

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

+ **Crl.M.C.No.2591/2008**

% **Date of Decision: 11.08.2008**

Sh. Ram Lal Bansiwal Petitioner

Through Mr.Ramesh Kumar, Advocate.

Versus

Sh. Mohan Lal Bansiwal & Others Respondents

Through Nemo.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner has impugned the dismissal of his complaint by the Metropolitan Magistrate by order dated 27th February, 2007 and dismissal of his revision petition by the learned Additional Sessions Judge by order dated 23rd February, 2008 in Criminal Revision No.61 of 2007. The petitioner/complainant is alleged to have entered into an agreement to sell, dated 9th December, 2002 with Mohan Lal, respondent No.1, for a total consideration of Rs.12.00 lakh out of which Rs.50,000/- was paid to respondent No.1 in advance and the balance amount was payable on or before 31st March, 2003. On failure of

respondent No.1 to execute the conveyance in terms of agreement to sell, dated 9th December, 2002, a suit for specific performance was filed by him against respondent No.1 which is still pending adjudication in the civil court.

The allegation of the petitioner is that respondent No.1 has executed sale deeds in favour of other respondents in respect of other portions. It is also alleged that a store measuring 6' x 7', situated in mezzanine floor, which is owned by the daughter of the petitioner has also been sold in favour of other respondents.

The learned Metropolitan Magistrate and the revision Court has held that the disputes are of a civil nature and though the petitioner has tried to dress them and attribute criminal nature to the same the petitioner, however, should not be permitted to use the prosecution to put pressure for achieving their civil claims.

It is apparent that there is a civil contract, an agreement to sell a portion of the property, and the respondent No.1 allegedly did not perform his part of agreement and a civil suit for specific performance is already pending. In the circumstances, there is a specific remedy in civil law which has already been availed by the petitioner.

Learned counsel for the petitioner has also relied on 1993 RLR 567, Ravi Kumar Nigam, Sathabalan v. State. Perusal of the judgment relied on by the petitioner reveals that the said precedent is distinguishable as in that case there was an allegation of trespass on

the basis of a document whereas in the present case there is no trespass and the suit for specific performance is already pending.

Considering the facts and the orders of the courts below, no such manifest error is apparent which will entail exercise of jurisdiction under Section 482 of the Criminal Procedure Code by this Court. There is no infirmity in the orders dismissing the complaint of the petitioner as the suit for specific performance filed by the petitioner against the respondent for non-performance of agreement to sell executed by him is still pending. There are no grounds to interfere in the facts and circumstances and the petition is, therefore, dismissed.

August 11, 2008

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ANIL KUMAR, J.