



2025:DHC:2318



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 04.04.2025

+ **CRL.M.C. 4123/2019**

FIITJEE LTD.

..... Petitioner

versus

STATE & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Pramod K. Dubey, Sr. Adv. with Mr. Raaj Malhotra, Mr. Rahul Goyal, Mr. Abhishek Khaturia, Ms. Pinky Dubey, Ms. Amrita Vatsa, Mr. Vaibhav Kapur, Ms. Prachi Dubey, Ms. G. Priyadarshni & Ms. Swati, Advs.

For the Respondents : Mr. Rajkumar, APP for the State
Mr. Nidhesh Gupta, Sr. Adv. with Mr. Ashwani K Dubey, Mr. Sanjeev Kumar Baliyan & Mr. Nirbhay Sharma, Advs. for R2 to R7

**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

1. The present petition is filed, *inter alia*, challenging the order dated 14.02.2019 (hereafter '**impugned order**'), passed by the learned Revisional Court, in Cr.Rev. 395/2018.



2. By the impugned order, the learned Revisional Court had upheld the order dated 19.05.2018, in CC No. 12114/2017, whereby the learned Trial Court had dismissed the application filed by the petitioner under Section 156(3) of the Code of Criminal Procedure, 1973 ('CrPC').

3. The brief facts of the case are as follows:

3.1. It is the case of the complaint petitioner that Respondent Nos. 2 to 7 had conspired and cheated it of crores of rupees. It is alleged that Respondent Nos. 2 to 7 induced the petitioner company to start a school at a piece of land admeasuring 17 acres at Kaushalpur, Bhopal, despite knowing that the permission for change of land use for the land in question would never be given by the Government of Madhya Pradesh. It is alleged that Respondent Nos. 2 to 7 misrepresented that Respondent No.2 was the owner of the said land, however, no such land existed in their name.

3.2. In the year 2010, a Joint Venture Agreement dated 11.07.2010 was executed between the parties to this effect as per which the petitioner was to pay ₹10 crores to the accused persons in various installments. It is alleged that Respondent Nos. 2 to 7 assured that the school will be built within eight to twelve months of signing of the agreement and that they would obtain the relevant approvals and sanctions in this regard.

3.3. It is alleged that the originally offered land was a piece of Agricultural land and the accused persons dishonestly deceived the complainant that they had applied for the land conversion, knowing



fully well that the same would not be granted. It is alleged that the accused persons had dishonestly promised to get the Change of Land Use by enticing the petitioner that it was a cake walk for them to get any work done in Bhopal as they know all the top bureaucrats, politicians and judges. It is alleged that Change of Land Use was never obtained by the accused persons, despite which, they kept assuring the complainant that the construction will commence in June, 2012 and will be completed by February, 2013.

3.4. Later, it was agreed between the parties that a defunct school in BHEL complex, Bhopal at Govind Pura will be acquired to run the junior division of the school while the senior division will be operated in Kaushalpura, Bhopal.

3.5. It is alleged that the accused persons sought a sum of ₹2.5 crores from the petitioner on the pretext of work that had to be carried out at Kaushalpura, and the amount was released by the petitioner on the basis of the representations and assurances of the accused persons that the construction had commenced.

3.6. The deal in respect of the defunct school in BHEL complex did not fructify and it was revealed to the petitioner that the sanction for construction of the main school had not been granted, whereafter, it was decided between the parties that a school, namely, Mayur school, along with 15 acres of land will be taken over and developed, against which the payment of ₹2.5 crores will be adjusted.

3.7. It is alleged that Respondent Nos. 2 to 7 induced the petitioner to enter into a loan agreement dated 20.11.2012 in this regard, by



making further false assurances. It was agreed that the loan amount will be enhanced and it was provided in the said agreement that if the project or any part of it is delayed, the loan facility already granted will become due and payable immediately on demand by the petitioner. It was further agreed that a charge will be created in favour of the petitioner on the school building and 15 acres of land till discharge of loan liability.

3.8. It is alleged that Mayoor School with only 5 acres of land was acquired, and the accused respondents, with an intention to cheat the petitioner, sold the said school and land on which charge and lien was created in favour of the petitioner to another company, in which Respondent No.3 was a director himself for a sum of ₹9 crores. Arbitral proceedings were also initiated by the accused persons claiming damages.

