

**Issam Bakshi Vs.
Pawan Khetam & others.**

ORDER BELOW EXH. 01 IN RCC NO. 143 OF 2017

Heard Ld. Adv. for the complainant. Perused the complaint and documents submitted along with it.

2. The complainant submitted that the accused No. 2 had executed the registered agreement for sale bearing No. 748/2012 in favor of his father. They received amount of Rs. Three lack from his father as earnest money. Thereafter, his father met the accused No. 2 on many occasions requesting them to execute the sale deed in his favor but they did not pay any heed to his request. In the month of December 2015 his father came to know that the accused No. 2 executed the sale deed in favor of the accused No. 1. He had to execute the sale deed in his fathers favor but his father was deceived. By this complaint the complainant wants to send the matter under Section 156 (3) of Code of Criminal Procedure.

3. I have gone through the proceedings of the matter. From the record its appears that the complainant ought to have instituted a suit for specific performance against the accused Nos. 1 to 3. The matter seems to be civil in nature. The complainant did not produce any material on record to show why the matter should be sent under Section 156 (3) of Code of Criminal Procedure. In my opinion also the matter does not require to send for filing the FIR against the accused persons as the relief can be sought by filing the suit for specific performance in the competent court. Further, it is mandatory on the part of the complainant to support the complaint seeking relief under Section 156(3) of Cr.P.C. with the

affidavit. The complainant has not supported the complaint with the affidavit. On this ground also the prayer to send the matter under Section 156(3) of Cr.P.C. deserves to be rejected. Further, the complainant does not show that he tried to file the report under Section 154 of Cr.P.C. There is no averment in the complaint about taking steps under Section 155 of Cr.P.C. Before seeking the relief under Section 156(3) of Cr.P.C. it is necessary to comply with the provisions of Section 154 and Section 155 of Cr.P.C. On this ground also the matter can not be sent under Section 156(3) of Cr.P.C. Considering above facts and legal position I am not inclined to send the matter under Section 156(3) of Cr.P.C. Hence, the matter is put for verification.

Mangaon
Dated: 15/11/2017.

(G.S.Hange)
Judicial Magistrate First Class,
Mangaon.