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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 20.03.2025*+ **CRL.M.C. 1593/2025 & CRL.M.A. 7238/2025**

ARVIND SARAF

.....Petitioner

Through: Mr. Siddharth Aggarwal, Sr.
Advocate with Mr. Shri Singh,
Mr. Kumar Vaibhaw, Mr.
Mohd Ashaab, Ms. Somaya
Gupta, Mr. Karan Dhalla and
Ms. Vismita Diwan, Advocates

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Manoj Pant, APP for the
State.
Mr. Madhav Khurana, Senior
Advocate with Mr. Nishant
Matoo, Mr. Birender Bhat, Mr.
Karan Khaitan and Mr. Talib
Khan, Advocates for R-2.

CORAM:**HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. The petitioner is aggrieved by an order dated 31.01.2025 passed by learned Chief Judicial Magistrate, Patiala House Courts, New Delhi [hereafter '*learned Magistrate*'] in *Ct. Cases 1842/2023*, allowing the application filed by the respondent no. 2 (original complainant) under Section 156(3) of the Code of Criminal



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Procedure, 1973 [hereafter '**Cr.P.C.**'] and directing registration of FIR against the petitioner (proposed accused no. 1). The petitioner further assails the order dated 25.02.2025 passed by the learned Additional Sessions Judge-05, Patiala House Courts, New Delhi [hereafter '**learned ASJ**'] wherein the revision petition preferred by the petitioner against the order dated 31.01.2025 was dismissed. In addition to seeking setting aside of these orders, the petitioner also prays that the FIR registered by the police pursuant to the direction issued by the learned Magistrate, i.e. FIR No. 15/2025, registered for offences punishable under Sections 406/420 of Indian Penal Code, 1860 [hereafter '**IPC**'], at Police Station (P.S.) Economic Offences Wing, Delhi (EOW) be quashed.

FACTUAL BACKDROP

2. The complainant/respondent no. 2 had filed a complaint dated 18.10.2022 with the DCP, Economic Offences Wing, P.S. Mandir Marg. In the said complaint, he had alleged that he shared a familial relationship with accused no. 1, Arvind Saraf (petitioner herein) as the latter is the brother-in-law of the complainant's wife. Due to this close family association, they had known each other for several years. It is stated that accused no. 2, i.e. M/s Jeevan Vihar Properties Pvt. Ltd., is a family-owned company of accused no. 1. In the past, when relations between the complainant and accused no. 1 were amicable, the complainant, at the request of accused no. 1, had also served as a Director in M/s Jeevan Vihar Properties Pvt. Ltd. until 21.11.2013.



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3. As per the allegations, in 2014, the complainant had met accused no. 1 at his office/factory premises situated at 81, Industrial Growth Centre, Sector-3, Bawal-123501, District Rewari, Haryana, where accused no. 1 had sought financial assistance, claiming to be in urgent need of funds. Given their close family ties, the complainant, through the account of M/s O.P. Khaitan & Co., a sole proprietorship firm belonging to his father, had extended an interest-free loan of ₹2,25,00,000/- (Rupees Two Crores Twenty-Five Lakhs) to accused no. 1 on 15.04.2014. This amount was directly transferred to the bank account of accused no. 1. Subsequently, the complainant had multiple interactions with accused no. 1 at his addresses in Gurgaon and Delhi, during which accused no. 1 further persuaded the complainant to provide additional financial assistance. Convinced by the assurances of accused no. 1, the complainant had transferred further amounts of ₹1,30,00,000/- on 07.09.2016, ₹4,00,00,000/- on 17.01.2017, and ₹2,30,00,000/- on 30.06.2017, with the understanding that the accused no. 1 would pay an interest of 12% per annum on a monthly basis and return the principal sum within three months from the respective dates of transfer. Trusting these assurances, the complainant had disbursed the said amounts to the accused's account.

4. It is further alleged that whenever the complainant had requested for repayment of the amounts, accused no. 1 had repeatedly cited financial difficulties and assured that the entire amount would be returned soon. Initially, accused no. 1 had made interest payments on the borrowed sums, until 31.03.2018. A confirmation letter dated



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08.03.2018, issued by the accountant of accused no. 1, acknowledged the total outstanding liability as ₹10,61,70,000/- (Rupees Ten Crores Sixty-One Lakhs Seventy Thousand) as on 07.03.2018, comprising both principal and accrued interest. According to the complainant, when he had intensified his demands for repayment, accused no. 1, in the presence of the head of their wives' family, Mr. H.P. Khetawat, and other relatives, had showcased documents related to properties owned by him and accused no. 2. It was represented by him that these properties were held either in his personal capacity or in the name of M/s Jeevan Vihar Properties Pvt. Ltd., and that he, being a shareholder and director of accused no. 2, would liquidate these properties to repay the complainant if his business continued to suffer. However, despite these assurances, accused no. 1 eventually stopped making even the interest payments. Despite repeated reminders and emails from the complainant, accused no.1 allegedly failed to clear his outstanding dues.

