

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

+ **CRL.M.C. 69/2009**

% Date of Order : 18th December, 2009

NARENDER KUMAR JAIN Petitioner

! Through Mr.Sudhir Nandrajog,
Sr.Advocate with Mr.Ashutosh
Lohia, Advocate.

versus

\$ STATE OF N.C.T. OF DELHI & ANR. Respondent

! Through Mr.Sidharth Luthra,
Sr.Advocate with Mr.Ankur Garg,
Adv. for R-2.

* **CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

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| 1. | Whether the 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 the Digest? | Yes |

: **V.K. JAIN, J. (oral)**

1. This is a petition under Section 482 of the Code of Criminal Procedure for quashing FIR No.249/2008 lodged by respondent No.2 at Police Station Rajinder Nagar under Sections 420/406/506 of IPC.

2. A perusal of the FIR would show that the petitioner agreed to sell half undivided portion of property bearing No.R-750, New Rajinder Nagar, New Delhi, to respondent No.2 for a sale consideration of Rs.24,62,500/-. A sum of Rs.24 lakhs was paid to the petitioner by way of five cheques issued in his favour and an

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Agreement to Sell was executed on 25.6.2005 acknowledging the payment. A sum of Rs.4,62,500/- was also paid in cash to the petitioner on that date. This is also the case of the complainant/respondent No.2 that on 25.6.2005 itself, the petitioner handed over the physical possession of the area which was in his exclusive possession and also delivered symbolic possession of the remaining portion of his share. The actual physical possession of that portion was to be handed over to him after getting the same vacated from its occupants. Documents, such as Will, Special Power of Attorney and Possession Letter etc. were also executed in favour of the complainant. A civil suit filed by the petitioner for possession of the portion alleged to have been in illegal occupation is pending in Civil Court. According to the complainant, the petitioner executed the Sale Deed in his office on 11.3.2008 and at that time, he took away the original Agreement to Sell on the representation that since Sale Deed has been prepared and signed, there was no need of the Agreement. The grievance of the complainant is that despite taking money from him and executing the sale deed, the petitioner had not come forward to present it for registration on one pretext or the other. It has also been alleged that the petitioner was threatening, intimidating and blackmailing the complainant demanding more money over and above the agreed sale consideration.

3. It is settled proposition of law that cheating is made out if
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there was fraudulent or dishonest intention at the very inception of the transaction i.e. at the time when the promise or representation was made. In **Hira Lal Hari Lal Bhagwati vs. Central Bureau of Investigation** 2003 AIR(SC) 2545, the Hon'ble Supreme Court held that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent intention at the time of making promise or representation. It was further held that from his making failure, to keep up promise subsequently such a culpable intention right at the beginning, i.e., at the time when the promise was made cannot be presumed. Similar view was taken in **K.C. Builders vs. Assistant Commissioner of Income Tax**, 2004 (2) SCC 731, **Alpic Finance Ltd. vs. P. Sadasivan and Anr.** (2001) 3 SCC 513, **V.Y. Jose & Anr. Vs. State of Gujarat & Anr.** 2009 I AD (Cr.) (S.C.) 567. In **Anil Mahajan Vs. Bhor Industries**, 2005 (10) SCC 228, the Hon'ble Supreme Court, inter alia, observed that the substance of the complaint is to be scene and mere use of expression 'cheating' in the complaint is of no consequence. Therefore, unless the complainant is able to show that the petitioner had a dishonest or fraudulent intention at the time he entered into sale agreement with him, cheating would not be made out. There is no allegation made to the FIR which would indicate any fraudulent or dishonest intention on the part of the petitioner at the time, he entered into sale transaction with the complainant. The petitioner handed over vacant portion of the

possession occupied by him. He also gave symbolic possession of the portion which was occupied by one Mr.Basant Lal Chopra. He has not withdrawn the civil suit filed by him for possession of the remaining portion. In these circumstances, it cannot be said that there was any fraudulent or dishonest intention on the part of the petitioner, when he entered into sale agreement with the complainant and accepted money from him.

4. It was contended by the learned counsel for the complainant that vide para 2 of the sale deed, the petitioner assured the complainant that the property, subject matter of the transaction, was free from all prior disputes etc. whereas in fact a dispute was admittedly going on between the petitioner and Mr.Basant Lal Chopra as regards possession of the portion occupied by Mr.Basant Lal Chopra. A perusal of the FIR would show that the complainant knew since very beginning that there was a dispute between the petitioner and Mr.Basant Lal Chopra as regards the portion occupied by Mr.Basant Lal Chopra and that is why only symbolic possession of that portion was given to him. The physical possession of that portion was to be given to him by the petitioner only after getting it vacated from Mr.Basant Lal Chopra. Therefore, no fraudulent or dishonest intention on the part of the petitioner can be inferred on account of this averment made in the sale deed.

