

**IN THE COURT OF SH.PANKAJ ARORA, LD. M.M-03 (WEST), TIS HAZARI COURTS,
DELHI.**

Complaint case No. 827/2018

PS Nihal Vihar

Sh. Jaspal Singh Gill,
S/o Sh. Kundan Singh Gill,
R/o B-18, Nihar Vihar,
Delhi-110041.

.....Complainant

Versus

1. Sh. Ravinderjeet Singh
S/o Sh. Soham Singh,
R/o A-71, Vani Vihar, Uttam Nagar,
Delhi.

.....Accused no.1.

2. Sh. Sumit Rana,
R/o K-8, Street No. 12,
Bharam Puri,
Delhi-110053.
no. 2.

..... Accused

ORDER

Present: Sh. Sanjeev Beniwal, Ld counsel for the complainant via video conferencing conducted through Cisco webex application vide meeting No. 576 403 936

Vide this order, this court shall dispose of the application filed under Section 156(3) Cr. PC filed on behalf of the complainant Sh.Jaspal Singh Gill. The brief facts of the complaint case as per the complainant are that in the month of March, 2015, accused no.2 namely Sh. Sumit Rana whom the complainant know since many years, came to the complainant's office with one of his friend namely Ravinderjeet Singh, who is accused no.1 and introduced him as his close friend and requested the complainant that accused no.1 is in dire need of money and told the complainant to arrange Rs. 7 lacs and for this accused no.1 offered this complainant that accused no.1 is ready to hand over original papers of his built up property at B-97, Shiv Vihar, Chandini Vihar, Nangloi, New Delhi-110041 ad measuring 100 sq. yds to the complainant as a security for

which the complainant declined and both the accused persons moved out from the complainant's office.

That after few days the accused persons again came to the complainant's office and accused no.2 told the complainant that the accused no.1 wants to sell his above mentioned built up property as accused no.1 urgently needs money and further offered the complainant to purchase it for which the complainant asked accused persons to firstly show the property and its original papers. In the evening, both the accused persons came to the complainant's office with original chain of papers and accused persons along with the complainant went to see the property at Chandini Vihar, Nangloi, New Delhi admeasuring 100 sq. yds. After seeing the property the complainant agreed to purchase it and later on dated 12.003.2015, the accused no.1 executed GPA, Agreement to Sell, Affidavit, Possession Letter and Will, payment of receipt and other documents in complainant's favour and accordingly handed over Rs. 7 lacs to accused no.1 in the presence of accused no. 2. After executing the above agreement, the accused no.2 requested the complainant to let the accused no.2 continue the tenancy of the tenants who are residing in the above said built up property and told the complainant that every month, the complainant will get Rs. 6000/- per month on it and the accused not. 2 took the responsibility to deliver an amount of rent to the complainants house for which the complainant agreed upon.

That the accused no. 2 regularly delivered the rent amount of Rs. 6000/- , the amount for the above built up property till January 2016 and when the complainant did not receive the rent for February 2016, the complainant made a telephonic call to the accused no.2 but they took excuses on one pretext or other. That when the complainant did not receive the rent amount of the month of March, 2016 the complainant got suspicious on the conduct of the accused no.2 and decide to visit the above said built up property for collecting the rent from the accused no.2, which was purchased by the complainant. That when the complainant reached at the above property, he was shocked to know that the above said built up property was in the name of some other person and the residents who are living in the said home, did not know about accused no.1. That the complainant immediately called and told accused no.2 about the above said fact and told the accused no. 2 to come to the complainant's office with the accused no. 1 but accused persons did not turn up to the complainant's office nor responded to the calls. It is stated that the accused no.1 & 2 were having common intention to cheat the complainant of his hard earned money by making forged and false documents of the above said property.

As per the ATR filed by the IO, it is stated that property in question was in possession of one Baldev Singh, who purchased the same about 9-10 years ago and there is no tenant residing at the given property.

Arguments of the Ld. Counsel for the complainant on the application under Section 156 (3) of Cr. P.C. already heard.

Application and complaint perused.

In the matter of “**M/s Skipper Beverages Pvt. Ltd. Vs. State**” 2002 CrL LJ NOC 333 (Delhi), it has been held as under:-

“Section 156 empowers Magistrate to direct police to register case and initiate investigation but this power had to be exercised judiciously and not in mechanical manner. Those cases where allegations are not very serious and complainant himself in possession of evidence to prove allegation, there should be no need to pass order under Section 156”.

In matter of “**Zubair Ul-Abidin (Dr.) Vs. State (NCT of Delhi)**” 2014 III AD (DELHI) 61 of **Hon'ble High Court of Delhi** has held that : -

“12. Thus, the magistrate is not supposed to act mechanically and direct registration of FIR in each and every case in routine and casual manner. Criminal law is not expected to be set in motion on mere asking of a party. There has to be some substance in the complaint filed and it is only if it appears that the allegations are serious enough and establish the commission of cognizable offence required thorough investigation by the police an FIR should be ordered to be registered.”

In the case of “**Sukwasi Vs. State of Uttar Pradesh**” 2008 Cri. L. J. 472, Division Bench of **Hon'ble Allahabad High Court** has held that merely because a complaint discloses a cognizable offence, application under Section 156 (3) of Code of Criminal Procedure, 1973 is not bound to be allowed. The following observations are relevant : -

“22. Applications under Section 156(3) of Code of Criminal Procedure, 1973 are now coming in torrents. Provisions under Section 156 (3) of Code of Criminal Procedure, 1973 should be used sparingly. They should not be used unless there is something unusual or extra ordinary like miscarriage of justice, which warrants a direction to the Police to register a case. Such applications should not be allowed because the law provides them with a remedy because the law provides them with an alternative remedy of filing a complaint, therefore, recourse should not normally be permitted for availing the provisions of Section 156 (3) of Code of Criminal Procedure, 1973.

23. The reference is, therefore, answered in the manner that it is not incumbent upon a Magistrate to allow an application under Section 156 (3) of Code of Criminal Procedure, 1973 and there is no such legal mandate. He may or may not allow the application in his discretion.”

I have considered the submissions advanced by Ld. Counsel for complainant in view of the above-said case law. This is not a fit case for invoking powers under Section 156(3) of

Code of Criminal Procedure, 1973 and for directing the SHO of concerned police station to register FIR for the following reasons :-

- 1.The identity of the accused persons is already known.
- 2.All the incriminating facts are already with in the knowledge of the complainant.
- 3.No facts are to be unearthed so as to require aid of police and it is also not the case where the collection of evidence is required.
- 4.Custodial interrogation of the accused persons is not necessary.
- 5.The evidence required in the case is within the reach of the complainant.
- 6.The allegations bear semblance of a civil dispute.

In view of the above-said reasons, the application of the complainant under Section 156 (3) of Cr. P.C. is hereby dismissed.

The complainant is at liberty to treat his complaint as a complaint case for the purpose of Section 200 of Code of Criminal Procedure, 1973. Be listed on 16.07.2020.

Dictated through Cisco Webex application as per circular no.8188-8348/DJ/COVID 19 Lockdown/pronouncements/2020 Dated 03.05.20
Date:06.05.2020


(PANKAJ ARORA)
M.M-03 (West), THC, Delhi