

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Crl.M.C.1092/2008, Crl.M.A.4087/2008 & Crl.M.A.4088/2008

% Date of decision: 03.04.2008

SUKHBIR SINGH & ANR ...PETITIONERS

Through: Mr.S.K.Bhalla & Mr. Arvind
Kumar, Advocates for the
Petitioners *Versus*

STATE AND ANR. ...RESPONDENTS

Through: Mr.Pawan Sharma,
APP for the State

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be
reported in the Digest? | No |

SANJAY KISHAN KAUL, J. (Oral)

+ Crl.M.A.No.4088/2008

* Allowed subject to just exceptions.

Crl.M.C.1092/2008 and Crl.M.A.4087/2008

1. A complaint under Section 200 of the Code of Criminal Procedure, 1973 dated 30.08.2005 under Sections 415/416/419/420/463/464/466/468/469/471/506/120B/34 of IPC was filed by Smt. Chander Mukhi, respondent no.2 herein, arraying 29 persons as accused. The complainant claims to be an illiterate villager, a senior citizen and a

resident of Village Saboli, District: Sonapat, Haryana, but was residing with her husband and other family members at 11-A, Savitri Nagar, New Delhi -110017. The complainant claimed that she had purchased land measuring approximately 554 square yards which was part of Khasra no.73, situated with the revenue estate of village Neb Sarai, Tehsil Mehrauli, New Delhi on 26.08.1988 from Sh. Jaipal Singh on Power of Attorney basis where the usual documents of Agreement to Sell, GPA, Affidavit, Cash Receipts and Will were executed in favour of the complainant and subsequently peaceful vacant possession was also handed over to the complainant. Sh.Jaipal Singh had represented to the complainant that he had purchased the land measuring 4340 square yards from Sh.Harnand, one of the bhoomidars, on 03.07.1987 for valuable consideration and the land which was sold to the complainant was a part of the said land which was free from all disputes and encumbrances. Sh. Jaipal Singh further revealed to the petitioner that he along with three other persons had purchased land measuring 21,700 square yards out of the total five acres of land owned by five bhoomidars who were sons of Sh. Prabhati on 03.07.1988 in pursuance to similar documents of sell on Power of Attorney basis. One of the said five bhoomidars is Ram Karan. After purchasing the said land, the four purchasers including Sh. Jaipal Singh sold the said land to 46 different persons by once again executing similar documents in the name of

these 46 persons and subsequently the names of the said 46 persons were duly recorded in the revenue records of Tehsil Mehrauli as bona fide persons in possession of their respective plots in the year 1988-89 itself. The aforesaid plot holders and the complainant erected boundary walls around their respective plots and the 46 purchasers formed a Cooperative Society under the name and style of Harivansh Vihar Plot Holders Association for proper development of the plots.

2. In the month of July, 1994, the original bhoomidars including Sh.Harnand accompanied by gunda elements are alleged to have gone to the said five acres of land and started demolishing the boundary walls, dwellings etc. with the intention of grabbing the land which they had already sold long back. FIR No. 213/1994 was thus registered with PS Mehrauli, New Delhi. Another FIR No.31/2000 dated 21.06.1999 under Sections 323/341/34 of IPC was also registered at PS Mehrauli. The said Ram Karan has been impleaded as accused No.15 in the complaint while his sons Sukhbir Singh, the petitioner in the present case, Vikram and Rajinder Singh have been impleaded as accused Nos.16 to 18. Complainant claims that the original bhoomidars on the strength and influence of accused No.18 Sh. Rajinder Singh, who is a police officer in the police station Neb Sarai, intended to grab the land of five acres as they had become greedy on account of increase in the market value of the land. In para 8 of the complaint, it is alleged that the

complainant had come to know that the said original bhoomidars along with their legal heirs i.e. accused Nos.5 to 21 and accused nos.1 to 3 had connived and conspired with Sh. Raghuvinder Singh, accused no.4, under the instructions and guidance of the mastermind Sh. Rajinder Singh, accused no.18, to achieve their ulterior motives and entered into an agreement/memorandum of understanding dated 19.10.2004 with the said Sh. Raghuvinder Singh, for the sale of the said five acres of land for Rs.7 crore out of which Rs.1.25 core had already been paid to accused Nos.1 to 3 and accused Nos.5 to 21. Sh. Rajinder Singh was said to have stood witness in the earlier sale transaction of the aforesaid land by the original bhoomidars in favour of one Sh.Ahmed Sultan Chawla which was later cancelled by the original bhoomidars again on the strength of the same Sh.Rajinder Singh. Sh. Ahmed Sultan Chawla had also filed a civil suit against the original bhoomidars impleading the successors as owners numbering about 50 persons but the suit was subsequently compromised. The allegation is that Sh.Raghuvinder Singh is a notorious land grabber against whom a number of FIRs have been registered. The complainant had also come to know that an FIR No.110/2005 under Sections 415/418/419/420/448/506/511 of IPC had been got registered by a company M/s Supreme Infrastructure (India) Pvt. Ltd which had purchased most of the land from the respective sellers. The complainant claimed that she was receiving threatening calls from

