

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 1356/2006 & CRL.M.As 2282-83/2006

Reserved on: 8th April 2009

Decision on: 14th July 2009

R.K.BHANDARI

..... Petitioner

Through: Mr.V. Sekhar, Senior Advocate,
Ms.Rebecca John, Advocate with Ms. Tara
Ganju and Mr. Manish Sharma, Advocates.

versus

STATE & ANR

..... Respondents

Through: Mr.Pawan Behl, APP.
Mr.Harish Malhotra, Senior Advocate with
Ms. Arti Bansal, Advocate for complainant.

CRL.M.C. 2073/2006 & CRL.M.A. 3324/2006

SATISH JASSAL (Deceased) through LRs.

..... Petitioners

Through: Mr.Harish Malhotra, Senior Advocate
with Ms. Arti Bansal, Advocate

versus

STATE & ANR

..... Respondents

Through: Mr.Pawan Behl, APP.
Through: Mr.V. Sekhar, Senior Advocate,
Ms.Rebecca John, Advocate with Ms. Tara
Ganju and Mr. Manish Sharma, Advocates for
Respondent No.2

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

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

JUDGMENT

14.07.2009

S. Muralidhar, J.

1. CrI.M.C. No. 1356 of 2006 under Section 482 of the Code of Criminal Procedure, 1973 (CrPC) by R.K. Bhandari (RKB) challenges an order dated 28th January 2006, passed by the learned Additional Sessions Judge (ASJ) in C.R. No. 93/2004 arising out of FIR No. 801 of 2000 registered at P.S. R.K. Puram. By the said impugned order, the learned ASJ held that there was sufficient material on record which prima facie showed that the petitioner had forged the construction agreement dated 20th March 1996 intending it to be used for the purpose of cheating Respondent No.2 Satish Jassal (SJ) (now deceased and represented through his legal heir Karan Jassal) thereby committing the offences under Sections 468 and 471 IPC read with Section 120 B thereof. However, the learned ASJ held that there was not even a prima facie material to frame charges against the petitioner for the offences under Section 420/120B IPC and therefore to that extent set aside the order dated 2nd November 2004 passed by the learned Metropolitan Magistrate (MM) framing charges against the petitioner for those offences. The challenge by RKB to the order of the learned ASJ is to the extent that charges have been ordered to be framed against him for the offences under Sections 468/471 IPC.

2. CrI.M.C. No. 2073 of 2006 is by SJ (now deceased and represented through his LR Karan Jassal) challenging the aforementioned order dated 28th January 2006 passed by the learned ASJ to the extent it has discharged RKB of the offences under Section 420/120B IPC. The prayer is that the

charges should be framed against RKB, in addition, under Sections 406, 420 and 500 IPC.

3. The facts leading to the filing of the present petition are that by an indenture of perpetual sub-lease dated 5th December 1967 the property No.5/12 Shanti Niketan, New Delhi measuring 975 sq.yds. was given to RKB (sub-lessee) through the Government Servants Cooperative House Building Society Ltd., (the lessee). Subsequently, a two-storied building comprising a ground and first floor was constructed thereon. On 28th July 1992 an agreement to sell whereby RKB agreed to sell to SJ the absolute ownership right, title and interest in the entire second floor along with one existing servant's quarter having use of common bath and WC facilities including the proportionate non-divisible impartible rights in the said plot of land beneath the building for a total consideration of Rs.9,50,000. It is the case of SJ that Rs. 1,75,000 was paid by him to RKB at the time of the agreement.

4. It appears that on 28th March 1995 RKB executed a relinquishment deed, relinquishing half of the unspecified share in the plot of land of the said property in favour of his sister Ramola Bhandari. The relinquishment deed referred to RKB and his sister Ramola as legal heirs of the original allottee their father late L.R. Bhandari. According to SJ, RKB suppressed the fact of the execution of the aforementioned relinquishment deed.

5. As regards the first floor of the property, pursuant to an understanding between the parties on 5th March 1996 the possession thereof was handed over by RKB to SJ. This was for the purposes of construction/ modification of the first floor. This was followed by an agreement dated 20th March 1996 (hereinafter the construction agreement) executed by RKB (jointly with Ramola Bhandari) on the one hand and SJ on the other. In terms of the said construction agreement SJ undertook to cause additions/ alterations and renovation of the first floor, boundary wall and garage block at “his own cost, expenses and resources.” In Clause 5 of the construction agreement it was stated that: “In lieu of SJ incurring and bearing the entire cost of additions/alterations and renovation of the First Floor of the building”, RKB and his sister Ramola Bhandari jointly agreed to pay SJ: “Rs. 800/- (Rupees eight hundred only) per sq. ft. for construction on the vacant terrace area of 1600 sq. ft. approx. and Rs. 650/- (Rupees six hundred and fifty only) per sq. ft. for alteration and renovation of the existing built-up area of approx. 1600 sq. ft. Payment for extension of the boundary wall, garage block and other repairs, external painting and electrification of the building shall be extra on actual basis plus 15% profit on sub-contractor’s bills.”

