



2024:DHC:7416



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

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Reserved on : 27.08.2024

Pronounced on : 24.09.2024

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**CRL.M.C. 2191/2023**

**SANJAY KUMAR GAUR & ANR**

.....Petitioners

Through: Mr. Uttam Datt, Mr. Rishi Raj Sharma, Ms. Sonakshi Singh, Mr. Kumar Bhaskar and Mr. Aman Sanjeev Sharma, Advocates

versus

**STATE GNCT OF DELHI & ORS.**

.....Respondents

Through: Mr. Sanjeev Sabharwal, APP for State with SI Amit Kumar PS EOW.  
Mr. Arvind Nayjar, Senior Advocate with Mr. Mayank Mishra, Mr. Raunak Singh and Mr. Kunwar Surya Pratap, Advocate for respondent nos. 2 to 7

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**JUDGMENT**

1. By way of present petition, the petitioners seek quashing of the order dated 04.01.2023 passed by learned ASJ, Patiala House Courts, New Delhi in Cr. Rev. No. 108/2022 titled “SANJAY KUMAR GAUR & ANR vs STATE & ORS” whereby the learned ASJ has upheld the Order of the learned Additional Chief Judicial Magistrate (ACJM) dated 22.02.2022 dismissing the petitioners' application under Section 156(3) Cr. P.C.
2. Briefly stated, the petitioners/complainants claim to be the joint owners of the agricultural land measuring 43.10 acres situated at village



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Durina/Dulina, Tehsil Jhajjar, Haryana. The petitioners entered into Agreement to Sell dated 25.04.2019 (hereafter, the ATS) with M/s Dalmia Ram Rattan Strategic Investment LLP/respondent No. 7 for an advance consideration of Rs. 4.72 crores out of a total sale consideration of INR 1,10,00,000 per acre of land and the balance sum was to be paid on execution of sale deed. However, due to lack of funds, the sale could not be completed within the stipulated period. Consequently, the petitioners terminated the said agreement and forfeited the advance received. It was further claimed that thereafter, the petitioners gave two post-dated cheques to respondent No. 5 as security for executing the cancellation deed. On 22.01.2022, the cancellation agreement was executed and refund of advance was made by way of the RTGS. However, contrary to the understanding, the said two cheques were never returned to the petitioners and later, misused by respondent No. 7 by presenting them for encashment. The petitioners in order to avoid wrongful loss issued instruction to their bank for stop payment. The cheques were dishonoured whereafter, respondent No. 7 initiated proceedings under Section 138 Negotiable Instruments Act (NI Act) against the petitioners.

3. As the respondent no.7 had acted contrary to understanding between the parties, the petitioners filed a police complaint regarding the alleged illegal act but since no action was taken, the petitioners moved an application under Section 156(3) CrPC. In the Action Taken Report (ATR), requisitioned by the Ld. ACJM, it was reported that a civil suit was pending regarding recovery from Aravali Logistics Park Pvt Ltd as balance amount of Rs. 4.7 crore was still due. It was also reported that the cases filed by the respondent No. 7 under Section 138 NI Act were dismissed on technical ground by the concerned Court at Gurugram. Further, it was stated that the



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dispute arose between the parties due to violation of verbal/contractual agreement and that the matter is civil in nature. Learned ACJM while dismissed the application under Section 156(3) CrPC and directed continuation of proceedings under Section 200 CrPC, the petitioners challenged the same however, the revisional court also found no merit and dismissed the challenge.

4. Learned counsel for the petitioners submit that the learned ASJ has erroneously and wrongly concluded that that there is no infirmity in the findings of the Ld. ACJM, that all evidence is within control/reach of the petitioners and therefore, the application under Section 156(3) CrPC has been wrongly dismissed. It is stated that the attempt made by the accused persons to encash the post-dated cheques amounts to an offence under Section 406/420/120B/511/34 IPC and the learned court failed to notice that if preliminary inquiry discloses commission of cognizable offence, then FIR must be registered. In this regard, reliance has been placed on the decision of Supreme Court in case Lalita Kumari Vs. Government of UP reported as **(2014) 2 SCC 1**.

