Arun Saxena & Anr Vs Today Homes & Infrastructure P. Ltd. & Ors

Court: Delhi High Court

Date of Decision: Aug. 23, 2018

Acts Referred: Constitution of India, 11950 â€" Article 12, 226, 227
Code of Criminal Procedure, 1973 â€" Section 36, 154, 154(3), 155, 156(3), 157, 190(1), 200, 219(1), 397(1), 397(3), 399, 482
Indian Penal Code, 1860 â€" Section 120B, 406, 420, 468, 471
Indian Evidence Act, 1872 â€" Section 91, 92

Hon'ble Judges: VIPIN SANGHI, J

Bench: Single Bench

Final Decision: Allowed

Judgement

,,,,

VIPIN SANGHI, J",,,,

1. The aforesaid writ petitions have been preferred by the aforesaid petitioners under Article 226 of the Constitution of India read with Section 482 of,,,,

the Code of Criminal Procedure, 1973 (Cr PC) to assail: (i) the common order dated 06.11.2012 passed by the learned MM-05, Patiala House Courts,",,,,

New Delhi in CC Nos.218/1/2012 to 223/1/2012 and CC No.64/1/2012 on similar applications moved by the petitioners under Section 156 (3) Cr PC,",,,,

whereby their said applications were rejected and the petitioners/ complainants were granted opportunity to lead pre-summoning evidence to show that,,,,

there is ground to proceed against the accused, and; (ii) the order dated 01.08.2013 passed by the learned ASJ-01, Patiala House Courts, New Delhi",,,,

in the criminal revisions preferred by the petitioners to assail the aforesaid common order dated 06.11.2012. All the criminal revisions - being Crl Rev,,,,

Nos.23/2013, 10/2013, 8/2013, 24/2013, 11/2013, 80/2013 and 9/2013 were dismissed by the said impugned common order dated 01.08.2013.",,,,

2. The petitioners had preferred their respective applications under Section 156 (3) Cr PC with substantially the same following allegations:,,,,

(i) ThatÃ, theÃ, accusedÃ, no.1Ã, company,Ã, namely,Ã, TodayÃ, HomesÃ, & Infrastructure Pvt. Ltd. (THIPL) in furtherance of their business",,,,

started building a Mall in North Delhi named as Ã¢â‚¬Å“North Gate MallÃ¢â‚¬â€;,,,,

(ii) That respondent nos.2 and 3, Sh. V.K. Ghambir, Chairman cum M.D. of accused no.1 company and Sh. Arun Nayyar, Director of accused no.1",,,,

company assured them that the Mall being built by them would be state-of-the-art and that they had obtained all mandatory permissions/ clearances to,,,,

construct the Mall, which would be constructed strictly in conformity with the sanction plan;",,,,

(iii) That all of them were lured and induced by deliberate, intentional and wrongful inducements made by accused nos.1 to 3;",,,,

(iv) That they made knowingly false inducement/ representations that the investors in the said project shall be given an assured monthly income, which",,,,

would be guaranteed for at least a period of three years from the date of the fit out period;,,,,

(v) That the accused represented that they would lease out the areas in the Mall to reputed and established entities, who would pay the rentals to the",,,,

owners/ investors;,,,,

(vi) That they also assured that till the time the possession of the shops/ areas bought by the investors are not given on lease to reputed brands,",,,,

accused no.1 would pay the agreed monthly rent to the investors after deducting TDS;,,,,

(vii) That based on the said inducement and assurances, the petitioners had invested their hard earned savings and entered into their individual",,,,

agreements-to-sell with the accused no.1 company;,,,,

(viii) That the agreements-to-sell entered into between the complainants and the accused provided that the rent would be exclusive of water,",,,,

electricity and maintenance charges, which were payable by the lessees/ brand owners who would take the portions of the constructed Mall of the",,,,

complainants on lease;,,,,

(ix) That the accused also showed to the complainants various Letters of Intent (LOIs) and Memorandum of Understanding (MOUs) entered into by,,,,

the accused in this regard, which showed that they had entered into agreements with famous brands qua the units/ shops/ areas agreed to be",,,,

purchased by the complainants;,,,,

(x) That the Mall was to be completed latest by 01.07.2007 as per the agreement. However, the accused were not able to hand over the Mall/ units in",,,,

the Mall to the promised lessees/ brand owners, and accused nos.1 to 3 deliberately and intentionally made unauthorized illegal construction in the",,,,

Mall;,,,,

(xi) That they made extensions/ deviations in the Mall without any authority/ permission/ sanction, and had also sold illegal areas to the naÃƒÂ¨ve",,,,

customers like the complainants;,,,,

(xii) That the accused failed to pay the promised and assured monthly return on the shops/ areas booked by the complainants despite repeated,,,,

requests and assurances given to them;,,,,

(xiii) That the accused had neither let out their shops to the lessees/ brand owners as promised, nor did the accused nos.1 to 3 hand over possession of",,,,

the shops of the complainants to them, nor the said accused paid the promised and assured monthly returns/ rents on the shops of the complainants.",,,,

3. The complainants set out, from their respective agreements, the obligation undertaken by the accused no.1 company to lease out their respective",,,,

portions to named reputed brands on handsome monthly rent Ã¢â‚¬Å“as per the terms and conditions as already been settled by the intending seller with,,,,

the intending lesseeÃ¢â‚¬. There were slight variations in the agreements entered into by each of the complainants with the respondent no.1 company in,,,,

relation to the dates of commencement of the lease; the names of the leading brand owners/ lessees, and; the rate of rent payable by the said leading",,,,

and popular brand owners/ lessees. Otherwise, the clauses in the agreements were identical. For instance, in the agreement entered into with the",,,,

petitioners Arun Saxena and D.K. Saxena Ã¢â‚¬" the petitioners in W.P.(Crl.) No.1645/2013, the agreement to sell, inter alia, provided:",,,,

Ã¢â‚¬Å“The intending seller shall be liable to pay the rental for the said premises till the expiry of any rent free and fit out period of 1st July, 2007 or",,,,

whichever is later. In case rent starts before the above mentioned date intending purchaser shall have no right for the same till the mentioned date, this",,,,

rent shall go to the account of intending seller after which the rent shall go to the intending purchaser.,,,,

Further the intending seller agrees to facilitate the letter of attornment on or before the expiry of the fit out period as mentioned aboveÃ¢â‚¬â€‹.,,,,

4. In respect of the present writ petitioners, the names of the proposed lessees; the rate of monthly rent that the proposed lessees had purportedly",,,,

agreed to pay, and; the date of start of the payment of monthly rent by each of the named reputed tenants was as follows:",,,,

Sl. W.P.(Crl.) Petitioner Proposed Rent Free,,,,

No. No. Lessees & Fit Out,,,,

Period,,,,

,,,,

1.,1645/2013,"Arun Saxena &

Anr.","PJL Clothing

(India) Ltd.","Rs.135/- per

sq. ft.

01.07.2007

2.,1660/2013,"Harbans Lal

Sarin","Pret StudyÃ, Ã, by

Janak Fashions","Rs.205/- per

sq. ft.

01.11.2007

3.,1664/2013,Rakesh Nanda,"No brand

mentioned","Rs.195/- per

sq. ft.

Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã,,,,,01.07.2008

4.,1679/2013,"UmeshÃ, Ã, Bhatia

& Anr.","No brand

mentioned","Rs.165/- per

sq. ft.

01.06.2008

5.,1666/2013,Hari Om Gupta,"M/s Adidas India

Marketing Pvt.

Ltd.","Rs.165/- per

sq. ft.

01.07.2007

6.,1678/2013,"RaviÃ, GulatiÃ, &

Anr.","M/s. Indus

LeagueÃ, Clothing

Pvt. Ltd.","Rs.135/- per

sq. ft.

01.07.2007

The accused nos.5 & 6 are the Directors of the accused no.4 and which Directors of the accused no.4 are none but the employees of accused no.1,,,,

and thus the accused no.1 to this connived and conspired to dupe the legal and bona fide entitlements of the complainants. The aforesaid was done by,,,,

the aforesaid persons in connivance and conspiracy with each other when the accused knew that neither the accused no.4 was doing in business nor,,,,

the accused no.4 was capable of doing any business. The accused no.4 was illegally and wrongfully created by the accused no.1 to 3 and 5 to 6 so,,,,

that naÃƒÂ¯ve and innocent people like the complainants could be duped and the aforesaid accuseds can wriggle out of the contractual obligations,,,,

towards the complainants. The aforesaid was done with a pre planned criminal objective to cheat i.e. to wrongfully gain at the expense of the innocent,,,,

investors like the complainants. The aforesaid accuseds also while illegally and wrongfully cheating the accused under the apparent and evident acts,,,,

of criminal breach of trust as the transfer was bestowed upon the accused by criminal acts of the aforesaid persons. The criminal acts committed by,,,,

the accused in connivance and conspiracy with each other committed the aforesaid criminal offences of criminal breach of trust, cheating, also",,,,

committed offences of fraud and forgery upon the complainants. It is pertinent to state that the criminal acts of fraud and forgery were committed by,,,,

the complainants as the accused no.4 was created only with the mala fide and criminal intentions to make sure that the liability of the accused no.1,,,,

becomes null to pay the legal and bona fide dues of the complainants along with the accused no.4.,,,,

17. That the accused further committed acts of criminal breach of trust, cheating, fraud and forgery as the accused no.4 paid to most of the investors",,,,

for a period in 2009 when the documents as have now been provided by the accused to the most of the complainants show that in April, 2009 itself.",,,,

The accused had entered into a lease agreement with inter alia other companies and while doing so had categorically stated in the lease deed that the,,,,

accused no.1 to 5 had consent with the complainants to such consent was not given by the complainants to the accused to enter into the lease deed,,,,

with respect to their portions and that too when the accused no.4 was paying rent to the complainants and in March, 2011 had informed the",,,,

complainants that they had already vacated the entire Mall and that in case the possession is not physically taken by the complainants of their,,,,

respective portions, it shall be assumed/ deemed possession have been handed over by the accused no.4 to the various complainantsÃ¢â‚¬â€.",,,,

10. Since the complaints made by the complainants to the police at PS Barakhamba Road, New Delhi were not actioned and no FIR was registered",,,,

despite disclosure of the commission of cognizable offences including under Section 406/ 420/ 468/ 471 IPC read with section 120B IPC, they",,,,

preferred the aforesaid applications under Section 156(3) Cr.P.C.,,,,

11. The learned Magistrate called for the Action Taken Report (ATR). The ATR filed by the police in respect of the complaint of Arun Saxena and,,,,

D.K. Saxena, inter alia, stated that inquiry had been conducted on the complaint of the said complainants with the officials of the accused company.",,,,

They stated that MOU/ LOI was executed between PJL Clothing India Ltd. and the accused no.1 company prior to the complainants approaching the,,,,

accused company to buy the shop admeasuring approximately 1167 sq. ft., but the proposed lessee did not fulfill the agreement and hence the accused",,,,

no.1 company paid the rental to the complainants. Thereafter, the shops were leased out to M/s Sea Shore Properties Pvt. Ltd.- respondent no.4. In",,,,

terms of clause (v) of the agreement to sell executed between the accused no.1 company and the complainants, the complainant had given their",,,,

consent and accepted the cheque towards rent from M/s Sea Shore Properties Pvt. Ltd. M/s Sea Shore Properties Pvt. Ltd. is entirely a different,,,,

company from the accused no.1 company and it gave rent for five month to the complainants. If M/s Sea Shore Properties Pvt. Ltd. vacated the shop,,,,

of the complainant, that was a dispute between the complainant and M/s Sea Shore Properties Pvt. Ltd. The ATR concluded that the dispute raised",,,,

by the complainant was of purely a civil nature. The ATR stated that no cognizable offence was made out as the complainants have filed a civil suit in,,,,

the Delhi High Court, and the matter is already subjudice.",,,,

12. The learned Magistrate, as aforesaid, dismissed the said applications under Section 156(3) Cr PC by a common order dated 06.11.2012. In the",,,,

impugned order, the learned Magistrate takes note of the fact that a legal notice was issued to the respondent, which was duly replied by the said",,,,

respondent in CC NO 64/1/2012. The respondent denied that they had made any promise to get a reputed brand as lessee, and had stated that the",,,,

shops are ready for possession after all legal compliances. In other cases, the replies of the respondents stated that the construction of the Mall is",,,,

complete and the respondents have all the required permissions from the various departments to operate the Mall. The respondent further stated that,,,,

various fit out are also going on in the Mall, and the complainants may start running the shops.",,,,

