

Des Raj Vs . Lalita & Ors.

PS : Sarai Rohilla

Case No.11268/2020

30.09.2020

Through video conferencing

ORDER ON APPLICATION U/S 156(3) Cr.P.C.

Present: None .

The present order shall dispose of an application U/s 156 (3) Cr.P.C filed by the complainant which is also accompanied by a complaint u/s 200 crpc.

It is the case of the complainant that after his retirement from government service in 2019 he decided to purchase his own house from the gratuity and provident funds received by him. For , this purpose he approached accused no.5 Rajender Chopra, a property dealer , who allured him into purchasing one property situated at upper ground floor, 85/5, Gali No.1, East Moti Bagh, Sarai Rohilla where accused no.1 to 3 were found to be living. He also introduced him to his associates/assistant Gautam (accused no.6). Accused no.5 specifically took the responsibility for the entire transaction and also gave assurance for managing to hand over peaceful possession to the complainant from accused no. 1 to 3. Believing the representations made by the accused persons, complainant sought the title documents of the said property for checking the same. On this, accused no.5 Mr Rajender Chopra disclosed that only notarized title documents of the properties used to be done in this area and he will arrange the documents for checking the same by the complainant. After 2-3 days when the complainant alongwith his relative Sh Kishori Lal visited there for checking the title documents and to finalize the sale consideration amount etc. accused no.2 Shrawan Kumar requested the complainant that he is a government employee and they want to sell this property only for the reason of paucity of accommodation and wants to purchase a big property after selling out this property and he will show the title documents later on. He also showed his government service token No.44953 and badge No.20445. The said fact was also ratified

by accused no.1 Lalita who was also present there and who also assured the complainant to have faith and belief on them as they have very good reputation in the society and for the purpose of getting the confidence of the complainant, all accused persons assured that the necessary title documents shall be provided on 04.09.2019 and relevant paper for Bayana or Agreement to Sell would be ready and drafted on stamp paper on 04.09.2019 and accordingly all the relevant documents have been prepared by the accused no.5 on 04.09.2019 while subsequently as per their game plan they changed the date of meeting and shifted it on 05.09.2020 by accused No.5 Mr. Rajender Chopra and also informed to complainant over phone that meeting was shifted from 04.09.2020 to 05.09.2020 wherein he also assured that he will ready the Bayana document on the said day. On believing the above versions of the accused persons, on 05.09.2019 complainant again reached office of accused no.5 Rajender Chopra where accused no.1 to 3 were already present . They also introduced the complainant with one Mr Anand Kumar Azad ( accused no.4) as their son-in-law. The agreement to Sell/Bayana Agreement was executed and all the said accused persons also appended their signatures on the same. Accused no.1 and 2 Lalita and Shrawan Kumar as well as complainant put signatures on all the pages, and accused no.5 Rajender Chopra signed as witnesses. Out of the total sale consideration of Rs.17,21,000/-, complainant paid a sum of Rs. 2 Lakhs ( Rupees Two Lakhs) in cash to accused no.2 on asking of accused no.1. It is further mentioned in the complaint that there was CCTV camera installed and the said proceedings were recorded there. Thereafter, on 13.09.2019, the complainant further paid a sum of Rs. Five Lakhs in cash and a sum of Rs.2.5 Lakhs through cheque bearing No.004369 dated 27.09.2019 given to accused no.2 Shrawan Kumar in the office of accused no.5 Rajender Chopra, though the cheque was filled up in the name of accused no.1 Lalita as desired by said accused no.2. hence the complainant paid a total sum of Rs.9.5 lakhs as part sale consideration of the said property, and the said amount duly acknowledged by him in presence of other accused persons. It is also agreed vide the aforesaid Agreement that the remaining amount shall be paid by the complainant to accused no.1 and 2 on 05.10.2019 at the time of completion of sale transaction i.e. handing over the possession of the property to complainant and execution of Sale Deed

in favour of complainant. As per the said Agreement to Sell/Bayana Agreement , complainant had made the total payment of Rs.9,50,000/- by the date of 03.10.2019 and same had been duly acknowledge by you.

As per the agreed terms of the agreement, complainant called accused no.2 and 5 on 03.10.2019 and duly informed that rest of the payment was ready for making the registration of the sale deed and possession on payment of the balance sale consideration amount. Accordingly, on 03.10.2019, complainant was ready with remaining balance sale consideration and execution & registration of the Sale Deed as well as for taking possession of the property in question, and as per the direction of accused no.5, complainant had also visited to Kashmere Gate alongwith the other accused no.6 and also paid the amount of Rs.35,000/- for stamp duty papers for execution of sale deed and finally 05.10.2019 was fixed for registration of the sale deed and for handing over the possession of the property to the complainant. But it is shocking and surprising that on 05.10.2019 when complainant disclosed accused no.1 and 2 that he had given amount for purpose of stamp duty and remaining sale consideration amount is ready for payment and asked them about the time for registration of sale deed and hand over the possession of the property, on this, the accused no.1 and 2 showed their inability being not present and asked the complainant to provide /give some time. Complainant had no option but to agree for the same at that moment.

The aforesaid incident created suspicion in the mind of the complainant , he visited the office of accused no.2 Shrawan Kumar and he came to know that the accused no.2 has two wives and he had already debarred his son Jitender Kumar/accused no.2 by Public Notice prior to aforesaid transactions and further he is not residing with accused no.1 and the house/property in question is in possession of accused no.2 and 3.

Action taken report was called from the police.

As per the report complainant( it appears io has written complainant instead of accused) was contacted through phone and she intimated that she is willing to sell her

property but her in law are not vacating the property . Further, she informed that even she had paid the token amount to buy some other property and due to failure of present deal the paid token amount by her has been forfeited. She had refused to meet and notice was served upon her through whatsapp but she never turned up. Complainant was also contacted for his version and supporting documents but even he had refused to meet stating that he would submit his version and documents before the court. He was also served by notice through whatsapp but he also did not turned up. It is further mentioned in the report that Rajender Chopra the middle man of deal accepted the payment by the complainant against the deal for sale/purchase of the property in question. Even he informed that Lalita Kumari is registered owner of the property and there is dispute between Lalita Kumari and her in laws for the sale of the property in question.

I have heard Ld. Counsel for the complainant and perused the record.

It is settled law that u/s 156(3) Code of Criminal Procedure, a magistrate has power to direct the police to register a case and investigate the matter, but this power is to be exercised judiciously and not in a technical manner. In the matters where the complainant has in his possession all the evidence required to prove his allegations, there should be no need to pass an order U/s 156 Code of Criminal Procedure. The dispute is between two private parties arising mainly out of non-fulfilment of the terms of the agreement to sell an immovable property.

From the facts of the case, this court is of the opinion that assistance of investigation agency is not required in the present case for the collection of evidence. Moreover, the facts and circumstances are within the knowledge of the complainant. Also the identity of accused is already known to the complainant. He is also in possession of the impugned documents. Further, if in future any need arises for police assistance, same can be taken under section 202 Cr.P.C. Accordingly, the present application under section 156 (3) is dismissed.

However, this court takes cognizance of the complaint and complainant is called upon to bring pre-summoning evidence on 16/11/2020.

(Chander Mohan)

MM-04/Central:

Delhi/30.09.2020