5. As per the complainant's records, as of 31.07.2021, the outstanding liability of accused no.1 stood at ₹15,76,00,000/- (Rupees Fifteen Crores Seventy-Six Lakhs), including a principal sum of ₹9,85,00,000/- and interest amounting to ₹5,91,00,000/-. The complainant further alleges that when he had confronted accused no.1 in the presence of close family members in Kolkata, the accused had once again assured that he would settle the entire amount in a time-bound manner. Accused no. 1 allegedly had promised to involve the complainant in the sale of accused no. 2's property and make



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payments from the sale proceeds. Furthermore, it is alleged that accused no. 1 had promised that in case the property was not sold within a month, he would transfer 2.5 acres of land belonging to accused no. 2 to the complainant. However, it is alleged that at the time of making these promises, accused no. 1 had already transferred his shares in accused no. 2 to his immediate family members “without consideration”, indicating a dishonest intention from the outset.

6. The complainant also alleged that despite repeated assurances, as no payments were forthcoming, he was compelled to institute a recovery suit before this Court, being *CS(OS) No. 395/2021*, against accused no. 1 and accused no. 2, which remains pending adjudication. It is further alleged that during the pendency of this suit and an application for injunction, accused no. 1 had sold the property in question to one Mr. Satish Lohia through a registered Sale Deed dated 14.06.2022. However, in paragraph (i) of the sale deed, accused no. 1 had allegedly concealed the fact that litigation regarding the said property was already pending before this Court. The complainant asserts that the sale consideration for the property was grossly undervalued, as the prevailing market rate for one acre of land in that area is between ₹18-20 crores, whereas the accused had shown a much lower sale consideration, indicating possible receipt of cash transactions.

7. The complainant further alleged that in his pleadings before this Court, accused no. 1 had taken a baseless stance that the money was provided for investment in a company, which purportedly did not



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yield fruitful results. The complainant alleged that, even assuming such a claim was true, the accused had held the money in a fiduciary capacity, and his act of misappropriation would constitute criminal breach of trust. It was the complainant's case that the entire conduct of accused no. 1, from the inception of the transactions, revealed a dishonest intention, as he had made fraudulent representations to induce the complainant into lending substantial sums. Such conduct, as alleged, constitutes the offences of cheating under Section 420 of IPC and criminal breach of trust under Section 409 of IPC, thereby causing wrongful loss to the complainant amounting to approximately ₹15 crores while resulting in wrongful gain to the accused. Thus, the complainant had sought registration of FIR against the accused persons and investigation to ascertain as to how the accused had misappropriated the money given to him by the complainant.

8. On 26.04.2023, the complainant had received a communication that his complaint had been closed on the ground that the matter was of a civil nature. On 29.06.2023, the complainant had forwarded the complaint to the Commissioner of Police. Thereafter, on 05.07.2023, the complainant had filed a complaint under Section 200 of Cr.P.C., alongwith an application under Section 156(3) of Cr.P.C., before the learned Magistrate.

9. On 01.08.2023, the Action Taken Report (**ATR**) was filed by the concerned officer, in which it was opined that after conducting preliminary enquiry, no cognizable offence was found to have been committed by the accused and that the matter was of civil nature. Vide



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order dated 31.01.2025, the learned Magistrate was pleased to allow the application under Section 156(3) of Cr.P.C. and direct registration of FIR. The relevant portion of the order is set out below:

“9. From perusal of entirety of facts and circumstances as pleaded by the complainant, it appears that factual matrix prima facie discloses cognizable offence committed by the accused. It appears that alleged excuses discloses offence of cheating. Cheating by law requires threefold essential elements (1) Inducement (2) Deception (3) Delivery of Property. In the matter at hand, these three essential ingredients seems to be fulfilled. Accused had the intention of cheating the complainant as he induced him to deliver the property i.e. loan amount without any intention to repay it. Malafide intention of accused is apparent from the fact that he made assurances and reassurances to repay the complainant by sale of land and even shown papers of the properties owned by him and in the meanwhile, he disposed not only his share in the company i.e. M/s Jeevan Vihar Properties Pvt. Ltd but also closed other windows of effecting recovery of money from him. The conduct of accused as apparent on aforesaid facts reflects a tale of malice with ulterior motive of cheating the complainant, thus causing wrongful loss to the complainant and wrongful gain to himself.