6. It is stated that on 27th March 1996, RKB handed over the vacant and peaceful possession of the second floor open terrace space to SJ. A Special

Power of Attorney (SPA), Indemnity and an Undertaking was executed by RKB in favour of SJ on 6th May 1996. It is SJ's case that he completed the construction strictly in terms of the agreement some time in February 1997 incurring a sum of Rs. 24,72,315. However, RKB avoided making payment of the said sum to SJ. It is SJ's further case that RKB instead forged and altered Clause 5 of the construction agreement to read as: "Rs.600/- per sq. ft. for covering of the terrace area of 1300 per sq. ft. and Rs.100/- per sq. ft. for renovation of the existing built-up area of approximately 1850 sq. ft." Meanwhile, unknown to SJ, pursuant to an application made by RKB half the portion of the property was transferred to Ramola Bhandari by the DDA on 2nd September 1996.

7. SJ made the entire balance payment for the Second Floor by 28th March, 1997. On 27th March 1997 RKB executed a receipt acknowledging receipt of the sum of Rs.2,25,000 and on 28th March 1997 RKB executed yet another receipt acknowledging receipt of the sum of Rs.7,25,000. Thus RKB acknowledged having received the entire sale consideration of Rs.9,50,000 from SJ for the Second Floor of the premises. ON 28th March 1997 RKB executed a Will in favour of SJ, and a general power of attorney (GPA) in favour of SJ's wife Sudesh Jassal in respect of the Second Floor. On 18th September 1997 RKB executed a GPA in favour of SJ in regard to the Second Floor. The documents executed by the parties were registered in the office of the Sub Registrar on 17th April 1998.

8. On 9th May 1998 RKB issued a public notice in the Statesman stating that he had revoked the SPA, GPA and all of the above documents executed in favour of SJ and his wife Sudesh Jassal. Further a letter was written by RKB and Romola Bhandari to Mobil Asia Pacific Pte Ltd. c/o Indo-Mobil Limited, SJ's tenant in the Second Floor, on 27th June 1998, followed by a legal notice dated 11th July 1998 served on the tenant asserting ownership to the premises. Consequent upon these developments on 20th July 1998 SJ gave a complaint to the Station House Officer (SHO) P.S. R.K. Puram. A letter dated 7th August 1998 was sent by RKB and Ramola Bhandari to SJ stating that he had no right or title to the second floor of the premises. On the same date, RKB also sent a letter to the SHO P.S. R.K. Puram complaining about the harassment by SJ. On 12th August 1998 a legal notice was sent to SJ asserting that the RKB was the owner of the premises and that SJ had no title or interest to the property. RKB gave another complaint to the SHO, P.S. R.K. Puram on 13th August 1998.

9. On 19th August 1998 SJ filed a Suit No. 1776 of 1998 in this Court against RKB seeking a permanent injunction restraining him from interfering with the peaceful possession of SJ of the Second Floor of the said property. An interim injunction to that effect was issued by this Court on 24th August 1998. Notwithstanding this, on 28th August 1998 RKB and Ramola Bhandari again wrote a letter to the Mobil Asia Pacific Pvt. Ltd.,

asserting that they were the owners of the Second Floor and that SJ had no right, title or interest therein.

10. On 3rd August 1998, 10th September 1998, 16th October 1999 and 17th November 1999 SJ filed complaints with the police against RKB and Ramola Bhandari. Meanwhile, on 30th August 2000 SJ's complaint was transferred to the Crime Branch Delhi Police. On 29th November 2000 FIR No. 801 of 2000 was registered against RKB and Ramola Bhandari under Sections 420/34/120B IPC. In this criminal case anticipatory bail was granted to RKB and Ramola Bhandari on 19th February 2001. Not happy with the progress of investigations, on 6th February 2001 SJ filed another complaint before the Additional Chief Metropolitan Magistrate (ACMM) New Delhi against RKB and Ramola Bhandari under Sections 448, 453, 454, 506, 511, 34 & 380 IPC. Consequent to the orders passed therein, FIR No. 119 of 2001 was registered against RKB and Ramola Bhandari under Sections 420/34. A charge sheet dated 13th March 2001 was filed in the court on 3rd July 2001.