13. The learned Magistrate in the impugned order, inter alia, observed:",,,,

Ã¢â‚¬Å“Ã¢â‚¬Â¦ Ã¢â‚¬Â¦ In my view the foundation on which the complainant alleges the offence of cheating and other offences are false is based on the clause,,,,

3(V) of the Agreement to Sell between the parties which reads as Ã¢â‚¬Å“It is agreed between the parties that the intending Seller shall have unrestricted,,,,

rights to lease out the said premises to any reputed brand in the market at the market prevailing rates. However the intending purchaser is also free to,,,,

lease out the said premises subject to the written approval of the intending sellerÃ¢â‚¬â€‹.,,,,

This clause nowhere states that the accused company has made a promise to get a reputed brand as lessee. It only says that it will be the discretion of,,,,

the accused company to bring a reputed brand as lessee and the complainant can not make choice as to which reputed brand it would like to have as,,,,

lessee. The complainant was also given a choice by the accused company to get its own lessee. Other than this clause I do not find even a whisper,,,,

that any promise was made that the said accused company would bring a reputed brand as lessee. It is pertinent to note that allegations are made,,,,

regarding the role played by directors/ employee of M/s Sea Shore Pvt. Ltd. to show that there was conspiracy between the said accused company,,,,

and M/s Sea Shore Pvt. Ltd. but making of promise with dishonest intent on part of the accused company M/s Today Homes & Infrastructure Pvt.,,,,

Ltd. is not seen in the file which hurdle must be crossed before looking at the allegations regarding M/s Sea Shore Pvt. Ltd. Ã¢â‚¬Â¦ Ã¢â‚¬Â¦Ã¢â‚¬. (emphasis,,,,

supplied),,,,

14. The learned Magistrate also referred to Section 91 and 92 of the Evidence Act and observed that the parties could not be allowed to give proof of,,,,

the terms of any contract, grant or other disposition of the property except the documents itself, or secondary evidence of its contents; if admissible, as",,,,

per law. The learned Magistrate observed that the fact that security rent was not paid, or that the possession of the shop was not given on time, is",,,,

merely a breach of contract and that no promise had been made by the accused company to find a reputed brand as lessee. Reliance was placed on,,,,

the decision in Dalip Kaur & Ors. v. Jagnar Singh & Anr., (2009) 14 SCC 696, wherein the Supreme Court observed that an offence of cheating",,,,

would be constituted when the accused has fraudulent or with dishonest intention at the time of making promise or representation. A pure and simple,,,,

breach of contract does not constitute an offence of cheating. He also was of the view that all the evidences is within the reach of the complainant as,,,,

it can be established from the ROC record as to what is the status of M/s Sea Shore Pvt. Ltd. Reliance was also placed on M/s Skipper Beverages,,,,

Pvt. Ltd. v. State, 2001 IV AD (Delhi), wherein the Court held that whether the allegations are not very serious and the complainant himself is in",,,,

possession of evidence to prove his allegations, there should be no need to pass orders under Section 156(3) of the Code. This discretion ought to be",,,,

exercised after appropriate 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 in the interest of justice demand of the,,,,

police should step in to help the complainant, who the registration of the case be directed. Gulab Chand Upadhayay v. State of U.P., 2002 Crl LJ",,,,

2907. He also place reliance on V.P. Sharma (Dr.) v. State (NCT of Delhi) & Ors., 2009 X AD (Delhi) 701, wherein the Court found that the",,,,

allegations, prima facie reveal a civil dispute.",,,,

15. The learned ASJ, in the impugned order, inter alia, observed:",,,,

Ã¢â‚¬Å“15. Coming to the instant case although the finding of the Ld. Trial Court that case is primarily of a civil nature must be considered to be a,,,,

tentative one and not yet conclusive, apparently no other reason has been advanced for dismissing the relief u/s 156(3) of the Code. Anyhow, such",,,,

reasons can be culled out and it appears that by and large all the evidence including documentary in nature are in the possession and control of the,,,,

petitioners/complainants. The petitioners/complainants have come to the court belatedly seeking redressal under the criminal law as admittedly the,,,,

possession of the shop had not been handed over by 1st July 2007 contrary to the agreement and accused no. 4 company stopped paying rent w.e.f,,,,

April 2009. The complaint u/s 156 (3) of Cr.P.C. at this stage does not disclose any ground of urgency that would require the assistance of the,,,,

investigating agency. The petitioners/complainants can very well summon appropriate witnesses in their pre summoning evidence to show that,,,,

accused no.4 was a fictitious company which never run its operation by calling relevant record from Registrar of Companies and other government,,,,

authorities.,,,,

16. It is needless to point out that after recording evidence, the Magistrate, if he deems fit, may exercise his powers u/s 202 Cr.P.C. and take the",,,,

assistance of the police or other investigating agency, as may be required, for collection of vital evidence. To my mind, it does not lie in the mouth of",,,,

the petitioners / complainants to insist that the Magistrate was bound to pass an order u/s 156 (3) of Cr. P.C, particularly in the circumstances",,,,

surrounding the instant case where the petitioners / complainants have approached the Court belatedly and no allegations are made that the,,,,

respondents are likely to destroy or temper with the evidence. Reference in this connection can also be had to the Full Bench decision in the case of,,,,

Panchabhai Popotbhai v. State of Maharashtra, 2010 Crl. L. J, 2727Ã¢â‚¬â€‹. (emphasis supplied)",,,,

16. When the petitioners preferred the present petition, notice was issued to respondent Nos. 1 to 6 initially vide order dated 04.10.2013. They",,,,

impleaded Sea Shore Pvt. Ltd as respondent No.4. All except respondent No.4 were served as noticed in the order dated 27.11.2013. Fresh notice,,,,

was directed to be issued to respondent No.4 by Regd.AD post and courier returnable on 18.02.2014. The order shows that respondent No.4 could,,,,

not be served. The order dated 21.07.2014 shows that the premises at which the respondent No.4 company was located, was found locked and no one",,,,

could provide information about the said company. Even inquiries made by the local police officials of PS Parnashree, Kolkata from the local residents",,,,

and shopkeepers did not yield any information about the said company. Subsequently, the petitionerÃ¢â‚¬â„¢s corrected the name of respondent No.4. That",,,,

correction was allowed by the Court vide order dated 31.08.2015. The amended memo of parties was taken on record.,,,,

17. The hearing of the present petitions commenced on 13.07.2016. During the course of the hearing it transpired that respondent No.4 had not been,,,,

served in terms of order dated 31.08.2015. Consequently, notice was issued to respondent No.4 returnable on 29.07.2016. Additionally, notice was",,,,

directed to be collected by the SHO, Barakhamba Road and it was directed to transmit the same to the SHO having jurisdiction over the area where",,,,

the respondent No.4 was situated in Kolkata, to have the same served on respondent No.4. On 29.07.2016, Mr. Mohd. Faraz and Mr. Arshdeep",,,,

Singh, Advocate put in appearance on behalf of the respondent No.4. The counsel stated that the vakalatnama shall be filed within two days along",,,,

with a copy the board resolution and authorization in favour of the person who signs the vakalatnama. The petitioners were directed to supply a copy,,,,

of the petition to counsel for respondent No.4 within 2 days. They were permitted to file a reply within two weeks. The matters were adjourned till,,,,

14.09.2016.,,,,

18. On 14.09.2016, Mr. Mohd. Faraz, Advocate who had appeared on behalf of respondent No.4 on the previous date, stated that he appears only for",,,,

Mr. Sanjay Kumar-respondent No.6 and not for respondent No.4 company. He stated that respondent No.4 company is a defunct company. He,,,,

explained that he did not have the copy of the memo of parties on the previous date when he made the statement - that he appear for respondent,,,,

No.4, and he had made this statement under misimpression. This explanation of learned counsel Md. Faraz was rejected by this Court while observing",,,,

as follows:,,,,

Ã¢â‚¬Å“I cannot accept the explanation offered by the learned counsel. Notice has been issued vide order dated 13.07.2016 to respondent No.4, and not",,,,

to respondent No.6. There was no occasion for the counsel appearing for Mr. Sanjay Kumar to stand up and put in appearance on the said date on,,,,

behalf of respondent No.4. The order dated 29.07.2016 shows that the counsel was also directed to place on record the Board Resolution and,,,,

authorisation in favour of the person who signs the Vakalatnama on behalf of respondent No.4 company. If there would have been any confusion in,,,,

the mind of learned counsel, the same would have been got cleared upon hearing the order that was passed in open Court. It appears to the Court that",,,,

this entire process of putting in appearance on behalf of respondent No.4, and thereafter resiling from the same, is a method of delaying the hearing in",,,,

the matter. In any event, since respondent No.4 is stated to be a defunct company, the matter rests there and the hearing shall proceed.",,,,

A copy of the paper book shall be provided to learned counsel for the respondent No.6.,,,,

List for arguments on 26.09.2016Ã¢â‚¬â€‹,,,,

19. On 23.03.2017, the parties expressed their desire to arrive at a mediated settlement. The parties were, accordingly, referred to the Delhi High",,,,

Court Mediation & Conciliation Centre. However, the mediation was a Ã¢â‚¬Å“non- starterÃ¢â‚¬ as reported by the Ld. Mediator in report dated 28.03.2017.",,,,

The matter was listed before the Court on the same day i.e., 28.03.2017 when broad terms of settlement were discussed between the parties. They",,,,

were recorded as an Ã¢â‚¬Å“aide memoireÃ¢â‚¬. They were also communicated to the parties on the same day. The matter was adjourned thereafter from,,,,

time to time in the hope that the parties would settle their disputes. However, on 04.08.2017, this Court was informed by the counsel representing",,,,

respondent No.1 that the said broad terms of settlement are not acceptable. Consequently, the matter was directed to be listed for further hearing. On",,,,

22.09.2017 another offer was made by respondent Nos. 1 to 3, that they would sell certain flats through a Court appointed commissioner, so as to",,,,

settle the claims of the petitioners. Even the said proposal was not found feasible and, consequently, arguments were finally heard and concluded on",,,,

13.10.2017 and judgment reserved.,,,,

20. Mr. Dayan Krishnan has, firstly, argued that the private respondents have a right of audience before this Court, since the rejection of the",,,,

application of the petitioners under Section 156(3) Cr PC results in termination of the proceedings and, consequently, the respondents have an interest",,,,

in the matter. He places reliance on the judgment of the Supreme Court in Manharibhai Muljibhai Kakadia vs Shaileshbhai Mohanbhai Patel, (2012) 10",,,,

SCC 517 in support of this submission.,,,,

21. I find merit in this submission of Mr. Krishnan. The petitioners have also not disputed the right of the respondents to be heard in the matter.,,,,

22. Learned senior counsel for the respondents, Mr. Dayan Krishnan has raised a preliminary objection to the maintainability of the present petitions. I",,,,

proceed to first deal with the same.,,,,

23. Mr. Krishnan submits that the petitioners have preferred the present writ petitions under Article 226 of the Constitution of India to assail judicial,,,,

orders of judicial Courts. He submits that judicial orders of judicial Courts (and not tribunals) cannot be assailed in a writ petition, since no relief in the",,,,

nature of a writ of Certiorari can be claimed in respect of an order passed by a judicial Court. He submits that neither the Learned MM, nor the",,,,

learned ASJ are tribunals and, being regular Courts, their orders cannot be assailed under Article 226 of the Constitution of India. He further submits",,,,

that a writ petition is not maintainable against a private party, to settle a private dispute of a civil nature. He submits that the disputes raised are in",,,,

relation to alleged breach of contract Ã¢â‚¬" at the highest. Commission of a cognizable offence is not disclosed by the petitioners. In support of his,,,,

submission he places reliance on Shalini Shyam Shetty & Anr vs Rajendra Shankar Patil (2010) 8 SCC 329, and Radhey Shyam & Anr vs Chhabi",,,,

