ऋषभ कपूर
RISHABH KAPOOR
महानगर दण्डाधिकारी–03
Metropolitan Magistrate-03
केन्द्रीय जिला कमरा नं. 150
Central District, Room No. 150
तीस हजारी न्यायालय, दिल्ली
Tis Hazari Courts, Delhi

State Vs. Alzubair
e-FIR No. 3798/2017
PS: I.P. Estate

23.07.2020

Present: None for applicant despite intimation.
Sh. Vakil Ahmed Ld. APP for State (through VCC over Cisco Webex)

Matter is heard through VCC over CISCO Webex Application at 12:38 PM.

The present urgent application was filed on behalf of the applicant on email id of this court on 22.07.2020. Same is taken up for hearing through VCC in view of Circular No. 6797-6899/CMM/Central/DR/2020 dated 29.06.2020.

Counsel for applicant has not joined the hearing despite intimation.

Sh. Manoj Kumar (Assistant Ahlmad) informs that the link of present meeting has already been sent to counsel for applicant but due to some technical glitch at his end, counsel for applicant is unable to join the meeting.

*At request, put up for consideration on **24.07.2020 at 2:00 PM.***

Scanned copy of this order is being sent to Sh. Manoj Kumar (Assistant Ahlmad) through whatsapp/email for transmitting the same to the Ld. Counsel for applicant and for compliance.

Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.

(RISHABH KAPOOR)
MM-03 (Central), THC, Delhi
23.07.2020

ऋषभ कपूर
RISHABH KAPOOR
Central District कमरा नं. 150
Room No. 150
तीस हजारी न्यायालय, दिल्ली
Tis Hazari Courts, Delhi

Gunjan Arora Vs. Vikas Srivastava & Ors.
CC. NO. 2187/2019

23.07.2020

Present: None for Complainant despite intimation.

Case taken up for hearing through VCC over Cisco Webex at 1:08 PM.

Matter was fixed for orders on application u/s 156(3) Cr.PC. for today, vide enbloc dates given on account of Covid-19 pandemic.

File taken up for pronouncement of order in view of observations made by Hon'ble High Court of Delhi in case titled as Rishabh Jain Vs. High Court of Delhi W.P(C) No. 3026/2020 dated 01.05.2020 and Circular no. 8188-8348/DJ/Covid-19 Lockdown/pronouncements/2020 dt. 03.05.2020, issued by Ld. District & Sessions Judge, (HQ.), THC.
On 22.07.2020 the instructions were given to Sh. Atma Ram (Ahlmad) to contact counsel for complainant and coordinate for scheduling the hearing through VCC over Cisco Webex.

Today, Sh. Manoj Kumar (Assistant Ahlmad) informs that the link for meeting has already been sent counsel for complainant Sh. Amit Tayal and he has telephonically informed that he cannot join the hearing and the orders passed today, be intimated to him through email.

This order shall dispose of application u/s 156(3) Cr.P.C. moved by the complainant. The allegations levelled by complainant are that she came in contact with proposed accused no. 1 in year 2010 as she alongwith her brother had joined the institute of proposed accused no.1. Allegedly, the proposed accused no. 1 used to teach the complainant and thereby gained her trust. In year 2014, proposed accused no.1 approached complainant and requested her to become Director of his Institute, namely, Axis Tutorial Private Ltd. on the pretext that he was harassed by

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one Anuradha Rathi for making the payment of her money. Thereafter, on 17.10.2014, the complainant became the director of the company by making payment of Rs. 6 lacs to said Anuradha Rathi for her 25% shareholding in the company. The complainant thereafter, inquired about the financial affairs of the company and was informed that the company was going through financial crisis. The proposed accused no.1 was requested by the complainant for returning her money, but in vain. The uncle of complainant, thereafter, asked his C.A. to check stakes of complainant in said company and was informed that she was having only 10% shareholding in the company. It is alleged that the shares of the complainant were transferred illegally in favour of one Shefali Bareja who was unknown to complainant. The complainant then approached to police, but in vain.

With these allegations prayer is made for registration of case FIR u/s 406/420/468/471/120B IPC against proposed accused persons.

In ATR filed by the IO/SI Ranveer Singh, it has been stated that after inquiry, it was found that the matter involves financial business transaction and commission of no cognizable offence was found in the present case.

Prior to delving into the merits of the present application, let us briefly discussed the position of law pertaining to section 156(3) Cr.P.C.

