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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 31st July, 2024

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CRL.M.C. 1144/2023 and CRL.M.A.4393/2023

INDIAN INSTITUTE OF PLANNING AND MANAGEMENT

..... Petitioner

Through: Mr. Arunabh Choudhary, Senior Advocate with Mr. Kunal Sharma, Mr. Vishal Gupta, Mr. Karma Dorjee and Mr. Yash Punjabi, Advocates.

versus

STATE (NCT OF DELHI) AND ANR.

..... Respondents

Through: Ms. Richa Dhawan, APP for State with SI Sudhir Rathee, PS: EOW.

Mr. Pramod Kumar Dubey, Senior Advocate with Mr. Arjun Mahajan, Mr. Sumit R. Sharma, Mr. Daves Bhatia, Mr. Raghendra N. Budholia, Mr. Piyush Gautam, Mrs. Ambika Kapur, Ms. Amrita Vatsa, Ms. Aditi, Mr. Satyam Sharma, Mr. Ayush Sachar, Mr. Shivam, Mr. Kartik Kaushik, Mr. Prashant Tripathi, Mr. Piyush and Ms. Ritvika Poswal, Advocates for Respondent No.2.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.**

1. Present petition has been filed by the Petitioner under Section 482 Cr.P.C. seeking quashing of order dated 27.09.2022 passed by learned Chief Metropolitan Magistrate, South District, Saket Courts, New Delhi in CTC/171/2021 dated 28.01.2021 on an application under Section 156(3) Cr.P.C. filed by Respondent No.2/complainant and the resultant FIR bearing



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No.157/2022 dated 12.10.2022 registered under Sections 406/420/468/471/120B IPC at PS: Economic Offences Wing ('EOW').

2. Facts as set forth and pleaded in the petition are that Petitioner i.e. Indian Institute of Planning and Management ('IIPM') and complainant/ M/s. Institute of Marketing & Management ('IMM') entered into an arrangement after due deliberations and on 11.03.2011 executed a Letter of Intent ('LOI') recording the ongoing negotiations and the terms of agreement to be eventually executed for transferring the brand IMM Business School to IIPM on pan India basis along with its trademark for an initial consideration of Rs.52.50 crores plus Rs.7.5 crores, within 90 days from the execution of the LOI. The validity of the LOI was 3 months from the date of its execution and parties were required to execute and register an Agreement before its expiry, under the terms of which IIPM was to operate the IMM-B School. IIPM paid Rs. 4.8 crores as earnest money/advance deposit to IMM under the terms of LOI.

3. It was stipulated in Clause 5 of the LOI that if IMM failed to execute the Agreement within 3 months, it would refund twice the amount paid by IIPM. Similarly, IMM could forfeit the said amount if IIPM failed to come forward to execute the Agreement. IMM failed to execute the Agreement within 3 months and became liable to refund Rs.9.6 crores to IIPM, which it failed to refund, citing financial constraints. IMM approached IIPM and offered use of portion of property at B-11, Tara Crescent, Qutub Institutional Area, New Delhi-110016, for running its affairs. Lease Agreement was executed on 16.08.2011 in respect of 4th and 5th Floors of the property for a period of 4 years commencing from 16.08.2011 and Rs.4.80 crores were to be treated as Security Deposit.



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4. IMM as IMM B-School, a division of IMM and IIPM as M/s IIPM Centre for Higher Education Pvt. Ltd. ('IIPM CHE') thereafter entered into and executed a 'Management Consultancy Agreement' ('MCA') on 01.01.2012 and the essence of this Agreement was that IIPM and IMM would enter into an exclusive strategic alliance and IIPM would help IMM in running the Business School by providing admission related services, updating course curriculum, evolving standards, strengthening the academic quality and giving global exposure to the students of IMM to prepare them for better placement opportunities as well as to provide services of advertising, branding, marketing and image building of IMM. Clause 10 of MCA stipulated that IMM B-School could be marketed as IIPM CHE supported institution during the term of MCA i.e. for a period of 9 years from the start of Academic Session July, 2012. MCA could be renewed on expiry of the said term. Clause 13 of MCA provided for payment of 30% of the total fees collected from students by IMM to IIPM CHE, for the services rendered. MCA was an exclusive Agreement with a negative covenant restraining IMM from entering into a similar Agreement with any party, directly or indirectly, relating to any activity pertaining to MCA, for minimum 5 years from the date of expiry or termination. Clause 15 provided Arbitration as the Dispute Resolution Mechanism between parties to the Agreement.

5. Both the Institutes were in strategic alliance and IMM was using IIPM brand name in its marketing campaigns by providing a link of IIPM website on its website and showcasing its strategic alliance with IIPM. Post the execution of MCA, IIPM and IMM launched a new IMM-MOYD Programme in 2012 and IMM provided letter heads with its logos to IIPM



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for the purpose of admissions and provisional fees acknowledgement receipts. As per the agreed arrangement, IIPM paid an advance of Rs. 25 lacs to IMM in its bank account and on receipt of fees amount equivalent to Rs.35.70 lacs, IIPM was to retain the remaining amount of Rs.10.7 lacs as 30% fees and pay IMM Rs.25 lacs as further advance and so on. Bank statement of IIPM would reflect the transfer of Rs. 25 lacs to IMM on 07.08.2012.

6. IMM withdrew from the IMM-MOYD Programme unilaterally and illegally and arbitrarily terminated the MCA on 16.05.2014 and entered into a similar strategic alliance in 2015 with a third party called FOSTIIMA, in breach of the terms of MCA. IMM owed moneys to IIPM and hence Respondent No.2/Gaganjit Singh, Executive President of IMM sent an e-mail on 10.05.2019 to the Dean of IIPM, offering to collect the rentals from 4th and 5th Floors at B-11, Tara Crescent, Qutub Institutional Area, New Delhi to generate income and further stating that as when IMM returned the money owed to IIPM, the latter would cease to have any right to occupy the property.

7. After remaining silent for over 8/9 years from the date of execution of LOI and MCA, Respondent No.2 maliciously filed a complaint dated 12.12.2019 before DCP, EOW, levelling false allegations of cheating, forgery, breach of trust, misrepresentation, etc. against IIPM and other accused persons named in the complaint. Investigating agency conducted a thorough inquiry between 2019 to 2020 and several persons including Authorized Representatives on behalf of IIPM were examined, questioned and interrogated and EOW found that no cognizable offence was made out.



8. On 28.01.2021, Respondent No.2 filed an application under Section 156(3) Cr.P.C. before the learned CMM seeking registration of FIR against the Petitioner and other accused persons. EOW filed an Action Taken Report ('ATR') dated 28.07.2021 stating therein that IMM and IIPM under a strategic alliance had executed the MCA dated 01.01.2012 and both were operating from the same building and using each other's name for marketing to each other's advantage. IIPM and IMM jointly initiated the IMM-MOYD Programme in 2012 but the same did not fructify and those students, who had paid advance fees were given refunds by IMM. As per the investigation no cognizable offence was made out and hence the complaint was filed.

9. EOW filed a second detailed ATR dated 02.03.2022, reiterating that no cognizable offence was made out. As per the report it was established that an amount of Rs. 25 lacs was paid by IIPM to IMM through Kotak bank account for the purpose of admissions and this showed that IIPM was authorized to collect advance fees from the students on behalf of IMM. It was noted that both parties were involved in another case filed by IMM for possession of the leased property, which is pending before the High Court. On being questioned on the point of delay in filing the complaint, Respondent No.2 merely cited personal family problems.

10. IIPM avers that despite the stand of EOW in the two ATRs and sufficient material on record evidencing falsity of the allegations levelled by IMM, learned CMM passed the impugned order on 27.09.2022 directing the concerned SHO to register FIR and investigate the matter. Pursuant to this direction, EOW registered an FIR under Sections 406/420/468/471/120B IPC and aggrieved Petitioner approached this Court.



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11. As a matter of record, on 17.02.2023 Court issued notice to the Respondents and directed that no coercive action will be taken against the Petitioner and the accused persons and the interim order continues. Status Report has been filed by EOW stating therein that investigation is in progress and alleged offences are made out against the accused persons and the Petitioner.

12. Learned Senior Counsel for the Petitioner argued that IIPM is an erstwhile premier Institute with great repute and offered non-AICTE approved Management and other courses through several branches all over the country. Complaint was filed by Respondent No.2 with a malicious intent to falsely implicate the accused persons, knowing fully well that IMM was in breach of the terms of MCA and owed monies to IIPM. Filing of the complaint and the application containing false allegations is a sheer abuse of process of law. The disputes between the parties, if any, emanate out of LOI dated 11.03.2011 and MCA dated 01.01.2012 and are purely civil in nature based on commercial transactions *inter se* the parties. Substantial part of the application/complaint pertains to alleged non-payment of rent and electricity and water charges in respect of the leased premises under the Lease Deed dated 16.08.2011, which is a civil dispute. Civil Suit bearing No.326/2020 for recovery of possession was filed by IMM and is pending disposal before this Court, which fact was concealed by IMM. Another material fact that a sum of Rs.4.80 crore was paid by IIPM to IMM under the LOI and IMM is liable to refund double this amount i.e. Rs. 9.6 crores by virtue of Clause 5 of the LOI, which IMM failed to refund on false pretext of financial crunch and in lieu offered use of its property till the amount was realised, was concealed.



