

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: January 28, 2008

Date of decision: February 26, 2008

**CRL.M.C. 6707 of 2005 & CRL.M.A. 12572 of 2005  
& CRL.M.A. 8228 of 2006**

NARENDER SINGH & ORS. .... Petitioners  
Through Mr. Sanjay Suri and Mr. Jeevesh  
Mehta, Advocates.

versus

STATE NCT OF DELHI & ORS. .... Respondents  
Through Mr. Sunil K. Mittal, Advocate.

**CORAM:**  
**HON'BLE DR. JUSTICE S. MURALIDHAR**

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

**Dr. S. Muralidhar, J.**

1. By this petition under Section 482 CrPC the Petitioners seek the quashing of FIR No. 941 of 2003 under Sections 406/420/506/120B/34 IPC registered at Police Station Kalkaji and all proceedings pursuant thereto.

2. The Petitioners state that they are carrying on business of retail sale of gold ornaments and diamond jewellery and have been running a show room since 1972. The business is a partnership started by their father in the name of Satkar Jewellers which has been registered under the sales tax and excise laws. The case of the complainant SRG Pvt. Ltd Respondent No.2 is that the

complainant also deals in the business of sale and manufacturing of jewellery. It is stated that the petitioners accused contacted the complainant for the purpose of entering into regular transactions for purchase of jewellery items made from precious metals on a wholesale basis. Payments were made against regular purchases and thereafter once the volume of transactions increased, jewellery was sold to the accused against post-dated cheques. When the cheques began to get dishonoured, the complainant made a demand for payment. It is stated that a sum of Rs.33,45,693/- became due and outstanding from the accused persons. It is then stated as under:

“That all the accused persons are family members and have tendered the deep conspiracy to cheat the complainant of his valuable money/goods for including him to deliver the goods to them which he would have never delivered if he would have known their dishonest intention. Since from the beginning to cheat the complainant and the accused persons have committed a criminal breach of trust as the goods were entrusted to the against consideration and the accused were required to make the payment and honour their commitment on the due dates of the cheques, which they intentionally did not fulfill.”

3. The FIR also states as under in para 14:

“14. That the complainant now tried to find out their status and position in the market and came across and met several other persons, who were also cheated in a similar manner and their modus operandi for cheating all the persons is one and the same and a no. of case have been filed against the accused persons are facing trial in these case at various places. Copy of few cases is enclosed as annexure ‘B’ with this complaint for kind perusal of this Hon’ble Court.”

Thereafter a separate averment is made regarding an incident of 12<sup>th</sup> September 2003 in para 15 which reads as under:

“That the accused persons finally called the complainant on 12.09.2003 at their shop on the pretext of settling the matter and the complainant went there alongwith Pushkar

his employee and found that Sh. Surender Singh, Narender Singh and Arvinder Singh alongwith Smt. Upinder Kaur and Smt. Arvinder Kaur and when the complainant demanded for money or the return of the goods, all the three accused persons got angry and started abusing the complainant in a filthy language and took out their kirpans and threatened to kill the complainant, if the complainant will visit their shop in future and will demand the money. The accused had also calls 4-5 other persons who were looking like gunda elements, whom the complainant can identify on being produced, who were also supporting the accused and threatened the complainant and his family members. The complainant was forced to leave the place by all the persons and the complainant realized that the accused persons have cheated him by inducing him to part with the valuable property after taking him into confidence by issuing him cheque and on the fake commitment of their encashment on their due dates. All the accused persons have entered into a deep conspiracy with an intention to cheat him and has entered into a criminal breach of trust. Not only the complainant has been cheated by the accused persons, that even the relatives of the accused Sh. Gurnarain Singh, Shri Sukchain Singh tried to get the matter settled but of no use.”

4. Soon after the FIR was filed, the Petitioners here filed Criminal Misc. Case No. 5265 of 2003 in this Court stating that on the same cause of action a criminal complaint had already been filed under Section 138 of the Negotiable Instruments Act, 1881 and while that was in progress the present petition has been filed arising out of the same cause of action and was therefore bad in law in view of the judgment of the Supreme Court in ***G. Sagar Suri v. State of U.P. 2000 (1) JCC (SC) 158***. That petition came to be disposed of by an order dated 20<sup>th</sup> April 2004 which reads as under:

“This petition has been filed with a prayer to quash FIR No. 941/03 under Section 406/420/506/120B/34 IPC registered at Police Station Kalkaji.

It is contended by counsel for the petitioners that on the same cause of action a complaint has earlier been made under Section 138 of the Negotiable Instruments Act and proceedings in that complaint are in progress. The complainants in the earlier complainant have moved

another complaint enlarging the scope of the earlier complaint by including Section 420 IPC etc. Counsel further submits that the second complaint is malicious and cannot be tried. He relies upon a judgment of the Supreme Court in **G.SAGAR SURI AND ANOTHER VS STATE OF U.P. AND OTHERS**, AIR 2000 SUPREME COURT 754.