In case titled as ***Skipper beverages Pvt. Ltd. Vs. State 2001 (92) DLT 217***, after taking the note of Judgment of Hon'ble Apex Court in ***Suresh Chand Jain Vs. State of M.P. 2001 (1) SC 129***, the Hon'ble High Court of Delhi dealt with this question. The relevant paragraphs of that Judgments are produced herein below-

Para 7 "it is true that Section 156(3) of the Code empowers a Magistrate to direct the police to register a case and initiate investigations but this power has to be exercised judiciously on proper ground and not in mechanical manner. In those cases, where the allegation are not very serious and complainant himself is in possession of evidence to prove his allegation their should be no need to pass order under Section 156(3) of the Code. The 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 allegation is such that the complainant himself may not be in a position to collect and produced evidence before the Court and the interest of justice demand that police should step in and

23/07/2020

help the complainant. The police assistance can be taken by a Magistrate u/s 202 (1) of the Code after taking cognizance and proceedings with the complaint under chapter XV of the Code as held by Hon'ble Apex Court in 2001 (1) SC 129 titled as ***Suresh Chand Jain Vs. State of M.P. & Ors.****"*

Para 10 "Section 156(3) of the Code aims at curtailing and controlling the arbitrariness on the part of police authorities in the matter of registration of FIRs and taking up investigations, even in those cases where the same is warranted. The section empower the Magistrate to issue directions in this regard but this provision should not be permitted to be misused by the complainants to get the police cases registered even in those cases which are not very serious in nature and the Magistrate can himself hold an inquiry under chapter XV and proceed against the accused, if required. Therefore, the Magistrate must apply his mind before passing an order under section 156(3) of the code 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 complainant or custodial interrogation appears to be necessary for some recovery of the article or discovery of fact".

In view of the authority discussed above, as it emerges that in the present case, the evidence is not beyond the control and reach of the complainant. Further, no scientific investigation is required to be conducted by the police nor the custodial interrogation of the proposed accused persons is necessitated. The material on record suggests that the complainant has not specifically alleged that the alleged transfer of her shareholding was either made by the proposed accused persons unlawfully nor their complicity as such is prima facie shown. Besides, as it surfaces that the alleged company of proposed accused no.1 in which the complainant was also having shareholding, is a Private Limited Company, therefore, its records are well within the reach of the complainant, so as to establish the commission of the offences alleged. In view of the above, there exists no ground to order the registration of the case FIR u/s 156(3) Cr.P.C. and accordingly the present application is dismissed.

However, taking the cognizance of the complaint filed u/s 200 Cr.P.C., the complaint is hereby given an opportunity to lead PSE.

23/07/2020.

Accordingly, list for PSE on ***28.09.2020.***

Scanned Copy of this order is being sent to Sh. Manoj Kumar (Assistant Ahlmad) through whatsapp/email for transmitting it to counsel for complainant, electronically and also for uploading on CIS.

Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.

(RISHABH KAPOOR)
MM-03 (Central), THC, Delhi
23.07.2020

ऋषभ कपूर
RISHABH KAPOOR
महानगर दण्डाधिकारी-03
Metropolitan Magistrate-03
केन्द्रीय जिला कमरा नं. 150
Central District, Room No. 150
तीस हजारी न्यायालय, दिल्ली
Tis Hazari Courts, Delhi

Mehtab Singh Vs. Brigd. Satender Singh Katoch
CC. NO. 13379/2018

23.07.2020

Present: Sh. Durgesh Rao Ld. Counsel for Complainant.

Case taken up for hearing through VCC over Cisco Webex at 1:18 PM.

Matter was fixed for orders on application u/s 156(3) Cr.PC. for today, vide enbloc dates given on account of Covid-19 pandemic.

File taken up for pronouncement of order in view of observations made by Hon'ble High Court of Delhi in case titled as Rishabh Jain Vs. High Court of Delhi W.P(C) No. 3026/2020 dated 01.05.2020 and Circular no. 8188-8348/DJ/Covid-19 Lockdown/pronouncements/2020 dt. 03.05.2020, issued by Ld. District & Sessions Judge, (HQ.), THC.
On 22.07.2020 the instructions were given to Sh. Atma Ram (Ahlmad) to contact counsel for complainant and coordinate for scheduling the hearing through VCC over Cisco Webex.

This order shall dispose of application u/s 156(3) Cr.P.C. moved by the complainant. The allegations levelled by complainant are that his wife Ms. Harvinder Kaur was admitted in Ganga Ram Hospital for her treatment on 09.12.2016 and remained in ICU for treatment of diabetes, kidney failure etc. with expenditure incurred to the tune of Rs.12,57,261/- till 09.01.2017, out of which complainant had paid Rs.5,45,000/- and was assured by the proposed accused no.1 that the remaining amount would be provided through the financial assistance from Hans Lok Ashram as well as the Prime Minister Relief Fund. Allegedly, on 11.01.2017, the complainant was informed that his wife had unfortunately died and proposed accused no.1 had refused to hand over her dead body to complainant's wife and had rather forced him to hand over a blank signed cheque bearing no. 564348

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drawn Indian Overseas Bank, Rajendra Place, to the proposed accused. Allegedly, on the basis of such cheque, the proposed accused has falsely implicated the complainant in a complaint u/s 138 NI Act. The complainant had also filed a complaint to SHO and Commissioner of Police on 02.02.2018, but in vain. With these allegations, prayer is made for registration of case FIR u/s 420/406/386/352/342/506 IPC, against proposed accused.

