(2026) 08 DEL CK 4521

In the Delhi High Court, Principal Bench, New Delhi

Case No : CRL.M.C. 2539/2026

I F Hussain APPELLANT

Vs

Jitender Kharbanda & Anr. RESPONDENT

Date of Decision : 04-08-2026

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 528
Code of Criminal Procedure, 1973 — Section 156(3), 200
Right to Information Act, 2005

Citation : (2026) 08 DEL CK 4521

Hon'ble Judges : Madhu Jain, J

Bench : Single Bench

Advocate : Ms. Sunita Arora, Adv. (DHCLSC), Mr. Digam Singh Dagar, APP for State

Final Decision : Dismissed

Judgement

Madhu Jain, J.

1. The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the '*BNSS*') assailing the order dated 28.11.2022 passed by the learned ASJ (Central), Tis Hazari Courts, Delhi in Criminal Revision No.254/2021 whereby the revision petition preferred by the petitioner against the order dated 08.05.2019 passed by the learned Metropolitan Magistrate in Complaint Case No.15879/2018 came to be dismissed. The petitioner also seeks setting aside of the order dated 08.05.2019 whereby his application under Section 156(3) of the Code of Criminal Procedure, 1973 seeking registration of an FIR was declined.

Brief Facts

2. According to the petitioner, he was residing in Australia and was carrying on the business of export of steel scrap through his proprietorship concern, M/s Haidery Metals (also known as H. Metals). It is his case that respondent no.1,

proprietor of M/s Bharat Steel Traders, approached him through business intermediaries with a proposal to establish commercial relations for purchase of steel scrap for import into India. The petitioner alleges that respondent no.1 initially placed orders of comparatively small value and made advance payments in order to gain his confidence. Thereafter, respondent no.1 allegedly placed an order for supply of 420 tonnes of steel scrap under Sale Contract No.156748 dated 07.11.2005 and assured the petitioner that payment would be remitted through banking channels shortly after shipment of the consignments.

3. The petitioner further alleges that after the consignments were dispatched, respondent no.1 represented that payment in respect of three containers had already been processed and requested the petitioner to dispatch ten additional containers, assuring that the outstanding dues would be cleared upon receipt of the consignments in India. Proceeding on such assurances, the petitioner claims to have shipped the additional consignments. It is further alleged that thereafter respondent no.1 required the petitioner to alter the description of the goods from steel scrap to prime material, make changes in the shipping documents including the unit price and divert the cargo to another port, purportedly to facilitate customs clearance. The petitioner further alleges that respondent no.1 demanded an amount of USD 20,000 for securing clearance of the consignments from the Customs authorities and threatened to abandon the goods if the said amount was not paid.

4. The petitioner states that despite his efforts, respondent no.1 neither cleared the consignments nor made payment of the sale consideration. According to him, the goods remained uncleared at the port resulting in substantial demurrage, customs duty, transportation and allied charges. It is alleged that he was ultimately compelled to retrieve the consignments and dispose of the goods to another purchaser at substantially reduced rates after bearing the aforesaid expenses, thereby suffering financial losses quantified by him at approximately USD 193,882. The petitioner also alleges that during his visit to India, respondent no.1 and his father threatened him when he sought payment of the outstanding amount and requested them to clear the consignments.

5. The petitioner further states that after his attempts to recover the outstanding dues from respondent no.1 proved unsuccessful, he pursued remedies before the Directorate General of Foreign Trade (DGFT), including by addressing communications to the concerned authorities. According to him, no effective relief was granted by the DGFT despite repeated representations. The petitioner thereafter lodged complaints dated 09.06.2015 and 14.10.2015 before the Delhi Police alleging that respondent no.1 had dishonestly induced him to dispatch the consignments and had caused him substantial financial loss.

6. It is the petitioner's case that pursuant to the complaints, a Vigilance Enquiry was conducted by the Vigilance Department. According to the petitioner, the Vigilance Enquiry Report dated 02.05.2016 concluded that cognizable offences were disclosed against respondent no.1 and, since the matter fell within the

jurisdiction of Police Station Sadar Bazar, forwarded the complaint to the competent police authorities for appropriate action. The petitioner, however, states that instead of registering an FIR, the Investigating Officer conducted a de-novo enquiry and submitted a closure report dated 26.08.2016, observing, *inter alia*, no cognizable offence is made out as the dispute was civil in nature, that proceedings before the DGFT were already pending, that no sale and purchase agreement existed between the parties and that the shipment documents had been returned to the petitioner at his own request.

7. The petitioner further asserts that the closure report was never communicated to him and that he became aware of the same only after obtaining copies of the relevant documents under the Right to Information Act,2005 (hereinafter referred to as the '*IT Act*'). Thereafter, he submitted a representation dated 10.02.2017 before the DCP (North), requesting reconsideration of the matter in view of the findings recorded in the Vigilance Enquiry Report and seeking appropriate criminal action against respondent no.1. According to the petitioner, despite such representation, no action was taken by the police authorities.

8. Aggrieved by the inaction of the police authorities, the petitioner instituted a complaint under Section 156(3) of the Cr.P.C. before the learned Metropolitan Magistrate seeking a direction for registration of an FIR. Upon calling for an Action Taken Report from the police, the learned Metropolitan Magistrate dismissed the application vide order dated 08.05.2019. The petitioner challenged the said order by filing Criminal Revision No.254/2021 before the learned ASJ (Central), Tis Hazari Courts, Delhi, which also came to be dismissed vide order dated 28.11.2022. The aforesaid orders are under challenge in the present petition.

