$~16

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

\+ CRL.M.C. 62/2021

KAILASH CHAND UPRETI .....Petitioner

Through: Ms. Shantha Devi Raman and Ms. Tanisha Gopal, Advocates

versus

THE STATE NCT OF DELHI & ORS. .....Respondents

Through: Mr. Utkarsh, APP for the State with SI P. Buno, P.S. Madhu Vihar

Mr. Prateek Saxena, Proxy Counsel for R-2 & 3

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

<u>O R D E R</u>

% **02.12.2025**

1. Petition under Section 482 Cr.P.C. has been filed for quashing the impugned Order dated 01.10.2020 in Criminal Revision Petition No. 26/2020 whereby Ld. ASJ upheld the Order dated 06.03.2020 of Ld. MM rejecting the Application under S.156(3) Cr.P.C. for registration of FIR.

2. ***Briefly stated***, the Petitioner had filed a criminal Complaint under Section 200 read with Section 156(3) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*) for the offences under S.323/406/420/467/468/471/120B/506/34 IPC.

3. The Petitioner stated in his Complaint that the Respondent No.2, namely Banti Choudhary @ Narender Singh, was well known to him as they were residing in the same locality. The Petitioner was in search of a flat and discussed it with Respondent No.2, who represented himself as the owner of and having possession of a Flat situated on the 1st floor up to the extent of ceiling level area measuring 57.5 sq. yards, i.e., 47.7 sq. meters consisting of

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 26/12/2025 at 11:48:24

two plus one room set therein, with common staircase, passage, entrance, and two-wheeler parking space at the ground floor with the right to go on roof/ terrace of top floor for maintenance/installation of TV antenna and water tank purpose only; a part of property bearing number D-8/A, out of Khasra No. 800–801, situated in the Abadi of D-Block, West Vinod Nagar, in the area of village Mandawali, Fazalpur, Illqua Shahdara (*suit property*).

4. Believing the representations made by Respondent No.1, the Petitioner entered into an Agreement/ *Bayana* dated 27.08.2014 in the presence of the witnesses and Sh. Sher Singh, Respondent No.3, for purchase the Flat at a total consideration of ₹27.5 lakhs.

5. The Respondent No.2 received a sum of Rs.2,50,000/- in cash on 27.08.2014, as earnest/ advance money from the Petitioner, under the said Agreement, in the presence of the Respondent No.3 and other witness. It was agreed that the remaining amount of Rs.25,00,000/- shall be paid by the Petitioner to the Respondent No.2 by the end of December 2014, on which Respondent No.2 shall execute and register the Sale Deed in respect of the aforesaid flat, in favour of the Petitioner.

6. In the meantime, Respondent No.2 approached the Petitioner and requested to pay him a sum of Rs.10,00,000/- under the aforesaid Agreement, as he was in dire need of funds. Thus, the Petitioner paid a sum total sum of Rs.10,00,000/ in two instalments of Rs.5,00,000/- each in cash to Respondent No.2, on 20.10.2014 and on 10.11.2014, respectively. The receipt of the amount of Rs.10,00,000/- was acknowledged by Respondent No.2 in his handwriting, on the back of the Agreement dated 27.08.2014, in the presence of the witnesses.

7. In the month of December 2014, the Petitioner requested the

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 26/12/2025 at 11:48:24

Respondent No.2 to accept the remaining Rs.15,00,000/- and execute and register the sale deed, in his favour. However, Respondent No.2 expressed his inability to do the needful, stating that the construction was not complete. Despite repeated reminders by the Petitioner, Respondent No.2 kept on seeking time on one pretext or the other. Somewhere in the month of May, 2015, he refused to perform his part of the contract without assigning any reason.

8. On enquiry, the Petitioner came to know that Respondent No.2 had already sold the suit Flat to some other person without having any right and authority whatsoever to sell out the said property to any other person except the Petitioner. Since the Respondent No.2 had violated the agreed terms of the Agreement to Sell, he became liable to pay double the amount of the earnest money. The Petitioner requested him to pay a sum of Rs. 5,00,000/-, i.e. double of the earnest amount of Rs.2,50,000/- as well as the amount of Rs.10,00,000/- received under the Agreement, along with interest. However, Respondent No.2 only gave false assurances and failed to return the amount to the Petitioner.