In ATR filed by the IO/ASI Prakash Veer, it has been stated that the complainant had handed over the cheque dt. 11.01.2017 to proposed accused in discharge of the remaining payment left on the treatment of his wife. It is also stated that the complainant had not reported the matter to police prior to the receipt of the legal notice dt. 11.04.2017 by him nor has made any PCR call. It is stated that commission of no cognizable offence was found in the present case.

Prior to delving into the merits of the present application, let us briefly discuss the position of law pertaining to section 156(3) Cr.P.C.

In case titled as ***Skipper beverages Pvt. Ltd. Vs. State 2001 (92) DLT 217***, after taking the note of Judgment of Hon'ble Apex Court in ***Suresh Chand Jain Vs. State of M.P. 2001 (1) SC 129***, the Hon'ble High Court of Delhi dealt with this question. The relevant paragraphs of that Judgments are produced herein below-

Para 7 "it is true that Section 156(3) of the Code empowers a Magistrate to direct the police to register a case and initiate investigations but this power has to be exercised judiciously on proper ground and not in mechanical manner. In those cases, where the allegation are not very serious and complainant himself is in possession of evidence to prove his allegation their should be no need to pass order under Section 156(3) of the Code. The 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 allegation is such that the complainant himself may not be in a position to collect and produced evidence before the Court and the interest of justice demand that police should step in and help the complainant. The police assistance can be taken by a Magistrate u/s 202 (1) of the Code after taking cognizance and proceedings with the complaint under chapter XV of the Code as held by Hon'ble Apex Court in 2001 (1) SC 129 titled as ***Suresh Chand Jain Vs. State of M.P. & Ors.***"

23/07/2020.

Para 10 "Section 156(3) of the Code aims at curtailing and controlling the arbitrariness on the part of police authorities in the matter of registration of FIRs and taking up investigations, even in those cases where the same is warranted. The section empower the Magistrate to issue directions in this regard but this provision should not be permitted to be misused by the complainants to get the police cases registered even in those cases which are not very serious in nature and the Magistrate can himself hold an inquiry under chapter XV and proceed against the accused, if required. Therefore, the Magistrate must apply his mind before passing an order under section 156(3) of the code 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 complainant or custodial interrogation appears to be necessary for some recovery of the article or discovery of fact".

In view of the authority discussed above, as it emerges that in the present case, the evidence is not beyond the control and reach of the complainant. Further, no scientific investigation is required to be conducted by the police nor the custodial interrogation of the proposed accused is necessitated. Further, it also prima facie emerges that the complainant had filed the first complaint to Commissioner of Police with copies to ACP, DCP, SHO etc. on 02.02.2018 whereas, the alleged occurrence pertains to 11.01.2017. There is no justification as to why the complainant has not immediately reported the matter to the police and waited for more than one year. Further, as per the status report filed by the IO as it surfaces that the complainant had already received a legal notice for complaint u/s 138 NI Act filed by the proposed accused, on 11.04.2017, therefore, it can infered that the complaint made by the complainant can be an afterthought. In view of the above, there exists no ground to order the registration of the case FIR u/s 156(3) Cr.P.C. and accordingly the present application is dismissed.

However, taking the cognizance of the complaint filed u/s 200 Cr.P.C., the complaint is hereby given an opportunity to lead PSE.

Accordingly, list for PSE on ***28.09.2020.***

Scanned Copy of this order is being sent to Sh. Manoj Kumar (Assistant Ahlmad) through whatsapp/email for transmitting it to counsel for complainant, electronically and also for uploading on CIS.

23/07/2020.

Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.

(RISHABH KAPOOR)
MM-03 (Central), THC, Delhi
23.07.2020

ऋषभ कपूर
RISHABH KAPOOR
महानगर दण्डाधिकारी–03
Metropolitan Magistrate-03
केन्द्रीय जिला कमरा नं. 150
Central District, Room No. 150
तीस हजारी न्यायालय, दिल्ली
Tis Hazari Courts, Delhi

Pankaj Jain Vs. Ankur Aggarwal

CC. NO. 14216/2018

23.07.2020

Present: Sh. Nikhil Borwankar Ld. Counsel for Complainant.

Case taken up for hearing through VCC over Cisco Webex at 1:28 PM.

Matter was fixed for orders on point of summoning for today, vide enbloc dates given on account of Covid-19 pandemic.

