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

+ **CRL.M.C. 4267/2024**

DILSHAD

.....Petitioner

Through: Mr. Vinay Bhushan, Adv.

versus

STATE NCT OF DELHI AND ORS.

.....Respondents

Through: Mr. Aashneet Singh, APP for State
with SI Sanjeet Rathee, PS Malviya
Nagar.

Mr. Rashid Hussain & Mr. D.A. Saifi,
Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

08.10.2024

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1. By way of present petition, the petitioner seeks to assail the order dated 18.12.2023 passed by learned Principal District & Sessions Judge, South District, Saket, New Delhi, whereby the petitioner's challenge to the dismissal of an application filed by him under Section 156(3) Cr.P.C. by the learned Judicial Magistrate, was rejected.

2. The petitioner claims to have purchased 3rd floor of property bearing No. E-12/19-A, Hauz Rani, Malviya Nagar, New Delhi. In the complaint, it was claimed that at the time of said transaction, the respondent No.2/Sarfaraz Khan claimed himself to be owner of the 2nd and 3rd floor, by virtue of Collaboration Agreement dated 04.09.2018 executed between him and respondent no. 3/Mrs. Fajrun Nisha. The petitioner claims that the entire amount was paid through banking transaction and cash. The sale transaction was accompanied by execution of documents in the form of GPA, Agreement to Sell, Affidavit, Will, Receipt, possession letter, etc. with respect to the third floor. The petitioner further claims that after taking



possession, on 24.08.2019, while he was not in the flat, respondent No. 4/Reshma, daughter of Mrs. Fajrun Nisha trespassed into the property and took possession.

3. It is born out from the record that during the pendency of the petitioner's application under Section 156(3) Cr.P.C., an Action Taken Report (ATR) was called from the concerned police station. In the said ATR, the matter was opined to be of civil in nature. Learned Judicial Magistrate declined to allow the petitioner's application by opining that all the property documents were in the possession of the petitioner and hence no police investigation was required. The proceedings under Section 202 Cr.P.C. were continued and it was further noted that in case any further investigation would be required, the same would be undertaken under Section 202 Cr.P.C.

4. The aforesaid order came to be assailed by way of Criminal Revision Petition No. 448/2023 and the Revisional Court also declined to interfere and upheld the order of Judicial Magistrate.

5. Before this Court, learned counsel for the petitioner contends that the ingredients of offence under Section 420 IPC are made out and the petitioner's FIR ought to have been directed to be registered as the concerned Police Station has not registered the FIR.

6. During the course of proceedings, it has been further informed that respondent no. 3/Mrs. Fajrun Nisha has since expired.

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, reported as **(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, reported as **ILR (2010) 6 Del 495** 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....

8. In the present case, all the facts leading to the complaint are within the knowledge of the petitioner. There is no fact/evidence which needs to be unearthed by the police and as such there is no requirement of police investigation. Considering that all the documents are in petitioner’s possession, I find no ground to interfere with the impugned order. The petition is dismissed.

MANOJ KUMAR OHRI, J

OCTOBER 8, 2024
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