Nath & Ors (2015) 5 SCC 423.,,,,

24. In Radhey Shyam &Anr (supra), the Supreme Court held that a writ of certiorari lies against patently erroneous or without jurisdiction orders of",,,,

tribunals or authorities or Courts, other than judicial Courts. It observed that there are no precedents in India for the High Courts to issue writs to the",,,,

subordinateÃ, Courts. ControlÃ, ofÃ, workingÃ, ofÃ, theÃ, subordinateÃ, Courts,Ã, in dealingÃ, withÃ, theirÃ, judicialÃ, orders,Ã, isÃ,",,,,

exercisedÃ, byÃ, wayÃ, ofÃ, appellateÃ, or revisional powers, or power of superintendence under Article 227 of the Constitution of India. Orders of",,,,

the civil Court stand on a different footing Ã, from orders of authorities, or tribunals, or Courts other than judicial/ civil Courts. WhileÃ, appellateÃ,",,,,

orÃ, revisionalÃ, jurisdictionÃ, isÃ, regulatedÃ, byÃ, the statutes, power of superintendence under Article 227 is constitutional. In paragraph 27 of",,,,

the judgment in Radhey Shyam &Anr (supra), the Supreme Court observed as follows:",,,,

Ã¢â‚¬Å“27. Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in",,,,

agreement with the view of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty, Scope",,,,

of Article 227 is different from Article 226.Ã¢â‚¬â€<,,,,

25. In Shalini Shyam Shetty (supra) the Supreme Court held that a writ petition under Article 226 of the Constitution would not be maintainable against,,,,

a private respondent alone. Writs could be issued to persons who have some statutory or public duty to perform. The main respondent in a writ,,,,

proceeding should be either the Government, Governmental agency or State or instrumentalities of State within the meaning of Article 12 of the",,,,

Constitution. However, a writ petition cannot be filed when all the respondents are private parties. The only exception to this rule is in respect of a writ",,,,

of habeas corpus. The Supreme Court also disapproved of the tendency of High Courts to entertain writs in purely civil and private disputes.,,,,

26. I do not find any merit in the aforesaid preliminary objection of the respondents to the maintainability of the present proceeding in respect of the,,,,

aforesaid impugned orders. The first noticeable aspect is that the present petitions are preferred not only under Article 226 of the Constitution of India,",,,,

but also under Section 482 of the Cr.P.C. which preserves the inherent power of the High Court to make such orders as may be necessary to give,,,,

effect to any order made under the Code, Ã¢â‚¬Å“or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.Ã¢â‚¬ Section",,,,

482 begins with a non obstante clause Ã¢â‚¬Å“nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court.....Ã¢â‚¬â€‹,,,,

27. The Supreme Court in Kailash Verma vs Punjab State Civil Supplies, (2005) 2 SCC 571 held that a second revision to the High Court is not",,,,

maintainable after dismissal of the first revision by the Sessions Court under Section 399 of the Cr.P.C. The Supreme Court then examined the,,,,

remedy available to an aggrieved party under Section 482 of the Cr. P.C. In this regard, the Supreme Court referred to its earlier decision in Krishnan",,,,

& Anr vs Krishnaveni & Anr, (1997) 4 SCC 241, wherein it had observed that even though a second revision cannot be resorted to, the inherent",,,,

power of the High Court under Section 482 of the Cr.P.C. is still available, and as it is paramount power of continuous superintendence of the High",,,,

Court under Section 483, the High Court would be justified in interfering with an order leading to miscarriage of justice, and setting aside the order of",,,,

the Court below. In paragraph 5 of the decision in Kailash Verma (supra), the Supreme Court observed:",,,,

Ã¢â‚¬Å“5. It may also be noticed that this Court in Rajathi v. C. Ganesan, (1999) 6 SCC 326 said that the power under Section 482 of the Criminal",,,,

Procedure Code has to be exercised sparingly and such power shall not be utilized as a substitute for second Revision. Ordinarily, when a Revision",,,,

has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to Revision before the High",,,,

Court under Section 397(1) of the Criminal Procedure Code as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a",,,,

petition under Section 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when,,,,

mandatory provisions of law were not complied with and when the High Court feel that the inherent jurisdiction is to be exercised to correct the,,,,

mistake committed by the revisional court.Ã¢â‚¬â€‹ (emphasis supplied),,,,

28. The Supreme Court also relied upon State (N.C.T. Of Delhi) vs Navjot Sandhu @ Afsan Guru, (2003) 6 SCC 641, wherein it had observed that",,,,

the inherent power under Section 482 Cr.P.C is to be used only in cases where there is an abuse of the process of the Court, or where interference is",,,,

absolutely necessary for securing the ends of justice.,,,,

29. Thus, to say that the present petitions are not maintainable would not be correct. Even if a writ petition under Article 226 cannot be maintained to",,,,

seek a writ of certiorari i.e. to seek the quashing of the two impugned orders passed by judicial Courts, a petition under Section 482 of the Cr.P.C",,,,

would be maintainable to assail the said two orders, and High Court would exercise its inherent jurisdiction, if it finds that there has been an abuse of",,,,

the process of the Court, or that interference is absolutely necessary for securing the ends of justice. The issue of maintainability of a petition under",,,,

Section 482 Cr.P.C. cannot be confused with the exercise of the inherent jurisdiction in the facts of a given case.,,,,

30. Secondly, I may notice the prayer made by the petitioners in their writ petitions, which are more or less identical. The prayer made in CRL(WP)",,,,

1645/2013 preferred by Arun Saxena and Anr. reads as follows:,,,,

Ã¢â‚¬Å“set aside the impugned order dated 06.11.2012 passed by the court of sh. Ashok Kumar, ld. metropolitan magistrate (new delhi)-05, patiala house",,,,

courts, new delhi and for also setting aside the order dated 01.08.2013 passed by the court of sh. Dharmsh Sharma, ld. ASJ, New Delhi in the criminal",,,,

revision no. 23 of 2013 preferred by the petitioner against order passed by sh. Ashok Kumar ld. mm dated 6.11.2012 and thereafter direct the SHO of,,,,

the concerned police station to register an fir against the accused under inter alia under sections 406/420/461/467/468/478 & 120-b ipcÃ¢â‚¬â€‹,,,,

31. Thus, apart from seeking to assail the two impugned orders, the petitioners also seek a direction to the SHO of the concerned police station to",,,,

register a First Information Report against the accused, inter alia under Section 406, 420, 461,467,468,471 and 120(B) IPC. According to the",,,,

petitioners, the police was duty bound to register the FIR and investigate the alleged offence, since the information laid disclosed commission of",,,,

cognizable offences. Thus, the petitioners complain of non-performance of their statutory duty by the police. It is well settled that a writ petition under",,,,

Article 226 would be maintainable to seek a writ in the nature of mandamus, to compel the performance of its statutory duty by a statutory/ public",,,,

authority. Reference may be made to State of U.P. v. Harish Chand & Ors., (1996) 9 SCC 309. Thus, the submission of the petitioners - that the",,,,

information disclosed by them discloses commission of a cognizable offence, would need examination, and the petition - even under Article 226, cannot",,,,

be rejected at the threshold. Pertinently, these petitions have been filed by the petitioners, after availing of, and exhausting the alternative efficacious",,,,

statutory remedy available under Section 156(3) Cr.P.C. In these circumstances, in my view there is no bar to the maintainability of the writ petition",,,,

under Article 226 of the Constitution of India to seek such a relief.,,,,

32. I am conscious of the decision in Sakiri Vasu v. State of U.P. & Ors., (2008) 2 SCC 409. In Sakiri Vasu (supra), the Supreme Court observed that",,,,

the High Court should discourage the practice of filing of a writ petition or a petition under Section 482 Cr PC, simply because a person has grievance",,,,

that his FIR has not been registered by the police or, that after being registered, proper investigation has not been done by the police. The Supreme",,,,

Court observed that for this grievance, the remedy lies under Section 36 and Section 154(3) of Cr PC before the police officers concerned, and if that",,,,

is of no avail, under Section 156(3) Cr PC before the Magistrate, or by filing criminal complaint under Section 200 Cr PC, and not by filing a writ",,,,

petition, or a petition under Section 482 Cr PC. The Supreme Court also observed that the alternative remedy is not an absolute bar to a writ petition,",,,,

but it is equally well settled that if there is an alternative remedy, the High Court should not ordinarily interfere.",,,,

33. In my view, the said decision does not come in the way of the petitioners for the reason, that they have indeed invoked Section 154 Cr PC in the",,,,

first instance and, thereafter, Section 156(3) Cr PC, before preferring the present petition not only under Section 482 Cr PC, but also under Article 226",,,,

of the Constitution of India.Ã, Thus, they have already exhausted their other alternative efficacious remedies without satisfactory redressal of their",,,,

grievance. If they succeed in assailing the impugned orders passed by the learned MM - rejecting their application under Section 156(3), and the order",,,,

in revision under Section 397 passed by the Sessions Court, they would be entitled to press their relief to seek a writ in the nature of mandamus for a",,,,

direction to the SHO concerned to register the FIR and investigate the same. Whether, or not, in the facts of a given case, the Court would exercise",,,,

its writ jurisdiction to grant such a relief, is a different matter.",,,,

34. Reliance placed by Mr. Krishnan on Shalini Shyam Shetty (supra) is also misplaced. Firstly, in respect of a petition under Section 482 Cr.P.C., it is",,,,

not necessary that the same should be directed against the State, or an instrumentality of the State as defined Article 12 of the Constitution. Secondly,",,,,

in the present petition, the State is also a party represented through the SHO, PS Barakhamba Road. Thus, objection to the maintainability of the",,,,

present petitions is rejected, being devoid of any merit.",,,,

35. To appreciate the submission of learned counsels it is, firstly, necessary to appreciate the scope of Section 156, and in particular Sub Section (3)",,,,

thereof. Section 156 of the Cr.P.C. reads as follows:,,,,

Ã¢â‚¬Å“156. Police officer's power to investigate cognizable case.,,,,

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction",,,,

over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.,,,,

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer,,,,

was not empowered under this section to investigate.,,,,

(3) Any Magistrate empowered under section 190 may order such an investigation as above- mentioned.Ã¢â‚¬â€‹ (emphasis supplied),,,,

Thus sub-section (3) enables the learned MM (empowered under section 190) to order the officer in charge of a police station to investigate the,,,,

cognizable offence, which may brought to his notice by a complainant.",,,,

36. The petitioners had preferred their respective applications under Section 156(3) Cr.P.C. before the Ld. MM. to seek a direction to respondent,,,,

No.7Ã¢â,¬"SHO, PS Barakhamba, New Delhi to register their First Information Reports on the basis of their complaints. The petitioners averred in their",,,,

applications that they had given their written complaints in PS Barakhamba Road and, despite their best efforts, no case had been registered by the",,,,

police. The complaints preferred by the petitioners have been placed on the record, which bear endorsement of receipt by the SHO, PS Barakhamba",,,,

Road, New Delhi.",,,,

37. By placing reliance on Subhkaran Luharuka & Anr. v. State (Govt of NCT of Delhi), 170 (2010) DLT 516, learned senior counsels for the",,,,

respondents have submitted that the power of the Magistrate under Section 156(3) of the Code is a discretionary remedy, as the provision uses the",,,,

word Ã¢â,¬Å“mayÃ¢â,¬ in respect of the power of the Magistrate to order investigation. The submission is that the Ld. Magistrate having exercised his,,,,

discretion for the reasons disclosed, this Court should not interfere with the same. This Court is not sitting in appeal against the impugned orders.",,,,