8. The Court is mindful of the fact investigating agency has given a negative report that no cognizable offence has been committed. This Court is mindful of the fact that with regard to the application u/s 156 (3) CrPC, the Court is not bound by the police report. This Court is guided by settled law as held by various judgments of the Hon’ble Supreme Court of India that whenever cognizable offence is disclosed, the Court is bound to direct registration of FIR without looking into merits of prospective evidence and without looking into material on record to secure conviction. At this stage, only question before the Court is whether facts alleged by the complainant discloses a cognizable offence. In the course of proceedings u/s 156 CrPC, the Court is not to decide on the criminality or the culpability but rather onus is to secure to conduct a fair and proper investigation at the hands of the investigating agency.

10. My views are supported by the judgment passed by the Hon’ble Apex Court in the case titled as **Lalita Kumari Vs.**



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Govt. of U.P. & Ors. W.P.(Crl) No.68/2008 dated 12.11.2013 wherein it is held that :

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information disclosed commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry disclosed the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him disclosed a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

11. The present complaint discloses commission of offence which are cognizable offences and all evidence is not within the reach of complainant. Recovery of proceed of crime is required to be effected.

12. Concerned SHO is directed to register FIR within 24 hours after receiving the order and file police report after investigation. Copy of order be sent to the concerned SHO.”

10. The petitioner herein had assailed the aforesaid order by way of a revision petition i.e. Crl. Rev. P. 79/2025 filed before the learned ASJ. On 06.02.2025, notice was issued in the said petition and the



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operation of order dated 31.01.2025 was stayed till the next date of hearing. However, the police had already registered the FIR in question by that time, i.e. on 03.02.2025. By way of order dated 25.02.2025, the learned ASJ dismissed the petitioner's revision petition and upheld the order of learned Magistrate. The relevant portion of the order is set out below:

“6. If I just have a re-look at para 126 onwards, para 126 (a) and (b) deals with the situation when the FIR is not yet registered - the operation of the impugned order can be stayed by the revisional Court - the revisional Court has full powers staying the operation of the impugned order and the Investigating Agency cannot enter the domain to investigate unless and until the revisional Court decides the matter. Para No.126 (b) reclarifies this aspect that before registration of the FIR irrespective of the nature of the infirmity which weighed with the revisional Court to stay such an order. Meaning thereby at that juncture the revisional Court has all the powers to check as to the propriety, correctness and legality of the impugned order. The usage of the words irrespective of the nature of the infirmity is for the reason that in para 126(c) the said aspect becomes important or relevant post registration of the FIR. This particular aspect has been clarified, in my humble opinion in para no.126(b) wherein certain instances have been quoted.

6.1 Coming to the nature of infirmity in the impugned order the infirmity should of such a nature which is adumbrated in para 119, 120, 122 of the said judgment :

i) First infirmity which has been pointed is with regard to the non compliance of the ratio of Priyanka Srivastava which pre supposes filing of an affidavit in support of the complaint.

ii) Secondly an order has been passed in respect of an act done by a public servant while acting in official capacity or in discharge of his official duties without the previous sanction envisaged U/s 197 Cr.PC.

iii) Another category of cases was culled out with reference to doctors wherein the question of medical negligence is in question particularly in reference to the criminal aspect



wherein additional safeguards have been provided to prevent wanton misuse of the provision of the criminal law - as so held in the leading case of Jacob Methews v/s State of Punjab & Ors. wherein Hon'ble Apex Court has directed that a private complaint may not be entertained unless the complainant has produced prima facie evidence of a competent doctor particularly in reference to a charge of rashness and negligence viz a viz the accused doctor. Non compliance of such a mandate would itself means that there is a violation of a settled law and any action taken in contravention thereof is illegal and nonest.

7. The instances which have been articulated which is clear by the usage of the word " in a sense, the order passed by the Magistrate in the circumstances, highlighted above, takes the colour of an order passed in breach of a jurisdictional condition, either prescribed by the statute or postulated by judicial precedents" suggest that the infirmities are of such a nature which at the first instance would not have led to the registration of the FIR. In simpler words at the stage post registration of the FIR the interdict by the Court or intervention is considerably narrower or only in exceptional circumstances where there is a breach of jurisdictional condition and not otherwise to substitute another view against the view taken by the Ld. Trial Court/Ld. CJM.

8. The complaint and the application U/s 156(3) Cr.PC is supported with the affidavit of the complainant. It is also not a complaint wherein any public servant or any medical professional is involved. There is no patent or gross violation of any statute or a leading precedent which constitutes to be a breach of jurisdictional condition.

9. Ld. Sr. Advocate on behalf of the revisionist has not been able to point out any fragrant violation except contending to the fact that already a civil suit was filed and the ATR is in their favour. In my considered opinion these are not infirmities which Court should now consider once the FIR has been registered. Still, in order to lend completeness to the present order I have examined the same as well.