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13. It was urged that post execution of the LOI, IIPM and IMM entered into an agreement and executed the MCA on 01.01.2012, the essence of which was an exclusive strategic alliance whereby IIPM was to render its services for running the Business School by providing students etc. as mentioned in the MCA as a support institution and the arrangement was for a mutual benefit. Pertinently, it was provided in Clause 10 of MCA that IMM B-School could be marketed as IIPM CHE supported institution during the term of MCA and Clause 13 stipulated that for the services rendered under the agreement, IMM will pay IIPM CHE 30% of the total fees collected. It was thus fraudulently and deliberately misrepresented before the learned CMM that Respondent No.2 was induced or enticed by IIPM to enter into the LOI/MCA with an assurance of profit worth several crores. In terms of the MCA, entered into after several rounds of discussions and negotiations, IIPM launched a new programme IMM-MOYD in 2012 and for this purpose, IIPM was provided receipts on letter heads of IMM. As per the agreed course of action IIPM paid an amount of Rs.25 lacs to IMM as advance and on receipt of fees from students equivalent to Rs. 35.70 lacs, IIPM was to retain the remaining amount of Rs.10.70 lacs as 30% fees, payable to IIPM. IMM was non-compliant with its obligations under the MCA and in breach of its terms but instead of remedying the breaches and refunding the outstanding amounts to IIPM, IMM not only illegally terminated the MCA on 16.05.2014 but also lodged a false, frivolous and malicious complaint against IIPM and other accused persons.

14. It was argued that IIPM provided its services to the best of its ability and there was no complaint by IMM during the subsistence of MCA or even soon thereafter and after a long and unexplained delay of 8 long years, IMM



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filed the false complaint only to arm-twist the accused persons and pressurise them to give up their claims of outstanding amounts, a fact acknowledged in email dated 10.05.2019 sent by Respondent No.2 to Prasoon Majumdar, Dean of IIPM offering IIPM to rent out space allotted to them on the 4th and 5th Floors of the property under the Lease Deed and collect rentals. The objective behind the initiative to enter into a strategic alliance was primarily to provide both AICTE and non-AICTE courses as options to the students since IMM offered only AICTE approved courses. IMM advertised on its own website that IMM had a strategic alliance with IIPM and provided a link of IIPM website, besides advertising in several newspapers etc. that both were in a joint venture. LOI and MCA were entered into and executed and signed on behalf of IMM with open eyes and after several rounds of deliberations, to generate revenues for mutual benefit of both institutes and there was no reason for IIPM to entice or lure the complainant, as alleged. It was the responsibility of IIPM to market, advertise and run the education programme as a joint venture and hence IMM's staff provided letter heads with its logos for the purpose of presentations and admissions as well as for provisional fee acknowledgement receipts, against which final receipts were to be issued later by IMM. IMM not only received 25 lacs as advance basis these receipts but also refunded money to the students later when the programme was not allegedly successful. No complaint was lodged either during the subsistence of MCA or soon thereafter that the letter heads were forged and misused by IIPM and the allegations of forgery are false and an afterthought.

15. It was urged that after thorough investigation and examination of several persons and documents, the investigating agency filed two ATRs and



stated that no cognizable offence was made out. It was revealed and established that the transactions were based on a strategic alliance and both operated from the same building and used each other's name for mutual benefit. Investigation established that IIPM paid Rs.25 lacs to IMM as reflected in IIPM's bank statement. IMM had agreed to pay 30% fees collected from the students to IIPM and that IMM had itself extensively advertised that IMM and IIPM were in an alliance. Thus, there was no misrepresentation and IIPM's actions were in consonance with the agreed terms and authorisations under the MCA. The ATRs thus vindicated the stand of IIPM.

16. It was contended that there was gross and unexplained delay in filing the complaint. The allegations pertained to the years 2011 and 2012 and the MCA was illegally terminated on 16.05.2014 by IMM, yet the complaint was filed on 12.12.2019. The only unsustainable explanation rendered to EOW for the long delay was complainant's family issues. The delayed action clearly reflects an afterthought and was a *malafide* action and the application ought to have been dismissed on this ground alone. **[Ref.: *Hasmukhlal D. Vora and Another v. State of Tamil Nadu*, (2022) 15 SCC 164].**

17. The impugned order passed by the learned CMM directing registration of FIR is a classic case of mechanical exercise and does not disclose application of mind. Court did not consider the two ATRs filed by EOW, a specialized Investigating Agency, stating that no cognizable offence was disclosed. Parties were in strategic alliance under MCA and the allegations were purely in the nature of civil disputes. In ***Ramdev Foods Products Private Limited v. State of Gujarat***, (2015) 6 SCC 439, the



Supreme Court held that an order under Section 156(3) Cr.P.C. cannot be passed mechanically by a Magistrate. In *Ravinder Lal Airi v. S. Shalu Construction Private Limited and Others*, 2023 SCC Online Del 454, this Court relying on *Harpal Singh Arora & Ors. v. State and Anr.*, 2008 SCC OnLine Del 530, held that order of the Magistrate under Section 156(3) Cr.P.C. must reflect application of mind on the result of the investigation conducted by an investigating agency as brought forth in the ATR and where the learned Magistrate is in disagreement with the opinion of the Investigating Officer that no cognizable offence is made out, he must indicate the reasons for the disagreement. In the present case, learned CMM has only referred to the 2 ATRs and merely stated in one line that cognizable offence is made out. The order is totally bereft of reason to come to the said conclusion and/or disagree with the findings of the investigation brought out in the ATRs. The order is primarily predicated on an unwarranted and baseless finding that not only the complainant but several students might have been the victims of the alleged offences.

18. The observation of the learned CMM that many students might have been the victims of fraud, which has weighed in passing the impugned order, is factually incorrect and unfounded. Going by the complaint or the application under Section 156(3) Cr.P.C., names of 8 students were furnished, who were allegedly defrauded by IIPM. It is brought out in the second ATR that during investigation, notices dated 14.07.2020 were sent to all the 8 students to seek their versions followed by reminder notices. However, out of total 8 students, only 3 students responded. One of the 3 students stated that he had cancelled the admission on account of the demise of his father and the second one informed that the cancellation was on



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account of the change of the programme to 2 year course instead of the applied 3 year course. Only one of the 3, stated that he was given admission in IIPM in NOIDA Campus while he wanted the same in IMM. This shows that the finding in the impugned order that many students may have been victimised, had no basis.

19. Learned Senior Counsel for Respondent No.2 defended the impugned order and submitted that directions have been rightly issued by learned CMM for registration of the FIR against IIPM and other accused persons. It was urged that IMM is a highly accredited Institute founded in 1969 and approved by AICTE and well-known in the field of education, particularly, as a centre for excellence in Management, Education, Research and Training. IMM offers reputed PG Diplomas in Marketing and Management, which is usually a 2 year course. On the other hand, IIPM is not affiliated/recognized by any University and does not conduct any AICTE approved programmes. IIPM and the other 5 accused persons, in connivance with each other hatched a criminal conspiracy against the complainant and committed offences of cheating, impersonation, criminal breach of trust, forgery of valuable security, forgery for the purpose of cheating, etc. and thus rightly the Application under Section 156(3) Cr.P.C. filed by Gaganjit Singh, the Executive President of IMM was allowed and direction for registration of an FIR was passed by the learned CMM.

20. It was submitted that sometime in January, 2011, accused Amit Saxena represented to Respondent No.2 that IIPM had the requisite manpower, technical staff and wherewithal to launch a big initiative for purpose of training and empowering students in marketing and management and IMM with its world class brand should join in the business of education.



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It was portrayed and assured that IMM would earn revenue worth several crores from the joint venture. Complainant did not immediately agree, upon which accused Nos. 2, 3, 4 and 6 again contacted the complainant and represented to him that the joint venture would be successful. Unfortunately, in February, 2011, complainant was lured and enticed into executing and signing the LOI on 11.03.2011 and pursuant thereto complainant agreed to allow IIPM to use the brand IMM against an initial consideration of Rs. 60 crores, out of which Rs.2 crores was paid upfront by IIPM through account payee cheque.