Merely because another view may be possible, this Court should not substitute the view of the ld. Magistrate and the Ld. ASJ.",,,,

38. No doubt, the said power is a discretionary power vested in the Ld. Magistrate. However, whenever a discretionary power is vested by a statute",,,,

on a statutory/ public authority, the nature of such discretionary power is not arbitrary, whimsical or fanciful. That discretionary power can only be",,,,

exercised fairly, reasonably, and bonafide. When discretionary power is vested in a judicial authority or court, the exercise of discretion should also be",,,,

judicious. I may refer to the judgment of the Supreme Court in U.P. State Road Transport Corporation & Anr. V. Mohd. Ismail & Ors., (1991) 3 SCC",,,,

239. The Supreme Court considered the manner in which statutory discretion has to be exercised. It observed:,,,,

Ã¢â,¬Å“15. Ã¢â,¬Â¦ Ã¢â,¬Â¦ The second aspect relates to the manner in which statutory discretion is to be exercised. The discretion allowed by the statute to the,,,,

holder of an office, as Lord Halsbury observed in Susannah Sharpv. Wakefield [1891 AC 173, 179 : 64 LT 180] is intended to be exercised",,,,

Ã¢â,¬Å“according to the rules of reason and justice, not according to private opinion; Ã¢â,¬Â¦ according to law and not humour. It is to be, not arbitrary, vague,",,,,

and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to",,,,

confine himselfÃ¢â‚¬. Every discretion conferred by statute on a holder of public office must be exercised in furtherance of accomplishment of purpose,,,,

of the powerÃ¢â‚¬Â¦ Ã¢â‚¬Â¦Ã¢â‚¬â€‹.,,,,

39. Reliance has been placed by learned senior counsels for the respondents on State of Gujarat v. Girish Radhakrishnan, (2014) 3 SCC 659 and, in",,,,

particular, para 12 thereof, wherein the Supreme Court observed:",,,,

Ã¢â‚¬Å“12. Section 190(1) CrPC contains the provision for cognizance of offences by the Magistrates and it provides three ways by which such,,,,

cognizance can be taken which are reproduced hereunder:,,,,

(a) upon receiving a complaint of facts which constitute such offence;,,,,

(b) upon a police report in writing of such factsÃ¢â‚¬"that is, facts constituting the offenceÃ¢â‚¬"made by any police officer;",,,,

(c) upon information received from any person other than a police officer or upon the Magistrate's own knowledge or suspicion that such offence has,,,,

been committed.,,,,

An examination of these provisions makes it clear that when a Magistrate takes cognizance of an offence upon receiving a complaint of facts which,,,,

constitute such offence, a case is instituted in the Magistrate's court and such a case is one instituted on a complaint. Again, when a Magistrate takes",,,,

cognizance of any offence upon a report in writing of such facts made by any police officer it is a case instituted in the Magistrate's court on a police,,,,

report. The scheme underlying CrPC clearly reveals that anyone who wants to give information of an offence may either approach the Magistrate or,,,,

the officer in charge of a police station. If the offence complained of is a non-cognizable one, the police officer can either direct the complainant to",,,,

approach the Magistrate or he may obtain permission of the Magistrate and investigate the offence. Similarly anyone can approach the Magistrate,,,,

with a complaint and even if the offence disclosed is a serious one, the Magistrate is competent to take cognizance of the offence and initiate",,,,

proceedings. It is open to the Magistrate but not obligatory upon him to direct investigation by police. Thus, two agencies have been set up for taking",,,,

offences to the CourtÃ¢â‚¬â€‹. (emphasis supplied),,,,

40. In my view, the said reliance is misplaced. Firstly, there can be no quarrel with the proposition that it is not obligatory for the Ld. Magistrate to, in",,,,

all cases, direct investigation by the police, when a complaint is filed Ã, disclosing commission of a cognizable offence.Ã, That discretion vests in the",,,,

Ld. Magistrate. Pertinently, this case was not concerned with the scope of the power of the learned Magistrate under Section 156(3) Cr PC. Ã, It did",,,,

not concern the manner in which the said power should be exercised by the learned Magistrate.Ã, The Supreme Court set out the question which,,,,

came up for consideration before it in paragraph 2, which reads as follows:",,,,

Ã¢â‚¬Å“2. The principal question which arises for determination in the instant appeal is whether the learned Magistrate by virtue of the powers conferred,,,,

upon him under Chapter XV of the Code of Criminal Procedure, 1973 (for short Ã¢â‚¬Å“CrPCÃ¢â‚¬) under the heading of Ã¢â‚¬Å“Complaints to MagistratesÃ¢â‚¬",,,,

can be permitted to allow the complainant/informant to add additional sections of IPC into the charge-sheet after the same was submitted by the police,,,,

on completion of investigation of the police case based on a first information report registered under Section 154 CrPCÃ¢â‚¬â€‹.,,,,

41. The factual context in which the Supreme Court made its observations was entirely different. In that case, the FIR already stood registered with",,,,

the police station. The charge sheet was submitted before the Magistrate. The complainant submitted an application before the Magistrate for adding,,,,

certain charges under the IPC into the charge sheet. That application was allowed by the Magistrate. In revision, the Sessions Court set aside the",,,,

order passed by the learned Magistrate. The High Court upheld the order of the Sessions Judge. The Supreme Court held that at the time of,,,,

consideration on charge and framing of charge, it was open to the Magistrate to either add or remove any of the penal provisions. The same could not",,,,

be done in the manner resorted to by the complainant. Thus, the decision in Girish Radhakrishnan (supra) does not help in resolving the issue raised by",,,,

the petitioners- viz. whether the Ld. Magistrate and the Ld. ASJ have applied theÃ, correctÃ, principlesÃ, ofÃ, lawÃ, whileÃ, rejecting Ã, theÃ,,,,,

petitionersÃ, applications under Section 156(3) Cr.P.C.,,,,

42. In Madhao & Anr. v. State of Mahrasthra & Anr., (2013) 5 SCC 615, on the complaint of the complainant, the learned Magistrate directed the",,,,

police to investigate the matter under Section 156(3) Cr PC and to submit a detailed report. That order was assailed by the accused/ appellants before,,,,

the Bombay High Court by preferring applications under Section 482 Cr PC. The High Court dismissed those applications, holding that the procedure",,,,

adopted, and power exercised by the Magistrate ordering investigation under Section 156(3) Cr PC was just and proper. The appellants then preferred",,,,

their Special Leave Petitions before the Supreme Court, which were granted and appeals registered. The Supreme Court considered the issue",,,,

whether the learned Magistrate was justified in directing the police to investigate and submit a detailed report within one month under Section 156(3),,,,

of the Code. In this context, the Supreme Court referred to its earlier judgment in CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd., (2005) 7 SCC",,,,

467. The Supreme Court observed as follows:,,,,

Ã¢â‚¬Å“17. In CREF Finance Ltd. v. Shree Shanthi Homes (P) Ltd. [(2005) 7 SCC 467 : 2005 SCC (Cri) 1697] while considering the power of a,,,,

Magistrate taking cognizance of the offence, this Court held: (SCC p. 471, para 10)",,,,

Ã¢â‚¬Å“10. Ã¢â‚¬Â¦ Cognizance is taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any,,,,

offence is disclosed. The issuance of process is at a later stage when after considering the material placed before it, the court decides to proceed",,,,

against the offenders against whom a prima facie case is made out. It is possible that a complaint may be filed against several persons, but the",,,,

Magistrate may choose to issue process only against some of the accused. It may also be that after taking cognizance and examining the complainant,,,,

on oath, the court may come to the conclusion that no case is made out for issuance of process and it may reject the complaint. It may also be that",,,,

having considered the complaint, the court may consider it appropriate to send the complaint to the police for investigation under Section 156(3) of the",,,,

Code of Criminal Procedure.Ã¢â‚¬â€‹,,,,

It is clear that any Judicial Magistrate before taking cognizance of the offence can order investigation under Section 156(3) of the Code. If he does so,",,,,

he is not to examine the complainant on oath because he was not taking cognizance of any offence therein.,,,,

18. When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an,,,,

offence. The Magistrate has discretion in the matter. If on a reading of the complaint, he finds that the allegations therein disclose a cognizable",,,,

offence and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time,,,,

of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting",,,,

that course as an alternative to taking cognizance of the offence itself. As said earlier, in the case of a complaint regarding the commission of",,,,

cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)",,,,

(a). However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the",,,,

pre-cognizance stage and avail of Section 156(3).,,,,

19. Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives:,,,,

(a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightaway issue process to the accused but,,,,

before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.,,,,

(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.,,,,

(c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.,,,,

20. In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry,,,,

ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.,,,,

21. Where a Magistrate orders investigation by the police before taking cognizance under Section 156(3) of the Code and receives the report,,,,

thereupon he can act on the report and discharge the accused or straightaway issue process against the accused or apply his mind to the complaint,,,,

filed before him and take action under Section 190 of the Code.,,,,

22. The above principles have been reiterated in Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy [(1976) 3 SCC 252 : 1976 SCC (Cri),,,,

380] and Tula Ram v. Kishore Singh [(1977) 4 SCC 459 : 1977 SCC (Cri) 621] .,,,,

23. Keeping the above principles, if we test the same with the direction issued by the Magistrate for investigation under Section 156(3) of the Code",,,,

and the facts of these cases, we are satisfied that the Magistrate has not exceeded his power nor violated any of the provisions contained in the Code.",,,,

As observed earlier, the Magistrate need not order any investigation if he presupposes to take cognizance of the offence and once he takes",,,,

cognizance of the offence, he has to follow the procedure provided in Chapter XV of the Code. It is also settled position that any Judicial Magistrate",,,,

before taking cognizance of the offence can order investigation under Section 156(3) of the Code.,,,,

24. As rightly observed by the High Court, the Magistrate before taking cognizance of the offence can order investigation under Section 156(3) of the",,,,

Code, we are of the view that the procedure adopted and the power exercised by the Magistrate in this case is acceptable and in accordance with the",,,,

scheme of the Code. We are also satisfied that the High Court rightly refused to exercise its power under Section 482 of the Code. (emphasis,,,,

supplied),,,,

43. Thus, the Supreme Court rejected the challenge to the order passed by the learned Magistrate under Section 156 (3) Cr PC directing the police to",,,,

investigate the matter in terms of Section 156(1) of the Code. It was not essential for the Magistrate to take cognizance of the complaint before,,,,

ordering investigation by the police under Section 156(3) Cr PC. At the same time, once the Magistrate takes cognizance of an offence, and embarks",,,,

on the procedure prescribed under Chapter 15 of the Code, he cannot revert back to the pre-cognizance stage, and avail of Section 156 (3) Cr PC. On",,,,

the same aspect, Mr. Krishnan has relied on Tula Ram & Ors. v. Kishore Singh, (1977) 4 SCC 459.",,,,

44. These decisions, in my considered view, do not in any way advance the submission of Mr. Krishnan. The issue in the present case is a limited one",,,,

i.e. whether the learned Magistrate was justified in rejecting the applications of the petitioners under Section 156(3) Cr PC. The only issues that arise,,,,

for consideration are whether: the learned Magistrate and the learned ASJ were justified in holding that the allegations did not disclose commission of,,,,

a cognizable offence; whether they were justified in holding that the petitioners were possessed of the requisite evidence within their power and,,,,

control to be able to pursue their complaint, and; whether, in the facts of the case, investigation by the police was essential.",,,,

45. Section 156(3) Cr.P.C. vests a discretionary power upon the Ld. Magistrate, coupled with the duty for him to act in a judicious manner. Ld.",,,,

