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

\+ CRL.M.C. 301/2023

KAMAL MANCHANDA .....Petitioner

Through: Mr. Akshat Aggarwal and Ms. Khushi Aggarwal, Advs.

versus

STATE OF NCT OF DELHI & ANR. .....Respondents

Through: Mr. Aashneet Singh, APP for State with PSI P. Buno, PS Madhu Vihar. Mr.Nishant Awana, Ms.Rini Bahoni, Mr.Nitya Sharma and Ms. Parul Yadav, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% **18.09.2024**

1. By way of present petition, the petitioner seeks setting aside of order dated 15.11.2022 passed by learned ASJ-05, Shahdara District, Karkardooma Courts, Delhi in Crl. Rev. No. 54/2021, whereby the learned ASJ-05 upheld the decision of the concerned Judicial Magistrate dismissing the petitioner's application under Section 156(3) Cr.P.C. vide order dated 28.09.2020.

2. The facts, as apparent from the record, are that the petitioner in his complaint has claimed that the respondent No. 2, i.e., *Abhishek Kumar* approached him in March 2017 with a request to invest a sum of Rs. 1.5 Crore in his company namely *M/s Sir John Bakeries India Pvt. Ltd.* (hereinafter, referred to as 'SJBI'). It is claimed that on account of

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inducement, the petitioner entered into an agreement with SJBI and invested a sum of Rs. 60 lacs from the bank account of his firm and Rs. 50 lacs from his personal account. Besides the above, there were also some deliveries of equipment and machinery from the complainant's company to SJBI. However, the respondent No.2 started unilaterally dealing with the affairs of the business including opening of bank accounts in the name of SJBI and obtaining loans from various financial institutions without the approval of the board of directors and the petitioner. Eventually, on account of the said business disputes, the petitioner exited the company and an agreement to that effect was executed on 06.11.2017. He further submits that while the complaint was filed with respect to the alleged loan taken from Tata Capital Financial Services Ltd., the status report reveals that three other loans were also taken from other NBFCs.

3. Learned counsel for the petitioner contends that the respondent No.2 has obtained loans without the consent and approval of the Board and while keeping the petitioner in the dark. It is also the contention of the petitioner that another bank account was opened by the respondent No. 2 without his knowledge or consent and when the petitioner asked for the statement of account, the same was not provided. On the strength of the above, learned counsel submits that upon the information of a cognizable offence being given, the FIR ought to have been registered by the police/directed to be registered by the Judicial Magistrate. Learned counsel has found fault with the impugned orders of the Judicial Magistrate as well as of the Revisional Court on this account.

4. Learned counsel for the respondent No. 2, while defending the impugned orders, has drawn the attention of the Court to the various e-mails

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sent by the petitioner which indicate that the petitioner was aware of the loans being taken and the amounts received. In fact, the petitioner, vide e-mail dated 28.11.2017, has forwarded loan sanctioned in favour of his own company to show the creditworthiness of SJBI. It is stated that the reading of other e-mails, especially the e-mail dated 28.11.2017, would show that the petitioner himself had demanded a sum of Rs. 20 lacs being 60% of the loan taken and thus, cannot claim that he was unaware of the loan being taken. Attention is also drawn to further e-mails, wherein the petitioner has approached the loan facilitator, *M/s Osia Credits*, which was instrumental in SJBI's applications for the three other loans. It is also submitted that SJBI had only one bank account in HDFC Bank, in which the loans disbursed by the NBFCs were credited and from the said account, a part of them travelled to the petitioner's account. It is stated that approximately a sum of Rs. 85 lacs have gone to the petitioner's account. It is further contended that the petitioner, being the authorized signatory of the account in HDFC bank, was fully aware of the transactions in the said account. In so far as the opening of the second bank account in Yes Bank is concerned, it is submitted that the same was opened by the respondent No.2 only when on the request of the petitioner, the HDFC bank had directed freezing of the first account.

5. I have heard learned counsel for the parties and perused the documents on record.

6. During the course of hearing, learned counsel for the petitioner has conceded that the e-mails placed on record alongwith the reply by the respondent, are written by the petitioner and in fact, he himself relies upon them to submit that the petitioner had requested the respondent No. 2 to not proceed further with the loan application without seeking the petitioner's/the

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board's approval.

7. A perusal of the complaint as well as the submissions made during the course of hearing would show that there are no allegations that any act of forgery was committed in the opening of the bank account in HDFC Bank. Undisputedly, in the said account, the petitioner himself was the authorized signatory. In so far as the second bank account in Yes Bank is concerned, the petitioner's grievance is that the same was opened without making him the authorized signatory. However, the respondent No. 2 has explained that the second account was opened only because the first account in HDFC Bank was directed to be freezed.

Further, a perusal of the status report placed on record would reveal that there was also a settlement arrived at between the parties. The Report mentions that no specific allegations of forgery were made and the dispute was opined to be a civil in nature.

8. Both the Courts below have agreed with the aforesaid conclusion. It is noted that the proceedings under Section 200 Cr.P.C. are still pending before the Trial Court and only a request for registration of FIR under Section 156(3) Cr.P.C. has been declined.

9. Needless to state that the power conferred upon a Magistrate under Section 156(3) of the Cr.P.C. ought to be exercised judiciously and in a sparing manner, rather than in a mechanical fashion. However, at the same time, where disputes appear to be civil in nature or the party approaching the court has all the evidence in its possession, the court will be within its power to apply judicial mind which would depend on the facts and circumstances of each case. The issue also arose before a Co-ordinate Bench of this court in Skipper Beverages Pvt. Ltd. v. State, reported as **(2001) 59 DRJ 129**

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wherein it has been observed as under:

> *'Para-6: Chapter XII of the Code deals with information to the police and its power to investigate the offences. Section 156 of the Code included in this chapter speaks of the power of the police officers to investigate cognizable cases and sub clause (3) thereof lays down that any Magistrate empowered under Section 190 of Code may order such an investigation. Chapter XV of the Code deals with complaints to a Magistrate and the procedure to be adopted by the Magistrate after taking cognizance of an offence. This chapter provides an alternative as well as additional remedy to a complainant whose complaint is either not entertained by the police or who does not feel satisfied by the investigations being conducted by the Police.*
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> *Para-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 held 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 2001 (1) Supreme Page 129 titled* "Suresh Chand Jain *v.* State of Madhya Pradesh"'

10. It is deemed apposite to also refer to the decision of this Court in Shri Subhkaran Luharuka & Anr. v. State, reported as **ILR (2010) 6 Del 495,** wherein it has been observed: -

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"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."

11. From the entire prospectus of the facts noted hereinabove, the allegations apparently are contractual and civil in nature. Considering that the evidence is documentary and largely relating to the loan accounts/bank account which are in the knowledge of the petitioner and can be summoned, I find no ground to interfere with the impugned order. Accordingly, the petition is dismissed.

MANOJ KUMAR OHRI, J

SEPTEMBER 18, 2024
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