3.9. It is further alleged that as per the repayment schedule, a sum of ₹1 crore was due and the accused persons issued a cheque of the said amount to the complainant petitioner, which was dishonoured as well because the payment was stopped. In relation to the same, the petitioner initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881 against the accused respondents.

3.10. During correspondence, an amount of ₹1.5 crores was paid to the complainant in April, 2016.

3.11. When no action was taken on the complaint given by the petitioner to the Police Station Malviya Nagar, the complainant filed an application under Section 156(3) of the CrPC against Respondent



Nos. 2 to 7 alleging that they had caused wrongful gain to themselves and wrongful loss to the petitioner to the tune of ₹4,30,37,172/- by selling the property on which the petitioner had a charge and lien and that they had dishonestly induced the petitioner complainant to part with its hard earned money.

3.12. By order dated 19.05.2018, the learned Trial Court dismissed the application filed by the petitioner under Section 156(3) of the CrPC after calling for a detailed inquiry report from the police authority. The relevant portion of the said order is reproduced hereunder:

“15. Section 156(3) of the Code aims at curtailing and controlling the arbitrariness on the part of the police authorities in the matter of registration of FIRs and taking up investigations, even in those cases where the same are warranted. The Section empower the Magistrate to issue directions in this regard but this provision should not be permitted to be misused by the complainants to get police cases registered even in those cases which are not very serious in nature and the Magistrate himself can hold enquiry under Chapter XV and proceed against the accused if required. Therefore the Magistrate, must apply his mind before passing an order under Section 156(3) of the Code and must not pass these orders mechanically on the mere asking by the complainant. These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of complainant or custodial interrogation appears to be necessary for some recovery of article or discovery of fact.

16. Remedy under Section 156 (3) Cr.PC. is a discretionary one as the provision proceeds with the word 'may'. The Magistrate is required to exercise his mind while doing so and pass orders only if he is satisfied that the information reveals commission of - cognizable offence/offences and also about necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without the assistance of the police. The complainant, as a matter of right, cannot insist that the



complaint case filed by him/ her should be directed in every eventuality to the police for investigation.

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*18. Adverting to the facts of the instant case in the light of the case law, I am of the considered opinion that dispute between the applicant and the proposed accused is of civil nature. Complainant has also entered into an agreement dated 20.11.2012 and the schedule of repayment of loan was given in Clause 2, 3, 4 and 5. In compliance of loan agreement, some payment was also made to the complainant and a cheque was also issued. The recourse available to the complainant was to file a suit for specific performance or initiate recovery proceedings, investigation on any point is not required. **All the documents are in the possession of the complainant.** Moreover, the conditions have been laid down in the agreement of loan entered into between the parties, no FIR is thereby warranted. Accordingly, application u/sec 156 (3) of Cr.P.C. is dismissed.”*

(emphasis supplied)

3.13. The said order was challenged by the petitioner in Cr.Rev. 395/2018, which was dismissed by the impugned judgment. The relevant portion of the impugned judgment is as under:

*“Before proceeding further, it may be noted that the records of the case file reveal that though the application u/s. 156(3) Cr.P.C. had been dismissed by the Ld. CMM, South, **the case has been fixed for recording the statement of the petitioner u/s. 200 of Cr.P.C. Therefore, it is not as if all avenues of redressal have been closed to the petitioner.** Be that as it may, the revision is considered on its merits. It is settled law that a revisionary court is empowered to reverse the finding of the trial court only when it reaches the conclusion that the finding of the trial court is perverse. The purpose of powers of revision is to set right patent defect or error. The jurisdiction cannot be invoked lightly. The powers must be exercised when the court below has passed an incorrect, illegal or improper order and not in cases where it is possible to take two views on the same matter....*

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In the present case though the Ld. Counsel for the petitioner argued that police help was required to collect evidence it is seen



that from the submission of the ld. Counsel for the petitioner that reliance is placed on documents which are in custody and possession of the petitioner to contend that the intentions of the accused were malafide from the beginning. For this reason also the decision of the Ld. CMM, South to dismiss the application u/s. 156(3) of Cr.P.C cannot be faulted. The complainant being the petitioner would be able to provide adequate material within its custody and means to substantiate their allegations even without the State machinery being involved.