Magistrate cannot refuse to exercise his said discretion when the exercise of such discretion is warranted in the facts of the given case. If he fails to,,,,

exercise his discretion in a deserving case, his order would be open to challenge in revision - either before the Sessions Court, or before this Court. If",,,,

the failure to exercise the said discretion leads to abuse of the process of the Court, or miscarriage of justice, the said failure could still be assailed",,,,

before the High Court in a petition under Section 482 Cr.P.C. to prevent the abuse of the process of Court, or otherwise to secure the ends of justice,",,,,

notwithstanding the fact that the Sessions Court has rejected the challenge to the order of the learned Magistrate in revision proceedings.,,,,

46. The exercise of the judicial discretion vested in the learned Magistrate under Section 156(3) Cr PC has to be viewed in the light of the fact that the,,,,

police cannot refuse to register the FIR, and cannot turn away an informant who gives information about the commission of a cognizable offence, on",,,,

the ground that the informant has all the information and evidence in his possession, and he should prefer his private complaint. The police must",,,,

register the FIR. On the aspect that the police is bound to register the FIR and to investigate the cognizable offence, when one is disclosed by the",,,,

informant, the law is well settled and I may take note of only a couple of decisions of the Supreme Court on the subject.",,,,

47. In Ramesh Kumari v. State (NCT of Delhi) & Ors., (2006) 2 SCC 677 the Supreme Court observed in paragraph 4 as follows:",,,,

Ã¢â‚¬Å“4. That a police officer mandatorily registers a case on a complaint of a cognizable offence by the citizen under Section 154 of the Code is no,,,,

more res integra. The point of law has been set at rest by this Court in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426],,,,

. This Court after examining the whole gamut and intricacies of the mandatory nature of Section 154 of the Code has arrived at the finding in paras 31,,,,

and 32 of the judgment as under: (SCC pp. 354-55),,,,

Ã¢â‚¬Å“31. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the,,,,

mandate of Section 154(1) of the Code, the police officer concerned cannot embark upon an enquiry as to whether the information, laid by the",,,,

informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other,,,,

hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to",,,,

suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157. (As",,,,

we have proposed to make a detailed discussion about the power of a police officer in the field of investigation of a cognizable offence within the,,,,

ambit of Sections 156 and 157 of the Code in the ensuing part of this judgment, we do not propose to deal with those sections in extenso in the present",,,,

context.) In case, an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a",,,,

cognizable offence reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the",,,,

information in writing and by post to the Superintendent of Police concerned who if satisfied that the information forwarded to him discloses a,,,,

cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the",,,,

manner provided by sub-section (3) of Section 154 of the Code.,,,,

32. Be it noted that in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression",,,,

Ã¢â‚¬Å“informationÃ¢â‚¬ without qualifying the same as in Section 41(1)(a) or (g) of the Code wherein the expressions, Ã¢â‚¬Å“reasonable complaintÃ¢â‚¬ and",,,,

Ã¢â‚¬Å“credible informationÃ¢â‚¬ are used. Evidently, the non-qualification of the word Ã¢â‚¬Å“informationÃ¢â‚¬ in Section 154(1) unlike in Section 41(1)(a) and (g)",,,,

of the Code may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence,,,,

and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words,",,,,

Ã¢â‚¬Å“reasonablenessÃ¢â‚¬ or Ã¢â‚¬Å“credibilityÃ¢â‚¬ of the said information is not a condition precedent for registration of a case. A comparison of the present,,,,

Section 154 with those of the earlier Codes will indicate that the legislature had purposely thought it fit to employ only the word Ã¢â‚¬Å“informationÃ¢â‚¬,,,,

without qualifying the said word. Section 139 of the Code of Criminal Procedure of 1861 (Act 25 of 1861) passed by the Legislative Council of India,,,,

read that Ã¢â‚¬Å“every complaint or informationÃ¢â‚¬ preferred to an officer in charge of a police station should be reduced into writing which provision was,,,,

subsequently modified by Section 112 of the Code of 1872 (Act 10 of 1872) which thereafter read that Ã¢â‚¬Å“every complaintÃ¢â‚¬ preferred to an officer,,,,

in charge of a police station shall be reduced in writing. The word Ã¢â‚¬Å“complaintÃ¢â‚¬ which occurred in previous two Codes of 1861 and 1872 was,,,,

deleted and in that place the word Ã¢â‚¬Å“informationÃ¢â‚¬ was used in the Codes of 1882 and 1898 which word is now used in Sections 154, 155, 157 and",,,,

190(c) of the present Code of 1973 (Act 2 of 1974). An overall reading of all the Codes makes it clear that the condition which is sine qua non for,,,,

recording a first information report is that there must be an information and that information must disclose a cognizable offence.Ã¢â‚¬â€‹,,,,

(emphasis in original),,,,

Finally, this Court in para 33 said: (SCC p. 355)",,,,

Ã¢â‚¬Å“33. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station",,,,

satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the",,,,

prescribed form, that is to say, to register a case on the basis of such information.Ã¢â‚¬â€‹ (emphasis supplied)",,,,

48. I may also take note of the judgment rendered by a Constitution Bench of the Supreme Court in Lalita Kumari vs Govt.Of U.P., (2014) 2 SCC 1,",,,,

dealing with registration of the First Information Report in a cognizable case. The conclusions/ directions contained in the said decision read as follows:,,,,

Ã¢â‚¬Å“Conclusion/Directions,,,,

120. In view of the aforesaid discussion, we hold:",,,,

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no",,,,

preliminary inquiry is permissible in such a situation.,,,,

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be",,,,

conducted only to ascertain whether cognizable offence is disclosed or not.,,,,

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing",,,,

the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose",,,,

reasons in brief for closing the complaint and not proceeding further.,,,,

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers,,,,

who do not register the FIR if information received by him discloses a cognizable offence.,,,,

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the,,,,

information reveals any cognizable offence.,,,,

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The,,,,

category of cases in which preliminary inquiry may be made are as under:,,,,

Matrimonial disputes/family disputes,,,,

Commercial offences,,,,

Medical negligence cases,,,,

Corruption cases,,,,

Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without",,,,

satisfactorily explaining the reasons for delay.,,,,

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.,,,,

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it",,,,

should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.,,,,

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information",,,,

relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the",,,,

said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.Ã¢â‚¬â€‹ (emphasis supplied)",,,,

49. Thus, in view of the law laid down in Bhajan Lal (supra), which was followed in Ramesh Kumari (supra)Ã¢â‚¬" upon receipt of information disclosing",,,,

commission of a cognizable offence, the police officer concerned is mandated to register a case and investigate the same. The police officer cannot",,,,

embark on an enquiry as to whether the information laid by the informant is reliable and genuine, or not. He cannot refuse to register a case on the",,,,

ground that the information is not reliable or credible. He is statutorily obliged to register the case and then to proceed with the investigation, if he has",,,,

reason to suspect the commission of a cognisable offence. The police cannot tell the complainant that even though his complaint discloses commission,,,,

of a cognsiable offence, he must prefer a complaint under Section 200 Cr PC since, according to the police, the complainant is possessed of all the",,,,

information necessary to prosecute the accused and that police has no role in the matter of conduct of investigation.,,,,

50. A perusal of Subhkaran Luharuka (supra) shows that, unfortunately, the learned Single Judge neither noticed nor considered the decisions in",,,,

Bhajan Lal (supra) and Ramesh Kumari (supra).,,,,

51. In Amit Khera v. GNCTD & Ors., 171 (2010) DLT 607, the petitioner had assailed the order passed by the learned ASJ, dismissing the revision",,,,

petition, against the order of the learned MM dismissing his application under Section 156 (3) Cr PC. Thus, the background in which the petition was",,,,

preferred before this Court, was similar to the present cases. The petitioner had made a complaint to the SHO that he received threats on his mobile",,,,

phone from another mobile phone number disclosed by him. He claimed that he had recorded the conversation of the caller with himself, and given the",,,,

said conversation to the police. The police, however, did not register the FIR. Consequently, the petitioner preferred the application under Section",,,,

156(3) Cr PC before the learned MM. The learned MM declined the petitioners application on the ground that he had failed to explain why the,,,,

involvement of police machinery was required, since no recovery was to be made by the police officials and his allegations of illegal demand of money,",,,,

and of the petitioner being given threats could very well be established before the Court on leading proper evidence. He also held that no technical or,,,,

scientific investigation was required. The petitioner was given liberty to file a complaint under Section 200 Cr PC.Ã, The learned ASJ found no,,,,

infirmity in the order passed by the learned MM. This Court did notÃ, agreeÃ, with theÃ, approach ofÃ, theÃ, CourtsÃ, below andÃ, allowedÃ,,,,,

theÃ, said petition. It was observed by this Court as follows:,,,,

Ã¢â‚¬Å“4. Section 200 Cr.P.C requires a Magistrate to take cognizance of an offence on a complaint. When a complaint is made before the Magistrate,",,,,

the Magistrate has to examine complainant and other witnesses present, on oath and he has to record substance of such examination and ask the",,,,

complainant and witnesses to sign the same. However, a complaint can be made before the learned MM orally as well as in writing. Thus, when a",,,,

complainant approached the Court with an application under Section 156(3) Cr.P.C with specific allegations that his report was not being registered by,,,,

the police and the police was not acting, the Magistrate could not have sent back the person, unless the Magistrate had come to the conclusion that",,,,

from the complaint, no cognizable offence was made out. The reasons given by the Court of MM and upheld by the Court of ASJ for not acting on the",,,,

application of the petitioner are bereft of any logic. On receipt of a complaint, the duty of the police is not only to do scientific investigation and make",,,,

recoveries, it has to take action against the offenders as per law. The investigation is done by police even by the recording statements of witnesses.",,,,

Moreover, in the present case, the petitioner was having only phone number of the caller and police had resources to find out the name of the caller",,,,

and other particulars of the caller by approaching service providers, which the petitioner himself could not have done. I, therefore, consider that the",,,,

learned MM went wrong in observing that no FIR was required to be registered since no scientific investigation/ recovery needed to be done.,,,,

5. The learned MM and learned ASJ both went wrong in observing that a formal complaint was required to be made by the complainant under Section,,,,

200 Cr.P.C. Section 200 Cr.P.C does not require making of a written formal written complaint by a complainant. A complainant can just appear,,,,

before the Court of MM and request the Court to take his oral complaint on record. The Court of MM, under Section 200 Cr.P.C, is obliged to record",,,,

the statement of complainant and his witness, if any, appearing with him, and the learned MM has to act on such a statement, if commission of a",,,,

cognizable offence is disclosed. The Court cannot refuse to entertain a complainant who appears in person before the Court and wants to make an,,,,

oral complaint. In the present case, the complainant had made an application under Section 156(3) wherein he had made specific allegations against",,,,

respondent. The Court was duty bound to take cognizance of this complaint as a complaint of the petitioner and was bound to act upon it. The petition,,,,

is hereby allowed and the order passed by learned MM and learned ASJ both being illegal orders are hereby set aside. The application of the,,,,

petitioner under Section 156(3) is allowed. The police of police station Delhi Cantt. is hereby directed to register an FIR on the complaint of the,,,,

petitioner. The concerned SHO shall register a case and bring it to a logical conclusion, after proper investigationÃ¢â‚¬â€‹. (emphasis supplied)",,,,

52. I may now turn to examination of the relevant aspects taken note of in para 44 above in the facts of the present case.,,,,

53. The petitioners/ complainants allege commission of offences under, inter alia, Section 406/420/468 and 120B IPC i.e., criminal breach of trust,",,,,

cheating, forgery, criminal conspiracy etc. on the premise that the respondent No.1 acting through respondent Nos. 2 and 3, its Chairman cum",,,,

Managing Director, and Director lured and wrongfully induced, with deliberate mal-intention, the petitioners/ complainants to invest in their project for",,,,

development of a mall called North Gate Orbit Mall, which was assured to be State of the Art; with all mandatory permissions/ clearances for",,,,

construction and; with reputed occupants/ tenants offering handsome market rent. The petitioners/ complainants further state that under the,,,,

agreements entered into with each of them, the said respondents had undertaken to pay rent for the premises agreed to be purchased by each of the",,,,

petitioners/ complainants, till the expiry of rent free and fit-out period, as mentioned in the agreements with each of the petitioners/ complainants, or till",,,,

the leasing of the premises agreed to be purchased by each of the petitioners/ complainants, whichever is later.",,,,