Further, it is stated that in the ATR filed on 28.01.2022, it has been mentioned that disputed cheques do not bear the handwriting of the petitioners and that it is beyond the reach of the petitioners to investigate and lead evidence in a private complainant as to in whose hand-writing the cheques were filled up. It is further stated that police investigation is required to bring further evidence on record given that the amount of financial embezzlement involved is Rs. 9.40 crores by the respondents. Additionally, it is submitted that the affidavits filed by respondent no.5 and M/s Aaravali in the civil suit before the concerned court in Gurugram are forged and fabricated and therefore the role of all the respondents are



required to be investigated.

5. Learned APP for the state submits that as per the status report placed on record, the dispute arose between the parties due to violation of verbal/contractual agreement made between the parties during the said land deal which is civil in nature and that no cognizable offence has been found committed in the present matter.

6. Learned counsel for respondent Nos. 2 to 4, 6 and 7 submits that the impugned order does not suffer from any infirmity, the Ld. ASJ has correctly upheld that finding of the Ld. ACJM that no field of inquiry is required for collection of evidence and therefore the present case does not warrant the registration of an FIR. If any evidence is required, it could be adduced at the stage of inquiry under Section 202 of the Cr.P.C. It is further, submitted that the primary dispute is regarding an oral understanding and consequent bouncing of two cheques issued by the petitioners to respondent No. 7. Regarding the aforesaid, it has been observed by Ld. ACJM as well as ASJ in the impugned order that dispute regarding the bouncing of cheque is being adjudicated and that in fact the petitioners are in possession of all the information required to file a private complaint, making an investigation under Section 156(3), Cr.P.C unnecessary. Learned counsel for respondent No. 5 adopts the submissions made on behalf of other respondents.

7. I have heard the counsels for parties and perused the material available on record. Needless to state that the power conferred upon the Ld. Magistrate under Section 156(3) of the Cr.P.C. ought to be exercised judiciously and in a sparing manner, rather than in a mechanical fashion. However, at the same time, where disputes appear to be civil in nature or the party approaching the court has all the evidence in its possession, the court will be within its power to apply judicial mind which would depend on the



facts and circumstances of each case.

8. The issue also arose before a co-ordinate Bench of this court in Skipper Beverages Pvt. Ltd. v. State, (2001) 59 DRJ 129 and in para 6 and 7 it has been observed as under:

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

*Para-7 : It is true that Section 156(3) of the Code empowers a Magistrate to direct the police to register a case and initiate investigations but this power has to be exercised judiciously on proper grounds and not in a mechanical manner. In those cases where the allegations are not very serious and the complainant himself is in possession of evidence to prove his allegations there should be no need to pass orders under Section 156(3) of the Code. The discretion ought to be exercised after proper application of mind and only in those cases where the Magistrate is of the view that the nature of the allegations is such that the complainant himself may not be in a position to collect and produce evidence before the Court and interests of justice demand that the police should step in to 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”*



9. It is deemed apposite to also refer to the decision of this Court in Shri Subhkaran Luharuka & Anr. v. State<sup>1</sup>, wherein it has been observed:-

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

10. It is to be noted that the learned ASJ while concurring with the view taken by Id. ACJM has rightly noted that the petitioners have clearly specified that in the present complaint, the details of incident, all the venue where the meetings took place has also been specified, the amount was returned through RTGS and all the details of the transactions are available with the complainant. The details/credentials of the accused persons have been specified in the memo of parties, which shows that all the accused persons are known to the complainant and therefore the court arrived at the conclusion that the evidence is well within the reach and power of the complaint and no registration of FIR is required in the present case. It is not *res integra* that proceedings under Section 138 NI Act are maintainable even if the writing on the cheque is different as long as the signatures are

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<sup>1</sup> ILR (2010) 6 Del 495



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admitted. The complainant can adduce private evidence in this regard in the complaint proceedings pending under Section 200 CrPC.

11. Keeping in mind the settled principle of law in the above-noted cases, I concur with the findings of Courts below and find no infirmity in the impugned order. Accordingly, the petition stands dismissed.

**MANOJ KUMAR OHRI**  
**(JUDGE)**

**SEPTEMBER 24, 2024**  
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