21. It was urged that criminal intent was manifest at this stage itself since only an LOI was signed and not a proper Agreement. Accused persons cheated the complainant by making him sign on another LOI with a covenant that in case the Agreement was not signed, then instead of forfeiting Rs. 2 crores, the same would be adjusted as an interest free security for leasing out rear portion of 4th Floor and entire 5th Floor of property owned by the complainant i.e. B-11, Tara Crescent, Qutub Institutional Area, Delhi. A Lease Deed was signed on 16.08.2011, whereby IIPM was to pay Rs.10 lacs a month for the premises and deposit Rs.4.80 crores as security deposit. After the Lease Deed was executed, accused Nos. 2, 3, 4 and 6 enticed the complainant into executing the MCA by dishonest and fraudulent representations, assuring high returns from the strategic alliance. As per the Agreement, accused persons were to refer students to the complainant in the Post Graduate Diploma courses in return for commission, which they never did and in fact, stopped paying the monthly rent and water and electricity charges to the complainant.

22. It was submitted that complainant was shocked when the malpractices



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of the accused persons came to his knowledge, upon receiving a notice from one of the students of IIPM, who also filed a case in Consumer Forum seeking refund of Rs.3,65,500/- from IMM. Accused persons impersonated themselves as representatives of IMM and induced students into taking admissions in their institute. They knowingly and dishonestly forged the letter heads with IMM logos and used them for issuing Provisional Fee Acknowledgement Receipts. They also created an organization in the name and style of IIMM to deceive the public into believing that the institute was run under the brand IMM, with a criminal intent to collect money from students, taking advantage of IMM's reputation. Accused persons, through some of their employees, impersonated as Managers and staff of IMM and gave admissions using letter heads with IIMM/IMM logos. All payments made by the students were routed to 'IIMM A/C of IIPM' in contravention of the MCA. Courses were never started and students were left helpless without refund of the fees paid. Having no option, IMM terminated the MCA on 16.05.2014. Financial loss to the tune of Rs.5,82,01,052/- has been caused to the complainant on account of arrears of rent and electricity and water charges from 16.08.2011 upto December, 2019, in addition to wrongful loss of more than Rs.30 crores to the complainant and gain to the accused persons. Based on these facts and material on record, the impugned order was rightly passed by the learned CMM holding that cognizable offences were made out and directing registration of FIR for commission of offences of cheating, forgery, breach of trust, etc. against IIPM and other accused persons.

23. Learned Senior Counsel relied on the judgment of the Supreme Court in *Lalita Kumari v. Government of UP & Ors.*, (2014) 2 SCC 1, to argue



that police officials are duty bound to register an FIR upon receipt of a complaint that discloses commission of a cognizable offence. Reliance was also placed on the judgment in *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra & Ors.*, (2021) 19 SCC 401, wherein the Supreme Court emphasized that Courts should not thwart an investigation into cognizable offences. Power of quashing should be exercised sparingly and with circumspection and only where no cognizable offence of any kind is disclosed, Court would interfere. Criminal proceedings ought not to be scuttled at the initial stage. Reliance was placed on the judgments in *State of Haryana and Ors. v. Bhajan Lal and Ors.*, 1992 SCC (Cri) 426; *Directorate of Enforcement v. Niraj Tyagi & Ors.*, (2024) 5 SCC 419 and *Syed Shahnawaz Hussain v. State and Another*, 2022 SCC OnLine Del 2428.

24. In the Status Report filed before this Court on behalf of EOW, it is stated that investigation is on-going and in contrast to both the ATRs filed before the learned CMM, the stand is that the impugned order is justified and FIR should not be quashed.

25. Heard learned Senior Counsels for the Petitioner and the complainant/ Respondent No.2 and Ms. Richa Dhawan, learned APP for the State/EOW.

26. By this petition IIPM lays a siege to an order passed by learned CMM on an application filed by Respondent No.2 under Section 156(3) Cr.P.C., holding that a cognizable offence was disclosed against IIPM and other accused persons and directing the concerned SHO to register an FIR and investigate the matter. Interim order was passed by this Court, protecting the Petitioner against any coercive action and the order continues till date.



27. As per the allegations in the complaint and the application under Section 156(3) Cr.P.C., IMM, a Society founded in 1969 and approved by AICTE, has been offering credible and reputed PG Diplomas in Marketing and Management from 1969. IIPM is not affiliated to or recognised by any University and does not offer AICTE approved courses/programmes. The accused persons namely, Arindam Chaudhury (accused No.2), Ratna Chaudhury (accused No.3), Amit Saxena (accused No.4), Kusum Narang (accused No.5) and Prasoon Majumdar (accused No.6), in connivance with each other, committed offences of criminal conspiracy, cheating, forgery and criminal breach of trust, misappropriation etc.

28. In January, 2011, accused No.4 acting on his behalf and/or instructions from accused No.2 and 3 approached the complainant Gaganjeet Singh and represented that they were running the IIPM and had requisite man power, technical staff and wherewithal to launch a huge initiative for training students in marketing and management and being a big brand IMM, both IIPM and IMM should join hands to earn profits in crores. Complainant did not accede to the request immediately, but later in February, 2011, accused persons again enticed and lured the complainant to sign an agreement enabling the accused persons to adopt and use the brand IMM. LOI was signed on 11.03.2011 and enticed by the accused persons, Complainant agreed to the use of the brand IMM by IIPM for an initial consideration of Rs.60 crores, out of which Rs.2 crores was paid upfront by the accused persons.

29. It was alleged that the criminal intent was evident from the fact that only an LOI was signed and not a proper agreement. Accused persons further lured the complainant into signing another LOI agreeing that instead



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of forfeiting Rs.2 crores in the eventuality of the complainant not signing the agreement, the same could be adjusted as an interest free security for leasing out rear portion of 4th Floor and entire 5th Floor of the premises owned by the complainant in Plot No.B-11, Qutub Institutional Area, in favour of the accused persons. On 16.08.2011, a Lease Agreement was executed, whereby IIPM was to pay Rs.10 lacs a month for enjoyment of the premises. IIPM deposited interest free security of Rs.4.8 crores with IMM. Post signing the Lease Agreement, accused persons induced the complainant into signing on the MCA by fraudulent representations and assurances of high returns from the alliance. Trusting the accused persons, complainant entered into and signed the MCA on 01.01.2012 under which IIPM was to refer students to IMM for undergoing professional courses of Post-Graduate Diploma and in turn, commission was to be given to the accused persons. However, the accused persons did not refer the required number of students and even stopped paying the monthly rent and electricity and water charges of the leased premises soon after MCA was executed. An Addendum was executed on 01.08.2014 whereby IIPM vacated the rear side of the 4th Floor.

30. It was further alleged that the complainant was shocked to learn of the malpractices committed by the accused persons when they received a legal notice from a student of IIPM who had also filed a case before the Consumer Forum seeking refund from IMM for Rs.3,65,500/-. It came to light that to cheat the complainant, accused hatched a criminal conspiracy impersonating themselves as representatives of IMM and took money from the students enrolled in the programme on forged, fabricated letter heads carrying the logos 'IMM'. They created an organisation in the name and style of IIMM to deceive the public into believing that IIMM was the same



Institute as IMM. The *modus operandi* was to lure students into taking admission in the IMM-B School and the money collected was routed to “IIMM A/c of IIPM”, in contravention of the terms of MCA. Accused persons falsely represented that IMM and IIMM were one and the same and to further their dishonest intentions, issued provisional fee receipts on forged letter heads of IMM and in the follow up acknowledgements, cleverly and dishonestly changed the name of the organisation to IIPM’s IIMM-PG (B) Course, deceiving the students. Complainant did not receive any money from IIPM from the fees collected from the students. Further, accused persons misappropriated an amount of Rs.5,82,01,052/- payable to IMM towards arrears of rent and electricity/water charges for the period 16.08.2011 to December, 2019. On these allegations, complainant prayed for registration of FIR under Sections 406/420/468/471/120B IPC.

31. It is no longer *res integra* that while exercising power under Section 156(3) Cr.P.C. and before directing registration of FIR, the Magistrate must satisfy himself that a cognizable offence is made out from the allegations in the application and the essential ingredients of the alleged offences are *prima facie* satisfied. In ***Priyanka Srivastava and Another v. State of Uttar Pradesh and Others, (2015) 6 SCC 287***, the Supreme Court elucidated the law on Section 156(3) Cr.P.C. and relevant passages are as under:

“20. The learned Magistrate, as we find, while exercising the power under Section 156(3) CrPC has narrated the allegations and, thereafter, without any application of mind, has passed an order to register an FIR for the offences mentioned in the application. The duty cast on the learned Magistrate, while exercising power under Section 156(3) CrPC, cannot be marginalised. To understand the real purport of the same, we think it apt to reproduce the said provision:

“156. **Police officer's power to investigate cognizable case.**—(1) Any officer in charge of a police station may, without the order of a



Magistrate, investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned."