54. I have already taken note of the particulars of the proposed lessees; the relevant dates from which the obligation to pay the rent had to commence,",,,,

and; the rate of rent payable to the purchasers in paragraph 4 hereinabove.,,,,

55. Since the agreements are in the same format, for the purpose of discussion, I may take note of the clauses in the agreement dated 13.12.2006",,,,

entered into with the petitioners Arun Saxena and D.K. SaxenaÃ¢â‚¬" the petitioners in W.P.(C.) No. 1645/2013. Under the said agreement the,,,,

petitioners, Arun Saxena and D.K. Saxena agreed to purchase Unit No. UGF- 33 on the upper ground floor admeasuring 599.28 sq. ft. super area, for",,,,

a consideration of Rs.50,93,115/- as the basic sale price. The said petitioners paid the sum of Rs.10,00,000/- at the time of signing of agreement to sell.",,,,

Eventually, the petitioners Arun Saxena and D.K. Saxena have made full payment of the full basic price under the agreement to sell.",,,,

56. Clause 3(v) of the agreement to sell provides that;,,,,

Ã¢â‚¬Å“It is agreed between the parties that the intending Seller shall have unrestricted rights to lease out the said premises to any reputed brand in the,,,,

market at the market prevailing rates. However the intending purchaser is also free to lease out the said premises subject to the written approval of,,,,

the intending sellerÃ¢â‚¬â€. (emphasis supplied),,,,

57. Thus, under the agreement to sell, the said petitioners Arun Saxena and Arun Saxena agreed to purchase the defined Unit No. UGF- 33 on the",,,,

upper ground floor admeasuring 599.28 sq. ft. super area. The respondent Nos. 1 to 3Ã¢â‚¬" being the intended sellers, retained an unrestricted right to",,,,

lease out the said premises. However, this right was subject to two representations/ promises made on behalf of the respondent Nos. 1 to 3, namely,",,,,

that the premises would be let out Ã¢â‚¬Å“to any reputed brand in the marketÃ¢â‚¬ and Ã¢â‚¬Å“at the market prevailing ratesÃ¢â‚¬. The intending sellers/,,,,

respondent Nos. 1 to 3 also undertook to provide necessary basic amenities/ facilities, such as electric power/ meter, sub-meter etc. to the intending",,,,

purchaser on charged basis. The intending sellers/ respondent Nos. 1 to 3 also stated that the possession of the floor space is proposed to be delivered,,,,

to the intending purchaser/ petitioners on or before 30.06.2007 for fit outs. The agreement to sell dated 13.12.2006 with the petitioners Arun Saxena,,,,

and D.K. Saxena contains the following endorsement jointly signed by the parties:,,,,

Ã¢â‚¬Å“The Property under sale is agreed to be Leased to M/s PJL Clothing (India) Ltd. @ Rs. 135/- per sq. ft. per month. As per the terms and,,,,

conditions as already been settled by the Intending Seller with the Intending Lessee.,,,,

The intending seller shall be liable to pay the rental for the said premises till the expiry of any rent free and fit out period of 1st July, 2007 or whichever",,,,

is later. In case rent starts before the above mentioned date intending purchaser shall have no right for the same till the mentioned date, this rent shall",,,,

go to the account of intending seller after which the rent shall go to the intending purchaser.,,,,

Further the intending seller agrees to facilitate the letter of attornment on or before the expiry of the fit out period as mentioned above.,,,,

It is further agreed that however the first transfer will be free.Ã¢â‚¬â€‹ (emphasis supplied),,,,

58. Thus, at the time when the agreement to sell was entered into by the petitionersÃ¢â‚¬" Arun Saxena and D.K. Saxena, it was clearly represented to",,,,

them that the property agreed to be purchased by them was proposed to be leased to M/s. P.J.L. Clothing (India) Ltd. @ Rs. 135/- per sq. ft. per,,,,

month, and that the respondent Nos. 1 to 3 shall pay the rental for the premises till the expiry of the rent free and fit out period of 01.07.2007, or",,,,

whichever is later,,,,

59. The first grievance of the petitioners/ complainants is that though it was represented to them by the respondent Nos. 1 to 3 that they had entered,,,,

into various LOI/ MOUÃ¢â‚¬â„¢s with Ã¢â‚¬Å“Reputed brandsÃ¢â‚¬â„¢, to lease the unit/ premises of complainants, they later came to learn that the shop/ unit of the",,,,

petitioners/ complainants had not been at all given to the promised brands. They specifically aver that the accused did not let out the shop/ unit of the,,,,

complainants to the brand owners as promised.,,,,

60. Thus, the first aspect that requires investigation is whether respondent Nos. 1 to 3 did, in fact, enter into any genuine agreements/ LOIs/ MOUs",,,,

with the intended lessees- particulars whereof are mentioned in paragraph 4 hereinabove, or did the said respondents, at the time of entering into the",,,,

agreements to sell with the respective petitioners/ complainants, knowingly and deliberately make false representations to the respective petitioners,",,,,

that they had entered into agreements/ LOIs/ MOUs with the proposed lessees, where under the proposed/ intended lessees had agreed to take the",,,,

respective portions of the petitioners on lease at the rates of rent disclosed to the petitioners and mentioned in the endorsement made in the respective,,,,

agreements entered into with the petitioners and taken note of in paragraph 4 hereinabove, with a view to induce them into parting with their money-",,,,

which they otherwise would not have.,,,,

61. It would also require investigation whether the said agreements/ LOIs/ MOUs, if any, were merely a paper exercise, or were they genuinely",,,,

negotiated and entered into with the respective intended lessees/ popular brands. This is essential, since it is the positive case of the petitioners that",,,,

they were induced and lured into investing in the project of respondent Nos. 1 to 3 by the representations made to them that their respective portions in,,,,

the mall under development had already been agreed to be leased out to reputed brands at the rates of rent disclosed to the respective petitioners.,,,,

Thus, the decisions taken by respective petitioners to make their respective investments were influenced by the said representations made by",,,,

respondents.,,,,

62. If the said representations were false on the date when they were madeÃ¢â‚¬" to the knowledge of respondent Nos. 1 to 3, and they were made with",,,,

a view to induce the respective petitioners to make their investment in the project of respondent Nos. 1 to 3, the submission of the petitioners/",,,,

complainants that the offence under Sections 406/420/468 IPC read with Section 120B IPC are made out would, prima facie, have to be accepted.",,,,

63. Pertinently the petitioners/ complainants are not privy to the negotiations undertaken by the respondent Nos. 1 to 3 with the disclosed reputed,,,,

brands, if any, or to the LOIÃ¢â‚¬s/ MOUÃ¢â‚¬s/ agreements, if any, that may have been entered into between respondent Nos. 1 to 3 and the intended",,,,

lessees. They are not possessed of the said agreements/ LOI/ MOUÃ¢â‚¬s, and are not aware of the terms and conditions thereof. Only respondent Nos.",,,,

1 to 3 and the disclosed intended lessees would be possessed of the documents, if any, in this regard, and would have knowledge of the negotiations",,,,

undertaken between respondent Nos. 1 to 3 on the one hand, and the intended lessees on the other hand. The petitioners/ complainants are also not in",,,,

a position to investigate on their own, the reasons as to why all the intended lessees mentioned in paragraph 4 hereinabove backed out and did not take",,,,

on lease the premises agreed to by them at the rates of rent, and on the terms and conditions on which, they purportedly earlier agreed to. To",,,,

determine whether the petitioners/ complainants are indeed the victims of criminal breach of trust, cheating, and forgery for cheating and criminal",,,,

conspiracy as complained of by them, investigation into the said aspects would be essential, which only an authorized and empowered police force can",,,,

undertake. Private persons, such as the petitioners neither have the where withal, nor the capacity, nor the expertise, nor the legal authority to carry",,,,

out investigation into such aspects.,,,,

64. The further grievance and accusation of the petitioners/ complainants is that since the reputed brands did not take their respective portions on,,,,

lease by the disclosed dates (in the case of Arun Saxena and D.K. Saxena, the date being 30.06.2007), accused No.1 became liable to pay the agreed",,,,

monthly rent to the petitioners/ complainants which was paid, though irregularly, by the accused Nos. 1 to 3 to the petitioners/ complainants for some",,,,

time. The petitioners state that their decision to invest in the project of the accused Nos. 1 to 3 was also premised on the assurance given by them,,,,

that, even if they did not find reputed brands as lessee, they would, on their own make payment of the rent. The petitioners/ complainants allege that",,,,

when they demanded accused Nos. 1 to 3 to release the arrears of rent, instead of releasing the same, accused Nos.1 to 3 required the petitioners/",,,,

complainants to give their unconditional authority to the said accused to enable accused No. 2 and 3 to find suitable lessees for the shops/units of the,,,,

petitioners/ complainants at rentals/ assured returns which were intended to be better than the rentals as were agreed to be given to the complainants,,,,

when the complainants were induced and duped into purchasing the units/ premises from accused Nos. 1 to 3.,,,,

65. The petitioners/ complainants state that after getting the self addressed letters signed from them, without taking their consent and approvalÃ¢â‚¬" as",,,,

assured, accused Nos. 1 to 3 purportedly leased out their respective premises to accused Nos. 4Ã¢â‚¬" M/s Sea Shore Properties Pvt. Ltd. The same",,,,

was informed to the petitioners/ complainants Arun Saxena and D.K. Saxena vide letter dated 02.07.2009. The petitioners/ complainants were,,,,

shocked to receive the communication from accused No.4- M/s Sea Shore Properties Pvt. Ltd whereby respondent No.4 introduced itself as the,,,,

tenant of the shop of the petitioners/ complainants. The petitioners state that on receiving the communication along with the cheque from accused,,,,

No.4, they conveyed their shock and surprise to accused Nos. 1 to 3. They also raised a grievance with regard to the leasing of their shop/ premises",,,,

by accused Nos. 1 to 3 to accused No.4 without prior permission and authority. The petitioners/ complainants state that they did not present the,,,,

cheques issued by accused No.4 for encashment, whereupon accused Nos. 1 to 3 approached them to encash the said cheques and further informed",,,,

that accused No.4 was a company owned and possessed by the accused No.1, and since the accused were not able to meet their contractual liability",,,,

towards the complainants - as criminal cases had been lodged against the accused No.1 and 2 in respect of the infamous Ludhiana Mall Scam,",,,,

accused No. 1 would be meeting its contractual liability towards the petitioners/ complainants through accused No.4. Accused Nos. 1 to 3 also,,,,

assured that they are in the process of finding a suitable tenant for the shop/ premises in question, and till the time a suitable tenant is not found and the",,,,

shop is not let out to a suitable tenant on terms and conditions better than those mentioned in the LOIÃ¢â‚¬â€‹s with the previous reputed/ famous brands, the",,,,

petitioners/ complainants should agree to take the rent from accused No.4. The petitioners state that being unmindful of the criminal and mala fide,,,,

intention, nefarious designs and ulterior motives of respondent Nos. 1 to 3, they presented the cheques for encashment.",,,,