In the facts and circumstances of this case therefore, there is no ground made out for any interference by this court in the orders of the Ld. CMM, South dated 19.05.2018 by exercise of its revisionary powers, the revision petition is accordingly dismissed.”

(emphasis supplied)

4. The learned senior counsel for the petitioner submitted that sufficient material exists for allowing the application under Section 156(3) of the CrPC and the Courts below have not adequately considered the documents relied upon by the petitioner.

5. He submitted that the learned Courts below failed to consider that the police officials did not discharge their obligation to register the case despite the fact that the averments made in the complaint disclose commission of cognizable offences. He submitted that the judgment in the case of *Lalita Kumari v. Govt. of U.P. : (2014) 2 SCC 1* support the case of the petitioner.

6. He submitted that the allegation disclosing a civil dispute, by itself, cannot be a ground to hold that criminal proceeding should not be allowed to continue. He further submitted that simply because arbitral proceedings as well as proceedings under NI Act are underway between the parties, it cannot be said that civil proceedings are the only remedy available with the respondents.



7. He submitted that the learned Trial Court has erroneously observed that the dispute between the parties is civil in nature merely because the dispute arises out of agreements between the parties. He submitted that if the said proposition is accepted, then there can be no FIR where money is parted pursuant to an agreement, even if the intention of the party at the time of entering into the agreement is dishonest.

8. He submitted that in the present case, it is evident that it was the intention of the accused persons to cheat the complainant from the very start and the conspiracy to cheat the complainant started when it was offered a piece of land at Kaushalpura and induced the petitioner to enter into the Joint Venture Agreement.

9. He submitted that assistance of the police is required in the present case as original documents and title deeds are to be collected and custodial interrogation is also required. He submitted that the petitioner has found out that the proposed accused persons were never the owner of the land mentioned in the Joint Venture Agreement and the original documents of the various lands are with various authorities.

10. The learned senior counsel for Respondent Nos. 2 to 7 submitted that the present dispute arises out of a business transaction between the parties and the learned Courts below have rightly dismissed the application filed by the petitioner under Section 156(3) of the CrPC. He submitted that the dispute had arisen several years earlier, however, the complaint was made with significant delay.



11. He submitted that arbitral proceedings and NI Act proceedings are also underway between the parties and it was instead the petitioner who went back on the understanding with regard to the land at Govind Pura and also with regard to Mayur School, Bhopal.

12. He submitted that no alleged offence is made out as there is no inducement on part of the accused respondents or misappropriation.

13. He submitted that substantial investments running into several crores have been made by the accused respondents and the complainant has failed to honour its commitment of furnishing the amount of ₹10 crores.

14. He further disputed that any lien had been created on the properties that were sold and the property was sold only after the complainant had gone back on its commitments. He submitted that admittedly no payment was made under the loan agreement dated 20.11.2012 under which the lien is alleged to have been created and the complainant has clearly recalled the loan and never invoked the lien either. He further submitted that lien can only be created by a registered document, however, the loan agreement dated 20.11.2012 is not registered.

15. He further submitted that an application had been made by Respondent No.2 for change of land use of the land at Kaushalpura on 15.12.2010 itself and Respondent No.2 is in ownership of more than 17 acres of land there. He submitted that since the permission for change on land use was not received, a request was made for construction of school at Govind Pura. He submitted that the payments



of ₹2.5 crores were released after the land at Govind Pura was brought to the notice of the petitioner.

16. He further submitted that out of the sum of ₹2.5 crores paid by the petitioner, ₹1.5 crore has been returned to the petitioner and furniture was purchased from the remaining amount. He submitted that the representatives of Respondent No.2 and the petitioner jointly visited China for purchase of the furniture and the said fact has been admitted by the petitioner in the arbitration proceedings.

ANALYSIS

17. The first issue that falls for the consideration of this Court is whether the petitioner having already availed the remedy of revision should be allowed to take recourse to Section 482 of the CrPC as a substitute for initiating a second revisional challenge which is clearly barred under Section 397(3) of the CrPC which reads as follows:

“(3) If an application under this section has been made by any person either to the High court or to the Sessions Judge, no further application by the same person shall be entertained by the either of them.”