10. On 26th May 1999 SJ filed an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 ('Act') in this Court seeking the appointment of the arbitrator to settle the disputes arising out of the construction agreement. In the meanwhile SJ filed another suit being Suit No. 951/01 in this Court against RKB seeking the relief of specific

performance in relation to the agreement to sell dated 28th July 1992 in respect of the Second Floor.

11. On 12th July 2001 Ramola Bhandari expired. RKB filed two writ petitions for quashing the two FIRs. Writ Petition (Criminal) No. 280 of 2001 was filed by RKB seeking the quashing of FIR No. 119 of 2001. This writ petition was dismissed by this Court on 24th February 2002 on the ground that by that time a challan had already been filed. The petitioner RKB was permitted to avail “his remedy in accordance with law by appearing before the Ld.Magistrate and seek discharge or by taking out proceedings under Section 482 CrPC...” Writ Petition (Crl.) No. 899 of 2001 was allowed by quashing FIR No. 119 of 2001 by observing that “when all necessary facts which form the foundation of FIR No. 119 of 2001 had been disclosed in the first FIR No. 801 of 2000, the second FIR ought to have not been registered more especially when the parties are the same and the property is also the same.” The police was, however, permitted to file a supplementary challan in the first FUIR No. 801 of 2000 and the liberty of the petitioner to challenge it was also reserved. The supplementary charge sheet was filed on 2nd December 2002. The learned MM by an order dated 2nd November 2004 framed charges against RKB under Sections 420/468/471 and 120B IPC in the criminal case arising out of FIR No. 801/2000. This was challenged by RKB by filing C.R.No. 93 of 2004 which came to be disposed of by the learned ASJ by the impugned

order dated 28th January 2006. The revision petition filed by RKB against the order framing charge was dismissed by this Court.

12. As regards the civil dispute, in SJ's arbitration application No. 190 of 1999 this Court by an order dated 8th October 2002 appointed Justice K. Ramamoorthy as the Sole Arbitrator. On 29th April 2003 this court decreed Suit No. 1776 of 1998 filed by SJ and a direction was issued restraining RKB from interfering with SJ's possession of the Second Floor. Further, RKB was directed to ensure adequate water supply to the Second Floor. The second suit being Suit No. 951 of 2001 filed by SJ for specific performance in respect of the Second Floor was also referred for arbitration by the Additional District Judge. On 3rd October 2005 SJ died and the dispute was continued by his son and legal heir Karan Jassal.

13. On 27th January 2007 an award was given by Justice K. Ramamoorthy which came to be challenged by RKB in this Court by way of a petition under Section 34 of the Act by the Karan Jassal. On 14th September 2007 a consent decree was passed by the Division Bench modifying the award. On 14th November 2007 the entire payment of Rs.24, 72,315.10 together with interest at 12% for the period up to 15.12.2002 and at 10% p.a from 16.12.2002 till the date of payment was made by RKB in terms of the consent order of the DB.

14. Given the fact that RKB had already paid to SJ's legal heirs a sum of Rs. 50 lakhs pursuant to the consent order passed in the appeal arising out of the arbitration award, this Court requested the parties to examine if any settlement of the disputes was possible. Despite the efforts made by counsel on both sides no settlement was possible. Consequently the case was heard on merits.

15. A preliminary objection is taken by RKB to the maintainability of Crl MC No. 2073 of 2006 by Karan Jassal the LR of SJ. It is submitted that Karan Jassal has no locus to file the revision petition after the death of SJ. He is also not conversant with the facts of the case and no application for impleadment has been filed. It is submitted by RKB that the disputes are essentially of a civil nature and that SJ invoked the criminal law only with a view to harassing the petitioner. Reliance is placed on the judgment in *V.Y. Jose v. State of Gujarat (2009) 3 SCC 78* and *Inder Mohan Goswami v. State of Uttaranchal 2007 (12) SCALE 15*. It is then submitted that the original documents were not available with either parties and the charge sheet also mentions this fact. It is submitted that no offence under Section 468 and 471 IPC concerning the construction agreement dated 20th March 1996 could be said to be made out in the absence of the original documents. Reliance is placed upon the judgment in *K.V.R. Iyyanger v. State of Andhra Pradesh 1988 (2) Crimes 882*. The learned counsel relies upon the judgment in *Ajay Mitra v. State of MP 2003 (3) SCC 11* to

contend that not even a prima facie case is made out against the RKB for the offences under Section 468 and 471 IPC. It is submitted that RKB was to transfer only 325 sq. yds. being 1/3rd of the total area of the 925 sq. mts. and that even after relinquishment, RKB possessed 487 sq. yds. which included the Second Floor sold to late SJ and his legal heirs. Therefore, there was no question of RKB intending to cheat SJ.