21. *Dealing with the nature of power exercised by the Magistrate under Section 156(3) CrPC, a three-Judge Bench in Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy, had to express thus : (SCC p. 258, para 17)*

"17. ... It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173."

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30. *In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.*

31. *We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because*



once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

32. Recently, this Court in **Alok Kumar v. Harsh Mander and Another, 2023 SCC OnLine Del 4213**, again posed and answered the questions as to when a Magistrate can direct registration of an FIR and what are the essential pre-conditions for directing registration of an FIR, exercising power under Section 156(3) Cr.P.C. Reliance was placed on several judicial precedents and to avoid prolixity, I may refer to some passages from the said judgment, where there are references to the earlier judgements :-

“30. This Court in Subhkaran Luharuka v. State, 2010 SCC OnLine Del 2324 had discussed the nuances of Section 156(3) Cr. P.C. at length and had laid down certain guidelines for exercise of this power. The relevant observations read as under:

“22. The questions which arise for consideration are:—

(i) How and when powers under Section 156(3) of the Code are to be exercised by the Metropolitan Magistrate?

(ii) Whether the complaint instituted under Section 200, the order dated 1.7.2005 passed under Section 156(3) of the Code and also the FIR No. 436/2005 dated 6.8.05 of PS Defence Colony New Delhi registered pursuant to the aforesaid order, are liable to be quashed in exercise of powers vested in this Court under Section 482 of the Code in the peculiar facts of this case?

39. A Division Bench of the Karnataka High Court in Guruduth Prabhu v. M.S. Krishna Bhat, 1999 Cri LJ 3909 has also discussed the issue in detail both in the context of Chapter XII and XV of the Code. The relevant paragraphs reads as under:—



10. Let us first consider whether the learned Magistrate had jurisdiction to refer the matter for Police investigation under Section 156(3), Cr. P.C.

Sub-section (1) of Section 156 confers on the police unrestricted power to investigate a cognizable offence without the order of a Magistrate or without a formal first information report. The police are entitled to investigate cognizable offence either on information under Section 154 or on their own motion, on their own knowledge or from other reliable information. This statutory right to investigate cognizable offence cannot be interfered with or controlled by the Courts including the High Court. It is open to the Court to take or not to take action when the police prefer a chargesheet after investigation. But the Court's function does not begin until the chargesheet is filed. Under Sub-section (2) police can investigate any offence taking the matter to be a cognizable offence although ultimately charges are filed for a noncognizable offence since while investigating a cognizable offence, the police are not debarred from investigating any non-cognizable offence arising out of the same facts and including it in the report to be filed by them under Section 173, Cr. P.C., Sub-section (3) empowers the Magistrate to refer and direct the police to investigate a cognizable offence. But there is a restriction on the Magistrate before directing the police to investigate under Sub-section (3), the Magistrate should form an opinion that the complaint filed by the complainant before him disclose a cognizable offence. When the allegation made in the complaint does not disclose cognizable offence, the Magistrate has no jurisdiction to order police investigation under Sub-section (3). In the present case, the learned Magistrate without applying his mind had directed an investigation by the police. Such an order which is passed without application of mind is clearly an order without jurisdiction. Therefore, the order passed directing the police to investigate under Sub-section (3) of Section 156, Cr. P.C., passed without jurisdiction is liable to be quashed by this Court either under Section 482, Cr. P.C., or under Article 226 of the Constitution of India. We find from the materials on record, the learned Magistrate has not at all applied his mind before directing police investigation under Section 156(3), Cr. P.C. If the Magistrate had applied his mind, the Magistrate could have found that no cognizable offence is made out even if the entire allegations made in the complaint are accepted. We have already come to the conclusion that none of the complaints filed by the complainants disclose a cognizable offence alleged under Section 167, IPC. On this count alone the direction given by the Magistrate is liable to be



quashed. The Hon'ble Supreme Court in State of Haryana v. Bhajan Lal, 1992 Cri LJ 527 has held that the High Court could either exercise its power under Article 226 of the Constitution of India or under Section 482, Cr. P.C. and quash the investigation to prevent abuse of the process of law or to secure the end of justice.

11. Sub-section (3) of Section 156 Cr. P.C. empowers Magistrate to order an investigation. Under Section 157(1). Cr. P.C. an officer in charge of a Police Station having reason to suspect the commission of an offence which he is empowered under Section 156, Cr. P.C. to investigate should send a report to the Magistrate empowered to take cognizance of the offence upon a Police report and should proceed in person or depute one of his prescribed deputies to proceed to the spot to investigate under Section 157(1)(a) when the offender is named and if the case is not of a serious nature the officer need proceed in person or depute his subordinate. Under Section 157(1)(b) if it appears to such Police Officer that there is no sufficient ground for entering on an investigation he shall not investigate the case and the officer should inform the complainant under the prescribed manner. Thus, the Police Officer who is empowered to investigate on the information received by him of the commission of a cognizable offence can decide whether there is no sufficient ground for entering into an investigation and if there is no sufficient ground he should not investigate the case. But once the Magistrate orders an investigation under Section 156(3), Cr. P.C. the Police Officer is bound to investigate the matter and there is no question of his deciding not to investigate. Thus, by an order of the Magistrate under Section 156(3) the discretion given to the Police Officer under Section 157 is taken away. It is therefore very important that the Magistrate applies his mind and finds that the allegations made in the complaint filed under Section 200. Cr. P.C. before him discloses an offence. If every complaint filed under Section 200. Cr. P.C., is referred to the police under Section 156(3) without application of mind about the disclosure of an offence, there is every likelihood of unscrupulous complainants in order to harass the alleged accused named by them in their complaints making bald allegations just to see that the alleged accused are harassed by the police who have no other go except to investigate as ordered by the Magistrate. Therefore, it is mandatory for the Magistrate to apply his mind to the allegations made in the complaint and in only cases which disclose an offence, the Magistrate gets jurisdiction to order an investigation by the police if he does not take cognizance of the offence.



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 154(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.”

II. Essential Pre-conditions While Directing Registration of FIR under Section 156(3)

(i) Disclosure of Cognizable Offence

31. While exercising powers under Section 156(3) Cr. P.C. and directing the registration of an FIR, the Magistrate needs to ensure that a cognizable offence is disclosed from the allegations mentioned in the application and the essential elements of the alleged offences thereof are prima facie satisfied.

32. In the case of *Usha Chakraborty v. State of West Bengal*, 2023 SCC OnLine SC 90, it has been recently held by Hon'ble Apex Court that while passing an order for registration of an FIR upon an application filed under Section 156(3) Cr. P.C., the Court must satisfy itself that basic ingredients of the alleged offences are fulfilled. The relevant observations in this regard read as under:

*“...there cannot be any doubt with respect to the position that **in order to cause registration of an F.I.R. and consequential investigation based on the same the petition filed under Section 156(3), Cr. P.C., must satisfy the essential ingredients to attract the alleged offences. In other words, if such allegations in the petition are vague and are not specific with respect to the alleged offences it cannot be lead to an order for registration of an F.I.R. and investigation on the accusation of commission of the offences alleged...**”*

(Emphasis supplied)

33. In *Pandharinath Narayan Patil v. State of Maharashtra*, 2015 SCC OnLine Bom 882, the Hon'ble High Court of Bombay had expressed that the Magistrate in exercise of powers under Section 156(3) Cr. P.C. must see as to whether essential ingredients of cognizable offences are disclosed from the allegations levelled in the application or not. The relevant observations read as under:

*“15. It is thus well settled that the powers under section 156(3) of the Code cannot be exercised mechanically but are required to be exercised judiciously. The magistrate is not required to embark upon an in-depth roving enquiry as to the reliability or genuineness of the allegations, **nonetheless, he has to arrive at a conclusion that the application discloses necessary ingredients of the offence for which***



investigation is intended to be ordered. Furthermore, the reasons for arriving at such conclusion should be clearly reflected in the order.

26. A perusal of the order dated 2.12.2014 clearly reveals that the learned Magistrate has not made any endeavor to ascertain whether the application purported to be under section 156(3) Cr. P.C. disclosed any cognizable offence. **On the contrary, the order reveals that the learned Magistrate has ordered investigation only because "the complainant has alleged about the cognizable offence against the concerned PI of Kharghar Police Station."** Suffice it to state that in exercising powers conferred under section 156(3) Cr. P.C., the court cannot act as a post office and transmit every application for investigation. The legal mandate requires judicial application of mind to ascertain whether the facts alleged disclose cognizable offence. In the instant case the order is bereft of any reasons and reflects total non-application of mind.

(Emphasis supplied)

(ii) Application of Judicial Mind

34. It is no more res integra that power under Section 156(3) Cr. P.C. is to be exercised judiciously and direction for registration of FIR is to be given only after due application of judicial mind.

