



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

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Date of Decision: 18.03.2024

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CRL.M.C. 9442/2023, CrI. M.A. 35304/2023

ASHOK KUMAR SAXENA

..... Petitioner

Through: Mr. K.K. Manan, Sr. Advocate with
Mr. Sameer Chandra, Mr. Vivek
Sarin, Ms. Divyansh Singh, Ms. Udit
Bali and Mr. Satish C. Kaushik,
Advocates alongwith petitioner in
person.

versus

THE STATE NCT OF DELHI AND ORS.

..... Respondents

Through: Mr. Sanjeev Sabharwal, APP for
State/respondent No.1.
Mr. Raheel Kohli an Ms. Himangini
Mehta, Advocates for respondent
No.2.
Mr. N. Hariharan, Sr. Advocate with
Mr. Anant Malik, Mr. Akansha
Mishra, Mr. Mueed Shah and Ms.
Punya Rekha Angara, Advocates for
respondent No.3.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present petition filed under Section 482 Cr.P.C., the petitioner seeks setting aside of order dated 08.11.2021 passed in CT Case No.920/2021 whereby his application under Section 156(3) Cr.P.C. seeking registration of FIR under Sections 420/406/468 IPC came to be dismissed and the matter was directed to be listed for pre-summoning evidence.
2. In the application, the petitioner has alleged that he was induced to



invest US \$10,000 with the allurement that he would be designated as co-founder and director and would be allotted 45% stake in respondent No.3 company. Subsequently, repeated requests were made by respondent No.2 for more funds to keep respondent No.3 company afloat, and during the same time, the petitioner and respondent No.2 reached an arrangement recorded in the form of written agreement dated 24.09.2001. The grievance raised by the petitioner is that the terms of the agreement were not honoured inasmuch as neither were the requisite shares allotted to him nor was the third director appointed.

3. The record reveals that during the pendency of the subject application under Section 156(3) Cr.P.C., an Action Taken Report was called. After due inquiry, the dispute was found to be civil in nature and further that no cognizable offence was made out. A perusal of the alleged Agreement dated 24.09.2001 would show that it was expressly stated therein that legal papers reflecting the intent of the agreement would be executed by 20.10.2001. Prima facie, the Agreement appears to record the intent of the parties to enter into an agreement.

4. Admittedly, the petitioner filed the subject application under Section 156(3) after a period of nearly 20 years from the time of entering into the alleged Agreement. Vide the impugned order, learned MM dismissed the application and stated that the petitioner was already in possession of the requisite evidence. Statedly, the petitioner is in possession of the documents relating to transaction vide which he had transferred the amounts to the accused.

5. Considering the factual situation in the present case, this Court deems it apposite to take note of the decision of a Coordinate Bench of this Court in



Shri Subhkaran Luharuka and Anr. v. State & Anr.¹, wherein it was observed:-

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(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 alongwith 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.

xxx”

6. The petitioner has challenged the impugned order on the ground that the same has been passed mechanically without due consideration of the facts of the case including the gravity of the offence. It is stated that a cognizable offence has been made out prima facie and thus, a detailed investigation by a special investigation team (SIT) is required to collect/seize the requisite evidence.

7. In the impugned order, it has been observed that most of the documents which are being relied upon by the petitioner are either in his

¹ 2010 SCC OnLine Del 2324



possession or are public documents. The mode and manner of commission of the offence as well as the identity of the accused person(s) are already known to the petitioner. Keeping in mind the same, it was observed that the police intervention is not required inasmuch as the petitioner failed to bring on record anything to suggest what evidence is required to be collected through such intervention.

8. While the factual matrix has already been laid down, the only issue that arises for consideration is whether any investigation is required to be undertaken w.r.t the said case. A perusal of the petition and the documents filed with it as well as the impugned order, this Court concurs that the petitioner is already in possession (or can come into possession) of the documents/evidence required in support of his case. Admittedly, the matter was directed to be listed for pre-summoning evidence and the case was directed to be proceeded as a complaint case. In the considered opinion of this Court, no ground has been made out to interfere with the impugned order.

9. Accordingly, the present petition is dismissed alongwith pending application.

MANOJ KUMAR OHRI
(JUDGE)

MARCH 18, 2024/ga