16. On behalf of the legal heir of the SJ, it is contended that there were several acts that revealed that RKB intended to cheat SJ right from the inception. A reference is made to the relinquishment deed executed on 28th March 1995 in respect of half of the property by RKB in favour of Ramola Bhandari without the knowledge of SJ. Second is the public notice dated 9th May 1998 issued by RKB and Ramola claiming ownership over the entire property despite the fact that prior thereto several documents including GPA, SPA, Will etc.were executed by RKB in favour of SJ and his wife Sudesh Jassal in respect of the Second Floor of the property. It is submitted that by repeatedly issuing notices to SJ's tenant in the Second Floor and by asserting ownership, it was apparent that RKB intended to cheat SJ right from the beginning. On 20th July 1998 RKB along with Ramola Bhandari had illegally taken possession of the first floor by removing all the belongings of the SJ. It is submitted that after the award of Justice K. Ramamoorthy whereby RKB was directed to pay SJ a sum of Rs.24,72,315.10p. along with interest @ 24% per annum and with the

dismissal of OMP No. 257 of 2007 filed by RKB by the order dated 3rd August 2007 and the subsequent dismissal of FAO (OS) No. 361 of 2007 by an order dated 14th September 2007, the civil dispute attained finality. RKB had in fact complied with the consent order passed by the DB in the matter. Despite the above facts, the refusal by RKB to execute the sale deed in respect of the entire Second Floor in favour of SJ revealed his intention to cheat SJ right from the beginning. Accordingly it is submitted that the offence under Section 420 IPC is made out against RKB and that the learned ASJ erred in holding to the contrary.

17. It is seen from the impugned order dated 28th January 2006 that what appears to have weighed with the learned ASJ was that RKB handed over possession of the entire Second Floor to SJ in March 1996 pursuant to the agreement dated 28th July 1992. This, therefore, showed that there was no dishonest intention on the part of the RKB to cheat SJ even at the time of entering into the agreement in 1992. Even after execution of the relinquishment deed dated 28th March 1995, the vacant possession of the Second Floor was handed over by RKB to SJ on 27th March 1996. In the considered view of this Court, in light of the facts narrated hereinabove it cannot be said that RKB intended to cheat SJ in respect of the agreement to sell right from the inception. The dispute about the failure on the part of the RKB to execute sale deed in respect of the Second Floor is the subject matter of the suit for specific performance being Suit No. 951 of 2001.

Therefore no fault can be found with the impugned judgment of the learned ASJ holding that not even a prima facie case for an offence under Section 420/120 B IPC is made out against RKB. As a result there is no merit in the petition Crl MC No. 2073 of 2006 filed by Karan Jassal as LR of SJ. Consequently, this Court does not find it necessary to decide the question concerning the locus standi of Karan Jassal to file the said petition.

18. Turning to the Crl MC No. 1356 of 2006 by RKB, as regards the framing of charges against him for the offences under Sections 467 and 471 IPC, the effect of the findings rendered in this connection in the arbitration award which relates to the construction agreement pertaining to the first floor of the property, have to be considered by the trial court. Prima facie there is material to show that there has been an alteration of Clause 5 of the construction agreement. This cannot be termed as a mere civil dispute. Therefore, the decision in *V.Y.Jose v. State of Gujarat* (supra) relied upon by the counsel for RKB is not applicable in the facts of the present case. Also, the decisions in *Inder Mohan Goswami* (supra) and *Ajay Mitra v. State of M.P.* (supra) appear to have turned on their own facts. As far as the present case is concerned, a mere comparison of the original Clause 5 of the construction agreement with the one in the copy produced by RKB would show that prima facie the basic ingredients of the offences under Sections 467 or 471 IPC have been made out by the complainant. The question whether in the absence of the original of the

construction agreement, secondary evidence can be led in respect thereof and whether any liability can be attached on the basis of the evidence so led, and whether the decision in *K.V.R.Iyyanger v. State of AP* (supra) applies are questions that have to be considered by the trial court after the evidence is recorded. It is premature for this Court to express any opinion on these aspects at the present stage.

19. For the aforementioned reasons, it cannot be said that the learned MM and the learned ASJ were in error in coming to the conclusion that there was material on record to come to a prima facie conclusion that RKB should be tried for the offences under Section 468 and 471 IPC read with Section 120 B IPC. Consequently this Court is unable to find any error in the impugned order dated 28th January 2006 passed by the learned ASJ.

20. Consequently both the petitions are dismissed but in the circumstances with no orders as to costs. The pending applications are also dismissed. The trial court record be sent back immediately. The trial court is requested to expedite the further steps in the matter and consider the possibility of concluding the trial and delivering a final judgment within a period of one year from today.

S. MURALIDHAR, J.

JULY 14, 2009

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