66. The petitioners/ complainants stated that accused No. 4 continued to pay the assured rent to the complainants for their shop for a few monthsÃ¢â‚¬",,,,

as detailed in the respective complaints. In furtherance of their criminal and mala fide intentions and ulterior motives, the respondents stopped paying",,,,

the legal dues to the petitioners/ complainants. The petitioners/ complainants state that on their enquiry they were informed that accused No.4 had,,,,

breached the MOU entered into by it with respondent Nos1 to 3. Accused Nos. 1 to 3 further informed the petitioners/ complainants that they could,,,,

take the possession of their shop.,,,,

67. The petitioners/ complainants have averred that on an enquiry they found that the steps taken by accused Nos. 1 to 3 Ã¢â‚¬" in relation to leasing of,,,,

the mall space Ã¢â‚¬" including the shop/ premises of the petitioners/ complainants were a bundle of lies. The said accused had conspired with each other,,,,

to cheat the petitioners/ complainants. The petitioners/ complainants state that on their enquiry they found that the mall had not been completed and,,,,

had not been issued a completion certificate by the MCD. The same had been sealed by the MCD and the accused Nos. 1 to 3 had been issued show,,,,

cause notices for blatant violations/ unauthorized construction in the mall. The petitioners have placed on record the response received from the MCD,,,,

to the queries raised under the Right to Information Act in respect of the mall in question Ã¢â‚¬" i.e. North Gate Mall, Gujrawala Town, Delhi. The reply",,,,

is dated 13.06.2011 which discloses that the said mall had not been issued a completion certificate; that the mall was sealed during the last 3 years on,,,,

three occasions; that the possession could not have been offered without issuance of completion certificate to the purchaser and that the possession,,,,

could not have been offered even on the date of the reply i.e., 13.06.2011; that there are violations in the construction of the mall; that show cause",,,,

notices have been issued in respect of various violations and; Ã, even if the possession were to be given without the completion certificate, the shops",,,,

could be sealed.,,,,

68. The petitioners/ complainants have alleged that accused No.4 is a fictitious and bogus company created by respondent Nos. 1 to 3, incorporated",,,,

and registered in Calcutta with two directors, namely, Sh. Harjeet Singh and Sh. Sanjeev Kumar - accused Nos. 5 and 6, who are residents of Delhi",,,,

and as per the information of the petitioners/ complainants, they are the employees of accused No.1 company and confidants of accused Nos. 2 and 3.",,,,

69. The petitioners have made the following concluding averments in the complaint:,,,,

Ã¢â‚¬Å“16. That the aforesaid acts shows that the accused No.1 i.e. M/s. Today Homes and Infrastructure Private Limited through its Directors Sh. G.K.,,,,

Gambhir and Sh. Arun Nayar (accused no.2 and 3) illegally and wrongfully induced the Complainants to invest first in the shops/ portions in the Mall,,,,

detailed herein above and which illegal and wrongful inducements were on the pretext that the investment shall yield high returns. That thereafter to,,,,

wriggle out of the contractual obligations of the accused Nos.1 to 3, the accused Nos.1 to 3 created accused No.4 in connivance and conspiracy with",,,,

the accused Nos.5 & 6. The accused Nos.5 & 6 are the Directors of the accused No.4 and which Directors of the accused No.4 are none but the,,,,

employees of accused no.1 and thus the accused No.1 to this connived and conspired to dupe the legal and bona fide entitlements of the complainants.,,,,

The aforesaid was done by the aforesaid persons in connivance and conspiracy with each other when the accused knew that neither the accused,,,,

No.4 was doing in business nor the accused No.4 was capable of doing any business. The accused no.4 was illegally and wrongfully created by the,,,,

accused No.1 to 3 and 5 to 6 so that naÃƒÂ¯ve and innocent people like the Complainants could be duped and the aforesaid accuseds can wriggle out of,,,,

the contractual obligations towards the Complainants. The aforesaid was done with a pre planned criminal objective to cheat i.e. to wrongfully gain at,,,,

the expense of the innocent investors like the complainants. The aforesaid accuseds also while illegally and wrongfully cheating the accused under the,,,,

apparent and evident acts of criminal breach of trust as the transfer was bestowed upon the accused by criminal acts of the aforesaid persons. The,,,,

criminal acts committed by the accused in connivance and conspiracy with each other committed the aforesaid criminal offences of criminal breach of,,,,

trust, cheating, also committed offences of fraud and forgery upon the complainants. It is pertinent to state that the criminal acts of fraud and forgery",,,,

were committed by the complainants as the accused No.4 was created only with the mala fide and criminal intentions to make sure that the liability of,,,,

the accused No.1 becomes null to pay the legal and bona fide dues of the complainants along with the accused No.4.,,,,

17. That the accused further committed acts of criminal breach of trust, cheating, fraud and forgery as the accused No.4 paid to most of the investors",,,,

for a period in 2009 when the documents as have now been provided by the accused to most of the complainants show that in April, 2009 itself. The",,,,

accused had entered into a lease agreement with inter alia other companies and while doing so had categorically stated in the lease deed that the,,,,

accused No.1 to 5 had consent with the complainants to such consent was not given by the complainants to the accused to enter into the lease deed,,,,

with respect to their portions and that too when the accused No.4 was paying rent to the complainants and in March, 2011 had informed the",,,,

complainants that they had already vacated the entire Mall and that in case the possession is not physically taken by the complainants of their,,,,

respective portions, it shall be assumed/ deemed possession have been handed over by the accused No.4 to the various complainantsÃ¢â‚¬â€.",,,,

70. As noticed herein above, accused nos.1 to 3 had retained the unrestricted right to lease out the premises of the petitioners/ complainants to reputed",,,,

brands in the market at the market prevailing rates, and coupled with this was the obligation to lease out the premises of the petitioners/ complainants",,,,

to reputed brands in the market at prevailing market rates. The issue that arises is whether, in discharge of the said obligation, accused nos.1 to 3",,,,

could have leased out the premises of the respective petitioners to any entityÃ¢â‚¬" such as respondent no.4 Sea Shore Pvt. Ltd., without fulfilling their",,,,

said obligation. Prima facie, the answer would be in the negative. Embedded in the authority retained by accused nos.1 to 3 to have unrestricted right",,,,

to lease out the premises of the petitioners/ complainants to reputed brands in the market at prevailing market rates, is the entrustment of the property",,,,

of the petitioners/ complainants with the accused. The accused nos.1 to 3 retained the dominion over the property/ premises of the petitioners/,,,,

complainants, since they retained the unrestricted right to lease out the same. The accused no.1 company had the obligation to pay the rent till a",,,,

reputed tenant was found on prevailing market rate for the premises of the petitioner/ complainants. Thus, accused nos.1 to 3 could not have leased",,,,

out the premises of the petitioners/ complainants to any entity which was not a reputed brand, and at a rate of rent which was not the prevailing",,,,

market rent.,,,,

71. The petitioners have alleged that respondent no.4 is a bogus company promoted by accused nos.1 to 3. Its two directors are the employees of,,,,

accused no.1. The issue that thus, arises is as to how accused nos.1 to 3 found accused no.4Ã¢â‚¬" for the purpose of leasing out a huge space of 60,000",,,,

sq. feet on ground floor, upper ground floor and first floor of the mall, and how they agreed to lease out the premises of the petitioners/ complainants",,,,

to accused no.4 Sea Shore Pvt. Ltd. It requires investigation as to what due diligence was undertaken by accused nos.1 to 3 to ascertain whether,,,,

accused no.4 fulfilled the criteria of being a reputed brand in the market. What exercise did the accused nos.1 to 3 undertake to determine the,,,,

solvency of accused no.4.,,,,

72. Prima facie, it appears that the so-called leasing of the large area of the Mall to respondent no.4 was a sham, since the Mall had not been issued",,,,

the completion certificate; the possession could not have been offered without issuance of completion certificate to the purchaser, and; the possession",,,,

could not have been offered even on the date of the reply i.e. 13.06.2011. The Mall had been sealed on three occasions by the MCD in the three year,,,,

period preceding 13.06.2011. Thus, the question arises, as to how a large part of the Mall was leased out to respondent no.4 Sea Shore Pvt. Ltd. and",,,,

why any independent entity would take such large areas on the Mall on lease when the same could not be occupied or used commercially. These,,,,

aspects require deep and thorough investigation.,,,,

73. Pertinently, it is the case of the petitioners that they were informed by accused nos.1 to 3 that accused no.4 is a bogus company promoted by",,,,

accused no.1 and that accused no.4 was only a vehicle to make payment of the monthly rent under the agreements to sell, which accused no.1 was",,,,

not able to pay on account of the on-going investigation in respect of the Ludhiana Mall Scam.Ã,,,,,

74. From the facts taken note of herein above, it has transpired that there is substance in the accusation of the petitioners as initially made with regard",,,,

to respondent no.4 Sea Shore Pvt. Ltd. being a bogus company. It has transpired that respondent no.4 Sea Shore Pvt. Ltd. is never known to have,,,,

existed. The status report dated 16.07.2014 filed by the SHO PS Barakhamba Road, inter alia, states that the I.O. visited the premises of respondent",,,,

no.4 i.e. 14/1, Netaji Subash Road, Behala, Kolkata, which was found locked and no one could provide information about respondent no.4 company.",,,,

On inquiry from the local residents and shopkeepers, none of them could provide any information. Two shops on the ground floor of the said premises",,,,

were found locked.,,,,

75. Pertinently, I have also noticed herein above the manner in which counsels initially appeared to represent respondent no.4 Sea Shore Pvt. Ltd. on",,,,

29.07.2016. When respondent no.4 was asked to produce before Court the board resolution authorizing the person empowered to sign the,,,,

vakalatnama, on the very next date, the counsel took the stand that he was appearing for respondent no.6 and not for respondent no.4. This stand of",,,,

the counsel was rejected on 14.09.2016 by observing as follows:,,,,

Ã¢â‚¬Å“I cannot accept the explanation offered by the learned counsel. Notice has been issued vide order dated 13.07.2016 to respondent No.4, and not",,,,

to respondent No.6. There was no occasion for the counsel appearing for Mr. Sanjay Kumar to stand up and put in appearance on the said date on,,,,

behalf of respondent No.4. The order dated 29.07.2016 shows that the counsel was also directed to place on record the Board Resolution and,,,,

authorisation in favour of the person who signs the Vakalatnama on behalf of respondent No.4 company. If there would have been any confusion in,,,,

the mind of learned counsel, the same would have been got cleared upon hearing the order that was passed in open Court. It appears to the Court that",,,,

this entire process of putting in appearance on behalf of respondent No.4, and thereafter resiling from the same, is a method of delaying the hearing in",,,,

the matter. In any event, since respondent No.4 is stated to be a defunct company, the matter rests there and the hearing shall proceed.",,,,

A copy of the paper book shall be provided to learned counsel for the respondent No.6.,,,,

List for arguments on 26.09.2016Ã¢â‚¬â€‹.,,,,

76. The submission of respondent nos.1 to 3 is that according to the petitioners/ complainants, they were aware that respondent no.4 Sea Shore Pvt.",,,,

Ltd. is promoted by respondent no.1 only as a vehicle to be able to fulfill its contractual obligation of paying the rent for the premises of the petitioners/,,,,

complainants. Thus, there was no misrepresentation made to the petitioners/ complainants. However, that is not the stand of respondent nos.1 to 3",,,,

who have sought to wash off their hands from their obligation under the agreements to sell, by claiming that it is a matter between the petitioners on",,,,

the one hand and respondent no.4 Sea Shore Pvt. Ltd. on the other hand, and the dispute between them Ã¢â‚¬" with regard to non payment of rent, is a",,,,

civil dispute. The status report filed by the police before the Ld. MM was also on the same lines. In this background, it requires investigation as to",,,,

wherefrom respondent no.4 Sea Shore Pvt. Ltd. received monies, which were paid towards rent to the petitioners/ complainants for a few months that",,,,

they did. The money trail is essential to be tracked to unearth the fraud and conspiracy as alleged by the petitioners/ complainants.,,,,

77. The petitioners are at sea and are not aware of the manner in which respondent nos.1 to 3 found respondent no.4 as the lessee for the area of,,,,