5. As regards the allegation that the original Agreement to Sell was taken aback by the petitioner while signing the Sale Deed, it

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has been rightly pointed out by the learned counsel for the petitioner that once the Sale Deed had been signed by the petitioner, the Agreement to Sell lost all its significance since this is not the case of the complainant that the covenants contained in the Agreement to Sell are not part of the sale deed signed by the petitioner. In any case, once the sale deed is signed, the terms and conditions settled between the parties merge into the covenants contained in the sale deed and the parties are thereafter bound by those very covenants.

6. Mere failure, on the part of the petitioner to get the Sale Deed registered, would not constitute cheating unless it is shown that at the time, he executed Agreement to Sell in favour of the complainant, he did not have any intention to execute the sale deed in his favour. In fact, the conduct of the petitioner in handing over physical possession of the portion occupied by him, giving symbolic possession of the portion occupied by Mr. Basant Lal Chopra and signing the sale deed at the place of complainant show that at least till the time he signed the sale deed, there was no dishonest intention on the part of the petitioner. Once the sale deed had been signed, what remained was only presentation of the sale before the Sub-Registrar for the purpose of registration.

7. In **State of Haryana vs. Bhajan Lal, AIR 1992 SC 604**, the Hon'ble Supreme Court held that where the allegations made in the FIR or the complaint even if they are taken at their face

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value and accepted in their entirety do not, prima facie, constitute any offence or make out any case against the accused, the court would be justified in quashing the criminal proceedings in exercise of powers u/s 482 of Code of Criminal Procedure.

If the allegations disclose a civil dispute but also constitute an offence, that by itself cannot be a ground to hold that the criminal proceedings should not be allowed to continue, but, where the allegations made in the complaint, even if taken on their face value do not disclose commission of any offence, the court would be justified in taking recourse of taking provisions of Section 482 of the Code of Criminal Procedure.

8. In the case of **V.Y. Jose & Anr. Vs. State of Gujarat & Anr. 2009 (supra)** the Hon'ble Supreme Court, inter alia, observed as under:-

"Section 482 of the Code of Criminal Procedure, saves the inherent power of the court. It serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years although no case has been made out against him.

It is one thing to say that a case has been made out for trial and as such the criminal proceedings should not be quashed but it is another thing to say that a person should undergo a criminal trial despite the fact that no case has been made out at all."

9. In **Inder Mohan Goswami and Another vs. State of Uttranchal and Others** (2007) 12 SCC 1, the Hon'ble Supreme

Court, while quashing all the proceedings emanating from the FIR, inter alia, observed as under:

“The Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused.”

In **Indian Oil Corporation versus N.E.P.C. India Ltd.**

(2006) 6 SCC 736, the Hon’ble Supreme Court cautioned against a growing tendency in business circles to convert purely civil disputes into criminal cases. The Hon’ble Court observed that:-

“Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.”

10. The present case appears to be an attempt to solve a dispute which is purely of civil nature, by putting pressure on the petitioner by initiating criminal proceedings against him. The allegations made in the FIR, even if taken as correct and on their face value, do not constitute any criminal offence, and therefore, the guidelines laid down by the Supreme Court in the case of Bhajan Lal (supra) squarely apply to the present case.

11. As regards the alleged threat, I find that there is no specific allegation in the complaint. The complainant does not say on which date the threat was given to him, what precisely was the threat and where it was given. The allegations made in this

regard being absolutely vague and general in nature cannot be the sole basis of prosecution under Section 506 of IPC.

12. It appears from the above referred facts and circumstances that the transaction between the parties was purely of civil nature and the FIR is only an attempt to pressurize the petitioner to perform his civil obligation. The appropriate remedy for the complainant is to approach a civil court and lodging of FIR for commission of a cognizance offence was totally misconceived in the facts and circumstances of the case.

For the reasons give above, FIR No. 249/2008 lodged by respondent No.2 at Police Station Rajinder Nagar under Sections 420/406/506 of IPC and the proceedings arising therefrom are hereby quashed.

CRL.M.C. 69/2009 and Crl.M.A.215/2009 stand disposed of.

(V.K.JAIN)
JUDGE

NOVEMBER 15, 2009
SN/bg