35. In this regard, this Court, at the outset, takes note of the observations of Hon'ble Apex Court in Priyanka Srivastava (supra) wherein it was held that power under Section 156(3) Cr. P.C. warrants application of judicial mind. The pertinent excerpt from the judgment reads as under:

*"27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the **learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind.** He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order....to be adhered to.*

29. At this stage it is seemly to state that **power under Section 156(3) warrants application of judicial mind. A court of law is involved.** It is not the police taking steps at the stage of Section 154 of the code. **A litigant at his own whim cannot invoke the authority of the Magistrate.** A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows



citizens, efforts are to be made to scuttle and curb the same.”

(Emphasis supplied)

36. Similar observation was made by Hon'ble Supreme Court in case of *Ramdev Foods Products Pvt. Ltd. v. State of Gujarat*, (2015) 6 SCC 439, which read as under:

“22. Thus, we answer the first question by holding that:

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...”

(Emphasis supplied)

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38. This Court in case of *Subhkaran Luharuka* (supra), while emphasising upon the need to apply judicial mind while ordering registration of FIR under Section 156(3) Cr. P.C., had observed the following:

*“40. The aforesaid Judgment also emphasis that **there should be application of mind before a Complaint is sent to Police for investigation** and holds that it is not necessary to refer every Complaint filed under Section 200 to the police for investigation under Section 156(3) of the Code. It has been stated that if such order is passed in routine without application of mind there is every likelihood of causing harassment to the accused persons by unscrupulous Complainants.*

*41. In another judgment delivered by this Court in the case of *Skipper Beverages Pvt. Ltd. v. State* (supra) also relied upon by the petitioner a similar view has been taken by this Court also. In that case the judgment of the Apex Court in *Suresh Chand Jain v. State of Madhya Pradesh* (Supra) relied upon by the complainant has also been referred to. The relevant paragraphs of that judgment are also reproduced for the sake of reference:*

*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 help 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. Section 156(3) of the Code aims at curtailing and controlling the arbitrariness on the part of the police authorities in the matter of registration of FIRs and taking up investigations, even in those cases where the same are warranted. The Section empowers the Magistrate to issue directions in this regard but this provision should not be permitted to be misused by the complainants to get police cases registered even in those cases which are not very serious in nature and the Magistrate himself can hold enquiry under Chapter XV and proceed against the accused if required. **Therefore the Magistrate, must apply his mind before passing an order under Section 156(3) of the Code and must not pass these orders mechanically on the mere asking by the complainant.** These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of complainant or custodial interrogation appears to be necessary for some recovery of article or discovery of fact.*

*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) if 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.”

(Emphasis supplied)”

33. From the conspectus of the aforementioned judgments, it is palpably clear that while exercising power under Section 156(3) Cr.P.C., Magistrate must satisfy himself that a cognizable offence is disclosed from the allegations in the application and the essential elements of the alleged offences are *prima facie* made out and it needs no gainsaying that the power cannot be exercised mechanically. Additionally, the Supreme Court in **Anil Kumar and Others v. M.K. Aiyappa and Another, (2013) 10 SCC 705**, highlighted the importance of recording reasons when directing registration of an FIR and observed that the application of mind by the Magistrate should be reflected in the order and a mere statement that he has gone through the complaint, documents and heard the complainant as such will not be sufficient. After going through the complaint and documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) Cr.P.C. should be reflected in the order, though a detailed expression of his views is neither required nor warranted. Relevant passage is as follows:

“11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed case 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 CrPC, 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) CrPC, should be reflected in the order, though 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.”

34. Another connected and important facet is that the discretion should not be exercised arbitrarily but must be founded on sound principles of law as held by this Court in ***Mohd. Salim v. State, 2010 SCC Online Del 1053*** and I quote :-

“13. Since the discretion vested in the Magistrate under Section 156(3) of the Code of Criminal Procedure is a judicial discretion which cannot be exercised arbitrarily and on his whims and fancies, but needs to be guided by on sound principles of law governing exercise of such a discretion, it cannot be said that the discretion exercised by him cannot be subject matter of challenge in appropriate proceedings. If the Magistrate exercises discretion arbitrarily or in contravention of the principles governing exercises of such a discretion by him, the person against whom the discretion is exercised cannot be left remediless. In a given case, the Magistrate may take a view that the complaint received by him does not disclose the commission of a cognizable offence and may, therefore, reject an application filed under Section 156(3) of the Code seeking directions for investigation by the Police. If the complainant is aggrieved on account of the view taken by the Magistrate and feels that the complaint does in fact disclose commission of a cognizable offence, can it be said that the complainant has no remedy against the order passed by the Magistrate. In yet another case, the Magistrate may take a view that the complaint made to him does not need assistance of the Police by way of investigation by the State machinery and he may proceed to examine the complainant and his witnesses under Section 200 of the Code of Criminal Procedure. The complainant may, however, feel otherwise, and the case may be such as would warrant investigation by State machinery. Can it be said that the complainant, if he is aggrieved on account of the view taken by the Magistrate has no remedy with him, available in law. The answer to these questions can obviously be only in negative. The Magistrate acts judicially, exercises a judicial discretion while directing investigation by the Police or rejecting the request seeking such direction and in doing so he passes a judicial order. It is therefore difficult to accept that a judicial order cannot be challenged before a superior Court, in any proceedings whatsoever.



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21. Thus this judgment also recognizes that the discretion exercised by a Magistrate under Section 156(3) of the Code is a judicial discretion, which cannot be exercised arbitrary. Even while passing an order under Section 156(3) of the Code, the Magistrate necessarily needs to apply his mind to the facts and circumstances of the case in order to take a prima facie view as to whether the compliant made before him discloses commission of a cognizable offence or not and further to decide whether the case before him needs to be investigated by the police or it was a simple case which the complainant himself could prove by leading evidence before the Magistrate without aid and State machinery and, therefore, the order passed by him is a judicial order. Once it is held that the discretion exercised by the Magistrate is a judicial discretion and the order passed by him is a judicial order, it is difficult to accept that the order passed by him is not capable of being challenged in any judicial proceedings on any ground whatsoever.”

35. In **Alok Kumar (supra)**, this Court following the earlier judgments in **Gurdeep Singh Sudan v. State, 2013 SCC OnLine Del 2553** and **Om Prakash v. State, 2012 SCC OnLine Del 175**, reiterated that given that the exercise of power under Section 156(3) Cr.P.C. falls within the realm of judicial function, it necessitates application of judicial mind and consequently, it is incumbent upon the Magistrate to pass a reasoned order directing registration of FIR. Relevant paragraphs are as follows:

“41. Given that the exercise of power under Section 156 Cr. P.C. falls within the realm of judicial function rather than administrative, it necessitates the application of judicial mind. Consequently, it is incumbent upon the Magistrate to pass a reasoned order directing registration of an FIR.

42. This Court in **Gurdeep Singh Sudan v. State, 2013 SCC OnLine Del 2553** had observed that learned Magistrates should pass speaking and reasoned orders while deciding applications under Section 156(3) Cr. P.C. The relevant observations in this regard read as under:

“24. Having dwelled upon the said facet, without expressing any view on the merits of the case it would be appropriate that the learned Magistrate shall pass a speaking and a well-reasoned order...”

43. In **Om Prakash v. State, 2012 SCC OnLine Del 175** also, this Court



while relying upon the earlier decision of this Court in case of *Subhkaran Luharkha (supra)* had highlighted the importance of providing reasons, in the following manner:

“17. Though the guidelines in the case of Subhakarana Luharkha (Supra) came to be passed by this Court after the impugned order of the learned MM, but it is seen that the impugned order seems to have been passed by the learned MM in routine and casual manner. The learned MM ought to have given reasoned order while directing registration of FIR under section 156(3) Cr. P.C. Not only that, no reasons have been given, even it has also not been stated against whom and under what provision of law the FIR was to be registered.”

36. The Court also observed as under:

“44. Once a complaint/application under Section 156(3) Cr. P.C. is filed, the Magistrate can exercise the option of applying his own judicial mind to the entire material on record and may direct registration of FIR. However, at times, the Magistrate also calls for a report from the police as to why no action had been taken on an earlier complaint filed by the complainant with the police, and thereafter, once a report is filed by the police, the Magistrate applies his mind to the material before him i.e. the complaint as well as the Action Taken Report which constitutes a preliminary inquiry conducted by the police. After this, the Magistrate may make up his mind to either order registration of FIR or otherwise. In case the police closes the complaint on ground that no cognizable offence was made out, the Magistrate may again apply his mind disagreeing with the Action Taken Report and issue directions for registration of the FIR or may take into consideration the Action Taken Report and material on record vide the complaint filed before it and pass appropriate directions.”