60,000 sq. ft in the Mall, which included the premises/ shops of the petitioners. There is no way that they can, on their own, unearth the complete",,,,

transaction entered into between the respondent nos.1 to 3 on the one hand and respondent no.4 on the other hand. What were the considerations that,,,,

flowed between them when the transaction was entered into can only be gathered upon thorough investigation by an empowered and skilled,,,,

investigating agency. The petitioners do not have the authority; the wherewithal; the capacity, and; the expertise to gather evidence in this respect. If,",,,,

the grievance of the petitioners that respondent nos.1 to 3 have only resorted to a paper exercise with a view to evade their liability and dupe the,,,,

petitioners by introducing respondent no.4 as the tenant is correct; the same would, prima facie, disclose commission of offences under Sections",,,,

406/420/468 read with Section 120B IPC since, according to the petitioners, it was on the clear assurance and understanding of respondent nos.1 to 3,",,,,

as narrated herein above, that they accepted the rent offered by respondent no.4.",,,,

78. I may now turn to the two orders impugned by the petitioners. The learned MM in the impugned order dated 06.11.2012 has interpreted clause,,,,

3(v) of the agreement to sell to say that the said clause does not oblige the accused company to find a reputed brand as lessee. This interpretation of,,,,

clause 3(v) is patently incorrect. There may not have been a definite and binding obligation on the part of accused nos.1 to 3 to find any tenant.,,,,

However, failure to do so entailed the consequence of accused nos.1 to 3 having to pay the rent on their own. However, if respondent nos.1 to 3",,,,

chose to let out the premises/ shops of the petitioners/ complainants to third parties, then they were bound- under the terms of the agreement, to lease",,,,

out the same to reputed brands on prevailing market rent. The learned MM has clearly omitted to take note of the fact that the petitioners/,,,,

complainants were made a clear representation by respondent nos.1 to 3 at the time when the agreements to sell were entered into, that their premises",,,,

would be leased out to reputed brands at prevailing market rents and, in pursuance of the said assurance respondent nos. 1 to 3 had disclosed the",,,,

intended lessees, the rates of rent, and the dates from which the lessees would take the premises/ shops on lease. Merely because the petitioners/",,,,

complainants also had the conditional right to find a tenant on their own, with the approval of respondent nos.1 to 3, it did not whittle down the",,,,

obligation of respondent nos.1 to 3 to discharge the trust created in them- i.e., to act diligently in the matter of finding a lessee for the petitioners (if",,,,

they chose to find the tenant), who could be described as a reputed brand, and to lease out the shops/ premises of the petitioners/ complainants on",,,,

prevailing market rent.,,,,

79. I also cannot appreciate the observation made by the learned MM that there is nothing to show that the directors/ employees of respondent no.1,,,,

did not act with dishonest intent while inducting respondent no.4 as the lessee in the Mall, inter alia, in respect of the premises/ shops of the petitioners/",,,,

complainants. Prima facie, the leasing of the large area of 60,000 sq.ft. in the mall to respondent No.4 which has turned out to be a dubious or non-",,,,

entity, raises strong suspicion and doubts about the intentions of respondent Nos.1 to 3, particularly in the background that the obligation to make",,,,

payment of rent was sought to be transferred by this transaction, by respondent nos. 1 to 3 to respondent no.4. The learned MM has sought to invoke",,,,

Section 91 and 92 of the Evidence Act. In my view, they are wholly irrelevant in the face of the allegations made by the petitioners and the documents",,,,

on which their complaint is premised. The learned MM refers to the clause in the agreement to sell, which records that the accused company has",,,,

provided information, clarification etc. to the petitioners/ complainants. What is missed out is that the said clause records the position as on the date of",,,,

agreement to sell, and not thereafter. What is also missed is the fact that the information documents shown to the petitioners/ complainants count for",,,,

nothing, as the intended lessees did not showed up- for reasons best known to them, and respondent Nos. 1 to 3.",,,,

80. Reliance placed by the learned MM on Dalip Kaur & Ors. v. Jagnar Singh, (2009) 14 SCC 696 is misplaced, since, prima facie, the offences of",,,,

cheating, criminal breach of trust, forgery for the purpose of cheating and criminal conspiracy are made out from the allegations and the materials",,,,

produced by the petitioners/ complainants. The observation that the petitioners can collect the record from the ROC in relation to respondent no.4 Sea,,,,

Shore Pvt. Ltd. has no merit, considering the fact that the endeavour to locate respondent no.4 and its directors has lead to a dead end. Reliance",,,,

placed on Skipper Beverages v. State, 2001 (iv) AD (Del) is not apposite, since it cannot be said that the allegations in the present cases are not",,,,

serious, or that the petitioners/ complainants are in possession of the evidence to prove the same. It prima facie, appears that a large body of innocent",,,,

persons may have been cheated and duped by the respondents of their hard earned life savings. They have paid practically the entire agreed basic,,,,

consideration, and have been left high and dry on account of the alleged conduct of the respondents, and for anyone to say that the acts complained of",,,,

do not constitute, prima facie, serious offences would be to ignore and turn a blind eye to serious offences. Reliance placed on the observations made",,,,

in V.P. Sharma (Dr.) v. State (NCT of Delhi) & Ors., 2009 (x) AD (Del) 701 is misplaced in the circumstances of the case, as discussed herein",,,,

above.,,,,

81. The order passed by the learned ASJ in revision, unfortunately, displays the same lack of understanding of the legal position and appreciation of",,,,

the allegations made against the respondents. The enormity of offence has been completely missed and trivialized by the learned ASJ while passing,,,,

the impugned order. The learned ASJ has sought to place reliance on Tula Ram & Ors. v. Kishore Singh, AIR 1977 SC 2401. The quoted extract",,,,

from the said decision merely states that the Magistrate could order investigation under Section 156(3) Cr PC only at the pre-cognizance stage, and",,,,

where the Magistrate decides to take cognizance under the provisions of Chapter 14, he is not entitled in law to order any investigation under Section",,,,

156(3) Cr PC. The purpose of relying upon the said decision is unclear. Merely because the power to order investigation under Section 156(3) Cr PC,,,,

is discretionary, as noticed herein above, it does not follow that the Magistrate can fail to exercise the said discretion even in deserving cases.",,,,

82. The ld. ASJ has observed that, by and large, all the evidences, including documentary in nature are in the possession and control of the petitioners/",,,,

complainants. As I have already noticed herein above, this is certainly not the position. There are various aspects to which the petitioners/",,,,

complainants are not privy, and they have no information or knowledge about the same. It is for the accused to explain their conduct, and come out",,,,

clean on those aspects.,,,,

83. The next reason given by the ld. ASJ is that the complainants have come to the Court belatedly. I wonder how the ld. ASJ has come to this,,,,

conclusion. The complainants have disclosed that accused No.4 continued to make payment of rent for a few months. The petitioners/ complainants,,,,

received payments till about June, 2009 from respondent No. 4Ã¢â‚¬" Sea Shore Pvt. Ltd. Thereafter, respondent No.1 sought to raise bills for",,,,

maintenance charges. The petitioners have disclosed that in June, 2011, the MCD stated that the mall was not issued the completion certificate; the",,,,

mall was sealed at least 3 times during the last 3 years; the possession of the mall could not be offered without the completion certificate; that there,,,,

were violations in the construction of the mall for which show cause notices had been issued and; that the mall could be sealed even if possession had,,,,

been given to the buyers like the petitioners/ complainants. Respondent No.1 sent communication of 20.12.2011 claiming that the mall was complete,",,,,

and that the said respondents had the requisite permissions from various departments to operate the mall. The petitioners/ complainantsÃ¢â‚¬" Arun,,,,

Saxena and D.K. Saxena state in their notices dated 22.12.2011, that they visited the site on 09.11.2011 and found nothing to show that the mall is",,,,

operational. Not even a single shop was open.,,,,

84. The petitioners made police complaints in the end of 2011 and, since no FIR was registered, they preferred their applications under Section 156(3)",,,,

Cr.P.C. in June, 2012. Certainly, keeping in view the aforesaid chain of circumstances and developments, to say that there has been an inordinate",,,,

delay on the part of the complainants in the matter of filing of applications under Section 156(3) Cr.P.C., is wholly unjustified. Even though the",,,,

possession was not delivered to the petitioners on 01.07.2007, the petitioners were paid the rent/ liquidated damages by respondent No.1and,",,,,

subsequently even by respondent No.4 till sometime in the middle of 2009. Thus, failure to deliver possession by respondent Nos. 1 to 3 in July, 2007 is",,,,

not material for the purpose of examining the aspect of delay.,,,,

85. In view of the aforesaid, the two impugned orders appear to be patently erroneous and they are, accordingly, quashed.",,,,

86. In the light of the aforesaid discussion, in my view, serious miscarriage of justice has taken place by denying to the petitioners/ complainants their",,,,

prayer for direction to the police to register a case on their complaint. The petitioners/ complainants have been left high and dry and with no,,,,

satisfactory remedy. They have been left to fend for themselves, when they are not possessed of the machinery and authority of the State. As lay",,,,

persons, they are not in no position to carry out the necessary investigation to bring home their allegations. Their complaints disclose commission of",,,,

serious cognizable offences under Section 406/420/468 read with Section 120B IPC. Investigation by the police of the said offences is not only,,,,

conducive to justice, and would not only save the time of the Court from being wasted, it is absolutely imperative- if the offenders absolutely have to",,,,

be brought to justice.,,,,

87. I am of the considered view that in exercise of the inherent jurisdiction of this Court, the mistake committed by the Courts below in rejecting the",,,,

applications of the petitioners/ complainants under Section 156(3) Cr.P.C. ought to be corrected. Accordingly, I direct that the SHO, PS Barakhamba",,,,

Road to register separate FIRÃ¢â‚¬â„¢s forthwith on the complaints of the petitioners/ complainants and to proceed with the investigation into the cognizable,,,,

offences disclosed by the petitioners/ complainants, inter alia, under Section 406/420/468 read with Section 120B IPC. The police must strictly comply",,,,

with Section 219(1) Cr.P.C.,,,,

88. The reluctance shown by the police in registering the FIRÃ¢â‚¬â„¢s on the complaints of the petitioners/ complainants, despite the same disclosing",,,,

commission of serious cognizable offences, as also their opposition to the applications of the petitioners/ complainants under Section 156(3) Cr.P.C.",,,,

before the ld. MM; thereafter before the Ld. ASJ; and thereafter before this Court shakes the confidence of this Court and raises doubts as to,,,,

whether the police is truly interested in performing its statutory obligations. The possibility of the accused- who are builders are having deep pockets,",,,,

influencing the machinery, cannot be ruled out.",,,,

89. I may observe that looking to the circumstances of the cases; I was inclined to direct the registration of the cases and investigation by the CBI,",,,,

since the cases would involve conduct of investigations not only within the NCT of Delhi but also in other places like Kolkata, where respondent No.4",,,,

Company was registered. However, I am refraining from doing so at this stage in the hope that Delhi Police would make all endeavors to redeem",,,,

themselves and restore the shaken confidence of this Court.,,,,

90. In the aforesaid light, I direct that after the registration of the individual FIRs in each of the cases at the Barakhamba Road Police Station, the",,,,

investigation shall be undertaken under the supervision of the DCP concerned.,,,,

91. In case, the petitioners and/ or the concerned Court are not satisfied with the manner and pace of investigation undertaken by the police, it shall be",,,,

open to them to approach the Court to seek the transfer of investigation in the cases to another independent agency like the CBI, by providing",,,,

justification therefor.,,,,

92. In the end, I make it clear that observations made by me in this judgement on the merits of the cases have been made purely for the purpose of",,,,

examination of the limited aspect, namely, whether the rejection of the applications of the petitioners/ complainants under Section 156 (3) Cr.P.C. was",,,,

justified in the face of the allegations made, and material relied upon by the petitioners/ complainants, and whether the same led to serious miscarriage",,,,

of justice calling for interference by this Court in exercise of its inherent jurisdiction, to correct the mistakes committed by the Courts below. The",,,,

observations made in this judgment shall not prejudice the case of either party at any stage of the proceedings.,,,,

93. The petitions are allowed with costs quantified at Rs. 10,000/ - each to be paid by respondent Nos. 1 to 3. The costs be paid within two weeks.",,,,