9.1 The crux of the submission of the Ld. Sr. Advocate on behalf of the revisionist is that the Ld. CJM should not have ordered registration of the FIR and should have opted/taken recourse to the procedure U/s 200/202 Cr.PC which facet is also substantiated by the fact that the ATR had also concluded



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that no cognizable offence is made out. Now on this aspect i.e. whether the Ld. CJM should have taken/adopted the second path instead of ordering the registration of FIR U/s 156(3) Cr.PC, in my considered opinion the primary test or the basic test with respect to the registration of the FIR is whether the complaint discloses any cognizable offence or not. Once answer to this is in affirmative then the next question for consideration is as to whether Court should order registration of the FIR or proceed by treating the same to be a complaint case.

Now the Ld. CJM had categorically formed the opinion that on the basis of the complaint and the material relied upon by the complainant coupled with the ATR this matter requires to be investigated by registration of FIR. This particular aspect or opinion cannot be stated to be perverse. In fact the Ld. CJM had taken due note of the judgment/the ratio of Ravinder Lal Airi (supra) and Alok Kumar (supra) and taken note of the ATR which has been filed. Ld. CJM had taken note of the facts of the case as so stated in para 2 of the impugned order and also taken note that the amount was duly acknowledged coupled with the fact that the accused had agreed to dispose of the property of his company of which the complainant was earlier also a director and later on the said property was fraudulently sold for a pittance i.e. much less than the market rate to negate/wriggle out of the obligations by causing change in shareholding in contravention of the Companies Act. Apart thereof the money trail also requires to be investigated.

9.2 Considering the totality of facts and circumstances the need for investigation the second test U/s 156(3) Cr.PC apart from the disclosure of a cognizable offence was adjudicated/held in favour of the complainant and the said opinion to my mind cannot be faulted more so once crystallized in the registration of the FIR cannot be reversed by exercising the revisional jurisdiction which is even much more restricted post registration of the FIR/subsequent to the registration of the FIR.

10. With the aforesaid discussion the present revision petition is liable to be dismissed. The same is dismissed...”



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11. Aggrieved by both these orders, and the consequent registration of the FIR in question, the petitioner has approached this Court.

SUBMISSIONS BEFORE THE COURT

Submissions on Behalf of the Petitioner

12. The learned senior counsel appearing for the petitioner contends that the learned ASJ has failed to test the legality, correctness, and propriety of the order passed by the learned Magistrate, since instead of exercising the revisional powers in accordance with the law, the learned ASJ erroneously held that the revisional jurisdiction of the Sessions Court becomes restricted once the FIR is registered pursuant to the order directing its registration. It is argued that such a finding is legally unsustainable, as the learned ASJ is duly empowered under Section 438 of BNSS to examine the legality, correctness, and propriety of the order directing registration of FIR, irrespective of whether the FIR stands registered. The learned senior counsel submits that the learned ASJ failed to deal with the order of the learned Magistrate on its merits and brushed aside the petitioner's substantive contentions in a mechanical manner merely on the ground that the FIR had already been registered.

13. It is further argued that the ATR dated 01.08.2023, filed by the investigating agency before the learned Magistrate, clearly recorded that no cognizable offence was made out in the instant case. The ATR clearly noted that the allegations regarding non-payment of the loan were civil in nature, for which a recovery suit was already pending



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before the competent court. However, the learned ASJ, without considering these detailed findings, proceeded to hold that the same could not be examined since the FIR had been registered. The learned senior counsel further submits that the mere act of registration of FIR does not render the statutory remedy of filing a revision petition redundant. It is argued that the High Court of Bombay in ***Arun P. Gidh v. Chandraprakash Singh***: 2024 SCC OnLine Bom 1028 highlighted that an order passed by a revisional court against the direction to register an FIR retains its utility even after the FIR stands registered. One such utility is that the High Court concerned may duly consider the revisional court's order while deciding on a petition seeking quashing of the FIR under its inherent jurisdiction.

14. It is further contended by the learned senior counsel appearing for the petitioner that the learned Magistrate and the learned ASJ failed to recognize that the dispute between the parties is purely civil in nature, arising from non-repayment of an alleged loan, and the Hon'ble Supreme Court, in a catena of judgments, has deprecated the misuse of criminal law in cases involving civil disputes. The learned senior counsel further argues that the impugned orders fail to appreciate that the offence of cheating cannot be alleged against the petitioner, as there is no dishonest intention from the inception of the transaction. It is also submitted that the chronology of events and the legal remedies availed by the complainant reveal the *mala fide* and vindictive nature of the complaints filed by him. It is highlighted that although the alleged default in loan repayment arose only after March



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2018, the recovery suit was instituted after more than three years, i.e., on 16.08.2021. The subsequent police complaint before the EOW, Mandir Marg, was filed more than a year later, on 18.10.2022, demonstrating the belated and calculated filing of criminal complaints.

