

Delhi High Court M/S. Skipper Beverages Pvt. Ltd. vs State on 24 April, 2001 Equivalent citations: 2001 IVAD Delhi 625, 92 (2001) DLT 217, 2001 (59) DRJ 129 Author: R Chopra Bench: R Chopra ORDER R.C. Chopra, J. 1. This petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "Code" only) is directed against an order dated 2.2.2001 passed by learned Metropolitan Magistrate, Delhi declining the request of the complainant/petitioner to make over the complaint to the police under Section 156(3) of the Code of Criminal Procedure for registration of FIR and investigations in accordance with law. 2. I have heard learned counsel for the petitioner and learned counsel for the State. 3. The facts relevant for the disposal of this petition, briefly stated, are that the petitioner company had filed a complaint under Section 380, 420, 467, 468, 471 and 120B IPC against two accused and some unknown persons alleging that in the course of the business, some blank cheques signed by a Director of the Company used to be kept in the office for withdrawal of money for urgent needs. Accused No. 1 and 2 were employees of the company. After they had left the employment of the petitioner company, some records including a cheque were found missing regarding which a notice even was served upon accused No. 2. A complaint was made to the Manager of the bank also. On 20.12.2000 the Bankers sent an intimation to the complaint that the cheque which was reported missing, had been presented for clearance for a sum of Rs. 15 lakhs but was returned unpaid as the bank account was under attachment. On inquiries it was alleged that all the columns of the cheque except the signatures were filled by a typewriter. It was also found that the accused No. 1 and 2 in collusion with some unknown persons and with a view to cheat the complainant had removed the said cheque from the office of the complainant company. A complaint was made to the police but no action was taken and hence a complaint was filed before the Court with a prayer to summon the accused for the offence as stated above. An application under Section 156(3) of the Code was also filed Along with the complaint with a prayer to direct the police to register a case and investigate the offence. 4. Learned Metropolitan Magistrate, however, vide the impugned order, came to the conclusion that there was no need to send the matter to police for investigations under Section 156(3) of the Code. He thereafter fixed the case for recording the statements of the complainant and his witnesses under Section 200 of the Code. 5. Learned counsel for the petitioner has vehemently argued that the learned Metropolitan Magistrate had failed to exercise his discretion properly by refusing to direct the police to register a case and conduct investigations. he relies upon judgment reported in Madhu Bala Vs. Suresh Kumar & Ors. 1997 CrI. L.J. 3757, to contend that the impugned order should be set aside and the Magistrate be directed to pass orders under Section 156(3) of the Code. 6. Chapter XII of the Code deals with information to the police and its power to investigate the offences. Section 156 of the Code included in this chapter speaks of the power of the police officers to investigate cognizable cases and sub clause (3) thereof lays down that any Magistrate empowered under Section 190 of Code may order such an investigation. Chapter XV of the Code deals with complaints to a Magistrate and the procedure to be adopted by the Magistrate

after taking cognizance of an offence. This chapter provides an alternative as well as additional remedy to a complainant whose complaint is either not entertained by the police or who does not feel satisfied by the investigations being conducted by the Police. 7. It is true that Section 156(3) of the Code empowers a Magistrate to direct the police to register a case and initiate investigations but this power has to be exercised judiciously on proper grounds and not in a mechanical manner. In those cases where 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. The discretion ought to be exercised after proper application of mind and only in those cases where the Magistrate is of the view that the nature of the allegations is such that the complainant himself may not be in a position to collect and produce evidence before the Court and interests of justice demand that the police should step in to help the complainant. The police assistance can be taken by a Magistrate even Under Section 202(1) of the Code after taking cognizance and proceeding with the complaint under Chapter XV of the Code as held by Apex Court in 20001 (1) Supreme Page 129 titled " Suresh Chand Jain Vs. State of Madhya Pradesh & Ors." 8. In case Arvindbhai Ravjibhai Patel Vs. Dhirubhai Sambhubhai reported in 1998(1) Crimes 351, an Hon'ble Judge of Gujarat High Court took strong exception to the growing tendency of asking the police to investigate cases under Section 156(3) of the Code and advised the Magistrates not to pass orders mechanically. It was held that Magistrates should act under Section 156(3) of the Code only in those cases where the assistance of the police is essentially required and the Magistrate is of the considered view that the complainant on his own may not be in a position to collect and produce evidence in support of the accusations. 9. In the case in hand the allegations in regard to the theft of the cheque could be proved by oral or other evidence. The allegations regarding the forging of the cheque by typing out certain portions therein could also be proved by summoning the original cheque from the bankers and leading required evidence. Therefore, it was not at all a case where the police assistance was required for breaking the case and discovering some evidence which the complainant was unable to collect of his own. This Court, therefore, is of the considered view that learned Trial Judge was justified in declining the request of the complainant to issue directions to Police under Section 156(3) of the code as prayed. 10. Section 156(3) of the Code aims at curtailing and controlling the arbitrariness on the part of the police authorities in the matter of registration of FIRs and taking up investigations, even in those cases where the same are warranted. The Section empower the Magistrate to issue directions in this regard but this provision should not be permitted to be misused by the complainants to get police cases registered even in those cases which are not very serious in nature and the Magistrate himself can hold enquiry under Chapter XV and proceed against the accused if required. Therefore a Magistrate, must apply his mind before passing an order under Section 156(3) of the Code and must not pass these orders mechanically on the mere asking by the complainant. These powers ought to be exercised primarily in those cases where the allegations are quite serious or evidence is

beyond the reach of complainant or custodial interrogation appears to be necessary for some recovery of article or discovery of fact. 11. Therefore considering the nature of allegations made by the complainant in the complaint filed before the learned Metropolitan Magistrate, this Court is of the considered view that the learned Metropolitan Magistrate had exercised his judicial discretion properly and in accordance with law by declining the request of the petitioner to make over the investigations to the police under Section 156(3) of the Code. No interference, thus, is called for by this Court. 12. The petition accordingly stands dismissed.