unknown persons to the effect that the property of Neb Sarai, New Delhi had been purchased by Raghuvinder Singh and on a visit to the plot it was found that some undesirable elements were roaming there. A police complaint was lodged on 11.05.2005 with the SHO Mehrauli and subsequent complaints were also lodged. These facts set out in the complaint have been extracted to appreciate the conspectus of the dispute.

3. The learned MM passed an order dated 16.12.2005 under Section 156(3) of the said Code directing the SHO to investigate the case and to register the FIR. FIR No.24/2006 was thus registered. There are allegations that the IO has been able to verify that the signatures of Harnand could not be verified due to insufficiency of admitted signatures which in turn could have authenticated the execution of the documents executed by Sh.Harnand in favour of Sh.Jaipal Singh, who in turn sold the land to respondent no.2. It is alleged by the petitioner that one Sh. Chaman Lal, Advocate had attested the documents of transaction to different purchasers and he had in fact denied the same.
4. There are two other material facts disclosed in the present petition.
5. Firstly that Sh. Ram Karan, father of the petitioner and Sh.Vikram, brother of the petitioner, being accused no.15 and 17 had filed a criminal Crl.Misc.Case 1918/2006 for quashing of the FIR 24/2006 as also for quashing of the

Crl.Complaint 224/2005 filed by M/s Supreme Infrastructure (India) Pvt. Ltd. The said petition was dismissed on 21.02.2008 by a coordinate bench of this Court. The learned single Judge found that on a perusal of the complaint and the FIR, it could not be said there was no prima face case made out for proceeding against the accused for offences mentioned therein. The documents were still being examined and the investigation was in progress.

6. Secondly, a petition was lodged by Sh. Rajinder Singh, brother of the petitioner, as Crl Misc.Case 927/2008, which was dismissed as withdrawn before this Court on 20.03.2008.
7. The present petition has been filed once again by the petitioner herein seeking quashing of the complaint case and FIR 24/2006.
8. Learned counsel for the petitioner at the inception of the hearing was asked as to how different co-accused who are identically situated can keep on filing different petitions to somehow obtain the same relief by seeking quashing of the same complaint and the same FIR registered in pursuance to the order of the learned MM. Learned counsel could not dispute that the accused were really in the same boat except to the extent that Sh.Ram Karan was the father who was recorded as a bhoomidar while the other three accused including the petitioners were his sons. The allegations against the petitioner herein and Sh.Vikram are identical

though some greater role is assigned to the other brother Sh.Rajinder Singh. It was thus put to the learned counsel that the first petition was an endeavour by Sh.Ram Karan and Sh.Vikram, identically situated to the petitioner and his brother, thereafter an endeavour was made by Sh.Rajinder Singh, his brother, and now this is a third attempt by the petitioner even though there are categorical findings by a coordinate bench of this court vide order dated 21.02.2008 that there was sufficient material at least to proceed with the investigation. This is apart from the fact that normally there must be very strong reasons to shut out the investigation itself and it could only happen if on a bare reading of the complaint, nothing could be made out against the accused.

9. Learned counsel for the petitioner proceeded in his endeavour and sought to rely upon the judgment of the Apex Court in Indian Oil Corporation v. NEPC India Ltd & Ors; V (2006) SLT 475 and more specifically para 9 which is reproduced hereunder:

9.The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—*Madhavrao Jiwajirao Scindia v. Sambhajirao Chandojirao Angre*¹, *State of Haryana v. Bhajan Lal*², *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*³, *Central Bureau of Investigation v. Duncans Agro Industries Ltd.*⁴, *State of Bihar v. Rajendra Agrawalla*⁵, *Rajesh Bajaj v. State NCT of Delhi*⁶, *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.*⁷, *Hridaya Ranjan Prasad Verma v. State of Bihar*⁸, *M. Krishnan v. Vijay Singh*⁹ and *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque*¹⁰. The principles, relevant to our purpose are:

(i)A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with *mala fides*/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

10. Learned counsel thus contended that the case of the petitioner fell within (i) above inasmuch as the allegations made in the complaint, even if they are taken on their face value and accepted in their entirety, do not prima facie constitute an offence to make out a case against the accused.

