



2024:DHC:7374



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

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***Date of Decision: 29<sup>th</sup> August, 2024***+ **CRL.M.C. 4299/2019****M/S S.A. YADAV ESTATE & CONSTRUCTION  
PVT. LTD. THROUGH ITS A/R .....Petitioner****Through: Mr. Mukesh Gupta, Mr.  
Praveer Singh, Mr.  
Akshay Chauhan and Mr.  
Rahul Parashar, Advs.****versus****STATE & ORS. ....Respondents****Through: Mr. Sunil Kumar Gautam,  
APP for the State  
Mr. Ritesh Kr. Bahri, APP  
for the State  
Mr. Vivek Singh, Mr.  
Onkar Nath, Mr. Anshu  
Bhanot and Mr. Anuj  
Mirdha, Advs. for R-2 and  
3.****CORAM:  
HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J.**

1. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC'), *inter alia*, challenging the order dated 15.11.2018, in CIS No.9803/2018, whereby the learned Trial Court dismissed the petitioner's application under



Section 156(3) of the CrPC.

2. The petitioner has also challenged the order dated 10.05.2019, in Criminal Revision No.855/2018, whereby the learned Additional Sessions Judge, Central District, Tis Hazari Courts, Delhi had dismissed the revision petition filed by the petitioner against impugned order dated 15.11.2018.

3. The petitioner/ complainant company is engaged in the business of development of lands and building construction. It is the case of complainant company that Respondent No.2 had approached them and represented himself as the Director of the accused company/ Respondent No.3. It is alleged that Respondent No.2 had represented that he is the lawful owner of the property forming part of Khasra No. 599/588/276 min 2 Bighas-4 Bishwas and Khasra No. 586/282/min 1 Bighas- 4 Bishwas, totalling 3 Bighas 14 Bishwas (approximately 3500 Square Yrds.), situated at Village Malikpur Chhawani, Delhi (hereafter '**the subject property**').

4. It is alleged that Respondent No.2 had proposed a joint venture to develop the subject property and assured the complainant that he had all the relevant sanctions from the concerned Government Departments. On the basis of the said assurances, the complainant company entered into a Memorandum of Understanding ('**MOU**') dated 30.05.2009 with the accused persons. It is alleged that the complainant company had paid ₹90,00,000/- through cheques and ₹56,50,000/- in cash on representations by Respondent No.2. It is alleged that as per the MOU, the project was to be completed with all formalities



within 6 months by November, 2009. It is alleged that no satisfactory reply was given about status of project.

5. It is alleged that when the complainant company asked the accused to return the money, he requested for more time to complete the project and stated that the same had been delayed due to unforeseen circumstances. The time was verbally extended, despite which, the project was not completed for two more years.

6. At the insistence of the complainant company, the accused gave six cheques to repay the amount taken by him. The said cheques were dishonoured with remarks- 'funds insufficient'. Thereafter, Respondent No.2 paid no heed to the requests made by the complainant company to repay the amount.

7. Proceedings under Section 138 of the Negotiable Instruments Act, 1881 were initiated due to dishonour of the cheques.

8. The complaint was filed alleging that the accused had dishonestly and fraudulently induced the complainant company to enter into an agreement and pay huge sums on false pretext. It was alleged that the complainant company would not have made the payments if such false representations were not made.

9. The learned Magistrate by the impugned order dated 15.11.2018 dismissed the application filed by the petitioner under Section 156(3) of the CrPC. The relevant portion of the same is reproduced hereunder:

*“In the present case, the facts of the case reveal that there is a civil dispute between the parties as facts reveal that*



*apparently there was breach of the agreement/MOU dt.30.05.2009 by the accused. Further, the identity of the respondent is known to the complainant. All the evidence is at the disposal of the complainant. There is no need for police investigation in this case. Further if any fact is required to be unearthed, the same may be enquired into by the Court u/s 202 Cr.PC and for that enquiry the assistance of police may be taken.*

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*In the present case, since the identity of respondents is duly established and is known to the complainant, as such no investigation by the police is required.”*

10. The petitioner challenged the same before the learned ASJ by invoking the revisional jurisdiction. The learned ASJ dismissed the same order dated 10.05.2019 noting that the provisions of Section 156(3) of the CrPC cannot be permitted to be misused in cases which are not of serious nature and where the complainant can prove the case by summoning witnesses.

11. The learned counsel for the petitioner submits that the impugned order has been passed without application of judicial mind.

12. He submits that investigation is required by the police to recover the cheated money and also to ascertain the ownership of the land, the authenticity and the existence of the sanctions from the concerned government authorities, project sanction letter, and the other required certificates from the revenue department.

13. He submits that the Court is required to forward the complaint to the police for investigation if the same discloses a cognizable offence.



14. He submits that the Courts below did not consider the complaint made by the petitioner to Police Station Timarpur in respect of cheating.

15. He submits that while it is not necessary that the Court should direct registration of an FIR in every case even if the complaint discloses a cognizable offence, however, FIR can be registered if the petitioner is not able to collect or gather the necessary evidence and some technical investigation or custodial interrogation is required on the part of police.

16. He submits that the Hon'ble Apex Court in the case of ***State of Haryana v. Bhajan Lal* : 1992 SCC (Cri) 426** had held that if any information disclosing cognizable offence is laid to an officer in charge of a police station, the police officer has no choice but to register a case without considering the reasonableness or credibility.