15. It is further argued that, during the pendency of the proceedings before the learned Magistrate, the complainant had filed another complaint on 19.07.2023 before the EOW, Gurugram, which appears to have also been closed after a preliminary enquiry. The learned senior counsel for the petitioner argues that such conduct of filing consecutive and overlapping complaints clearly demonstrates the complainant's oblique motive to pressurize the petitioner into making payments. Thus, on these grounds, the petitioner has sought setting aside of the impugned orders and the quashing of FIR.

Submissions on Behalf of the Respondent No. 2

16. The learned senior counsel appearing for respondent no. 2 (complainant) argues that the impugned orders passed by the learned Magistrate and the learned ASJ are well-reasoned and do not suffer from any legal infirmity. It is argued that both the orders have been passed after due consideration of the facts, submissions, and the material placed on record. The learned Magistrate, while exercising powers under Section 156(3) of Cr.P.C., applied the settled principles of law and directed the registration of FIR only after being satisfied that the allegations disclosed a cognizable offence. Further, the



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learned ASJ, in the revisional jurisdiction, has rightly concluded that once the FIR stands registered, the revisional court's interference with the order directing registration of FIR would serve no practical purpose. It is argued that the impugned orders are detailed, well-reasoned, and do not warrant interference.

17. The learned senior counsel contends that the registration of FIR, pursuant to the direction under Section 156(3) of Cr.P.C. renders any challenge to the said order redundant, and that setting aside the order directing registration of FIR at this stage would be an empty formality and would not nullify the FIR or the ongoing investigation, as rightly noted by the learned ASJ. It is submitted that once the FIR is registered, the matter falls within the domain of the investigating agency, which is obligated to probe the allegations thoroughly and impartially. The learned senior counsel contends that the petitioner cannot be permitted to scuttle the investigation by seeking to quash the FIR prematurely. It is further argued that no ground for quashing of the FIR is made out at this stage.

18. It is also contended that the allegations against the petitioner clearly disclose the commission of cognizable offences, including the offence of cheating. The learned senior counsel specifically points to the allegation that the petitioner had induced respondent no. 2 into disbursing a substantial loan amount on the false assurance of timely repayment, despite having no intention to do so from the inception. It is argued that the material on record *prima facie* reveals that the petitioner had deceptively withheld repayment under the pretext of



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financial constraints. It is submitted that the accused has himself admitted the loans in his Income tax returns. It is also pointed out that the accused had promised that he will involve the complainant in the sale of property of accused no. 2 (M/s Jeevan Vihar Properties Pvt. Ltd.) and will immediately make payment out of the sale proceeds, and in case the property is not sold within a period of one month, he will transfer 2.5 acres of land belonging to accused no. 2 to the complainant; however, the petitioner had no intention of repaying the loan since he had concealed the fact that in the meantime, he had transferred the shares held by him in accused no. 2 to his immediate family members 'without consideration'. It is further pointed out that during the pendency of civil suit before this Court, the petitioner had sold the property in question by concealing the fact that a litigation *qua* the same was pending and created third party interest in the same.

19. In this background, the learned senior counsel submits that the investigation is still at an initial stage, and the petitioner's attempt to seek quashing of the FIR at this juncture is nothing more than an attempt to evade the lawful investigation. The learned senior counsel contends that the Hon'ble Supreme Court has repeatedly held that criminal proceedings should not be quashed in a routine manner at the stage of investigation, particularly when the allegations disclose a *prima facie* case. It is also argued that the mere existence of a parallel civil remedy does not bar criminal prosecution when the allegations and material placed before the Court clearly disclose elements of inducement, deception, and criminal intent. It is thus contended that



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the impugned orders have been passed in accordance with the law and deserve to be upheld, and therefore, it is prayed that the present petition be dismissed.

20. This Court has **heard** arguments addressed by the learned senior counsel appearing for the either side, and has carefully perused the material placed on record.

ANALYSIS & FINDINGS

21. In the present case, three things are under challenge: *first*, the order passed by the learned Magistrate under Section 156(3) of Cr.P.C. directing the registration of FIR; *second*, the order of the learned ASJ dismissing the revision petition filed by the petitioner against the said direction; and *third*, the FIR itself, which stands registered pursuant to the order passed under Section 156(3) of Cr.P.C.

22. The petitioner contends that the orders of the learned Magistrate and the learned ASJ suffer from legal infirmities and were passed without due application of judicial mind. It is further argued that the registration of the FIR, based on what is claimed to be a purely civil dispute, amounts to abuse of the process of law. Conversely, respondent no. 2 asserts that both the orders are well-reasoned, and do not warrant any interference, while also contending that the FIR, having already been registered, cannot be quashed at the threshold without allowing the police to conduct investigation.



