

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

+ **CRL.M.C. NO.806/2008**

Reserved on : 23.9.2009
Date of Decision : 15.12.2009

SHRI RAJ SINGH

.....Petitioner

Through: Mr. Lalit Kumar,
Advocate.

Versus

STATE

..... Respondent

Through: Mr.Pawan Bahl, APP for
the State.

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

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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 |

V.K. SHALI, J.

1. This is a petition filed by the petitioner u/s 482 of Cr.P.C. for setting aside the order dated 14.5.2007 passed by the learned Magistrate in a case bearing No.89/96 titled **State Vs. Sushil Gupta** and summoning the present petitioner u/s 319 of the Cr.P.C. for facing the trial along with co accused Sushil Kumar Gupta for an offence u/s 420 IPC. The petitioner has also challenged the subsequent order dated 31.10.2007 by virtue of which the learned Magistrate has issued non-bailable warrants against the present petitioner.

2. Briefly stated the facts leading to the filing of the present case are that a complaint was lodged for an offence of cheating, criminal misappropriation and criminal intimidation by one Hazari Lal against one Sushil Kumar Gupta and Raj Singh, the present petitioner. It was alleged in the said complaint that in the beginning of October, 1994, the present petitioner Raj Singh and Sushil Kumar Gupta had offered to sell a plot of 250 sq. yds, situated at Hauz Khas Village to the respondent/complainant. It is alleged to have been claimed that the said plot belonged to the present petitioner. It is alleged that the total sale consideration for which the plot was to be sold to the complainant was fixed at Rs.43,75,000/- out of which an advance of Rs.5 lacs is purported to have been given on 15.10.94 and another sum of Rs.5,50,000/- is purported to have been given on 17.10.94. Both these amounts were duly acknowledged by Sh. Sushil Kumar Gupta.
3. It is further alleged that in the meantime, the petitioner and Sushil Kumar Gupta is alleged to have offered another plot of land situated at Gujjar Diary, Gautam Nagar for a total sale consideration of Rs.7.5 lacs to the complainant out of which an amount of Rs.3.65 lacs is alleged to have been paid to him. The case of the complainant is that after he was made to part with the amount as stated above, these two persons had actually shown the forged title deeds of a piece of land at Hauz Khas and both these persons are

stated to have been cheated by the complainant. On the basis of this, an FIR u/s 420/468/471 IPC was registered and the matter was investigated.

4. During the pendency of the investigation, the complainant is alleged to have given an affidavit as well as in writing to the local police that he has since settled all his differences/disputes with the present petitioner and therefore, action may not be taken against him. A photocopy of the affidavit in this regard has also been placed on record.
5. After investigation into the matter, the local police of P.S. Hauz Khas is purported to have filed a charge sheet only against Sushil Gupta which is presently stated to be pending in the Court for trial. It is important to note that the respondent /State did not file a charge sheet against the petitioner as the complainant himself gave in writing that he has settled the matter with Raj Singh.
6. After framing the charge u/s 420 of IPC against Sushil Gupta, Hazari Lal, complainant appeared as PW-1 and made a statement that both the accused persons namely Raj Singh and Sushil Kumar Gupta had represented to the petitioner and that Raj Singh was the owner of the larger chunk of land a part of which was being sold to him and he was made to part with cash. Thereafter, Sushil Gupta and Raj Singh made representation to the petitioner and agreed to sell another piece of land for consideration and again

made him part with the cash. Later on both of them did not transfer the title of the property to the petitioner. A compromise seem to have been brought about by refunding 60% of the amount transferred to the complainant.

7. It is on the basis of the above-statement that the Court has considered that there is sufficient evidence of complicity of present petitioner and chosen to summon him to face the trial.
8. After recording the statement of PW-1 on 10.11.2003, the learned Trial Magistrate issued summons to the present petitioner so as to try him jointly along with the accused Sushil Kumar Gupta.
9. The petitioner feeling aggrieved by the said order summoning him u/s 319 Cr.P.C has assailed the same before this Court.
10. I have heard the learned counsel for the petitioner as well as the complainant and the learned APP for the State and also perused the record.
11. The main contention of the learned counsel for the petitioner is to the effect that firstly with the power u/s 319 of the Cr.P.C. to be exercised sparingly and in **Michael Machado & Anr. Vs. CBI** AIR 2000 SC 1127 the Apex Court while dealing with the said power has observed that the accused be summoned only if there is a likelihood that the accused so summoned would be convicted. In other words, it has been contended that the nature of evidence

against the person, who is sought to be summoned u/s 319 Cr.P.C should be of such a high degree that it will result in his conviction and it is not a mere suspicion which should warrant the exercise of this extraordinary power by the learned Magistrate.

