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

+ CRL.M.C. 1086/2025 & CRL.M.A. 4984/2025, CRL.M.A. 4985/2025

M/S SHREE KARANGAR TEXTILES (P) LTD. (THROUGH ITS
AR MR. PARVEEN KUMAR JINDAL)Petitioner

Through: Mr. Anshul Sharma, Mr. Chaaitanya
Jain, Mr. Pramod Ahuja and Mr.
Gaurav Ahuja, Advocates.

versus

THE STATE (THROUGH SHO OF P.S. KESHAV PURAM) &
ORS.Respondents

Through: Mr. Hemant Mehla, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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17.02.2025

1. The present petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 is directed against order dated 13th November, 2024 passed by the JMFC-04, North- West District, Rohini in Ct. Case 7103/2023, and the subsequent order passed by the revisional court on 11th December, 2024 in Cr. Rev. 379/2024. As a result of the said orders, the Petitioner's request under Section 156(3) of the Code of Criminal Procedure, 1973¹ for the issuance of a direction to register an FIR for the purpose of conducting an investigation, has been denied.

2. The Petitioner's case is that the Accused, Ritu Jain/ Respondent No. 2, proprietor of the sole proprietorship M/s Raj Trading Co., and her

¹ "CrPC"



husband, Ankur Jain/ Respondent No. 3 were engaged in regular business transactions with the Petitioner. The Accused approached the Petitioner Company for supply of goods like fabric and materials, and provided assurances and guarantees to take responsibility for the discharge of any liabilities arising from these transactions. The Petitioner issued various invoices and bills against the purchase of the aforesaid goods, and opened a separate running account in the name of Accused firm. This account now reflects an outstanding amount of INR 48,46,104/-, which is yet to be discharged by the accused persons. Additionally, the accused persons issued 17 cheques, which were dishonoured due to insufficient funds. As a result, the Petitioner filed the instant complaint case. The Petitioner has also initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881,² which are currently pending.

3. In light of the above circumstances, the Complainant also sought the intervention of the State agencies to register an FIR and to prosecute the accused persons. However, the Trial Court dismissed the aforementioned request through an order dated 13th November, 2024, to the following effect:

Arguments on the application u/s 156 (3) Cr.PC have already been heard. Matter is orders. No clarifications are required. The entire case file including the ATR has been perused carefully.

Reproduction of facts is dispensed with for the sake of brevity.

In the considered opinion of this Court the perusal of complaint and the annexures attached therewith reveal that the allegations contained therein do not disclose commission of such cognizable offence which is required to be investigated by the police.

*Reliance is placed by this Court on the judgment delivered in case titled as **'M/s Skipper Beverages P. Ltd. Vs. State'**, 2002 Cr.L.J. NOC 333 (Delhi) wherein Hon'ble Delhi High Court held that Section 156 (3) Cr.P.C. empowers a Magistrate to direct police to register case and initiate investigation but this power has to be exercised judiciously and not in a mechanical manner. Those cases where allegations are not very*

² "NI Act"



serious and complainant herself in possession of evidence to prove allegation, there should be no need to pass order u/sec. 156(3) Cr.P.C. But cases where the Magistrate is of the view that nature of allegation is such that complainant himself may not be in position to collect and produce evidence before court, and interest of justice demand that police should step in to help complainant, police assistant can be taken.

In view of the aforementioned facts and circumstances of the case and considering the settled legal position, this is not a fit case for invoking powers under Section 156(3) of Code of Criminal Procedure, 1973 and for directing the SHO of concerned police station to register FIR for the following reasons:-

- (i) The identity of the accused person (s) is already known.
- (ii) The entire evidence is in the control of the complainant.
- (iii) All the incriminating facts are already in the knowledge of the complainant.
- (iv) Resort to section 202 Cr.PC can always be taken at the later stage.

In these circumstances, the application under Section 156(3) of Code of Criminal Procedure, 1973 for directions to police to register FIR and for police investigation is hereby **dismissed**.

An opportunity is granted to the complainant to prove his case by leading evidence in his support.

Be put up for PSE on 08.04.2025.”

4. Aggrieved, the Petitioner preferred a revision petition against the aforesaid order. However, the same was dismissed by the revisional court on 11th December, 2024 in the following terms:

Record shows that no one was present when the file was received on 30.11.2024. It appears that petitioner is not interesting in pursuing the petition. However, the file perused.