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23. At the outset, a reference can be made to Section 156 of Cr.P.C., which is set out below:

“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.”

(Emphasis supplied)

24. While exercising powers under Section 156(3) of Cr.P.C., certain essential pre-conditions must be satisfied before directing the registration of an FIR. *Firstly*, the complaint must disclose the commission of a cognizable offence, as only then can the police be directed to investigate the matter. *Secondly*, the learned Magistrate is required to apply judicial mind to the facts and circumstances of the case before passing such an order. This ensures that the direction is not issued in a mechanical manner. *Thirdly*, the order under Section 156(3) of Cr.P.C. must be a speaking order, reflecting the reasoning and satisfaction of the learned Magistrate regarding the need for police investigation.

25. In the case of *Usha Chakraborty v. State of West Bengal: 2023 SCC Online SC 90*, it has been held by Hon’ble Supreme Court that



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while passing an order for registration of an FIR upon an application filed under Section 156(3) of Cr.P.C., the Court must satisfy itself that basic ingredients of the alleged offences are fulfilled.

26. In *Anil Kumar. v. M.K. Aiyappa*: (2013) 10 SCC 705 and *Priyanka Srivastava v. State of Uttar Pradesh*: (2015) 6 SCC 287, the Hon'ble Supreme Court held that power under Section 156(3) of Cr.P.C. warrants application of judicial mind.

27. The importance of passing speaking and reasoned orders while directing registration of FIR under Section 156(3) of Cr.P.C. was highlighted in decisions rendered by Coordinate Benches of this Court in *Subhkaran Luharuka v. State*: 2010 SCC OnLine Del 2324, *Om Prakash v. State*: 2012 SCC OnLine Del 175, and *Gurdeep Singh Sudan v. State*: 2013 SCC OnLine Del 2553.

28. The aforementioned essentials of Section 156(3) of Cr.P.C. were discussed at length by this Bench in case of *Alok Kumar v. Harsh Mander & Anr.*: 2023 SCC OnLine Del 4213.

29. At this stage, it is relevant to note that in Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), the corresponding provision to Section 156(3) of Cr.P.C. i.e. Section 175(3) of BNSS provides as under:

“(3) Any Magistrate empowered under section 210 may, after considering the application supported by an affidavit made under sub-section (4) of section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned.”



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30. Therefore, in the new provision, certain safeguards against an accused and the duty cast upon a Magistrate – as evolved from time to time by the Courts by way of judicial precedents – have been crystalized. The changes in the new provision are as follows:

- I. *Firstly*, it has been statutorily made mandatory for a complainant to approach the higher police officials i.e. the Superintendent of Police if the officer incharge of police station refuses to register an FIR
- II. *Secondly*, the Magistrate is empowered to ‘conduct such inquiry he thinks necessary’.
- III. *Thirdly*, the Magistrate is required to consider the submissions made by the concerned police officer for not registering the FIR.

31. Be that as it may, in the case at hand, this Court is examining the order passed under Section 156(3) of Cr.P.C.

32. Thus, in light of above observations, it shall now be apposite to take note of the allegations levelled against the petitioner herein by the respondent no. 2, and the order passed by the learned Magistrate under Section 156(3) of Cr.P.C.

33. In the present case, the allegations against the petitioner herein can be summarised as under:

- In 2014, the complainant had extended an interest-free loan of ₹2.25 crore to accused no. 1 through the account of his father’s



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proprietorship firm. Subsequently, relying on the accused's assurances of monthly interest payments at 12% p.a. and principal repayment within three months, the complainant had disbursed further amounts of ₹1.3 crore on 07.09.2016, ₹4 crore on 17.01.2017, and ₹2.3 crore on 30.06.2017, totaling ₹9.85 crore.

- Though accused no. 1 had initially made interest payments until 31.03.2018, he had eventually defaulted. A confirmation letter dated 08.03.2018, issued by the accused's accountant, acknowledged the total outstanding liability of ₹10.61 crore (including principal and interest) as on 07.03.2018. To reassure the complainant, accused no. 1, in the presence of Mr. H.P. Khetawat and other relatives, had showcased documents related to properties owned by him and M/s Jeevan Vihar Properties Pvt. Ltd., and had represented that he would sell them to repay the debt of the complainant, and had promised to involve the complainant in the sale process.
- However, despite repeated reminders, no payments were made. By 31.07.2021, the outstanding liability had grown to ₹15.76 crore (including ₹5.91 crore as interest). During a confrontation in Kolkata, accused no. 1 had again assured the complainant in the presence of family members that he would either sell the property owned by M/s Jeevan Vihar Properties Pvt. Ltd. or transfer 2.5 acres of land to the complainant. However, accused no. 1 had already transferred his shares in M/s Jeevan Vihar



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Properties Pvt. Ltd. to his family members “without consideration”, indicating a dishonest intention from the outset.

