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

\+ CRL.M.C. 2726/2017

TATA CAPITAL HOUSING FINANCE LTD .....Petitioner

Through: Mr. Satish Kumar, Advocate.

versus

STATE (NCT OF DELHI) & ORS .....Respondents

Through: Mr. Shoaib Haider, APP for the State. Mr. Rahul Chauhan, Advocate for R2 to R6.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **04.03.2025**

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 *(hereinafter referred to as 'Cr.P.C.')* has been filed on behalf of the Petitioner, against the Order dated 10.01.2017, passed by learned ASJ, Patiala House Courts, Delhi, who has upheld the Order of learned Metropolitan Magistrate dated 10.02.2016, dismissing the Application under Section 156(3) of Cr.P.C., for directing the SHO, Police Station Connaught Place, for registration of the FIR.

2. **Briefly stated**, the Petitioner Company is engaged in Housing Loan Activity, through **its legal heirs**. It is alleged that Mr. Rajesh Bansal and Mr. Ramniwas Bansal/Respondent Nos. 2 and 3 respectively, had approached the Complainant Company, to avail a Housing Loan on property bearing Plot No. 801, Tower A, La Lagune, Sector 54, Gurgaon, Haryana-122001. The Respondent No. 2

had already availed loan from Kotak Mahindra Bank, which was taken over by the Complainant Company.

3. It is further alleged that a loan of Rs.75,00,000/- was sanctioned to the Respondent Nos. 2 & 3. The Respondent Nos. 2 and 3 had assured the Complainant that when the Housing Loan of Kotak Mahindra Bank is closed, then they would deposit the Title Deeds and other related documents of the Property, with the Complainant within 60 days of closure of the loan.

4. The Complainant accordingly, transferred the amount to Kotak Mahindra Bank, despite which the Respondent Nos. 2 and 3 cheated the Complainant by misrepresentation and obtained a loan of Rs.75,00,000/- and have also sold the Property to another person with *mala fide* intention to cheat the Complainant.

5. The Investigating Officer had filed a Reply wherein it was indicated that Rs.24,72,353/- had already been repaid by the Respondent Nos. 2 and 3 to the Complainant and the dispute was primarily civil in nature.

6. The **learned Magistrate** in the Order dated 10.02.2016 observed that all the facts are within the knowledge of the Complainant. There is no evidence which is required to be collected by the Prosecution and there is no requirement for investigation. Though, Section 156(3) of Cr.P.C. empowers the Magistrate to send the matter for investigation, but this is so only where there are facts/evidence, which cannot be collected by the Complainant or requires the assistance of Police. In the facts and circumstances, no custodial interrogation was required. The Application under Section

156(3) of Cr.P.C. was dismissed and the matter was listed for recording of the pre-summoning evidence in the Complaint under Section 202 Cr.P.C.

7. The impugned Order was upheld by the learned ASJ *vide* Order dated 10.01.2017.

8. *Learned counsel for the Petitioner* submits that the cheating has been committed by the Respondent Nos. 2 and 3 who have misrepresented and assured that they would submit the original documents of the property. They have taken the loan from the Complainant with the intent of not repaying the same. Moreover, the alleged property has already been sold off whereby causing loss to the Complainant Company.

9. It is, therefore, submitted that the original documents are required to be retrieved and the Police investigations are required.

10. Moreover as observed in the Case of *Lalita Kumari vs. Government of U.P. & Ors*, MANU/SC/1166/2013, whenever the Complainant discloses a cognizable offence, the Police is mandatorily required to register the FIR under Section 154 Cr.P.C.

11. It is, therefore, submitted that the impugned Order be set-aside and the Application under Section 156(3) of Cr.P.C. be allowed and Police be directed to register the FIR.

12. **Learned counsel on behalf of the Respondent Nos. 2 and 3**, however, has opposed the Petition and submits that there is no infirmity in the impugned Order and the Petition be dismissed.

13. **Submissions heard and the record perused.**

14. Essentially, the allegations are that a Loan had been taken by

the Respondent Nos. 2 and 3, which has not been repaid and the documents of the property as were assured to be handed over by the Complainant, has not been done; instead the subject property has been sold by the Respondent Nos. 2 and 3.

15. Learned Metropolitan Magistrate has rightly observed that essentially the entire case is based on the documents and there is no Police investigations required for investigations into the facts, which are not within the power of the Complainant. Furthermore, the Suit Property already stands sold. In the circumstances, it has been rightly observed that there are no imperative directions required under Section 156(3) of Cr.P.C., for registration of FIR.

16. It is not as if the matter has been dismissed but the second alternate as available under law, has been resorted to whereby directions have been given for recording of evidence under Section 202 Cr.P.C. Furthermore, this does not foreclose the right to seek the Police assistance in getting the requisite facts investigated as provided under Section 202 and 203 Cr.P.C.

17. Therefore, there is no infirmity in the impugned Order.

18. The Petition is hereby dismissed and disposed of accordingly.

NEENA BANSAL KRISHNA, J

MARCH 4, 2025/RS