Having heard counsel for the petitioners, I am of the view that the petitioners should make this grievance in the first instance before the learned Metropolitan Magistrate who has directed an inquiry under Section 156(3) Cr.P.C. To enable the petitioners. To appear before the learned Magistrate even before they have been summoned, I grant them permission to appear before the learned Metropolitan Magistrate and show to him whether the order passed by him for investigation under Section 156(3) Cr.P.C. is in accordance with law or not.

To enable petitioners to avail of this order, I direct that, they be not arrested in this FIR for a period of seven days from today.

With this Cr. M.C. 5265/2003 stands disposed of. Cr. M.A. 7090/2003 also stands disposed of.

Dasti.”

5. Thereafter the learned Metropolitan Magistrate (‘MM’) passed an order directing registration of the FIR and taking cognizance of the offence under Sections 406/420/506/120-B read with 34 IPC. The main plank of the submission of the Petitioners is based on the judgment in **G. Sagar Suri** and a more recent judgment in **Inder Mohan Goswami v. State of Uttranchal (2007) 4 JCC 2843**. It is stated that on the same cause of action proceedings under Section 138 NI Act were initiated and this fact has been suppressed in the FIR deliberately. However, in respect of five separate cheques five such proceedings are pending in the court of the learned MM. Also certain civil recovery suits have been filed by the complainants against the Petitioners. Therefore what is essentially civil dispute has been given the colouration of

a criminal dispute. Therefore the entire proceedings are malafide and ought to be quashed.

6. Learned counsel for the Respondent on the other hand states that merely because the disputes also partake of a civil character, the filing of criminal proceedings is not precluded. He refers to the judgment in ***Rajesh Bajaj v. State (1999) 3 SCC 259***. He further points out that the orders passed by this Court record the fact payments have been made by the Petitioners and that this itself shows that the Petitioners have admitted their liability. Lastly he submits that the incident of 12<sup>th</sup> September 2003 is subsequent to the issuance of the cheques in question and since it constitutes a separate cause of action, another FIR can be legitimately registered.

7. The admitted position is that as far as the FIR is concerned, it indicates to the pending proceedings which include proceedings under Section 138 NI Act. It cannot, therefore, be said that the fact of pending proceedings was suppressed in the FIR. The learned MM appears to have passed the order after perusing the FIR as well as its Annexures.

8. The question that arises is whether the subject matter of both the criminal complaint filed under Section 138 NI Act as well as the FIR arises from the same cause of action. A further question whether the dispute is essentially of a civil nature and have been given the colouration of criminal proceedings makes it an abuse of the process of law.

9. The learned MM, when presented with the complaint passed the following

order on 28<sup>th</sup> November, 2003:

“The documents annexed to the complaint revealed that voluminous business has been conducted between the parties. Integrity of accused persons, who are representatives of M/s Satkar Jewellers somehow turned doubtful over passage of time and they started delaying discharging their liabilities. The conduct and role of the several accused persons impleaded in the complaint requires to be distinctly inquired and responsibility fixed. Practically, complainant being totally outsider cannot be expected to retrieve further evidence than that has been filed with the complaint. He requires police assistance to nab the culprits and unearth the siphoning of huge amount of complainant, who says that there are several similar other victims of the accused persons. It is therefore, fit case for being referred U/s 156(3) CrPC. SHO PS Kalkaji is directed to register the FIR on the complaint and investigate the matter. Copy of complaint, documents and this order be sent.

Progress report be submitted on 23.3.2004.”

10. The learned MM obviously had not at this stage to consider whether the proceedings under Section 138 NI Act precluded the filing of the second complaint. The incident of 12<sup>th</sup> September 2003 certainly was not part of the earlier complaint. It would require to be investigated. Also, the nature of the allegations in the present complaint and the order passed by the learned MM thereon indicate that the scope of the investigation in the FIR may be larger than what was earlier expected when the complaint under Section 138 NI Act was filed. To this extent the decision in *G.Sagar Suri* cannot be said to apply on all fours. In any event, without a detailed investigation and possible trial it may not be possible to arrive at a definite conclusion whether the subsequent FIR is no different from the complaint filed earlier under Section 138 NI Act.

11. This Court is of the considered view that all the arguments addressed at

the present stage could be urged by the Petitioners at the stage of framing of charge. This would include the contention that this is essentially a civil dispute which has been given the colour of a criminal offence.

12. For the aforesaid reasons, this Court is not inclined to interfere in the matter. No grounds have been made out for exercise of its powers under Section 482 CrPC by this Court. The observations in this order are tentative and not intended to influence the verdict of the trial court at the subsequent stages of the criminal proceedings.

13. The interim order staying the non-bailable warrants has worked itself out. The Petitioners will appear through counsel in the trial court on the next date of hearing and file an application for exemption thereafter which application will be considered on its merits by the trial court. The petitioners will appear before the trial court as and when directed by it.

14. The petition is dismissed and pending applications are disposed of with no order as to costs.

**S. MURALIDHAR, J.**

**FEBRUARY 26, 2008**  
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