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

% *Date of decision: 1st August, 2025*

+ **CRL.M.C. 5157/2025 & CRL.M.A. 22324/2025 (stay)**

SMT. ASHA GUPTA

.....Petitioner

Through: Counsel for Petitioner (appearance
not given)

versus

1. **SMT NEHA GUPTA**

W/o Sh. Arun Gupta

.....Respondent No.1

2. **SH. ARUN GUPTA**

S/o Sh. Jai Prakash

...Respondent No.2

Through: None

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (*oral*)

1. Criminal Petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as 'B.N.S.S.'*) read with Article 227 of the Constitution of India, has been filed on behalf of the Petitioner, Smt. Asha Gupta for quashing of the Judgment dated 06.03.2025 in Crl. Revision *vide* which the learned ASJ-07, Patiala House Court, has upheld the Order of learned Metropolitan Magistrate dated 06.11.2023 whereby **the Application under Section 156(3) Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*)**, has been **dismissed**.

2. *Briefly stated*, the Petitioner/Complainant, Smt. Asha Gupta had filed



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a Complaint under Section 200 Cr.P.C. read with Section 156(3) Cr.P.C. wherein it was stated that Smt. Neha Gupta, Accused No. 1 and her husband, Mr. Arun Gupta/Respondent No. 2 belonged to the same ancestral family as the Complainant. The Complainant had knowledge that Mr. Arun Gupta had been dealing in property business including purchase of old construction and thereafter, erecting new construction in selling the same. In the month of November, 2015, Respondent No.2/Accused Mr. Arun Gupta approached the Complainant, to sell one shop (L-Type) on the ground floor without terrace rights, in build-up property No.WZ-515, Naraina Village, New Delhi, constructed by him for her sale consideration of Rs.13,00,000/-. He represented that the said property was free from all sort of encumbrances.

3. The Complainant then entered into an Agreement to Sell and received Possession *vide* GPA, Deed of Will etc. on 04.12.2015 in respect of this suit shop. She also paid the sale consideration in cash to Smt. Neha Gupta with an assurance that the Sale Deed would be registered in favour of the Complainant. It is alleged that Smt. Neha Gupta conspired with her husband, Mr. Arun Gupta, to cheat the Complainant by execution of this Agreement to Sell and other documents.

4. It is claimed that both the Respondents misrepresented to the Complainant since the subject property had a Charge/Notice of unauthorised construction and the subject property has been sealed by North MCD *vide* Order dated 04.05.2018, on account of unauthorised construction. They also misrepresented to the Complainant that the subject property is in the Complainant's name as the same was rejected by Sub-Registrar *vide* Order dated 10.06.2016, on account of pending Court Case in respect of subject property. Despite request of the Complainant, the Respondents have failed



to fulfil their obligations *qua* the subject property. Her oral request to them to return the money with all the damages and interest, has also been declined. It is claimed that the Respondents have cheated the Complainant and thus, sought registration of FIR under Section 420/463/464/468/120B of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*).

5. *Learned Metropolitan Magistrate in the impugned Order observed that after going through the enquiry Report and the material on record, it was found that the identity of the Accused persons, is known. No facts are required to be unearthed as the same are all within the knowledge of the Complainant. The custodial interrogation of the Respondents, is not necessary and the evidence is well within the reach of the Complainant and no investigations are required to be carried out by State Agency. Consequently, the Application under Section 156(3) Cr.P.C. was rejected.*

6. *Revision Petition No. 105/2024 was preferred before the learned ASJ, who also observed that the sealing of the subject property was done by the North MCD on 04.05.2018, which is after the execution of the Agreement to Sell on 04.12.2015. There is no prima facie evidence that the Respondents were aware of the impending Municipal sealing action. Mere subsequent sealing cannot be automatically termed as a fraudulent intention.*

7. *Moreover, the dispute has essentially arisen from breach of contractual obligations and the claim for monetary relief are civil in nature. The remedy lies in filing the Civil Suit for recovery of the amount paid. In this context, it was further observed that every breach of contract, would not give rise to an offensive cheating. It becomes a case of cheating only when there is deception played at the very inception. Even if the allegations made in regard to the failure on the part of the Accused to keep the promise are*



proved, in absence of culpable intention at the time of initial promise, no offence under Section 420 IPC, was made out.