File taken up for pronouncement of order in view of observations made by Hon'ble High Court of Delhi in case titled as Rishabh Jain Vs. High Court of Delhi W.P(C) No. 3026/2020 dated 01.05.2020 and Circular no. 8188-8348/DJ/Covid-19 Lockdown/pronouncements/2020 dt. 03.05.2020, issued by Ld. District & Sessions Judge, (HQ.), THC.

On 22.07.2020 the instructions were given to Sh. Atma Ram (Ahlmad) to contact counsel for complainant and coordinate for scheduling the hearing through VCC over Cisco Webex.

This order shall decide the contentions of complainant on the point of summoning the proposed accused persons for commission of offences u/s S. 420/120B IPC. As per the allegations leveled by the complainant, the proposed accused no.1 and 2, who respectively, are the complainant's brother-in-law and his wife, have misrepresented the age of their son Arham Agarwal while procuring his admission in Springdales Public School, Pusa Road, New Delhi. Allegedly, the only son of the proposed accused persons was born on 2nd April, 2009 at Sir Ganga Ram Hospital,

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Delhi and his birth was registered with North Delhi, MCD. Further, in year 2011, proposed accused no. 1 and 2 got one alleged false and fake birth registered and a false birth certificate was issued by Allahabad Nagar Nigam, on the basis of false documents submitted by proposed accused persons, wherein the date of birth of the aforesaid child was shown as 27Th February, 2009. It is alleged that the proposed accused persons allegedly secured the admission of their son in Springdales Public School, Pusa Road, New Delhi by submitting the fake birth certificate procured from by Allahabad Nagar Nigam. It is further stated that the complainant came to know this fact from his wife Mrs. Parul Jain, who is the real sister of accused no.1 and on coming to know this crime, complainant allegedly sent a complaint letter dated 30.04.2018 to Principal of Springdales Public School, Pusa Road, New *Delhi (who was initially added as proposed accused no.3 but her name was deleted from the array of parties vide order dated 01.08.2018 passed by Sh. Abhilash Malhotra, Ld. MM*), but no action was taken. The complainant has also sent a complaint dated 01.05.2018 to Directorate of Education, Government of NCT of Delhi, complaint dated 16.06.2018 to SHO P.S. Rajinder Nagar and complaint dated 05.07.2018 to DCP Central, Delhi, but in vain. With these allegations, complaint seeks issuance of process against proposed accused persons for the offences u/s 420/120B IPC.

In his PSE, complainant examined three witnesses.

CW-1 Sh. Rajeev Sharma is the Accountant of Springdales Public School. This witness proved the summoned record of admission form bearing number 15483, registration form of Arham Agarwal, declaration given by Dr. Ankur Agrawal and Dr. Anchal Agarwal(who are parents of Arham Agarwal), certificate of date of birth of the child reflecting his date of birth as 27Th February, 2009 and affidavit given by parents of child, which are EX. CW-1/A to CW-1/F, respectively.

CW-2 Ms. Seema Bajaj is Sub Registrar, MCD Karol Bagh, who proved the record of attested copy of birth report information of child of Dr. Ankur Agarwal and Dr. Anchal Agarwal , which is EX. CW-2/A, reflecting his date of birth as 2nd April, 2009.

CW-3 Pankaj Jain is the complainant, who reiterated the allegations made in the complaint. This witness has also produced on record the copy of reply from NDMC in response to his RTI application, as EX. CW-3/A.

Now adverting ourselves to the merits of the contentions advanced by the complainant.

From the perusal of the record, it emerges that the complainant has moved the court alleging the commission of the offences of cheating and criminal conspiracy by the proposed accused persons, who are the brother and sister-in-law of his wife,

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namely Parul Jain. As per the complainant, in the year 2018, he was informed by his wife regarding the commission of alleged crime by the proposed accused persons. In this regard, it becomes pertinent to mention that vide Section 122 of Indian Evidence Act, since the communication was made between complainant and her wife during subsistence of marriage, hence, same becomes privileged and the complainant was not permitted to disclose the same without consent of his wife. (Reference drawn from ***M C Verghese v T.J. Ponnan and Anr., 1970 AIR 1876***). Therefore, in view of embargo contained in Section 122 of Indian Evidence Act, the complainant was not allowed to disclose the communication made to him by his wife, during subsistence of their marriage.

Further, from the perusal of the record, it also emerges that the complainant is having some matrimonial litigation with his wife. In this regard, it becomes pertinent to discuss about the *locus standi* of the complainant in prosecuting the present complaint.

The observations made by Hon'ble Madras High Court in recent case titled as ***Prisoners Right Forum v State of Tamilnadu, 2019 SCC ONLINE Mad 2476, decided on 22.07.2019,*** becomes pertinent to be discussed. Herein below are the observations made by the Hon'ble Madras High Court:

The court noted that the term 'Locus Standi' is commonly understood as right or capacity to bring an action or to appear in a court. The march of law, more particularly, by way of public interest litigations has now allowed anyone from the society not related to the cause of action to approach the court seeking justice for those who cannot or who could not approach themselves or in cases which involves public interest at large. However, it was held that such right cannot be extended in a criminal case to a third party who is not in any way related to the case.