12. It was contended that based on the aforesaid parameter, there is no such evidence which even if it is taken on its face value is of such a nature that it will result in conviction of the present petitioner. The learned counsel for the petitioner in support of his contention has also relied upon case titled **Sarabjit Singh & Anr. Vs. State of Punjab & Anr.** JT 2009 (8) SC 73.
13. The second contention urged by the learned counsel for the petitioner was that in order to make out a case of a cheating or breach of trust there should be dishonest intention while as there is no evidence in this regard. It was urged that this was essentially a civil transaction which did not warrant taking of a criminal action.
14. I have heard the learned APP for the State who has tried to justify the order of summoning.
15. I have carefully considered the respectful submissions of the learned counsel for the parties and gone through the record.
16. There is no dispute about the fact that the Apex Court has settled the controversy by interpreting Section 319 of Cr.P.C. by observing that the quantum of evidence which is

adduced against a person warranting his summoning u/s 319 of Cr.P.C. should be of such a nature that in all likelihood it would result in his conviction. This is the view taken by the Apex Court in **Michael Machado's** case (supra). I feel that Apex Court while interpreting Section 319 Cr.P.C. and talking about the likelihood of conviction was trying to impress on the Courts below exercising the power under Section 319 to say that this power should be exercised very sparingly and not on the drop of a hat when the name of a person simply surfaces in the evidence.

17. The method of investigation into the matter which is adopted by the local police is curious in the instant case. Although originally the complainant had lodged a report both against Sushil Kumar Gupta and Raj Singh but during the pendency of investigation, it is the complainant Hazari Lal who had given in writing to the local police that he does not want any action to be taken against Raj Singh because he has settled the matter with Raj Singh. The IO should have mentioned about this fact in the charge sheet rather than omitting to prosecute the petitioner or it should have filed cancellation report qua him. But this was not done. The IO does not seem to have acted in an impartial manner.
18. However, when PW-1 Hazari Lal testified in the matter, he testified against both Sushil Kumar Gupta and Raj Singh. It is Raj Singh who has been shown to be the owner of the

property not only with regard to the property in Hauz Khas but also the other property. Witness has stated that it was he along with Sushil Gupta who was paid the money. If these are the facts, then there is inescapable conclusion that it was a case of cheating is not breach of trust. At this point, only one star witness who if the complainant is examined and obviously his testimony if it is taken on its face value unless it is demolished in cross examination is going in all likelihood to satisfy the ingredients of the offence of cheating or the breach of trust and therefore it cannot be said that there is any illegality or impropriety in the exercise of discretion by the learned Trial Judge in summoning the petitioner to face trial with co-accused, Sushil kumar. I do not think that there is any violation or non-observance of the law laid down in **Michael Machado's** case. Similarly, the judgment in **Sarabjit singh's** case JT 2009 (8) SC 73 also does not come to the rescue of the petitioner. The investigating agency has not found the petitioner to be innocent during investigation. On the contrary, though there was evidence against him, but it seems that they refrained from taking action on the writing of the complainant himself who might be thinking that he will be able to retrieve his full money which he failed to do.

18. So far as the second plea of the learned counsel for the petitioner is concerned, although it was raised but it was not pressed. In any case, the same fact situation can result

in a civil wrong as well as give rise to commission of a crime. The judgements which are referred to in the petition are essentially dealing with the question of quashing of the FIR on the ground that it constitutes essentially a civil dispute between the parties while this is not the point urged. The grievance of the petitioner emanates essentially from the fact that the learned Trial Court has summoned him by invoking Section 319 of the Cr.P.C.

19. For the reasons mentioned above, I am of the considered opinion that there is no impropriety, illegality or incorrectness in the impugned order and accordingly the petition is dismissed.

DECEMBER 15, 2009
RN

V.K. SHALI, J.