically. Such a direction can be given only on application of mind by the Magistrate. The Magistrate is not bound to direct investigation by the police even if all allegations made in the complaint disclose ingredients of a cognizable offence. Each case has to be viewed depending upon the facts and circumstances involved therein. In the facts and circumstances of a given case, the Magistrate may take a decision that the complainant can prove the facts alleged in the complaint without the assistance of the police. In such cases, the Magistrate may proceed with the complaint under Section 200 of the Code and examine witnesses produced by the complainant. The Magistrate ought to direct investigation by the police if it feels that the evidence is required to be collected with police assistance. All the facts and evidence are within the knowledge of the petitioners, which they can

adduce during the inquiry conducted by the learned Metropolitan Magistrate under Section 200 of the Code.

29. The contention of the Ld. counsel for the petitioners that the Ld. Magistrate has wrongly noted in the order that the petitioners had not approached the police for registration of the FIR cannot be a ground for setting aside the impugned order. The petitioners though had filed a complaint before the police for registration of the FIR but the same was not registered by the police so only option left for the petitioners was to file a complaint U/s 200 Cr.P.C with an application U/s 156 (3) Cr.P.C for registration of the FIR. Even if the Ld. Metropolitan Magistrate had observed in the order that despite the filing of the complaint with the police no FIR was registered then also the Ld. Metropolitan Magistrate had to see the facts and circumstances of this case and to make up his mind as to whether any directions are required to be passed for the registration of the FIR.

30. Therefore, in my opinion, even if the Magistrate has over looked the above said fact, the same is of no help to the petitioners in the facts and circumstances as detailed hereinabove, I do not find any palpable absurdity or perversity in the impugned order, which may require to be corrected or set right by this Court, in exercise of its inherent jurisdiction U/s 482 Cr.P.C. The petition is, therefore dismissed.

RAJNISH BHATNAGAR, J

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Sumant

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