8. *The Order of learned Metropolitan Magistrate was upheld for the reasons stated therein.*

9. *Aggrieved by the said Order, the present Revision Petition has been filed.*

10. ***The grounds of challenge*** are that on the face of the record, criminal offence of cheating, forgery are made out. For the purpose of cheating, which is squarely covered by the Judgment of *M.N.G. Bhartesh Reddy vs. Ramesh Ranganathan & Ors.*, (2022) 6 SCR 1097. There was *mens rea* present at the time of sale of the said shop. Incorrect conclusion has been arrived by the learned Metropolitan Magistrate, which has been wrongly upheld by the Revisionist Court.

11. Furthermore, the learned ASJ has not considered in correct perspective, the earlier proceedings dated 01.12.2015 and 03.12.2015 in W.P.(C) 9432/2015 before this Court *qua* illegal and unauthorised construction, concealment, which constitute a criminal offence by the Accused. It has been erroneously observed by the learned ASJ that the sealing of the subject property by North MCD on 04.05.2018 was a subsequent event by not considering the earlier Orders dated 01.12.2015 and 03.12.2015 in the Writ Petition. There should be a sanction plan and ownership, which are the pre-condition to be satisfied by the Accused and in case of false promise being proved, he cannot be granted immunity on *mens rea* for cheating and forgery.

12. Complex issues have been raised in regard to the involvement of third party, false statements by the Accused, misrepresentation of facts by the



police in Status Report, concealment of earlier litigation in respect of the subject property, which all requires proper investigation, thereby making the registration of FIR mandatory.

13. Reliance has also been placed on Kailash Vijayvargiya vs. Rajalakshmi Choudhary & Ors., (2023) 6SCR 135 wherein it has been observed that the Magistrate is required to apply his mind and his discretion in a judicious manner. If the Magistrate finds that the allegations disclosed commission of cognizable offence, he must forward the Complaint to the Police for investigations under Section 156(3) Cr.P.C. and thereby save the valuable time of the Magistrate being wasted in enquiry as it is primarily the duty of the Police to investigate.

14. Serious error has been committed by the learned ASJ by rejecting the law settled by this Court in the matter of Anjuri Kumari vs. The State of GNCT of Delhi & Ors., W.P.(CrI.) 1210/2023 wherein it has been reiterated that the discretion must be exercised in appropriate cases.

15. Similar observations have been made in Subhakaaran Luharuka & Anr. vs. State, ILR (2010) VI Del 495.

16. It is, therefore, submitted that the impugned Order of the learned ASJ dated 06.03.2025 be set-aside and the directions be issued for registration of FIR.

Submissions heard and the record perused.

17. Essentially, the allegations made in the Complaint are that the Complainant had entered into an Agreement to Sell, etc. on 04.12.2015. However, when the parties approached the Sub-Registrar for registration of Sale Deed, it was rejected *vide* Order dated 10.06.2016, on account of the pendency of the Court case in regard to the unauthorised construction. The



Petitioner had asserted that he had already paid Rs.13,00,000/- as the sale consideration, which has not been returned by the Respondents.

18. It has been rightly observed by the learned Metropolitan Magistrate that the identity of the Accused persons, was known. The evidence could be summoned by the Petitioner by summoning the requisite witnesses and that there was no necessity of custodial interrogation or investigations, which necessarily required the Police assistance. The evidence being well within the reach of the Complainant, the same could be led under Section 200 Cr.P.C. The matter was listed for pre-summoning evidence.

19. The learned ASJ has also rightly endorsed these reasons for declining the directions for registration of FIR.

20. It may also be pertinent to note that the learned ASJ had also observed that it was essentially a case where the Sale Deed in terms of Agreement to Sell was not executed for whatever reasons and in such a case, the more appropriate remedy was to claim the consideration amount or seek the execution of Sale Deed by filing a Civil Suit. These observations however, was not the reason for rejection of Application under S.156(3) Cr.P.C. but to conclude that the Application has been rightly dismissed by Ld. MM.

21. It may be hereby clarified that it is not a case where by rejection of Application under Section 156(3) Cr.P.C, it has been held that the Complaint does not have any merit. The matter has only been listed for recording of pre-summoning evidence to assess whether it is a fit case for summoning the Respondents for the various offences. In the impugned Order, it has been found that at this stage, the Police intervention or interrogation was not merited and thus, the Application under Section 156(3) Cr.P.C. got dismissed.



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22. There is no infirmity in the impugned Order of learned ASJ upholding the Order of learned Metropolitan Magistrate. The Revision Petition is without merit and is hereby, dismissed and disposed of. Pending Application, if any, also stands disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

AUGUST 1, 2025/RS