11. Learned counsel also referred to the judgment in State of West Bengal and Ors v. Swapan Kumar Guha & Ors; AIR 1982 SC 949 to advance the proposition that while exercising jurisdiction under Article 226 of the Constitution

of India, the High Court was justified in quashing the investigation where the FIR did not disclose commission of a cognizable offence. The reference was also made to the judgment of a learned single Judge of this Court in Vijay Khanna v. Jumbo Electronics Co.Ltd and Anr; Recent Criminal Reports 1985 (1) 20 where the test for exercising jurisdiction under Section 482 of the said Code while quashing the criminal proceedings was held to be that the allegations in the complaint without adding or subtracting anything would show that no offence was made out.

12. A reference was also made to the Full Bench Judgment in Vinod Kumar Sethi and Ors v. State of Punjab and Anr; AIR 1982 Punjab and Haryana 372 to advance the proposition that there was no blanket bar against quashing of FIR and the consequent investigation though the power is not to be exercised indiscriminately and the requisite pre-condition for the exercise of the power must be satisfied.

13. On hearing learned counsel for the petitioner, I find that there cannot be any dispute about legal proposition sought to be advanced by learned counsel for the petitioner. However, the legal precedents apply only to given facts of a case and are law on those facts. The only question to be examined is as to whether on a bare reading of the complaint a situation exists where nothing can be held against the petitioner assuming that what is stated is correct. The present case certainly does not fall in that category. A reading of the complaint shows that there is

categorical allegation of collusion of the petitioner, his two brothers and his father to grab the bhoomidari land of which the father was one of the bhoomidars and the petitioner and his two brothers would have interest as heirs to the bhoomidars. The question of authenticity of the documents and their execution is being investigated and the IO has stated that as per his investigation, the advocate Mr.Chaman Lal had in fact sought to backtrack from having attested the documents under inducement or threat by the accused persons since on investigation it was found that the Register produced by him of the concerned time period was not authentic and further investigation did go to show that the documents were apparently executed. Thus, the investigation process is on and to quash the complaint and the FIR would be to scuttle and throttle the investigation at its inception which is not permissible.

14. There is another important aspect of the matter arising from the fact that accused no. 15 to 18 are closely related. Accused no.15 is the father and accused no.16 to 18 are the sons of accused no.15. Petitioner is accused no.16. These accused are thus sailing in more or less the same boat and the petitioner and accused no.17 are identically situated. The endeavour is to throttle the investigation by filing different petitions seeking the same relief. Thus one petition was filed by accused no.15 and 17 while another was filed by accused no.18. The first was dismissed by a speaking order by a coordinate bench of this

Court while the second one was dismissed as withdrawn by this Court. This is the third endeavour in that direction and it appears to be a concerted effort to take chances before different benches to somehow achieve the reliefs. It is noticed that such endeavours of litigants have increased in the recent past and in my considered view, the same deserves to be dealt with a strong hand. This is not only because the same would amount to element of bench hunting and abuse of process of court but also because such repeated petitions of identical nature only seek to burden the courts with unnecessary litigation when these courts are already over burdened. As an illustration, hearing in the present matter went on for about half an hour at the insistence of the learned counsel for the petitioner.

15. The most disturbing fact came to light on closer scrutiny of the records of the present petition. The whole case was argued by the petitioner on the basis that Mr.Sukhbir Singh was the sole petitioner in the present case. However, the records show that while the petition was originally so filed, there is a note on the said memo of parties stating that the same may be deleted as a new memo of parties has been filed adding the name of petitioner no.2. The petitioner no.2 is Mr.Vikram, brother of Sh.Sukhbir Singh. This, Mr.Vikram, had earlier filed a petition seeking quashing of the same FIR which was dismissed by a speaking order dated 21.02.2008 in Crl.M.C.1918-36/2006. The name of Sh.Vikram has thus

been surreptitiously sought to be added in the present petition as petitioner no.2 despite the fact that on the same cause and for the same relief, his earlier petition has already been dismissed. To say the least, this is a deplorable conduct and would not have come to light but for closer scrutiny of the record by this Court.

16. The petition and the application are thus devoid of any merit, abuse of process of court and are accordingly dismissed with costs of Rs.7,500/- to be deposited with Delhi High Court Legal Services Committee within fifteen days from today.

APRIL 03, 2008
dm

SANJAY KISHAN KAUL, J.