

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: February 8, 2008

CRIMINAL M C No 1857 of 2006 & Crl M C 3008/2006 (stay)

DEVENDER KUMAR MITTAL Petitioner
Through Mr. S.S. Gandhi, Senior Advocate with
Mr. M.R. Chawla, Advocate

versus

STATE & ORS. Respondents
Through Mr. P.D. Gupta with Mr. Abhishek
Gupta, Advocate for R-2.
Mr. O.P. Saxena, Advocate for State/R-1.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

- | | | |
|----|---|-----|
| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

ORDER

Dr. S. MURALIDHAR, J. (open court)

Crl M A No 6482/2006

1. This is an application filed by the applicant for transposing the Respondent No.3 as Petitioner No.2 in the main petition.

2. Learned Senior counsel appearing for the applicant does not press this application. Accordingly, this application is dismissed as not pressed.

Crl M C No 1857/2006

3. This is a petition under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') filed by the Petitioner seeking the quashing of an order dated 21st

December, 2005 passed by the learned Metropolitan Magistrate ('MM'), Delhi in Complaint Case No. 36/1 P.S. Roop Nagar, Delhi titled ***Naresh Kumar Aggarwal v. Pawan Kumar Jain & Another*** whereby the Petitioner and Respondent No.3 were summoned to face trial for the offences under Sections 420/468/467/471/34 IPC in the complaint filed by Respondent No.2.

4. There is a fairly long history to the present litigation between the parties. Briefly stated, the complainant along with the Petitioner No.1 and his deceased wife Smt. Kamini Mittal were co-owners of a property at Mussoorie in Uttaranchal. The parties thereafter formed a company named Kumari Hotel Pvt Limited. It is stated that the disputes that arose between the parties subsequently culminated in proceedings both the civil court as well as the Company Law Board. This Court had occasion to deal with the disputes between the parties under the companies Act 1956. By an order dated 24th May 1996 the learned Single Judge of this Court dismissed the petition filed by the complainant for winding up of the company. By a judgment dated 25th May 2001 the Division Bench of this Court affirmed that order.

5. The complainant claims that since he was finding it difficult to manage the property at Mussoorie he had executed a general power of attorney (GPA) in favour of the Respondent No.3 Pawan Kumar Jain on 3rd December 2001 which he subsequently revoked within a month thereafter on 8th January, 2002. When he visited the property at Mussoorie in the first week of October 2004 he learnt that the said Pawan Kumar Jain had in active collusion with the petitioner sold the share of the complainant to the petitioner by preparing and getting registered a

false sale deed in favour of the petitioner here on the basis of the GPA dated 3rd December 2001 by concealing the fact that it had been revoked.

6. According to the petitioner, however, the complainant had already received Rs.6 lakhs from him in settlement of their disputes. After the dismissal of his petition and the subsequent appeal by this Court, the complainant informed the petitioner that Pawan Kumar Jain in whose favour the complainant had executed a GPA would transfer the complainant's share in the property in favour of the petitioner; that the sale deed in favour of the petitioner was perfectly valid; in fact the complainant had even sworn to an affidavit on 3rd July 2002 to this effect; and that at no point of time did the complainant inform the petitioner of the alleged revocation of the GPA in favour of Pawan Kumar Jain.

7. It is repeatedly urged by learned Senior counsel for the Petitioner that given the background of the litigation between the parties it is apparent that the dispute is of a civil nature. It had been and given the colouration of a criminal offence by the complainant only to harass the Petitioner. He relies upon the judgment of the Supreme Court in *Suresh v. Mahadevappa Shivappa Danannava (2005) 3 SCC 670* to contend that criminal proceedings that have been instituted without any reasonable explanation for the delay ought to be quashed.

8. Learned counsel appearing for the complainant Respondent No.2 opposed the prayer of quashing and points out that the case is only at the stage of summoning the accused. He contends that any submission by the petitioner about the nature of

the dispute could well be addressed before the trial court at the stage of framing of charge.

9. This Court finds that the background of the case shows that there are highly disputed questions of fact which are not amenable to a decision one way or the other in a petition under Section 482 CrPC. A reading of the complaint as a whole does not show that there is not even a prima facie case made out for proceeding against the petitioner for the offences under Sections 420/468/467/471/34 IPC. Whether the Petitioner's assertions that the complainant had been paid for his share in the property and that the petitioner was not aware of the alleged revocation by the complainant of the GPA in favour of Pawan Kumar Jain are correct cannot be determined unless evidence is led at the trial. The judgment of the Supreme Court in *Suresh v. Mahadevappa Shivappa Danannava* (supra) shows that it turned essentially on the fact that the learned MM there proceeded to issue summons notwithstanding the police report under Section 156 (3) CrPC giving a clean chit to the accused who were summoned. In this case there is no such report by the Police. The facts are still to be examined by any authority. Given the nature of the allegations they can be determined one way or the other way only by the trial court in the first instance.

10. Finally it is urged by learned Senior counsel for the Petitioner that this Court may adjourn these proceedings sine die to await the final verdict in the proceedings pending in the civil court. The law is fairly well settled that the criminal and civil disputes arising out of the same set of transactions between the parties can proceed

simultaneously. Therefore, this Court is not inclined to accede to this prayer of the petitioner.

11. For the aforementioned reasons, this Court does not find any ground to interfere in exercise of its powers under Section 482 CrPC.

12. Any request made by the Petitioner for exemption from personal appearance should be made by way of an appropriate application before the trial court which will then be considered by that court on its merits.

13. This petition is dismissed. The interim order dated 28th August 2006 stands vacated. The pending application is also dismissed. A certified copy of this order be sent to the court of the concerned MM before whom Complaint Case No. 36/1 P.S. Roop Nagar, Delhi titled *Naresh Kumar Aggarwal v. Pawan Kumar Jain & Another* is pending within five days. Order dasti to counsel for the parties.

S. MURALIDHAR, J.

FEBRUARY 8, 2008

rk