It was further observed that "if this practice is permitted in a casual manner, a meddlesome bystander can easily decide to attack a person who has been held to be not guilty by a subordinate court by initiating frivolous proceeding and thereby cause irretrievable injury to the life and liberty of the accused persons."

In view of the authority discussed above, since it emerges that the complainant has no *locus standi* to prosecute the present complaint and also, the basis of his allegations is derived from the privileged communication, therefore, the present complaint is not maintainable and the same is accordingly dismissed.

Stands disposed off.

File be consigned to records after due compliance.

23/07/2020.

Scanned Copy of this order is being sent to Sh. Manoj Kumar (Assistant Ahlmad) through whatsapp/email for transmitting it to counsel for complainant, electronically and also for uploading on CIS.

Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.

(RISHABH KAPOOR)
MM-03 (Central), THC, Delhi
23.07.2020

Virender Mehta Vs. HDFC Bank
CC No. 12319/17

ऋषभ कपूर
RISHABH KAPOOR
महानगर दण्डाधिकारी–03
Metropolitan Magistrate-03
केन्द्रीय जिला कमरा नं. 150
Central District, Room No. 150
तीस हजारी न्यायालय, दिल्ली
Tis Hazari Courts, Delhi

23.07.2020

Present: Mr. Shahryar Khan Ld. Counsel for Complainant.

Case taken up for hearing through VCC over Cisco Webex at 1:39 PM.

Matter was fixed for orders on point of summoning for today, vide enbloc dates given on account of Covid-19 pandemic.

File taken up for pronouncement of order in view of observations made by Hon'ble High Court of Delhi in case titled as Rishabh Jain Vs. High Court of Delhi W.P(C) No. 3026/2020 dated 01.05.2020 and Circular no. 8188-8348/DJ/Covid-19 Lockdown/pronouncements/2020 dt. 03.05.2020, issued by Ld. District & Sessions Judge, (HQ.), THC.
On 22.07.2020 the instructions were given to Sh. Atma Ram (Ahlmad) to contact counsel for complainant and coordinate for scheduling the hearing through VCC over Cisco Webex.

This order shall decide the contentions of the complainant on the point of summoning the proposed accused persons for offences u/s 463/467/471/420/34 IPC.

The gist of the allegations levelled by the complainant is that the complainant was having a credit card issued by HDFC Bank in year 2003. In year 2008, due to financial difficulties, complainant could not pay the due amount and thereafter, he entered into final settlement of dues with the bank for amount of Rs.1,73,000/- and in pursuance thereto, Rs.20,000/- was paid by the complainant on 24.02.2010. However, bank refused to acknowledge the said payment and thereafter, another settlement was entered into between the complainant and bank on 15.11.2010. In view of such settlement, the amounts of Rs. 46,500/- and 1,13,000/- were paid on

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behalf of the complainant but the bank did not issue NOC and had informed of having withdrawn the settlement. The existence of such settlement was denied by the bank. The complainant then approached District Consumer Dispute Redrassal Forum-VII, New Delhi which accepted the claim of the complainant and allowed compensation of Rs.70,000/- to the complainant. Allegedly, the order of District Consumer Forum was assailed by proposed accused no.2 before Hon'ble State Commission wherein the copy of settlement dated 26.04.2010 purportedly, signed by the complainant, was filed. It is alleged that such settlement dated 26.04.2010 is a forged document, which is manipulated by the proposed accused persons as same was never executed by the complainant. With these allegations prayer is made for issuance of process against proposed accused persons for offences u/s 463/467/471/420/34 IPC.

In his PSE, complainant Virender Mehta was examined as CW-1 reiterating that his complaint was allowed by District Consumer Forum. The copy of such complaint is Ex.CW1/A. Further, the written statement of bank is Ex.CW1/B with supporting affidavit Ex.CW1/C, vide which the second settlement agreed in February, 2010 was denied by the bank. He deposed that the bank has preferred appeal Ex.CW1/D before the State Commission, claiming that settlement dt. 26.04.2010 Ex.CW1/E, has been entered into between the parties. He deposed that such settlement letter was never signed by him nor was made in his presence and same is a forged document produced by the bank in support of its illegal claim in the appeal filed before State Commission.

CW-2 Rajeev Kumar is the Dy. Manager, HDFC Bank, who deposed that the original settlement letter dt. 26.04.2010 is not available with the bank.

This is the entire PSE led by the complainant.