9. The Complainant asserted that Respondent No.2 has played a fraud and cheated the Petitioner by fraudulently taking a huge amount from the Petitioner, for his wrongful gain and causing wrongful loss to the Petitioner. Further, Respondent No.3 has acted in collusion and connivance with Respondent No.2, by hatching a conspiracy, to cheat the Petitioner.

10. Having no other alternative, the Petitioner issued a legal demand Notice dated 11.01.2016 through speed post, on 16.01.2016. However, despite receipt of the Notice, Respondent No.2 failed to reply or repay; instead, he contacted the Petitioner and assured him that he would return the

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 26/12/2025 at 11:48:24

amount. The Respondent kept trying to buy time on one pretext or the other and the Petitioner, in good faith, did not file any case against him.

11. Thereafter, on 13.12.2017, the Petitioner went to the office of Respondents No.2 and 3, and asked them to return his money, along with interest. However, they became aggressive and began abusing the Petitioner. Respondent No.2 caught hold of the Petitioner's collar and threatened him that if he demanded any amount in the future, he would be killed by them. Thereafter, he pushed the Petitioner out of his office.

12. It was further stated by the Petitioner that at the time of the execution of the aforesaid Agreement, Respondent No.2 had taken the signature and thumb impression of the Petitioner on the pretext that they would use the same with the BSES Department and Delhi Jal Board, to apply and get the connections in his name. The Petitioner had provided the same on one-two blank paper (A4 size), which were also having Revenue stamp. However, the Respondent No.2 started threatening to misuse the same against the Petitioner.

13. The Petitioner was subsequently informed that at the time of entering into the Agreement, the Respondent No.2 had no right to sell the aforesaid flat to anyone and thus, he had illegally and fraudulently represented himself to be the owner and induced the Petitioner to enter into the Agreement.

14. Also, the Respondent No.2 refused to return the amount and began extending threats. The Petitioner approached P.S. Madhu Vihar, and requested the Police Officials to take proper legal action against Respondent No.2 and 3. However, the Police Officials refused to receive his complaint, on account of which he was constrained to send a written Complaint dated 21.12.2017 to the SHO, P.S. Madhu Vihar through speed post on

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 26/12/2025 at 11:48:24

21.12.2017, and copy of the same was sent to other higher police officials through speed post. However, no action was taken against Respondent No. 2 and 3.

15. The Petitioner was thus, compelled to file a *Complaint case CC No. 862/2018 under Section 200 read with Section 156(3) Cr.P.C.* against Respondents No. 2 and 3 under S. S.323/406/420/467/468/471/120B/506/34 IPC.

16. The Action Taken Report (ATR) was called from the concerned Police Station from a perusal of which, it is evident that the Report was filed by the I.O. to safeguard the interest of Respondents No.2 and 3.

17. The Ld. MM erroneously dismissed the Application under Section 156(3) Cr.P.C. Aggrieved, the Petitioner filed the Revision Petition bearing No. 26/2020, which was also dismissed vide Order dated 01.10.2020, by the learned ASJ.

18. The impugned Order is ***challenged on the ground*** that the trial court had failed to consider the ATR along with the documents collected in the course of enquiry, by the Investigating Officer. The ATR reflected that Respondent No.2 Sh. Banti Choudhary @ Narender Singh had purchased the said property from one *Mr. Mukesh Aggarwal* through an Agreement dated 15.04.2014, executed on 27.05.2014, without having the same notarised. On the basis of such Agreement, Respondent No.2 claimed himself to be the owner of the property in question and thereafter, sold the property to the Petitioner by entering into the Agreement to Sell dated 27.08.2014 and received the Bayana,. Both the Agreements were collected from Respondent No.2, by the IO.

19. It is asserted that both the Agreements were forged and fabricated,

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 26/12/2025 at 11:48:24

and were required to be investigated by the IO, which was possible only after the registration of the FIR against Respondents No.2 and 3. This aspect has been completely ignored by the learned Trial Court as well as the learned ASJ.

20. Learned Trial Court further failed to consider that the IO was supposed to make an enquiry from Mr. Mukesh Aggarwal from whom the property in question had been first purchased, in order to identify whether Respondent No.2 was the absolute owner of the property in question or not. The ownership documents were also required to be investigated.

21. It is further submitted that the Agreement dated 27.08.2014 produced by Respondent No.2, is quite different from the actual Agreement executed between the Petitioner and Respondent No.2, which is evident from the ATR filed by the IO.