Through this petition, the petitioner is impugning the order dated 13.11.2024 whereby Id. JMFC 04 dismissed an application under Section 156(3) Cr.P.C. in CC No. 7103/2023 considering that the matter is civil in nature and is not fit to invoke power under Section 156(3) Cr.P.C. However, gave an opportunity to petitioner to proceed under Section 200 Cr.P.C.

File reveals that the application under Section 156(3) Cr.P.C. was filed as police did not take any action on the complaint made by the petitioner in which complainant alleged that the respondent had purchased goods from the petitioner and given assurance/guarantee to repay in time and there was a liability of Rs. 48,46,104/- and in discharge of that liability respondent issued 17 cheques in 2017 but they got dishonored. It appears that petitioner also filed complaint under Section



138 NI Act in which the respondent disputed that she issued the cheque but claimed that the cheques were kept by her father in law. However, the respondent admitted her signatures in the cheques.

This complaint to police was filed only after the defence disclosed by the respondent in notice under Section 251 Cr.P.C. in complaints of 138 NI Act.

Under these circumstances, I do not find any illegality in the order of Id. Trial Court to interfere with. The dispute primarily appears to be of civil nature and every evidence to be proved is documentary which is already with the petitioner. These circumstances do not warrant invoking power under Section 156(3) Cr.P.C. Therefore, Id. Trial court rightly relied on M/s Skipper Beverages Pvt. Ltd. Vs. State 2002 CRL J NOC 333 (DELHI) in dismissing the application.

*The petition fails show merit. Hence, dismissed.
File be consigned to record room."*

5. Counsel for the Petitioner argues that both the courts have misapplied the law and failed to acknowledge that, the accused persons have intentionally dishonoured multiple cheques with the intent to deceive and defraud the Petitioner, and to evade the outstanding debt. He contends that only the investigating agencies are in a position to procure essential documents, such as bank statements and ledger accounts with respect to the Accused firm, and therefore, the registration of FIR is crucial for this purpose. He argues that the existence of pending proceedings under Section 138 of the NI Act does not preclude the registration of an FIR when the factual matrix also discloses an offence of cheating and criminal breach of trust.

6. The Court has considered the aforesaid arguments, but finds them to be entirely misconceived. It is well settled that the powers under section 156(3) of the CrPC cannot be exercised mechanically, but are required to be exercised judiciously. A Magistrate, while considering an application under this provision, must ensure that the allegations *prima facie* disclose the commission of a cognizable offence and that the essential ingredients of the



alleged offences are satisfied. Mere allegations, without specific details or supporting material, cannot justify the registration of an FIR or an investigation by the police. The discretion ought to be exercised after proper application of mind, and only in those cases where the Magistrate is of the view that: (i) the nature of the allegations is such that the complainant himself would be unable to collect material evidence independently; (ii) the allegations are serious and warrant immediate police intervention; (iii) custodial interrogation is necessary for recovery or discovery of relevant facts. The present case does not meet these criteria. It *prima facie* pertains solely to a commercial transaction for the supply of goods, culminating in an alleged outstanding liability. The Petitioner, apart from initiating proceedings under Section 138 of the NI Act, now seeks the state agencies to prosecute the accused. However, it is well established that mere non-payment of dues or dishonour of cheques does not, in itself, constitute a cognizable offence of cheating or criminal breach of trust, unless there is *prima facie* evidence of dishonest intent at the inception of the transaction.

7. The Petitioner's allegations, even if taken at face value, primarily indicate a failure to honour a financial obligation, rather than an act of deception or misappropriation with fraudulent intent. Furthermore, the Petitioner's assertion that police intervention is necessary for procuring financial records, such as bank statements and ledger accounts of the Accused firm, is misplaced. The onus of proving fraudulent intent or misappropriation rests upon the Complainant, and such documents, if relevant, can be obtained and proved by summoning witnesses and record before the Trial Court. The police cannot be directed to step in for the sole purpose of gathering evidence where the Complainant is already in



possession of material facts and has alternative means to substantiate their claim. Consequently, the request for police investigation lacks legal merit and does not warrant invoking the powers under 156(3) of the CrPC.

8. In light of the foregoing, the Court finds no grounds to interfere with the decision of the lower courts.

9. Accordingly, the present petition is dismissed, along with pending applications.

SANJEEV NARULA, J

FEBRUARY 17, 2025/d.negi