In the present case, the allegations of the complainant revolves around the fabrication of the alleged settlement letter dated 26.04.2010 filed by the accused in appeal before the Hon'ble State Commission. In this regard, it becomes imperative to mention provisions of section 195 (1)(b)(ii) of Cr.P.C. which provides that the cognizance for the offences u/s 463/471/475/476 IPC cannot be taken when such offences are alleged to have been committed in respect of document produced or given in evidence in proceeding in any Court, except on the complaint in writing of

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that Court or by such officer of the Court as the Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate.

In the present case, as it has been alleged that the allegedly forged settlement letter dated 26.04.2010 was submitted by the proposed accused persons before the Hon'ble State Commission in the appeal filed against the order of District Consumer Forum, therefore, the cognizance of the offences alleged can only be taken upon the complaint made by the State Commission or the Authority superior thereto, due to bar contained in Section 195(1)(b)(ii) Cr.P.C. If that be so, the present complaint appears to be not maintainable due to combined operation of section 195(1)(b)(ii) and section 340 Cr.P.C. Accordingly, same deserves dismissal.

Therefore, present complaint is dismissed.

File be consigned to record room.

Scanned Copy of this order is being sent to Sh. Manoj Kumar (Assistant Ahlmad) through whatsapp/email for transmitting it to counsel for complainant, electronically and also for uploading on CIS.

Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.

(RISHABH KAPOOR)
MM-03 (Central), THC, Delhi
23.07.2020

Gurubhajan Singh Vs. State & Ors.
CC No. 538052/16

ऋषभ कपूर
RISHABH KAPOOR
महानगर दण्डाधिकारी–03
Metropolitan Magistrate-03
केन्द्रीय जिला कमरा नं. 150
Central District, Room No. 150
तीस हजारी न्यायालय, दिल्ली
Tis Hazari Courts, Delhi

23.07.2020

Present: Sh. Manmeet Singh Arora Ld. Counsel for Complainant.

Case taken up for hearing through VCC over Cisco Webex at 2:00 PM.

Matter was fixed for orders on point of summoning for today, vide enbloc dates given on account of Covid-19 pandemic.

File taken up for pronouncement of order in view of observations made by Hon'ble High Court of Delhi in case titled as Rishabh Jain Vs. High Court of Delhi W.P(C) No. 3026/2020 dated 01.05.2020 and Circular no. 8188-8348/DJ/Covid-19 Lockdown/pronouncements/2020 dt. 03.05.2020, issued by Ld. District & Sessions Judge, (HQ.), THC.

On 22.07.2020 the instructions were given to Sh. Atma Ram (Ahlmad) to contact counsel for complainant and coordinate for scheduling the hearing through VCC over Cisco Webex.

This order shall decide the contentions of the complainant on point of summoning the proposed accused persons.

The allegations leveled by the complainant are to the extent that the proposed accused no.3 came in contact with the complainant through a common friend. Allegedly, both proposed accused no.2 and 3, represented themselves to be businessmen of well repute, involved in construction activities. It is further alleged that with the passage of time, accused persons became friends with the complainants and their family members. The proposed accused no.2 and 3 claimed to have purchased property no. E-1 Road No.9, DLF Phase-1, Gurgaon and a view to cheat the complainants, proposed accused no.2 handed over the draft of attorney, purportedly executed by proposed accused no.3. Allegedly, both the proposed accused persons duped the complainants to part with a sum of money as investment in the projects run by

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proposed accused no.2 and 3, with the assurance of return of at least 24% per annum. It is further alleged that the investment was made by the complainant no.2 through bank transfers from time to time. It is further alleged that proposed accused no.3 had issued cheque amounting Rs. 4,30,000/- in favour of complainant no.2 in discharge of the admitted liability, however, same was dishonored on presentation. Further, both proposed accused persons also induced complainant no.3 and his mother to invest a sum of Rs.7 lacs in their construction business with an undertaking of assured returned of 2% per annum. Upon negotiation, proposed accused no.2 and 3 agreed to pay a sum of Rs. 8.15 lacs on the investment of Rs.7 lacs, to complainant no.3 and issued cheque amounting Rs.3,50,000/- towards discharge of the liability, which also got dishonored. Further, complainant no.1 also, made certain investment through cash and bank transfers, from time to time and towards discharge of the liability, proposed accused no.3 had issued cheque amounting Rs.9,14,000/- on 25.12.2015. Upon assurance of regular return by proposed accused persons, certain investments amounting Rs.1,15,000/- were also made by the complainant. It is alleged that the cheques issued by the proposed accused persons were dishonored. It is further alleged that a legal demand notice u/s 138 NI Act sent by complainants, was also received back with report "left without address". It is alleged that the proposed accused persons with their malafide misrepresentation have made the complainants to part with their money. With these averments prayer is made for issuance of process against proposed accused persons for offences u/s 420/34 IPC.

In their PSE, all the complainants were examined as CWs.