- Subsequently, the complainant had filed a civil recovery suit before this Court against him and M/s Jeevan Vihar Properties Pvt. Ltd. During the pendency of this suit, accused no. 1 had sold the property in question to a third party by way of a registered Sale Deed dated 14.06.2022. The complainant alleges that the accused had concealed the factum of pending litigation in the sale deed and undervalued the sale consideration, indicating the possibility of cash transactions.
- The complainant claims that the accused had misappropriated the loan amount, made fraudulent representations from the outset, and acted dishonestly, and thereby causing wrongful loss of approximately ₹15 crore to him.

34. In the given factual matrix, the learned Magistrate, while passing order under Section 156(3) of Cr.P.C., observed in paragraph 9 of the order dated 31.01.2025 that it was apparent from the allegations that the accused had the intention of cheating the complainant from the very outset, as he had induced the complainant to deliver substantial loan amounts without any genuine intention to repay them. The accused’s malafide intention was evident from the repeated assurances and reassurances he had made, including his promise to sell properties and his act of showing property papers to gain the complainant’s trust. However, during this period, the accused had surreptitiously disposed of his shares in M/s Jeevan Vihar



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Properties Pvt. Ltd. and simultaneously closed other avenues of recovery, effectively frustrating the complainant's chances of reclaiming his money. The learned Magistrate has further rightly observed that the accused's overall conduct revealed a pattern of malice, driven by an ulterior motive to cheat the complainant, thereby causing wrongful loss to the complainant and wrongful gain to himself.

35. It was vociferously contended on behalf of the petitioner that the ATR in the present case did not support the allegations levelled by the complainant, and it was opined that the matter was of a civil nature. However, it is pertinent to note that when an FIR is not registered by the police, the complainant under the law can approach the court by way of filing an application under Section 156(3) of Cr.P.C. In case, a report is called from the police and the police files Action Taken Report (ATR) against the complainant, opining that no cognizable offence was made out after conducting preliminary inquiry, the Magistrate may or may not agree with the said report and proceed further under the relevant provisions of law.

36. While a Magistrate is considering the ATR, what is crucial to consider is the overall nature and scope of the preliminary inquiry conducted by the police. It is settled law that a Magistrate is not bound by the ATR and has the discretion to form an independent opinion based on the material placed before him. If the Magistrate does not agree with the findings recorded in the ATR, he can record his own reasons for holding that the ingredients of the alleged offence are



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prima facie made out and that investigation is necessary [See: **Harpal Singh Arora v. State**: 2008 SCC OnLine Del 530; **Gurdeep Singh Sudan v. State** (*supra*)].

37. In the present case, the learned Magistrate has followed precisely the aforesaid procedure. After taking note of the allegations levelled in the complaint and the rival contentions raised before it, the learned Magistrate has recorded his own reasons (in paragraph 9) as to how the essential ingredients of the offence of cheating are *prima facie* established, and why a thorough investigation is warranted.

38. The learned Magistrate further observed that the complaint in this case disclosed the commission of cognizable offences and that all evidence necessary for the case was not within the complainant's reach. It was noted that the recovery of the proceeds of crime is required, which can only be effectively carried out through a proper investigation.

39. Therefore, when the order dated 31.01.2025 passed by the learned Magistrate is tested on the touchstone of the essentials of passing an order under Section 156(3) of Cr.P.C. and the judicial precedents, this Court is of the view that the same suffers from no infirmity.

40. Next, insofar as the order dated 25.02.2025 passed by the learned ASJ is concerned, it is relevant to note that the FIR had already been registered by the police on 03.02.2025 pursuant to the directions of the learned Magistrate, i.e., prior to the filing of the



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revision petition before the learned ASJ. Thus, the learned ASJ was seized of a situation where an order under Section 156(3) of Cr.P.C. was being assailed as illegal and perverse, despite the FIR against the accused having already been registered. In such a scenario, the attention of the learned ASJ was drawn to the decision rendered by a three-judge bench of the Bombay High Court in **Arun P. Gidh v. Chandraprakash Singh** (*supra*), wherein the Court addressed the reference as to whether the remedy of revision under Section 397 of Cr.P.C. is available to a person aggrieved by an order directing investigation pursuant to Section 156(3) of Cr.P.C., and if so, whether the said remedy remains efficacious when the FIR has already been registered prior to the filing of the revision petition.