37. The Court examined the ATR on record and summarized the findings emerging from the investigation and relying on the observations of this Court in ***Gurdeep Singh Sudan (supra)***, wherein it was held that even if the Magistrate finds himself in disagreement with the view taken by the police in the action taken report, then also his order must reflect a brief reasoning for taking a distinctive view, observed that while in the ATR it was stated that no cognizable offence was disclosed from the contents of the complaint, the order of the learned Magistrate was completely silent on the ATR filed



by the police and there was nothing in the order to show why the learned Magistrate disagreed with the ATR. Court observed that the ATR was overlooked and brushed aside in its entirety.

38. With these principles laid down by the Courts as a guiding light, I may now examine the impugned order passed by the learned CMM to see if it meets the parameters set forth by the Courts. A bare perusal of the impugned order dated 27.09.2022 shows that paragraphs 1 to 13 of the impugned order only contain the narrative from the application as put forth by the complainant. Paragraphs 14 and 15 carve out the contents of the ATRs and notes the conclusion of EOW that no cognizable offence was made out. Paragraphs 16 to 19 are as follows:

“16. Arguments heard. Record perused.

17. From the facts of the case as alleged in the complaint, prima-facie cognizable offence is made. Not only the complainant, but there may be several students who might have been the victims of the alleged offences.

18. Considering the gravity of the allegations, the Court is of the opinion that it is expedient to order investigation in the present matter in exercise of the judicial power under Section 156(3) Cr.P.C. The facts pleaded by complainant are such which necessitate intervention of State machinery in the form of police investigation and the complainant would not be in a position to collect evidence.

19. In view of the facts and circumstances, the complaint discloses commission of cognizable offences for which an FIR is warranted. Present application under Section 156(3) Cr.P.C is allowed. Concerned SHO is directed covert the contents of police complaint as FIR and investigate the matter fairly.”

39. The impugned order, in my view, fails to pass the tests laid down by the Courts and shows total non-application of mind. Learned CMM has not indicated a single reason to conclude that a cognizable offence was disclosed and the essential ingredients of the alleged offences were made out. Howsoever brief, learned CMM ought to have spelt out the reason in the



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order indicating what weighed with him to order investigation under Section 156(3) Cr.P.C. more so, in light of the 2 ATRs stating otherwise. The mere statement that from the facts, it is reflected that cognizable offence is made out and that the alleged offences are grave and several students may be victims, cannot be justification enough to direct registration of an FIR, which has serious repercussions. In *Usha Chakraborty and Another v. State of West Bengal and Another*, 2023 SCC OnLine SC 90; and *Alhaj Ebrahim Khan and Others v. Sopan Pandharinath Lohakare*, 2015 SCC OnLine Bom 1668, it was held that the Magistrate must apply his mind to see whether essential ingredients of cognizable offences are disclosed and while the Magistrate is not required to embark on a roving inquiry on the reliability or genuineness of the allegations, he has to arrive at a conclusion that application discloses necessary ingredients of the offence. Perusal of the impugned order in the present case, does not reflect application of mind as to how the essential ingredients of the alleged offences are even *prima facie* made out and nothing is forthcoming for disregarding the two ATRs filed by EOW, bringing on record crucial facts emerging from a thorough investigation and stating that the disputes are purely civil arising out of commercial transactions and no cognizable offence is made out. It is settled that the Magistrate can disagree with the ATR and take a different view but the order must indicate some reasoning to differ and disregard the police reports. On these grounds itself, in my view, the impugned order become vulnerable and deserves to be set aside.

40. Before proceeding further to examine the impugned order on merits, it would be important to look into the extent of powers of the High Court under Section 482 Cr.P.C. since Petitioner has invoked the inherent



jurisdiction of this Court. It is settled that power under Section 482 Cr.P.C. can be exercised for: (a) giving effect to any order passed under Cr.P.C.; (b) preventing abuse of the process of any Court; or (c) securing the ends of justice. It is equally settled that the power under Section 482 Cr.P.C. has to be exercised sparingly and with caution and learned senior counsel for IMM is right that ordinarily Courts should not come in the way of an investigation and scuttle the same, especially in serious offences. In **Bhajan Lal (supra)**, the Supreme Court illustratively highlighted categories where power under Section 482 Cr.P.C. ought to be exercised by the High Courts to prevent abuse of process of law and secure ends of justice and I quote:-

“102.....

(1) *Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

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(3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

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(7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

41. In **R. Nagender Yadav v. State of Telangana and Another, (2023) 2 SCC 195**, the Supreme Court observed as under:-

“19. While exercising its jurisdiction under Section 482CrPC, the High Court has to be conscious that this power is to be exercised sparingly and only for the purpose of prevention of abuse of the process of the court or otherwise to secure the ends of justice. Whether a complaint discloses a criminal offence or not, depends upon the nature of the act alleged thereunder. Whether the essential ingredients of a criminal offence are



present or not, has to be judged by the High Court. A complaint disclosing civil transaction may also have a criminal texture. But the High Court must see whether the dispute which is in substance of a civil nature is given a cloak of a criminal offence. In such a situation, if civil remedy is available and is in fact adopted, as has happened in the case on hand, the High Court should have quashed the criminal proceeding to prevent abuse of process of court.”

42. Relevant would it be to refer to observations of the Supreme Court in ***Prof. R.K. Vijayasarathy and Another v. Sudha Seetharam and Another***, (2019) 16 SCC 739, as follows:-

“10. The High Court, in the exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, is required to examine whether the averments in the complaint constitute the ingredients necessary for an offence alleged under the Penal Code. If the averments taken on their face do not constitute the ingredients necessary for the offence, the criminal proceedings may be quashed under Section 482. A criminal proceeding can be quashed where the allegations made in the complaint do not disclose the commission of an offence under the Penal Code. The complaint must be examined as a whole, without evaluating the merits of the allegations. Though the law does not require that the complaint reproduce the legal ingredients of the offence verbatim, the complaint must contain the basic facts necessary for making out an offence under the Penal Code.”

43. Coming to the present case, broadly, the allegations levelled by IMM can be crystallised as: (a) accused persons enticed and lured Respondent No.2/IMM into executing the LOI and the MCA, on assurance of huge profits from the joint venture; (b) IIPM used forged letter heads and fees acknowledgement receipts with name/brand/logo of IMM to misrepresent to the world and the students that the education programmes/courses were under the banner of IMM; (c) IIPM failed to pay the rental and water and electricity charges of the leased premises and misappropriated the money due to IMM; and (d) IIPM did not pay the money collected from the students towards admissions and advance fees and diverted the funds into its



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own account keeping IMM out of the loop from all activities concerning the education programme. It was also alleged that the accused persons impersonated as staff of IMM and after admitting the students and taking fees, left them in a lurch.

44. To appreciate the rival positions taken by IIPM and IMM and to test the correctness and legality of the impugned order, it would be useful to recapitulate a few crucial facts, at the cost of repetition. LOI was executed on 11.03.2011 between IIPM and IMM, recording the on-going negotiations for working out an arrangement between them to provide greater opportunities and facilities to aspiring students in various fields and for circulating education, training and research for exchange of knowledge. It was agreed that soon after the execution of the arrangement IMM shall transfer the brand 'IMM Business School' to IIPM on Pan India basis along with the trademark for a total consideration of Rs.52.50 crores plus Rs.7.50 crores within 90 days from the execution of the LOI. It was also agreed that the parties will execute and register an agreement containing all the agreed terms and conditions to operate the business school of IMM by IIPM. Relevant part of the LOI is as follows:

***"AND WHEREAS:** Pending finalizing the terms and conditions of the arrangement, the parties hereto have agreed to enter into this LOI in affirmation of the fact are negotiating the terms of the arrangement.*

***NOW THIS LOI WITNESSETH** as under:*

- 1. **THAT** the parties hereto finally are negotiating and finalizing the terms of the arrangement and shall eventually execute the same.*
- 2. **THAT** soon after execution of the arrangement IMM shall transfer the brand "IMM Business school" to the IIPM on Pan India basis along with trademark.*
- 3. **THAT** the IIPM shall pay a total consideration of Rs.52.5 Crores plus 7.5 crores (Fifty two crores and fifty lacs only plus seven crores and fifty*



lacs) of Kotak OD within 90 days from the date of execution of the LOI.

4. THAT the IIPM enclose hereto the cheque no. 708622 dated 11.03.2011 drawn on IDBI Bank favouring IMM in the sum of Rs. 2 Crore as part payment as above mentioned in clause 3.