CW-1 Gurubhajan Singh is the complainant no.1, who deposed that both accused no.2 and 3 with there oily tongue and sleek mannerism prevailed upon him and upon there assurances, Principal amount of Rs.8.5 lacs was invested by him through cash as well as cheque. He deposed that accused no.3 has issued cheque amounting to Rs.9.14 lacs dated 25.12.2015 in discharge of the amount given by him but same was dishonored. The complaint u/s 138 NI Act against accused no.3 is stated to be pending adjudication.

CW-2 Jaspal Singh deposed that on the assurance of accused persons, he invested a sum of Rs.3.6 lacs, with an undertaking from them with regard to assured return of 24% per annum. He deposed that accused no.3 had issued cheque amounting Rs.4.30 lacs dated 25.11.2015 in discharge of liability of amount paid by him, but said cheque was dishonored and complaint u/s 138 NI Act was filed by him.

CW-3 Harmeet Singh deposed that on the assurance of accused persons he invested a

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sum of Rs.7 lacs, with an undertaking from them with regard to assured return of 24% per annum. He deposed that accused no.3 had issued cheque amounting Rs.3.50 lacs dated 16.11.2015 in discharge of liability of amount paid by him, but said cheque was dishonored and complaint u/s 138 NI Act was filed by him.

CW-4 Devender Ahluwalia deposed that on the assurance of accused persons he invested a sum of Rs.1.5 lacs, with an undertaking from them with regard to assured return of 24% per annum. He deposed that accused no.3 had issued cheques amounting Rs.80,000/- and Rs.1 lac respectively dated 28.10.2015 and 30.10.2015 in discharge of liability of amount paid by him, but said cheques were dishonored and complaint u/s 138 NI Act was filed by him.

This is the entire PSE lead by the complainants.

The entire case of the complainants revolves around the commission of offence of cheating by the proposed accused no.2 and 3. More particularly, it is the case of complainants that the proposed accused persons with their sleek mannerism represented themselves to be the persons engaged in construction business and assured lucrative returns to the complainants.

So far as the allegations leveled by the complainant with respect to offence of cheating are concerned, it is well evident from combined reading of sections 415 and 420 IPC that one of the essential ingredient of Section 420 IPC is *mens rea* of the accused at the time of making the inducement. It is well settled position in law that in order to attract the provisions of section 420 IPC, the guilty intent at the time of making the promise is a pre-requisite and an essential ingredient thereto, and subsequent failure to fulfill the promise by itself would not attract provisions of section 420 IPC . In ***Dalip Kaur & Ors Vs. Jagnar Singh & Anr. (2009) 14 SCC 696***, *it was held that an offence of cheating would be constituted only when the accused has the fraudulent or dishonest intention at the time of making of promise or representation. A pure and simple breach of contract does not constitute offence of cheating.*

In the present case, more specifically in paragraph no.5 of the complaint, the complainants have stated that they had becomes friends with the accused persons and were having the frequent social trips, gatherings and vacations with them. It is further stated that in return of the liability of the amounts invested by the complainant, the proposed accused persons had issued the disputed cheques in their favour, which were subsequently dishonored. Such facts were also deposed by the complainants in their PSE. If that be so, from such facts it clearly infers that the alleged transaction between

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the complainants and proposed accused persons was a transaction which took place on account of previous friendly relationship between them. Further, in pursuance of their promises, the proposed accused persons had admittedly issued the disputed cheques in favour of the complainants. It was incumbent on the part of complainant to establish that there existed a dishonest intention on the part of proposed accused persons at the time when the transaction of alleged investments by the complainants, was entered into. Merely, stating that the proposed accused persons prevailed upon complainant with their sleek mannerism or lucrative lifestyle is not sufficient to establish existence of such dishonest intention on the part of proposed accused persons at the very inception of the transaction. If that be so, the present case clearly lacks existence of dishonest intention on the part of the proposed accused persons to deceive/induce the complainant, since very inception. The existence of dishonest intention of accused at inception, constitutes a vital ingredient of offence u/s 420 IPC, but same has not been *prima facie* established by the complainant, hence no ground exists for issuance of process for offence u/s 420 IPC.

In view of the discussion made above, since complainant has failed to establish a *prima facie* case against the accused for the commission of alleged offences by them, therefore, the present complaint deserves dismissal u/s 203 Cr.P.C. Accordingly, the present complaint along with pending application, if any, stands dismissed.

File be consigned to record room after due compliance.

Scanned Copy of this order is being sent to Sh. Manoj Kumar (Assistant Ahlmad) through whatsapp/email for transmitting it to counsel for complainant, electronically and also for uploading on CIS.

Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.

(RISHABH KAPOOR)
MM-03 (Central), THC, Delhi
23.07.2020

State Vs. Unknown (through applicant Jatinder Kumar Dudani).