18. At the outset, it is relevant to note that while it is settled law that a second revision cannot be filed in terms of the bar under Section 397 of the CrPC, the inherent power of this Court under Section 482 of the CrPC has a wide ambit and can be exercised in the interest of justice. The Hon’ble Apex Court, in the case of ***Krishnan v. Krishnaveni*** : (1997) 4 SCC 241, had observed as under:

“8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401,



upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order.”

(emphasis supplied)

19. It is the case of the petitioner that the complaint discloses commission of cognizable offences and it was thus incumbent on the police officers as well as the Courts below to direct registration of FIR. Reliance has been placed on the case of case of ***Lalita Kumari v. Govt. of U.P.*** (*supra*). The Hon’ble Apex Court in the said case has categorically held that FIR ought to be registered by the police when the allegations clearly disclose commission of a cognizable offence. The relevant portion of the judgment is set out below:

“119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the



information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

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120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.”

20. It is equally true that that it is not mandatory for the Magistrate to direct registration of an FIR merely because allegations disclose the commission of a cognizable offence. A reference can be made to Section 156 of the CrPC, which reads as under :

“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.”

21. Once a complaint/application under Section 156(3) of the CrPC is filed, the Magistrate can exercise the option of applying his own judicial mind to the entire material on record and ‘may’ direct



registration of FIR. However, at times, the Magistrate also calls for a report from the police as to why no action had been taken on an earlier complaint filed by the complainant with the police, and thereafter, once a report is filed by the police, the Magistrate applies his mind to the material before him i.e. the complaint as well as the Action Taken Report which is in the nature of 'preliminary inquiry' conducted by the police. After this, the Magistrate may make up his mind to either order registration of FIR or otherwise.

22. The Magistrate, after application of mind, can also decide to take cognizance and proceed under Section 202 of the CrPC instead of issuing directions under Section 156(3) of the CrPC. The Hon'ble Apex Court in the case of *Mona Panwar v. High Court of Judicature of Allahabad* : (2011) 3 SCC 496 had succinctly discussed the options present before a Magistrate on receipt of a complaint. The relevant portion of the same is reproduced hereunder:

“18. When the complaint was presented before the appellant, the appellant had mainly two options available to her. One was to pass an order as contemplated by Section 156(3) of the Code and the second one was to direct examination of the complainant upon oath and the witnesses present, if any, as mentioned in Section 200 and proceed further with the matter as provided by Section 202 of the Code. An order made under sub-section (3) of Section 156 of the Code is in the nature of a peremptory reminder or intimation to the police to exercise its plenary power of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with the final report either under Section 169 or submission of charge-sheet under Section 173 of the Code. A Magistrate can under Section 190 of the Code before taking cognizance ask for investigation by the police under Section 156(3) of the Code. The Magistrate can also issue warrant for production, before taking cognizance. If after cognizance has



been taken and the Magistrate wants any investigation, it will be under Section 202 of the Code.

19. The phrase “taking cognizance of” means cognizance of an offence and not of the offender. Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint or on a police report or upon information of a person other than a police officer. **Before the Magistrate can be said to have taken cognizance of an offence under Section 190(1)(b) of the Code, he must have not only applied his mind to the contents of the complaint presented before him, but must have done so for the purpose of proceeding under Section 200 and the provisions following that section.** However, when the Magistrate had applied his mind only for ordering an investigation under Section 156(3) of the Code or issued a warrant for the purposes of investigation, he cannot be said to have taken cognizance of an offence.

20. Taking cognizance is a different thing from initiation of the proceedings. One of the objects of examination of the complainant and his witnesses as mentioned in Section 200 of the Code is to ascertain whether there is prima facie case against the person accused of the offence in the complaint and to prevent the issue of process on a complaint which is either false or vexatious or intended only to harass such person. Such examination is provided, therefore, to find out whether there is or not sufficient ground for proceeding further.”

(emphasis supplied)

23. In the present case, the learned Trial Court has straightaway taken cognizance under Section 190(1)(a) of the CrPC instead of ordering an investigation under Section 156(3) of the CrPC.