5. THAT this LOI shall remain valid only for three months from the execution of this LOI. Before the expiry of three months both parties will execute & register an agreement, which will contain all the agreed terms and conditions to operate the business school of IIM by IIPM. If the IMM fails to execute the agreement within the abovementioned period or within the period mutually extended by both the parties, the IMM shall refund twice the amount paid by the IIPM with reference to clause no. 4 of this LOI. Should IIPM fail to come forward to execute the agreement within the above mentioned period or within the period mutually extended by both the parties in writing, the amount received in terms of clause 4 of this LOI shall stand forfeited.

6. THAT in case of any dispute arises on account of this LOI, the Courts situated at New Delhi shall have jurisdiction over the matter.

This LOI is executed in duplicate and one copy of the LOI in original has been retained.”

45. Subsequently, MCA was executed on 01.01.2012 i.e. after more than 09 months, incorporating the terms on which the business was to be carried out under a strategic alliance, wherein IIPM was responsible under the overall guidance of IMM for providing admission services etc. for the courses offered by IMM B-School and the expenses were to be borne by IMM. IIPM was responsible for advertising, branding, marketing and image building of IMM and it was stipulated in Clause 10 that “IMM B-School can be marketed as IIPM CHE supported institution during the term of the Agreement”. IIPM was to ensure that within 2 years, all seats shall be filled. Both LOI and MCA were thus executed on behalf of IMM after due deliberations and negotiations, as recorded in the LOI and was a well-thought decision of two contracting parties as part of a pure commercial transaction, for mutual benefit. Parties embarked on the journey in



furtherance of the strategic alliance and launched the IMM-MOYD Programme in 2012. If the allegations are that IIPM enticed the complainant into entering into the LOI, it is not understood why MCA was executed after 09 months of LOI. It is revealed from a thorough investigation that IMM did not execute the MCA on time and thus offered part of its property for use to IIPM to settle the outstanding of Rs.9.6 crores. When the MCA was executed IMM owed this money to IIPM and in these facts, it cannot be said that IIPM had an intent to cheat at the inception, a necessary ingredient of the offence of cheating under Section 420 IPC, as observed by the Supreme Court in *Vesa Holdings Private Limited and Another v. State of Kerala and Others*, (2015) 8 SCC 293. This view was also taken by the Supreme Court in *Dalip Kaur and Others v. Jagnar Singh and Another*, (2009) 14 SCC 696, as follows:-

“8. Sections 405 and 415 of the Penal Code defining “criminal breach of trust” and “cheating” respectively read as under:

xxx

xxx

xxx

“415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to ‘cheat’.”

An offence of cheating would be constituted when the accused has fraudulent or dishonest intention at the time of making promise or representation. A pure and simple breach of contract does not constitute an offence of cheating.

xxx

xxx

xxx

10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was



essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code. (See Ajay Mitra v. State of M.P. [(2003) 3 SCC 11 : 2003 SCC (Cri) 703])”

46. Even assuming that IIPM was not able to fulfil its obligations of getting the agreed or assured business and there was no profit, this would at best constitute breach of the contractual obligations arising out of the MCA, for which the parties agreed to resort to arbitration as a mode of disputes resolution. Significantly, IMM raised no grievance for 8 long years till 12.12.2019, when the complaint was filed and neither invoked the arbitration clause. It is obvious that the joint venture did not take off as expected and parties fell apart. After a long unexplained delay, the application was filed in 2021 under Section 156(3) Cr.P.C. giving the civil dispute, if any, a complexion of criminality, a practice condemned by the Supreme Court in several cases observing that recently, it is noticed that there is a growing trend to lodge FIRs giving colour of criminal matters to pure civil and commercial disputes. In ***Indian Oil Corpn v. NEPC India Ltd. and Others, (2006) 6 SCC 736***, the Supreme Court took note of this increasing tendency and *inter alia* held that mere breach of contract cannot give rise to an offence of cheating and breach of trust. In ***Naresh Kumar and Another v. State of Karnataka and Another, 2024 SCC OnLine SC 268***, the Supreme Court quashed the FIR holding that a dispute, which was essentially of a civil nature, was given a cloak of a criminal offence. In ***Vijay Kumar Ghai and Others v. State of West Bengal and Others, (2022) 7 SCC 124***, the Supreme Court observed as under:-



“25. This Court has time and again cautioned about converting purely civil disputes into criminal cases. This Court in Indian Oil Corpn. [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that : (Indian Oil Corpn. case [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] , SCC p. 749, para 13)

“13. ... Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.”

47. In **Mitesh Kumar J. Sha v. State of Karnataka and Others, 2021 SCC OnLine SC 976**, Supreme Court observed as under:-

“44. Moreover, this Court has at innumerable instances expressed its disapproval for imparting criminal colour to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.”

48. Learned CMM has completely overlooked that in the ATRs, EOW brought out that investigation revealed that both Institutes were in strategic alliance through the MCA and were operating from the same building. Both were using each other's name for marketing to their advantage and Clause 10 provided that IMM B-School will be marketed as IIPM CHE supported institution during the term of MCA. In fact, IMM had provided link of IIPM's website on its website and was widely advertising the strategic alliance between the two. IIPM has placed on record screenshots, which evidence this fact and importantly, IMM has neither denied the execution of LOI and the MCA nor the screenshots. Therefore, it cannot be urged by IMM that IIPM was using its brand name and misrepresenting that the programmes were run by IMM as that was the commercial understanding between the parties. Relevant part of the MCA is extracted hereunder:-



“Management Consultancy Agreement (Agreement)”

This Management Consultancy Agreement (hereinafter referred to as “Agreement”) is made on 1st January, 2012, by and between M/s IIPM Centre For Higher Education Pvt. Ltd. (hereinafter referred to as ‘IIPM CHE’) having its registered office at 48, Level – II, Community Centre, Naraina Industrial Area, Phase-I, New Delhi – 110028, acting through its Authorized Signatory Mr. Prasoon Sankar Majumdar duly authorized vide Board Resolution dated Dec 21, 2011 of the First Part and IMM B-School, a division of Institute of Marketing and Management (IMM), a society registered under the Societies Registration Act, 1860 having its office at Marketing Tower, B-11, Tara Crescent, Qutab Institutional Area, New Delhi-110016 (herein after referred to as ‘IMM B-School’) acting through its Director General Dr. Gaganjit Singh duly authorized vide Governing Body resolution dated Dec 24, 2011 on the Second Part.

WHEREAS IIPM CHE is engaged inter alia in establishing, promoting, encouraging, maintaining, managing and running colleges, management institutes in India and abroad for imparting, conducting and providing full range of training, education, information technology services, solutions, consultancy, technical and non technical education and various other services related to education.

WHEREAS IMM B-School is engaged in conducting various courses in the field of Management Education and is desirous of appointing/engaging various agencies to further its objects.

WHEREAS IIPM CHE has expressed its intent to assist IMM B-School in various areas of running the B-School on the terms and conditions contained in this Agreement in consideration of a fee.

Now, therefore, in consideration of mutual agreements, covenants, and conditions herein contained, IIPM CHE and IMM B-School agree as follows:

This is an exclusive agreement by IMM. IMM can not do any agreement with any third party pertaining to directly or indirectly related to any activity of this agreement, even after the expiry/termination of this agreement, whichever is earlier, subject to minimum 5 years from the date of expiry or termination.

1. IIPM CHE shall be responsible under the overall guidance of IMM for providing Admission Services e.g. including but not limited to decide the admission criteria, issue of prospectus, organizing the Admission Test, Group Discussion, Personal Interview and short listing of successful candidates for the courses offered by IMM B-School.



2. IIPM CHE and IIPM shall work together to periodically update the course curriculum as per the industry needs and feedbacks as desired by IMM.
3. IIPM CHE and IMM B-School shall evolve standards, norms and parameters in providing World Class education in consultation with each other.
4. IIPM CHE shall take the responsibility of strengthening Academic Quality of IMM B-School by taking regular faculty development workshops with senior corporate rank officers to update their knowledge and skills on a regular basis.
5. IIPM CHE shall be responsible for providing faculty members on visiting basis to meet the international standards of management education. Faculty payment shall be responsibility of IMM B-School.
6. IIPM CHE shall be responsible of giving the global exposure as desired by IMM to the students to prepare them for the better placement opportunities and embracing them to meet the corporate challenges. The cost of such programmes shall be borne by IMM B-School.
7. IIPM CHE shall organize seminars, workshops etc. for personality development of the students of IMM B-School to train them for the corporate world. The expenses and cost related to these programmes shall be borne by IMM B-School.
8. IIPM CHE will be responsible to provide support in placement for all enrolled students.
9. IIPM CHE shall be solely responsible for advertising, branding, marketing and image building of IMM B-School to the exclusion of any other party. All such activity shall be done after taking all necessary approvals from IMM. The cost of advertising, branding, marketing and brand building shall be borne by IMM B-School.
10. IMM B-School can be marketed as IIPM CHE supported institution during the term of this Agreement.
11. IIPM CHE also provides an assurance that within 2 years of commencement of this Agreement, all seats of IMM B-School shall be filled.
12. This agreement is for the period of 9 (nine) years from the date of starting of Academic Session July, 2012 and can be renewed on the expiry of this agreement on the terms and conditions mutually accepted between IIPM CHE and IMM B-School. This Agreement can be terminated by either party by giving a written notice of 1 month to other party at the address aforementioned before the start of the following new academic session.