FIR No. 137/2020

PS Rajender Nagar

ऋषभ कपूर
RISHABH KAPOOR
महानगर दण्डाधिकारी–03
Metropolitan Magistrate-03
केन्द्रीय जिला कमरा नं. 150
Central District, Room No. 150
तीस हजारी न्यायालय, दिल्ली
Tis Hazari Courts, Delhi

23.07.2020

Present: None

Matter is taken up again at 3:33 PM.

At this stage, it has been noted by undersigned that in the order sheet of even date passed in application qua release of gold bangles in question, at page no.2 in second para third line thereof, inadvertently, mobile phone has been mentioned instead of gold bangles in question.

In view of the above, as the error aforesaid appears to have arisen due to typographical mistake, therefore same is hereby corrected. Accordingly, at page no.2 in second para third line of order of even date passed in superdari application , the words "Honor-20I Mid Night Black mobile phone" are **deleted** and are substituted with words *"four gold bangles".*

This order sheet be tagged with concerned application for record.

Scanned copy of this order is being sent to Sh. Manoj Kumar (Assistant Ahlmad) through whatsapp/email for transmitting the same to the applicant and IO/SHO concerned, for information and compliance.

Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.

(RISHABH KAPOOR)
MM-03 (Central), THC, Delhi
23.07.2020

ऋषभ कपूर
RISHABH KAPOOR
महानगर दण्डाधिकारी
Metropolitan Magistrate-03
केन्द्रीय जिला कमरा नं. 150
Central District, Room No. 150
तीस हजारी न्यायालय, दिल्ली
Tis Hazari Courts, Delhi

Aman Sharma Vs. State
e-FIR No. 014208/2020
PS: I.P. Estate

23.07.2020

Present: None for applicant despite intimation.
Sh. Vakil Ahmed Ld. APP for State (through VCC over Cisco Webex)
IO/ HC Sushil Kumar (through VCC over Cisco Webex)

Matter is heard through VCC over CISCO Webex Application at 11:52 AM.

The present urgent application was filed on behalf of the applicant on email id of this court on 22.07.2020. Same is taken up for hearing through VCC in view of Circular No. 6797-6899/CMM/Central/DR/2020 dated 29.06.2020.

Counsel for applicant has not joined the hearing despite intimation. Sh. Manoj Kumar (Assistant Ahlmad) informs that the link of present meeting has already been sent to counsel for applicant through email.

Scanned copy of reply of under the signatures of IO/HC Sushil Kumar is received through email id of the court. Copy already stands supplied to counsel for applicant, electronically.

This order shall dispose off the application for release of vehicle no. ***DL-6SN-3905*** on Superdari, moved on behalf of ***applicant Aman Sharma***.

In furtherance of directions issued through email dated 22.07.2020, Scanned copy of status report has been sent by IO/HC Sushil Kumar, through the email id of the court, wherein it has been stated that he has verified the factum of ownership of the vehicle bearing no.DL-6SN-3905 and same is registered in the name of applicant Aman Sharma. Further, in the status report as received from the IO, he has raised no objection if the vehicle aforesaid is released on superdari

Scanned copies of R/C and insurance of vehicle in question are also sent with application and same are perused. For the purposes of identity applicant has sent scanned copy of his Aadhar card along with the application.

On perusal of the report of IO along with the copies of documents appended with application, as applicant Aman Sharma *prima facie* appears to be entitled for the custody of the vehicle in question, accordingly his prayer for release of same deserves to be accepted.

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In these circumstances and as per directions of ***Hon'ble High Court of Delhi*** in matter of ***"Manjit Singh Vs. State"*** in Crl. M.C. No.4485/2013 dated 10.09.2014, the aforesaid vehicle be released to the applicant / registered owner subject to the following conditions:-

1. Vehicle in question be released to its registered owner only subject to furnishing of indemnity bonds as per the value of vehicle, to the satisfaction of the concerned SHO/ IO subject to verification of documents.

2. IO shall prepare detailed panchnama mentioning the colour, Engine number, Chasis number, ownership and other necessary details of the vehicle.

3. IO shall take the colour photographs of the vehicle from different angles and also of the engine number and the chasis number of the vehicle.

4. The photographs should be attested and counter signed by the complainant/applicant and accused.

5. IO is directed to verify the insurance of the vehicle in question and release the vehicle after getting it insured by the applicant if the same is not already insured.

Scanned copy of this order is being sent to Sh. Manoj Kumar (Assistant Ahlmad) through whatsapp/email for transmitting the same to the Ld. Counsel for applicant and also to the IO/SHO concerned, for compliance.

Scanned copy of the order be also sent to Computer Branch for uploading on Delhi District Court Website.

(RISHABH KAPOOR)
MM-03 (Central), THC, Delhi
23.07.2020