24. At this juncture, this Court considers it apposite to discuss the factual matrix of the case and contentions of the parties. It is essentially the case of the petitioner that the accused persons had conspired to cheat it by inducing the petitioner to the Joint Venture



Agreement dated 19.10.2010 for construction of school at Kaushalpura, despite knowing that the permission for change in land use will not be granted. It is further alleged that the accused persons fraudulently sought a sum of ₹2.5 crores from the petitioner in relation to the project, which was released by the petitioner on the basis of false assurances. Thereafter, the accused persons again induced the petitioner to enter into a loan agreement dated 20.11.2012 by making further false assurances of taking over Mayoor school and land of 15 acres. It is alleged that the accused persons then sold the land and building of the Mayoor school, on which a charge and lien had been created in favour of the petitioner.

25. It is the case of the accused persons that it was the petitioner who breached contractual obligations. It is submitted that the application had been made for change of land use for the land at Kaushalpura and ₹1.5 crores already have been returned to the petitioner. It is further contended that the remaining amount of ₹1 crore was utilised towards purchase of furniture and the representative of the petitioner had also travelled to China for the same. The charge and lien on the concerned property has also been disputed on account of the loan agreement not being a registered document and the petitioner having recalled the advanced amount. It is further argued that the dispute is now the subject matter of adjudication in the arbitral proceedings as well.

26. The Status Report indicates that upon receipt of the complaint on behalf of the petitioner, it was noted that the parties were engaged



in business since the year 2006 and the Joint Venture Agreement dated 19.10.2010 to construct a school at Kaushalpura could not be finalized as the permission for change of land use was not granted. It was found that the deal in relation to Mayoor School could not be matured due to which the complainant demanded back the sum of ₹2.5 crores (the loan sum extended by the petitioner previously). It was found that ₹1.5 crores were paid back and suits were pending between the parties in relation to the recovery of the balance amount. It was found that no sign of any delivery or inducement and misrepresentation came to light and the case seemed to be civil in nature which essentially arose from breach of agreement.

27. It is argued on behalf of the petitioner that the learned Trial Court has erroneously observed that the dispute between the parties is of civil nature and noted that the recourse available to the complainant was to file a suit for specific performance or to initiate recovery proceedings. It is argued that the dispute between the parties involves an element of criminality and it was the intention of the accused respondents to cheat the petitioner from the very start. It is further argued that merely because civil remedies are available to a party, the same does not bar the criminal remedies.

28. It is well settled that for the same set of facts, parallel proceedings, seeking both civil and criminal remedies, can continue simultaneously. Thus, merely because a civil remedy is available to a litigant, the same cannot preclude the continuance of criminal proceedings.



29. While a breach of contract may not always involve any criminality, criminal prosecution will be warranted if a *prima facie* case of dishonest inducement and intention to cheat on part of the accused is present from the very outset.

30. However, in the present case, it cannot be denied that the dispute between the parties essentially relates to contracts that were entered into between them. It is not the case of the petitioner that it was unaware that permission for change in land use would be required for building the school at Kaushalpura. Moreover, even after finding out that the sanction could not be obtained, the petitioner chose to then enter into loan agreement 20.11.2012 with the accused persons. It cannot be ignored that certain steps were in fact taken by the accused persons towards discharge of their commitments under the agreements and some payment was also made to the petitioner towards the amount released to it. It is also not disputed that the representatives of Respondent No.2 and the petitioner jointly visited China for purchase of the furniture.

31. It was in such circumstances that the learned Trial Court did not deem it apposite to direct registration of FIR and proceeded under Section 200 of the CrPC instead. Reliance was placed on the case of ***Ramdev Food Products (P) Ltd. v. State of Gujarat : (2015) 6 SCC 439*** where it was held as under:

“11. On the other hand, contention on behalf of the alleged accused is that both the powers of the Magistrate : (i) directing investigation under Section 156(3); and (ii) direction under Section 202 to seek a report from police after investigation to enable the Magistrate to decide whether to proceed further and issue process



are qualitatively different and are in different chapters of the Code. Thus, as per scheme of the Code, power of the police in pursuance of directions under the said two provisions is not the same. The Magistrate has discretion either to direct registration of a case under Section 156(3) or to conduct inquiry himself as the situation may warrant. This discretion is to be exercised by the Magistrate in his wisdom and having regard to the nature of material available. The direction under Section 156(3) to register a criminal case and to investigate is to be exercised where the Magistrate is satisfied that prima facie a cognizable offence has been committed. On the contrary, where he thinks it necessary to conduct further inquiry before deciding whether he should proceed further in the matter, the matter has to be dealt with under Section 202. Mere allegation of forgery is not enough to require the Magistrate to pass the order under Section 156(3).

