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

% ***Date of Decision: 19th September, 2024***

\+ CRL.REV.P. 1098/2023 & CRL.M.A. 28292/2023

SUMAN KUMAR .....Petitioner

Through: Mr. Ankit Tandan & Ms. Hernisha Tandan, Advocates (Through V.C.). Petitioner-in-Person.

versus

COMMISSIONER OF POLICE, DELHI POLICE AND ORS. .....Respondents

Through: Mr. Bipul Kumar, Advocate for R-3 to R-16.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J *(Oral)*

1. The present petition is filed challenging the order dated 07.06.2023 (hereafter **'impugned order dated 03.06.2024'**) passed by passed by the learned Metropolitan Magistrate ('**MM**'), Tis Hazari Court, Delhi in Ct. Case No. 2561/2022, titled *Suman Kumar v. TATA Capital Housing Finance Ltd. and Ors.*, dismissing the application filed by the petitioner under Section 156(3) of the Code of Criminal Procedure, 1973 (**CrPC**), while taking cognizance on the complaint filed under Section 200 of the CrPC.

2. It is the case of the petitioner that he had applied for a home loan with Tata Capital Housing Finance Ltd. (**TCHFL**) for a sum of ₹86 lakhs which was issued to him on 20.08.2020. The petitioner alleges that despite not receiving the full loan amount, fraudulent deductions towards EMI and other charges were made from his bank account. He further claims that TCHFL charged EMIs before disbursal of any loan, which is against the loan terms.

3. On 02.02.2022, the petitioner lodged a police complaint. However, the concerned police officials had failed to take any action against the respondents on the complaint lodged by him.

4. As noted above, the application filed by the petitioner under Section 156(3) of the CrPC was dismissed by the learned MM by the impugned order. The relevant portion of the same is reproduced hereunder :

> *"……Even otherwise, this court is of the view that the allegations of the complainant, even if assumed to be true, would at best make out a case of breach of contract as the complainant grievance chiefly pertains to violation of terms of loan agreement entered into between the parties. Superior courts have time and again laid down that mere breach of contract must be distinguished from a criminal offence of cheating, in which deception from the very beginning is required to be established to have been there from the very beginning. In the circumstances of the case at hand also, it is observed that the complainant contentions of the proposed accused company deducting sums of money from its account in the name of processing charges, EMIs etc, before disbursal of loan as per him, with a counter version of the proposed accused company being there that the same was done in pursuance of advance cheque given to the the complainant as per his own demand, is in principal a dispute touching upon breach of contract and as such therefore does not warrant invocation of jurisdiction of this court to direct registration of an FIR.*

Apart from that, it is also seen that requirement for any kind of police intervention is also not made out since no evidence as such is required to be unearthed vide any investigation. This is so since such evidence shall be largely documentary in nature and therefore, within the reach of the complainant. Also, proposed accused persons, officials of the proposed accused company are known and their identities are not suspect. In fact, place of work of the proposed accused company and other such details are also ascertained as on date today. Considering the totality of circumstances therefore even on this count, the present application U/s 156(3) Cr.PC does not deserve favorable consideration. Accordingly, application in question is hereby Dismissed.

Cognizance of the offences as mentioned in the complaint as against the proposed accused persons is taken. Complainant to lead pre summoning evidence. If any investigation is required, Section 202 Cr.P.C can always be resorted to later.

Re-list for PSE on 20.10.2023."

5. Aggrieved by the aforesaid order, the petitioner has preferred the present petition.

6. The petitioner submits that TCHFL fraudulently deducted ₹24,462 on 27.08.2020, ₹14,214 on 10.09.2020, and other amounts before the loan disbursement. He submits that the loan disbursal started only in October 2020, but deductions began in August 2020. He submits that the conduct of the accused company violated the terms of the loan agreement and caused him significant financial distress.

7. He claims that Tata Capital did not inform him that interest and EMIs would be charged before the actual disbursal of the loan, and they misused his authorization to debit his account.

8. The petitioner further claims that TCHFL issued fraudulent medical insurance without his consent, deducting an additional

₹40,000 for a health policy that was neither requested nor required since his family already had insurance.

9. The petitioner argues that despite repeated requests, TCHFL delayed the disbursement of the loan, providing only ₹57.84 lakhs on 15.10.2020, long after the EMI deductions had already begun. TCHFL further delayed releasing the remaining amount, including ₹10.98 lakhs and ₹1.71 lakhs towards the TDS liability, thereby forcing the petitioner to arrange temporary funds to execute the sale deed.

10. The petitioner alleges that TCHFL fabricated documents, including a "Confirmation by the Borrower" dated 28.08.2020, which was backdated and notarized on 20.08.2020, even though the loan was purportedly disbursed later in October. He argues that this document was forged to justify the premature deductions from his bank account.

11. He submits that the impugned order dismissing his application under Section 156(3) of the CrPC is erroneous as it fails to appreciate the facts of the case and the fraudulent actions of TCHFL.

12. *Per Contra*, the learned counsel for Respondent No.2 submits that the impugned order is well – reasoned and entire gamut of facts have been deliberated upon and duly considered. He states that the entire evidence is documentary in nature as the complaint arises from a written loan contract and no recovery of any sort is to be made.

13. He submits that the allegations made by the petitioner, at best, point towards breach of contract for which remedy lies in Civil or Consumer Courts and criminal proceedings are not short cut of other remedies.

Analysis

14. 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."*

15. 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, thereof, are *prima facie* satisfied.

16. 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*

<u>cases where the allegations are not very serious and the complainant himself is in possession of evidence to prove his allegations there should be no need to pass orders under Section 156(3) of the Code. The discretion ought to be exercised after proper application of mind and only in those cases where the Magistrate is of the view that the nature of the allegations is such that the complainant himself may not be in a position to collect and produce evidence before the Court and interests of justice demand that the police should step in to held the complainant.</u> 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. <u>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.</u> 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)

17. 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. 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.

Preliminary Inquiry in Present Case :

The Action Taken Report filed by the police before the learned Magistrate contained a detailed account of preliminary inquiry conducted by the police. To summarise, a perusal of contents of the Action Taken Report reveals as under:

i. No cognizable offence was disclosed from the contents of complaint;

ii. The documentary evidence is already on record;

iii. The police did not register an FIR as the inquiry concluded that it was a matter of contractual dispute rather than a criminal offence.

17. Keeping in perspective the aforesaid observations, this Court has carefully perused and examined the records of the case including the order impugned before this Court.

18. In the opinion of this Court, the learned MM has rightly noted that the allegations levelled in the present case can be proved by oral and documentary evidence and police assistance is not required in the case.

19. The learned Trial Court in the impugned order dated 07.06.2023 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. <u>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</u>,....."*
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> 20. *In **Gulab Chand Upadhyaya vs. State of U.P. : (2002) 44 ACC 670**, the Hon'ble Allahabad High Court held that:*
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> *"22. <u>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.</u> 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."*
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> (Emphasis supplied)

21. 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 above narration of facts and the Action Taken Report filed by the Police before the learned MM, all pertinent facts and evidence are within the petitioner's knowledge and reach, and he can present such information during the inquiry conducted by the learned MM pursuant to Section 200 of the CrPC. 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 his own behalf.

22. 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.

23. In view of the above, I find no infirmity in the impugned order, and the same cannot be faulted with.

24. The petition, is, therefore, dismissed.

AMIT MAHAJAN, J

SEPTEMBER 19, 2024