

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : January 08, 2008
Date of Decision : February 05, 2008

+CRL. M.C. No. 4916 of 2005

NIRMALA JAIN & ORS. PETITIONERS
Through : Mr. Rajesh Tyagi, Advocate.

versus

V.C. JAIN RESPONDENT
Through: Mr. Arvind Gupta, Advocate.

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 |

Dr. S. Muralidhar, J.

1. This petition under Section 482 CrPC is directed against the Criminal Complaint No.2 /1 of 1995 titled ***Vinay Chand Jain v. Smt.Nirmala Jain & Ors*** and an order dated 24th November, 2001 passed by the learned Metropolitan Magistrate, Delhi ('MM') summoning the Petitioners to face trial for the offences under Section 420,468,471,120 B IPC.

2. Initially this petition is filed as a revision petition under Section 397 against the order dated 24th November, 2001 whereby the learned MM rejected the petition filed by the Petitioners seeking discharge and dropping of proceedings against them. In view of the judgment of the Supreme Court in ***Adalat Prasad (2004) 7 SCALE 137*** this Court accepted the plea of the Petitioner that the present petition should be treated as one under Section 482 CrPC and by an order dated 27th

September, 2005 the petition was directed to be numbered as such. This Court stayed the proceedings in the trial court during the pendency of the petition.

3. A complaint was filed by the Respondent Shri Vinay Chand Jain in the court of the learned MM, Delhi against the Petitioners and Bajaj Auto Limited ('Company') in respect of 2160 shares of the Company which according to the complainant stood in his name but was illegally got transferred in the name of the Petitioners by forging a transfer deed. According to the complainant, the share certificates in respect of the aforementioned 2160 shares were kept in the custody of his brother late Shri D.C.Jain who was a lawyer and with whom the complainant was also practising as a lawyer from 1959 to 1964. The address in the shares was therefore given as A-2/138 Safdarjung Enclave, New Delhi. It is stated that after the death of Shri D.C.Jain on 24th September 1993, the share certificates remained in the possession of the Petitioners here who are the widow and three sons and the daughter-in-law of Shri D.C Jain. According to the complainant he did not insist on the return of the share certificates since the parties were closely related.

4. The complaint proceeded to state stated that when the Petitioner applied to the Company for recording the change of his address from A-2/138 Safdarjung Enclave, New Delhi to 4499 Gali Jatan, Pahari Dhiraj, Sadar Bazar, Delhi a reply was received on 2nd July, 1994 from the Company stating that no action could be taken on his request since his account "was closed on 30.4.1994." On visiting the Company on 22nd July 1994, the complainant learnt that the shares were transferred in the name of the Petitioners here. Subsequently, the Petitioner received from the Company a photocopy of the transfer deed with a date stamp of 17th December, 1996. The date of transaction was however shown as 12th

April, 2003 which was five months before the death of Shri D.C Jain. The consideration was shown as Rs.4,96,800. The witnesses were Rakesh Jain and Anjali Jain wife of Petitioner No.2 here and the broker to the transaction was Mukesh Jain who is Petitioner No.3. According to the complainant, the signatures on the transfer deed and the writing in the columns thereon appeared to be forged. It is stated that the company failed to show the complainant the original records despite repeated requests and accordingly the complaint was filed thereafter.

5. By an order dated 4th September, 1998 the learned MM examined the report submitted under Section 156 CrPC by the police and held that there is a prima facie case against the Petitioners here for the offences under Sections 406/411/418/420/120B IPC. Summons were directed to issue to the petitioners

6. Aggrieved by the aforementioned order two sets of petitions were filed under Section 203 before the learned MM seeking discharge. One was by the Company and other by the Petitioners here. As regards the Company, the learned MM passed a detailed order dated 24th November, 2001 dropping further proceedings. By a separate brief order on the same date the learned MM rejected the application of the Petitioners here for dropping the proceedings. It is against the latter order that the present petition has been filed.

7. Learned counsel for the Petitioners contended that the complaint itself was mala fide and did not disclose any cognizable offence; that the parties are closely related and the complaint was filed several years after the alleged transfer of shares has taken place. It is accordingly submitted that the impugned order dated 24th November, 2001 issued by the MM summoning the Petitioners ought to be quashed.

8. The date stamp as can be seen evident from the photocopy of the transfer deed reads as 26th December, 1996 whereas the petitioners contend that it is 17th December 1986. Nevertheless the photocopy of the transfer deed shows several other dates as well. The entry on the rear shows the date of delivery of the shares as 4th August, 1993 but the endorsement of transfer on the bottom of the front page bears the date of 30th April, 1994. If indeed the transfer deed is dated 17th December 1986 as contended by the petitioners, why did they wait till 30th April 1994 or even till 4th August 1993 the date shown on the rear of the form? Therefore, even on the question of dates, the document of transfer raises more questions than it answers. Further, it cannot be said on a reading of the complaint as a whole that no offence at all has been made out against the Petitioners. These can be resolved only after evidence is led at the trial.

9. On a careful consideration of the material on record and submissions of the learned counsel for the parties, this Court is of the view that no grounds have been made out by the Petitioners to persuade this Court to interfere in exercise of its powers under Section 482 CrPC to quash the criminal proceedings. Nothing said in this order is intended to prejudice the rights and contentions of either parties. The learned trial court, after considering all the available pleas of the parties, will form its final opinion uninfluenced by this order.

10. Dismissed with no order as to costs.

S. MURALIDHAR, J.

**February 05, 2008
dn**