

**23.07.2018**

Present: None.

Vide this order, I shall decide the application u/s 156(3) Cr.PC filed on behalf of the complainant for registration of FIR against the proposed accused person as mentioned in his complaint and to investigate the case.

The case of the complainant is that he was searching a property in the area of Darya Ganj and came in contact with a property dealer namely Shamshuddin. He introduced him with Ms. Shagufta Begam, who wanted to sell her flat no. 3557, 3<sup>rd</sup> Floor, Kucha Tara Chand, Darya Ganj, Delhi. The flat was shown to the complainant and thereafter complainant agreed to purchase the said flat for a consideration of Rs. 43 lacs. The alleged had demanded Rs. 15 lacs as earnest money. The complainant had entered into an agreement to sell dated 26.02.2016 with Ms. Shagufta Begam W/o. Abrar Ahmad R/o. 4018, Gali Khan Khana, Urdu Bazar, Jama Masjid, Delhi in respect of said property and paid Rs. 10 lacs cash as earnest money and promised to pay balance Rs. 5 lacs before 07.03.2016. As stated in the complaint, he also paid Rs. 5 lacs to the alleged but the same was not given in writing by the accused. However, as per the agreement, the remaining amount was to be paid on or before 25.03.2016. He further reported that he personally visited the residence of accused and telephonically contacted her to get the Sale Deed registered and to pay remaining amount. But, after receiving RS. 15 lacs, she did not come at Sub-Registrar Office for registration of Sale Deed and cheated him to the tune of Rs. 15 lacs.

Complainant lodged complaint with the concerned PS but of no avail. Hence, the present application.

ATR filed by the IO, wherein it is stated case is of civil nature and no cognizable offence is made out.

I have given my thoughtful consideration to the contentions of the complainant and have gone through the record as well as perused the report.

The Law in respect of application U/s 156 (3) Cr.P.C. is well settled. In the case of

**Gulab Chand Upadhyay Vs. State of UP**, 2002 CrL LJ 2907, it has been held as under:

“the scheme of Cr.PC and the prevailing circumstances require that the option to direct the registration of the case and its investigation by the police should be exercised where some “investigation” is required, which is of a nature that is not possible for the private complainant, and which can only be done by the police upon whom statute has conferred the powers essential for investigation.

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”.

**In M/s Skipper Beverages Pvt. Ltd. Vs. State 2001 IV AD (Delhi)**, it was held that:

“It is true that Section 156(3) of the Code empowers to Magistrate to direct the police to register a case and intimate 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 complainant himself is in possession of evidence to prove his allegations there should be no need to pass orders U/s 156 (3) of the Code. This 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 interest of justice demand that the police should step in the help of the complainant.

The court is supposed to order investigation keeping in mind the guidelines issued by the Hon'ble Delhi High Court in the case of **Subh Karan Luharuka & anr Vs. State & anr 2010 (3) JCC 1972**, where it is laid down as under:

“52A. For the guidance of Subordinate Courts, the procedure to be followed while dealing with an application U/s 156 (3) of the Code is summarized as under:-

- (i) Whenever a Magistrate is called upon to pass orders under Sec 156 (3) of the code, at the outset, the Magistrate should ensure that before coming to the Court, the complainant did approach the police officer in charge of the Police of Station having jurisdiction over the area for recording the information available with him disclosing the commission of a cognizable offence by the person/persons arrayed as an accused in the complaint. It should also be examined as to what action was taken by the SHO, or even by the senior officer of the Police, when approached by the complainant under Section 154 (3) of the Code.
- (ii) The Magistrate should then form his own opinion whether the facts mentioned in the complaint disclose commission of cognizable offence by the accused persons arrayed in the complaint which can be tried in his jurisdiction. He should also satisfy himself about the need for investigation by the police in the matter. A preliminary enquiry as this is permissible even by an SHO and if no such enquiry has been done by the SHO, then it is all the more necessary for the Magistrate to consider all these factors. For that purpose, the Magistrate must apply his mind and such

application of mind should be reflected in the Order passed by him.

Upon a preliminary satisfaction, unless there are exceptional circumstances to be recorded in writing, a status report by the police is to be called for before passing final orders.

- (iii) The Magistrate when approached with a complaint under Section 200 of the Code, should invariably proceed under Chapter XV by taking cognizance of the complaint, recording evidence and then deciding the question of issuance of process to the accused. In that case also, the Magistrate is fully entitled to postpone the process if it is felt that there is a necessity to call for a police report under Section 202 of the Code.
- (iv) Of course, it is open to the Magistrate to proceed under Chapter XII of the Code when an application under Section 156 (3) of the Code is also filed alongwith a complaint U/s 200 of the Code if the Magistrate decides not to take cognizance of the complaint. However, in that case, the Magistrate, before passing any order to proceed under Chapter XII, should not only satisfy himself about the pre requisites as aforesaid, but, additionally, he should also be satisfied that it is necessary to direct Police investigation in the matter for collection of evidence which is neither in the possession of the complainant nor can be produced by the witnesses on being

summoned by the Court at the instance of the complainant, and the matter is such which calls for investigation by a State agency. The Magistrate must pass an order giving cogent reasons as to why he intends to proceed under Chapter XII instead of Chapter XV of the Code.”

Perusal of complaint reveals that there is allegations of cheating against the proposed accused.

In the light of the facts and circumstances of the present complaint, there is no need to invoke section 156(3) Cr.PC for issuing direction to register FIR against the respondent as:

1. The identity of alleged accused persons are ascertained.
2. No fact are needed to be unearthed as the same are well within the knowledge of the complainant.
3. Custodial interrogation of alleged accused persons are not necessary.
4. The evidence is well within the reach of complainant & no assistance of police is required to gather the same.
5. The facts of the case is not such that would warrant a detailed and complex investigations to be carried out by the State Agency.

Hence, there is no need for investigation by the Police u/s 156 (3) Cr.PC in this case. Application is hereby dismissed.

However, the cognizance on the complaint is taken, Complainant is at liberty to lead pre-summoning evidence. In case any requirement of investigation arises at later stage qua some disputed facts the provision of section 202 Cr.PC could be resorted to.

List for **PSE** on **03.12.2018**

(Shilpi Jain)  
MM-01(Central)/THC/Delhi  
23.07.2018