22. The Petitioner had relied on the Agreement dated 27.08.2014, executed between the parties, and claimed that it is notarised and has evidentiary value in the eyes of law, whereas, the Agreement to Sell dated 15.04.2014, procured by the IO from the possession of Respondent No.2, is not notarised and is fabricated, which was required to be investigated. Moreover, the property has been further sold to Ram Singh, despite the Agreement to Sell with the petitioner.

23. The ATR has stated that the amount of Rs.10,00,000/- had been returned to the Petitioner in two instalments by Respondent No.2, but no evidence to show the return of money, has come on record, which is also a matter of investigation.

24. During the enquiry, Respondent No.3 *Sh. Sher Singh* in his statement to the IO, had admitted that Respondent No.2 had taken Rs.10,00,000/- in

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 26/12/2025 at 11:48:24

two instalments, each of Rs.5,00,000/-, other than the sum of Rs.2,50,000/- from the Petitioner for sale of suit property. He further stated that the property in question was further sold to one *Mr. Ram Singh* after accepting the amount of Rs.10,00,000/- and the Bayana of Rs.2,50,000/- from the Petitioner. He has further admitted that Respondent No.3 is the witness to the Agreement between the Petitioner and Respondent No.2.

25. The Petitioner claims that his statement established that Respondent No.3 had also conspired to cheat the Petitioner. *Therefore, registration of FIR and further investigation, is required in the present matter.*

26. It is further submitted that Agreement to sell dated 27.08.2014 executed between the Petitioner and Respondent No.2 through which the property in question was transferred to the Petitioner was void, since the Respondent No.2 had entered into an Agreement with the Petitioner with mala fide intention knowing full well that he was not owner of the property and Agreement to Sell was prepared with sole intention to only cheat the Petitioner.

27. It is submitted that the Complaint disclosed the commission of a cognizable offence and it was mandatory for the police to register a case after making preliminary enquiry and to investigate the matter, as has been held in various judgments of the Apex Court. Reliance has been placed on *Lalita Kumari vs. Govt. of Uttar Pradesh & Ors.*

28. It is further submitted that the ld. ASJ has wrongly held that all the documents with regard to the allegations, are in the possession of the Petitioner. The documents with regard to the ownership of Respondent No.2 were required to be investigated by the concerned I.O., who has failed to verify the same. The role of Respondent No.3 who had assisted the

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 26/12/2025 at 11:48:24

Respondent No.2, was also required to be investigated. The recovery of Rs.12,50,000/- received by the Respondent No.2 from the Petitioner, was also to be investigated and recovered.

29. It is thus, prayed that the impugned Order dated 01.10.2020 passed in Criminal Revision Petition No. 26/2020 be set aside.

30. **Status Report** has been filed on behalf of the State, wherein it has been stated that enquiry on the Complaint of the Petitioner, was conducted and statement of witness *Sher Singh* was recorded, who stated that both the Petitioner and the Respondent No.2 were working as property dealers. On 15.04.2014, Respondent No.2 entered into an Agreement to purchase the aforesaid property with one Mukesh Aggarwal, and after receiving possession, started the construction work.

31. Thereafter, Respondent No.2 entered into Agreement to Sell with the Petitioner on 27.08.2014, after receiving Bayana. He further received cash of Rs.10,00,000/- in two instalments of Rs.5,00,000/- each from the Petitioner in cash. Thereafter, the said property was sold by Respondent No.2 to one Mr. Ram Singh.

32. Further, in the alleged Agreement dated 27.08.2014 of the Petitioner with respondent No.2, measurement of area has been shown as 60 sq. yards, while in his Complaint, the Petitioner has mentioned the area of property in question as 57.5 sq. yards. The *Bayana* amount as stated by the Petitioner, is Rs.2,50,000/-, but in the Agreement, it is mentioned as Rs.25,000/-. It is stated that no evidence or proof regarding the transfer of money to the Respondent No.2, was provided by the Petitioner.

33. Furthermore, the alleged incident took place in August 2014, but the matter was reported to the police in December, 2014. *A Civil Suit is also*

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 26/12/2025 at 11:48:24

pending trial in the Civil Court at Karkardooma, between the parties.

34. The *enquiry concluded* that no such cheating had taken place in the matter. The said matter is a monetary dispute, which is civil in nature for which the proceedings are pending between the parties.