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13. For the services mentioned in this agreement, IMM will pay IIPM CHE 30% of the total fee collected.

14. This agreement does not exclude/restrict/curtail/abridge the power of IIPM CHE to enter into similar or any other kind of arrangement/MOU/contract with other parties.

15. IIPM CHE and IMM B-School hereby agree that in case any dispute arises on account of or related to this Agreement and IIPM CHE and IMM B-School are unable to resolve the dispute through mutual consultation within 15 days of the initial notice of dispute, then any party can refer the matter to a mutually agreeable arbitrator. The award/decreed passed by the arbitrator will be binding on both the parties. In case there is no agreement on the appointment of the arbitrator within 45 days of the notice of dispute then Court of Law shall appoint the Arbitrator. The arbitration shall be conducted in accordance with the provisions of arbitration and Conciliation Act 1996 and/or any statutory modification or re-enactment thereof and the venue of Arbitration proceedings shall be at New Delhi, India. The expenses of the Arbitration proceedings shall be borne by each party in equal proportion or as per the decision of the Arbitrator.

IN WITNESS WHEREOF, the parties hereto have read and fully understood its contents and hereby agree to comply with its terms and conditions and have caused this Agreement to be duly executed by their authorized representatives affixed with the seals thereon in the presence of witnesses on the date first above written.”

49. Investigation has also revealed that letter heads and acknowledgement fee receipts with IMM logos were used by IIPM/IMM for admission purposes as well as for other presentations and events as this was agreed between the parties by stipulating so in Clause 10 and as noted above, IMM was itself marketing and promoting the strategic alliance between IMM and IIPM. These very receipts were the basis for the advance payment of Rs. 25 lacs by IIPM to IMM, made and reflected in the Bank Account of IIPM, as brought out in the ATRs. When the IMM-MYOD programme was not successful, IMM refunded money to few students, basis these receipts used for admission and fee collection. It was provided in Clause 13 of MCA that IIPM would pay advance of Rs. 25 lacs, which it did and whenever a total of



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Rs.35.70 lacs would be collected through the programme, IIPM would retain Rs.10.7 lacs as their 30% share and this cycle would repeat. The receipts were thus used by IIPM as per the agreed terms in the MCA, execution of which is admitted and it is an undisputed position that none of the letter heads were used by IIPM post the termination of MCA by IMM on 16.05.2014. The allegations of forgery are an after-thought and not substantiated.

50. It was alleged in the complaint that IIPM has misappropriated the amounts owed to IMM towards rentals and water and electricity charges for the property, leased out to IIPM, without disclosing the true and correct transaction between the parties. When the LOI was executed on 11.03.2011, it was agreed that IIPM would pay earnest money/advance payment to IMM. Under Clause 5, IMM agreed to refund twice the amount paid by IIPM, if IMM failed to execute the agreement contemplated by the parties to carry out the education programmes as a part of the strategic alliance, within 3 months and similarly, IMM could forfeit the said amount if IIPM failed. IMM admittedly failed to execute the agreement within the stipulated time of 3 months and hence, became liable to refund twice the amount of Rs. 4.8 crores which IIPM had paid as advance payment. Initially, IMM delayed the payment on one pretext or the other but finally approached IIPM and offered use of 4th and 5th Floors of its property at Qutub Institutional Area and lease deed was executed, for which Rs. 4.8 crores were the security deposit. Thus, even when the MCA was executed on 01.01.2012, IMM owed Rs.9.6 crores to IIPM, a fact concealed in its application under Section 156(3) Cr.P.C. This stand of IIPM is also supported by the e-mail dated 10.05.2019 sent by Respondent No.2 to the Dean of IIPM offering to rent out the space on the



two floors and authorising IIPM to collect the rentals. It was also stated that as and when IMM returned the money, IIPM would cease to have any right to occupy the property. Thus, there is no misappropriation and as far as civil liability is concerned, suit filed by IMM for possession is pending before this Court and will be decided on its own merit. Relevant part of the e-mail is extracted hereunder for ready reference:-

“Dear Prasoon

This is in reference to our communication for almost 9 years now and exploring various options to find success. While you and I have put our sincere efforts to solve the issue we still haven’t met with success.

So as discussed, I feel the best possible situation at the moment is as follows:

- 1) IIPM to take rentals from floor 4 and 5 to generate income for themselves as mentioned by you and naveen (we have actively started looking for parties for the same and are confident to get the two floors on rent soon)*
- 2) IIPM signboard to be removed from gate number two as it hampers all prospective deals that we wish to get into*
- 3) as and when IMM will return the exact amount received from IIPM, IIPM will then have no right of usage/occupancy on the 4th and 5th floor*

The above points are simple, fair and logical.

Neither am I interested in extracting any extra money’s from anyone nor will I allow that to be done to me.

We at IMM have always known you to be the face of IIPM and thus will be happy to conclude this 9 year struggle by getting into this agreement with you.

Please do let me know how to take this further

Best regards

Gagan”

51. Allegations of criminal breach of trust are vague and equally unfounded. Section 405 IPC defines ‘criminal breach of trust’ as under:-



“405. Criminal breach of trust. – *Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.*

52. The essential ingredients of the offence are that the accused must be entrusted with the property or dominion over it and the person so interested must use that property or the accused must dishonestly use or dispose that property. “Entrustment” is thus pivotal to constitute an offence under Section 405 IPC. Under the MCA both IIPM and IMM had mutual obligations to conduct the education programmes and courses and had assigned roles. Any breach of the contract was subject to arbitration, which IMM never invoked. IIPM marketed and advertised under the banner of IMM as that was the agreed term under clause 10 of MCA. IIPM was entitled to a specified share in the fees collected from students and pay advance to IMM under Clause 13 of MCA, which provided a methodology by which IMM was to pay to IIPM 30% of the total fee collected and in pursuance thereto, IIPM did advance Rs.25 lacs to IMM and only retained the share of fee, which it could legitimately do and no offence under Section 405 IPC is made out. Learned CMM was influenced by the allegations of the complainant that many students had been victimised by the actions of IIPM. This, in my view, was a factually incorrect observation and was made without any material on record and oblivious of the result of the investigation by EOW as brought forth in the ATRs. It is stated in the second ATR that during investigation, notices dated 14.07.2020 were sent to



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all the 8 students mentioned by IMM, to seek their versions, followed by reminder notices. However, out of total 8 students, only 3 students responded. One of the 3 students stated that he had cancelled the admission on account of the demise of his father and the second one informed that the cancellation was on account of the change of the programme to 2 year course instead of the applied 3 year course. Only one of the 3, stated that he was given admission in IIPM in NOIDA Campus while he wanted the same in IMM and this cannot be given much credence for the simple reason that a student was obviously unaware of the internal arrangement between IIPM and IMM that the Business School was to operate as IIPM CHE support institution.

53. The crucial facts viz.: execution of LOI and MCA; receipt of payment of Rs. 25 lacs by IMM; IMM's initial offer to lease the property through a duly executed lease deed; IMM's offer in 2019 to IIPM to collect rent from the property, premised on an admission of liability to pay IIPM; stand of EOW in two ATRs that parties were in strategic alliance, working together in the same building and using each other's name and no cognizable offence was made out; IMM advertising the alliance and indicating IIPM's link on its website; and long and unexplained delay in filing the complaint; failure to invoke arbitration; and pendency of civil suit for possession have been totally overlooked and not one reason is forthcoming in the impugned order to direct registration for FIR.

54. In my considered view, the disputes, if any, between IIPM and IMM are purely civil in nature, emanating from commercial contracts and IMM has sought to maliciously give them a colour of criminal culpability. The application does not disclose commission of a cognizable offence and



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essential ingredients of none of the alleged offences are even *prima facie* made out. For all the afore-stated reasons, impugned order dated 27.09.2022 passed by learned Chief Metropolitan Magistrate, South District, Saket Courts, New Delhi in CTC/171/2021 dated 28.01.2021 on an application under Section 156(3) Cr.P.C. filed by Respondent No.2/ complainant is set aside and the resultant FIR bearing No.157/2022 dated 12.10.2022 registered under Sections 406/420/468/471/120B IPC at PS: Economic Offences Wing (EOW) is quashed.

55. Petition is disposed of accordingly, along with pending application.

JYOTI SINGH, J

JULY 31, 2024/kks