41. Having perused the order dated 25.02.2025, this Court is of the opinion that the learned ASJ has rightly considered the scope of entertaining a revision petition against an order passed under Section 156(3) of Cr.P.C. once the FIR has already been registered. As far as the ground taken before this Court – that the learned ASJ unnecessarily restricted the powers conferred upon him by way of the revisional jurisdiction – is concerned, it is material to note that it was the learned counsel for the accused who had referred to and relied upon the decision of the Bombay High Court in **Arun P. Gidh v. Chandraprakash Singh** (*supra*). The said decision holds that when an FIR is registered, the revisional court would interfere only in cases of jurisdictional errors or serious procedural irregularities. However, even in cases where the revisional court passed any order in favour of



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the accused, the FIR already registered would not be quashed. Instead, the police may, in the future, explore an option of filing a closure report, or the Magistrate may choose not to take cognizance if a chargesheet is filed. Additionally, the High Court may consider the revisional court's order while adjudicating a petition seeking the quashing of the FIR.

42. Notably, the three-judge bench of the Bombay High Court, in the aforesaid decision had upheld the ruling of the Division Bench of Bombay High Court in case of ***Kailash Dattatraya Jadhav v. State of Maharashtra***: 2016 SCC OnLine Bom 5030, wherein it was held that once an FIR is registered, challenging an order passed under Section 156(3) of Cr.P.C. by way of a revision petition is not an efficacious remedy.

43. In the present case, the learned ASJ has examined the order passed by the learned Magistrate on two aspects. *First*, he has scrutinized it for any jurisdictional or grave procedural errors and found none, as observed in paragraphs 6 to 8 of the order. *Second*, he has assessed the order on merits too, and observed that the learned Magistrate had duly considered the allegations against the accused and recorded reasons while forming the opinion that a cognizable offence was *prima facie* made out. The learned ASJ, while passing the impugned order, also took note of the allegations against the accused.

44. Therefore, no infirmity can be found in the order dated 25.02.2025 passed by the learned ASJ.



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45. As far as the prayer of the petitioner regarding quashing of FIR is concerned, the main contention of the learned senior counsel for the petitioner is – that the matter is of a civil nature, and no cognizable offence is disclosed even from a bare reading of the complaint and the allegations levelled by the complainant.

46. However, in the preceding discussion, this Court has summarised the allegations against the present petitioner. As observed by the learned Magistrate, the same *prima facie* fulfils the threefold essential elements of the offence of cheating – (i) inducement, (ii) deception, and (iii) delivery of property. The petitioner had allegedly induced the complainant to deliver the loan amount by making assurances and reassurances of repayment through the sale of land and by showing property papers. However, with malafide intent, he had disposed of his share in M/s Jeevan Vihar Properties Pvt. Ltd., and later also sold the property in question during pendency of civil suit, and closed other avenues of recovery, thereby causing wrongful loss to the complainant and wrongful gain to himself.

47. The investigation in the case is at the initial stage. At this juncture, it would be appropriate to take note of judicial precedents, laying down principles governing quashing of FIRs and criminal proceedings. Such principles were summed by the Hon'ble Supreme Court in *Neeharika Infrastructure (P) Ltd. v. State of Maharashtra: (2021) 19 SCC 401* after analysing catena of judicial precedents. The relevant observations of the Supreme Court are set out below:



“13. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad, the following principles of law emerge:

13.1. Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

13.2. Courts would not thwart any investigation into the cognizable offences;

13.3. However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on; 13.4. The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'.

13.4. The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court;

13.5. While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

13.6. Criminal proceedings ought not to be scuttled at the initial stage;

13.7. Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

13.8. Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the process by Section 482 Cr.P.C.

13.9. The functions of the judiciary and the police are complementary, not overlapping;

13.10. Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

13.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;



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13.12. The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

13.13. The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

13.14. However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of *R.P. Kapur (supra)* and *Bhajan Lal (supra)*, has the jurisdiction to quash the FIR/complaint; and

13.15. When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”

48. As evident from the above, it is a settled principle of law that, except in exceptional cases where non-interference would result in a miscarriage of justice, courts should refrain from interfering at the stage of investigation of offences. The courts should not thwart or hinder an ongoing investigation, as it is premature to conclude that the FIR lacks merit or amounts to an abuse of process. The police must be



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permitted to complete the investigation, and if no substance is found, the police is always at liberty to file an appropriate report before the Magistrate. At this stage, this Court cannot embark upon an inquiry into the reliability or genuineness of the allegations, as doing so would amount to scuttling the criminal proceedings prematurely.

49. Therefore, this Court finds no ground to quash the present FIR.

50. It is however clarified that the observations made in this judgment are solely for the purpose of deciding the present petition, and the same shall not be construed as expression of opinion on the merits of the case. The police shall investigate the matter in accordance with law, and without being influenced by the observations in this judgment.

51. In view of the above, the present petition stands dismissed, alongwith pending application if any.

52. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

MARCH 20, 2025/ns