Submissions on behalf of the petitioner

9. Learned counsel for the petitioner submits that respondent no.1, with a dishonest intention from the very inception, induced the petitioner to supply steel scrap by assuring timely payment against the consignments. It is submitted that after obtaining the consignments, respondent no.1 falsely represented that payment had already been processed, induced the petitioner to dispatch further consignments and thereafter sought alteration of the description of the goods, change in the shipping documents and made unlawful monetary demands. It is submitted that the conduct of respondent no.1 resulted in the petitioner suffering substantial financial loss.

10. Learned counsel further submits that the Vigilance Enquiry Report dated 02.05.2016 categorically concluded that cognizable offences were made out against respondent no.1 and referred the matter to the concerned police authorities. However, instead of registering an FIR, the Investigating Officer filed a closure report by treating the dispute as civil in nature and on the erroneous premise that there was no sale contract between the parties and that pendency of proceedings before the Directorate General of Foreign Trade (DGFT) barred

criminal action.

11. Learned counsel further submits that the learned Metropolitan Magistrate as well as the learned Revisional Court failed to appreciate the Sale Contract dated 07.11.2005, the e-mail correspondence exchanged between the parties and the Vigilance Enquiry Report, all of which prima facie disclose the commission of cognizable offences. It is further submitted that the proceedings before the DGFT were independent in nature and could not constitute a bar to initiation of criminal proceedings. It is, therefore, prayed that the impugned orders dated 08.05.2019 and 28.11.2022 be set aside and appropriate directions be issued in accordance with law.

Analysis

12. When the matter was reserved for judgment, none appeared on behalf of the private respondent.

13. I have heard learned counsel for the petitioner and perused the material placed on record.

14. The petitioner seeks to assail the order dated 08.05.2019 passed by the learned Metropolitan Magistrate whereby the application under Section 156(3) of the Cr.P.C. as well as the complaint under Section 200 Cr.P.C. came to be dismissed. The petitioner also challenges the order dated 28.11.2022 passed by the learned Revisional Court affirming the said order.

15. It is well settled that the power under Section 156(3) Cr.P.C. is discretionary and is not to be exercised mechanically. Before directing registration of an FIR, the learned Magistrate is required to satisfy himself that the complaint discloses commission of a cognizable offence and that the facts of the case warrant investigation by the police.

16. The allegations in the present case arise out of a commercial transaction between the parties relating to export of steel scrap. The petitioner relies upon the Sale Contract dated 07.11.2005, the e-mail correspondence exchanged between the parties, the communications addressed to the Directorate General of Foreign Trade (DGFT), the Vigilance Enquiry Report dated 02.05.2016, the closure report and other contemporaneous documents. Thus, the entire case of the petitioner rests upon documentary evidence. The identity of the parties is known and the material relied upon by the petitioner is already within his knowledge and possession. No material has been shown which necessarily requires collection through police investigation.

17. The principal submission of the petitioner is that the Vigilance Enquiry Report concluded that cognizable offences were made out against respondent no.1 and, therefore, the learned Magistrate ought to have directed registration of an FIR. This contention cannot be accepted. The Vigilance Enquiry Report could only constitute one piece of material. It was for the learned Magistrate to

independently examine the complaint, the Action Taken Report and the material placed on record while considering the application under Section 156(3) Cr.P.C.

18. The learned Revisional Court has observed that the allegations arise out of a commercial transaction between the parties and that the dispute regarding the contractual obligations was already pending before the DGFT. It has further observed that, in the absence of clearly established contractual terms, the question as to which party committed breach of the transaction would necessarily require adjudication on the basis of the contractual documents. The Revisional Court also found that the material placed on record did not prima facie disclose the necessary *mens rea* to constitute the offences alleged.

19. Having perused the complaint and the documents relied upon by the petitioner, this Court finds no ground to take a different view. The allegations are founded upon the contractual relationship between the parties and the documents relied upon by the petitioner himself. Whether respondent no.1 failed to honour the contractual obligations or whether the petitioner suffered financial loss on account thereof are matters which cannot, by themselves, constitute the offences alleged in the absence of prima facie material showing dishonest or fraudulent intention at the inception of the transaction.

20. This Court also finds no infirmity in the view taken by the learned Metropolitan Magistrate in declining the prayer under Section 156(3) Cr.P.C. Merely because the petitioner disputes the conclusions recorded in the closure report or places reliance upon the Vigilance Enquiry Report would not justify issuance of directions for registration of an FIR. Insofar as the dismissal of the complaint under Section 200 Cr.P.C. is concerned, the material relied upon by the petitioner essentially pertains to the commercial dealings and correspondence exchanged between the parties and does not prima facie disclose dishonest or fraudulent intention at the inception of the transaction. This Court, therefore, finds no ground to interfere with the dismissal of the complaint under Section 200 Cr.P.C. as well.

Conclusion

21. In the facts of the present case, no illegality, perversity or jurisdictional error is made out in the impugned orders warranting interference by this Court in exercise of jurisdiction under Section 528 of the BNSS.

22. Accordingly, the present petition is dismissed. Pending application(s), if any, also stand disposed of.