*12. It is further submitted that in the present case, the civil proceedings are pending between the parties where the question of genuineness or otherwise of the partnership deed is an issue. The process of criminal law cannot be used when a dispute is primarily of civil nature. Simultaneously initiation of criminal proceedings may be permitted where an offence is shown to have been committed. Thus, the Magistrate was entitled to satisfy himself as to whether any cognizable offence had been committed before proceeding further. The Magistrate was not satisfied from the material available that any cognizable offence had been committed and he rightly decided to conduct further enquiry under Section 202. Having regard to the limited nature of inquiry under Section 202 which option had been rightly chosen by the Magistrate, direction to the police to investigate and give a report was limited by the very purpose for which the limited inquiry was to be held, as against procedure for investigation in cases not covered under Section 202 of the Code. **The purpose was to enable the Magistrate to decide whether there was ground to proceed further. The Magistrate having taken cognizance of the offence and the police having not registered a criminal case nor the Magistrate having directed registration of criminal case, procedure and power of the police in the matter are different and in such a situation police did not have the power to arrest without permission of the Magistrate as was the view of the Gujarat and other High Courts.***

(emphasis supplied)



32. It is argued that the facts of the present case are different from *Ramdev Food Products (P) Ltd. v. State of Gujarat (supra)*. While the facts may be different, however, the principle of law expounded is relevant to the present dispute where the issue has arisen essentially out of breach of contract. The civil nature of the dispute cannot be denied. Whether any *prima facie* criminality is involved and if there is sufficient cause for proceeding against the accused persons is yet to be seen by the learned Trial Court, however, this Court does not consider it apposite to comment further on the merits of the allegations at this stage, especially when the proceedings under Section 200 of the CrPC are underway. Also, as noted by the learned Revisional Court, it is not a case where all avenues of redressal have been closed to the petitioner.

33. It is also pertinent to note that while the learned Trial Court was weighed by the civil nature of the dispute, the prayer for registration of FIR was not denied merely because there is a civil tenor to the dispute between the parties. It was found by the learned Trial Court as well as the learned Revisional Court that registration of FIR was not required as the material documents required to substantiate the allegations are already in custody of the petitioner complainant. It was thus found that involvement of State machinery was not required.

34. For exercising powers under Section 156(3) of the CrPC and directing the registration of an FIR, the Magistrate needs to ensure that a cognizable offence is disclosed from the allegations mentioned in the application and the essential elements of the alleged offences thereof



are *prima facie* satisfied. Apart from the same, the Magistrate also needs to satisfy himself as to whether intervention of police is required and if the complainant will not be in a position to adduce the relevant evidence without assistance of police.

35. In the judgment delivered by this Court in the case of ***Skipper Beverages Pvt. Ltd. v. State*** : 2001 SCC OnLine Del 448, it was held as under :

“7. It is true that Section 156(3) of the Code empowers a Magistrate to direct the police to register a case and initiate investigations but this power has to be exercised judiciously on proper grounds and not in a mechanical manner. In those cases where the allegations are not very serious and the complainant himself is in possession of evidence to prove his allegations there should be no need to pass orders under Section 156(3) of the Code. The discretion ought to be exercised after proper application of mind and only in those cases where the Magistrate is of the view that the nature of the allegations is such that the complainant himself may not be in a position to collect and produce evidence before the Court and interests of justice demand that the police should step in to held the complainant. The police assistance can be taken by a Magistrate even Under Section 202(1) of the Code after taking cognizance and proceeding with the complaint under Chapter XV of the Code as held by Apex Court in 2001 (1) Supreme Page 129 titled “Suresh Chand Jain v. State of Madhya Pradesh”

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10. Section 156(3) of the Code aims at curtailing and controlling the arbitrariness on the part of the police authorities in the matter of registration of FIRs and taking up investigations, even in those cases where the same are warranted. The Section empower the Magistrate to issue directions in this regard but this provision should not be permitted to be misused by the complainants to get police cases registered even in those cases which are not very serious in nature and the Magistrate himself can hold enquiry under Chapter XV and proceed against the accused if required. Therefore the Magistrate, must apply his mind before passing an order under Section 156(3) of the Code and must not pass these



orders mechanically on the mere asking by the complainant. These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the reach of complainant or custodial interrogation appears to be necessary for some recovery of article or discovery of fact.”

