

**Ramesh Bhateja Vs. State and ors**

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**Court :** Delhi

**Decided On :** Jan-13-2014

**Judge :** V.P.Vaish

**Appellant :** Ramesh Bhateja

**Respondent :** State and ors

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. No.147/2014  
Date of decision:

13. h January, 2014 RAMESH BHATEJA ..... Petitioner Through Mr. Rajeev Kapoor & Mr. Sarvpreet S. Chawla, Adv. versus STATE & ORS ..... Respondents Through Mr. M.P. Singh, APP for the State CORAM: HON'BLE MR. JUSTICE VED PRAKASH VAISH VED PRAKASH VAISH, J.

(ORAL) CrI.M.A. No.505/2014 The application is allowed, subject to filing of certified copies within four weeks. Application stands disposed of accordingly. CrI.M.C. No.147/2014 1. This is a petition under Section 482 of Code of Criminal Procedure, 1973 (for short Cr.P.C.) against the impugned order dated 2.12.2013 passed by learned Additional Sessions Judge, Delhi, whereby Criminal Revision filed by the petitioner against the dismissal of his application under Section 156(3) Cr.P.C. was dismissed by learned Metropolitan Magistrate, Delhi.

2. Learned counsel for the petitioner submits that petitioner is the proprietor of M/s Ghanshyam Plastic Works and having business relations with respondent Nos.2 & 3 for the last more than ten years. Respondent No.4 is father -in-law of respondent No.2 and elder brother of the petitioner. The petitioner and respondents No.2 & 3 were having business dealings and as per the statement of accounts maintained by the petitioner it shows credit balance and it shows different balances at relevant time and by the end of November, 2011, the debit balance comes out to be Rs.62,29,311/- in respect of material supplied to respondent No.2. The respondents did not pay the amount towards purchases and despite repeated requests have been delaying the same on one pretext or the other.

3. The respondents gave a cheque for Rs.15.00 lakhs and asked the petitioner to present the same in the first week of December, 2011 and assured him that the remaining outstanding amount will be cleared within a short span.

4. It is also submitted that the petitioner was forced by respondent No.3 to buy the property of respondent No.4 at inflated price and adjust the outstanding amount of Rs.62,29,311/- towards the balance outstanding. A meeting was held on 2.12.2011 and the respondent admitted their liabilities. Counsel for the petitioner also submits that the video recording is available on record and the trial court should have invoked the provisions of Section 156(3) Cr.P.C.

5. It is well settled that when the criminal complaint is filed before the Magistrate and upon perusal it is found to disclose uncongnizable offence having been committed, two courses are open to the Magistrate. He may chose to inquire into the complaint by taking cognizance in exercise of his powers under Section 190 Cr.P.C. and proceed to inquire into it in accordance with the procedure laid down in Sections 200 and 202 Cr.P.C. In the alternative, he may refer the complaint to police under Section 156(3) Cr.P.C. for investigation. In the later case, the Magistrate having given such direction would stay his hand till report under Section 173 Cr.P.C. is submitted by the police, on which further process of law would follow.

6. The law governing the choice to be exercised from amongst the two options has been settled by this Court in M/s. Skipper Beverages Pvt. Ltd. vs. State, 2001 IV

AD (Delhi). In the said case it was held that a magistrate must apply his mind before passing an order under Section 156(3) Cr.P.C. 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 the complainant or custodial interrogation appears to be necessary for some recovery of articles or discovery of facts.

7. The well settled guidelines are laid down by this Court in respect of invoking provisions of Section 156(3) Cr.P.C. in *Subhakaran Loharuka vs. State*, (170) 2010 DLT516 in para 52A, the guidelines have been summarized as under:

52A. (i) CrI.M.C. No.147/2014 For the guidance of subordinate courts, the procedure to be followed while dealing with an application under Section 156(3) of the Code is summarized as under: Whenever a Magistrate is called upon to pass orders under Section 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 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 Complainant. It should also be examined what action was taken by the SHO, or even by the senior officer of the Police, when approached by the Complainant CrI.M.C. No.147/2014 (ii) The Magistrate should then form his own opinion whether the facts mentioned in the complaint disclose commission of cognizable offences 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 along with a Complaint under Section 200 of the Code if the Magistrate decides not to take cognizance of the Complaint. However, in that case, the Magistrate, Page 4 of 5 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 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.

8. 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 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.

9. In the instant case, the parties are known to each other and the petitioner is in a position to adduce evidence. The petitioner has been directed to lead pre summoning evidence. I find no infirmity or illegality in the impugned order passed by learned Additional Sessions Judge, Delhi and M.M., Delhi. There is no ground to interfere in the present matter. Hence the present petition is dismissed in limine. (VED PRAKASH VAISH) JUDGE JANUARY13 2014/aj

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