### **ANALYSIS**

17. The first issue that falls for the consideration of this Court is whether the petitioner having already availed the remedy of revision should be allowed to take recourse to Section 482 of the CrPC as a substitute for initiating a second revisional challenge which is clearly barred under Section 397(3) of the CrPC which reads as follows:

*“(3) If an application under this section has been made by any person either to the High court or to the Sessions Judge, no further application by the same person shall be entertained by the either of them.”*



18. At the outset, it is relevant to note that while it is settled law that a second revision cannot be filed in terms of the bar under Section 397 of the CrPC, the inherent power of this Court under Section 482 of the CrPC has a wide ambit and can be exercised in the interest of justice. It is settled law that the power under Section 482 of the CrPC is to be exercised cautiously and sparingly, especially when Sessions Judge has already exercised revisional power under Section 397 of the CrPC.

19. The Hon'ble Apex Court, in the case of **Krishnan v. Krishnaveni : (1997) 4 SCC 241**, had observed as under:

*“8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order.”*

(emphasis supplied)

20. At the outset, a reference can be made to Section 156 of the CrPC, which reads as under:

*“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 above mentioned.”*

21. Thus, while exercising powers under Section 156(3) of the CrPC and directing the registration of an FIR, the Magistrate/Special Court needs to ensure that a cognizable offence is disclosed from the allegations mentioned in the application and the essential elements of the alleged offences are *prima facie* satisfied.

22. In the judgment delivered by this Court in the case of ***Skipper Beverages Pvt. Ltd. v. State* : 2001 SCC OnLine Del 448**, it was held as under :

*“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 empower 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.*

(emphasis supplied)

23. Thus, once a complaint/application under Section 156(3) of the CrPC 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.

24. Keeping in perspective the aforesaid principles, this Court has to carefully peruse and examined the records of the case including the orders impugned before this Court.

25. At the outset, it is relevant to consider the nature of the dispute. The learned ASJ in the impugned order dated 10.05.2019 observed that the exercise of power under Section 156(3) of the CrPC ought to be exercised in those cases where the allegations are serious or the evidence is beyond the reach of the complainant. It was rightly noted that there exists a civil dispute between the parties as there is a breach of the agreement/ MOU dated 30.05.2009 by the respondent.



26. In the opinion of this Court, the learned Courts below have rightly noted that the allegations levelled in the present case can be proved by oral and documentary evidence and police assistance is not required for breaking the case.

27. Furthermore, the learned ASJ has also adequately addressed the apprehension of the petitioner regarding not having certain documents to establish its case. It was also observed that it is open to the petitioner to seek the recourse under Section 91 of the CrPC to summon the relevant documents from Respondent No.2 and the office of the concerned Sub-Registrar to prove its case.

28. The learned Trial Court in the impugned order dated 15.11.2018 had also noted that in case any fact was required to be unearthed, the same could be enquired into by the Court under Section 202 of the CrPC. In ***Subhkaran Luharuka & Anr. vs. State : (2010) 170 DLT 516***, it was observed as under:

*"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 discretionary remedy as the provision proceeds with the word 'May'. The Magistrate is required to exercise his mind while doing so. He should pass the 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,....."*



43. In ***Gulab Chand Upadhyaya vs. State of U.P. : (2002) 44 ACC 670***, the Hon'ble Allahabad High Court held that:

"22. But where the complainant is in possession of the complete details of all the accused as well as the witnesses who have to be examined and neither recovery is needed nor any such material evidence is required to be collected which can be done only by the police, no "investigation" would normally be required and the procedure of complaint case should be adopted. The facts of the present case given below serve as an example. It must be kept in mind that adding unnecessary cases to the diary of the police would impair their efficiency in respect of cases genuinely requiring investigation. Besides even after taking cognizance and proceeding under Chapter XV the Magistrate can still under Section 202(1) Cr.P.C. order investigation, even thought of a limited nature."

(Emphasis supplied)

29. It is apparent that the petitioner is merely seeking the assistance of the police to conduct a fishing and roving inquiry. As is evident from the aforesaid observations, all pertinent facts are within the petitioner's knowledge and reach. Given these factors, the need for police involvement in evidence collection appears to be minimal, as the complainant is well-equipped to facilitate the presentation of evidence on its own behalf.

30. In my opinion, the learned MM and the learned ASJ have rightly relied upon the judgments in ***Subhakaran Luharuka v. State (Govt. of NCT of Delhi)*** (*supra*) and ***Skipper Beverages Pvt. Ltd. v. State*** (*supra*), wherein it was held that when the allegations are not particularly severe, and the complainant already possessed sufficient evidence to support their claims, there may be no necessity to pass orders under Section 156(3) of the CrPC.



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31. In the instant case, this court is of the opinion that no exceptional circumstances have been presented to warrant the exercise of its extraordinary jurisdiction under Section 482 of the CrPC. There is no indication of any miscarriage of justice or legal irregularity in the proceedings undertaken by the two lower courts, and the petitioner has not pointed out any such deficiencies.

32. In view of the above, I find no infirmity in the impugned orders.

33. The petition, is, therefore, dismissed.

**AMIT MAHAJAN, J**

**AUGUST 29, 2024**