(emphasis supplied)

36. In the case of ***Subhakaran Loharuka & Anr. vs. State : (2010) 170 DLT 516***, it was observed as under:

“42. Thus, there are pre-requisites to be followed by the complainant before approaching the Magistrate under Section 156 (3) of the Code which is discretionary remedy as the provision proceeds with the word 'May'. The Magistrate is required to exercise his mind while doing so. He should pass the orders only if he is satisfied that the information reveals commission of cognizable offences and also about necessity of police investigation for digging out of evidence neither in possession of the complainant nor can be procured without the assistance of the police. It is thus not necessary that in every case where a complaint has been filed under Section 200 of the Code the Magistrate should direct the police to investigate the crime merely because an application has also been filed under Section 156 (3) of the Code even though the evidence to be led by the complainant is in his possession or can be produced by summoning witnesses, may be with the assistance of the Court or otherwise,.....”

(emphasis supplied)

37. In ***Gulab Chand Upadhyaya v. State of U.P. : (2002) 44 ACC 670***, the Hon’ble Allahabad High Court held that:

“22. But where the complainant is in possession of the complete details of all the accused as well as the witnesses who have to be examined and neither recovery is needed nor any such material evidence is required to be collected which can be done only by the police, no "investigation" would normally be required and the procedure of complaint case should be adopted. The facts of the present case given below serve as an example. It must be kept in mind that adding unnecessary cases to the diary of the police



would impair their efficiency in respect of cases genuinely requiring investigation. Besides even after taking cognizance and proceeding under Chapter XV the Magistrate can still under Section 202(1) Cr.P.C. order investigation, even though of a limited nature."

(emphasis supplied)

38. It is argued that assistance of the police is required in the present case as original documents and title deeds are to be collected and custodial interrogation is also required. No reason is stated as to why custodial interrogation is required. Insofar as original documents and title deeds are concerned, the complainant has annexed a number of documents with the present petition to prove its case, including copies of certain sale deeds filed by the accused persons before the District Court of Bhopal. Copy of the purchase deed and sale deed of the 5 acres of land out of the 15 acres of land has also been placed on record. The said documents have not been disputed by the respondent. The original copies of the same, if required, can be called for subsequently. In such circumstances, this Court finds no merit in the said averment.

39. If at a later stage, the Magistrate is of the opinion that investigation is required by a police officer, the same can be ordered by the Magistrate under Section 202(1) of the CrPC, which empowers the Magistrate to inquire into the case or direct an investigation as he deems fit, for the purpose of deciding whether or not there is sufficient ground for proceeding.

40. It is apparent that the petitioner is merely seeking the assistance of the police to conduct a fishing and roving inquiry. As has been



noted by the learned Trial Court as well as the learned Revisional Court, all pertinent facts and evidence are within the petitioner's knowledge and reach, and it can present such information during the inquiry conducted by the learned Trial Court pursuant to Section 200 of the CrPC. Given these factors, the need for police involvement in evidence collection appears to be minimal, as the complainant is well-equipped to facilitate the presentation of evidence on its own behalf.

41. As noted above, when the allegations are not particularly severe, and the complainant already possessed sufficient evidence to support their claims, there may be no necessity to pass orders under Section 156(3) of the CrPC.

42. In the instant case, this court is of the opinion that no exceptional circumstances have been presented to warrant the exercise of its extraordinary jurisdiction under Section 482 of the CrPC. There is no indication of any miscarriage of justice or legal irregularity in the proceedings undertaken by the two lower courts, and the petitioner has not been able to point out any such deficiencies.

43. In view of the above, I find no infirmity in the impugned judgment and the same cannot be faulted with.

44. The petition is therefore dismissed.

AMIT MAHAJAN, J

APRIL 4, 2025