35. ***A Reply has been filed on behalf of Respondent No.2 and 3*** wherein it has been stated that the present Petition is grossly misconceived and an abuse of the process of law. The learned Trial Court, and ASJ have passed lawful orders on the basis of the settled, legal principles applicable in the current matter.

36. Further, no amount has been paid either in cash or in any other manner whatsoever. The allegations of the Petitioner are entirely bogus, false and misleading. It is submitted that there was no Agreement to Sell and thus, their readiness or willingness to perform any Agreement never arose.

37. It was reiterated that there is no iota of doubt that the Petitioner is in possession all the necessary and requisite evidence in respect of which he can lead evidence under Section 200 Cr.P.C., and the assistance of investigating agency is not required for collection of evidence.

38. Reliance has been placed on *M/s Skipper Beverages Pvt. Ltd. vs. State* 92 (2001) DLT 217 and *Arvindbhai Ravjibhai Patel vs. Dhirubhai Sambhubhai* 1998(1) Crimes 351.

39. The averments made in the Complaint is of a civil nature, to which the Petitioner is trying to give a criminal colour by way of manipulation and distortion. The Petitioner has not initiated any civil action as he is aware that his case would not stand the scrutiny of civil trial. The allegations in the Complaint are without any legal or actual merit and are hence, liable to be rejected.

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 26/12/2025 at 11:48:24

40. Therefore, it is prayed that the Petition may be dismissed in the interest of law and justice.

Submissions heard and record perused.

41. The basic allegations of the Petitioner are that despite having entered into an Agreement to Sell dated 27.08.2014, the Respondent No.2 has failed to execute any Sale Deed in his favour. It is also asserted that in fact, Respondent No.2 had allegedly purchased from one Mukesh Aggarwal *vide* Agreement dated 15.04.2014, executed on 27.05.2014, but the investigations are required to ascertain if Mukesh Aggarwal indeed was the owner of the Property. Pertinently, it is also stated that the description of the property in the Agreement to Sell between Mukesh Aggarwal and Respondent No.2 is different from description of the property in the Agreement to Sell between Respondent No.2 and the Petitioner.

42. These allegations and averments of cheating, are essentially emerging from the two Agreement to Sell which have already been seized from Respondent No.2. The evidence sought to be led in respect of these two Agreements, is not only documentary but is also well within the possession of the Petitioner for which no assistance of the Police is required. The Petitioner has further asserted that he had paid Rs.10 lakhs in two instalments of Rs.5 lakhs each in cash aside from Rs.2.5 lakhs which had been paid in cash on 27.08.2014 as earnest money under the Agreement. Pertinently, all these transactions are in cash which have been witnessed by Respondent No.3 Sher Singh. Again, it is not the evidence which can be collected by the Police, but is in the special knowledge of the Petitioner himself who alone can adduce the evidence in this regard.

43. Further averments are that this amount of Rs.10.5 lakhs which had

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 26/12/2025 at 11:48:24

been allegedly taken from the Petitioner by Respondent No.2, has already been returned, which again is a matter for which the Petitioner or the Respondent has to lead their independent evidence.

44. Further, the claim that the property has been further sold to Ram Singh, is also a factor to be proved by the either party. Bald assertions without any corroborative evidence, cannot be of assistance to seek the directions to the Police for registration of FIR under Section 156(3) Cr.P.C *sans* any cogent evidence pointed out to be collected by the Police.

45. It is also pertinent to note that according to the Complainant, the balance amount under the Agreement to Sell had been paid by him to Respondent No.2 by December, 2014. However, some time in the month of May, 2015, Respondent No.2 refused to perform his part of the Contract. Pertinently, a Civil Suit in respect of this transaction is already pending between the parties. The Petitioner had approached the Court by way of his Complaint in respect of the alleged offence committed in December, 2014 to May, 2015, but the complaint has been filed only on 22.12.2017.

46. In the aforesaid circumstances, the learned M.M was right in observing that all the evidence was within the power and possession of the Petitioner and had denied issuing any directions under Section 156(3) Cr.P.C for registration of FIR *vide* Order dated 06.03.2020, which has been rightly upheld by learned ASJ *vide* Order dated 01.10.2020.

47. There is no merit in the present Petition, which is hereby dismissed. Pending Applications are disposed of accordingly.

NEENA BANSAL KRISHNA, J

DECEMBER 2, 2025/*N*

This is a digitally signed order.
The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above.
The Order is downloaded from the DHC Server on 26/12/2025 at 11:48:24