

IN THE HIGH COURT OF DELHI AT NEW DELHI**Crl M C No. 5649/2006 & Crl M A 9620/2006****JAI KISHAN SHARMA**

..... Petitioners

Through: Mr. Narender Sharma, Advocate

versus

STATE & ORS

..... Respondents

Through: MR. Pawan K. Behl, APP

Mr. M.K. Sharma with Mr. Suryakant Singla and

Mr. Shanto Mukherjee, Advocates for R-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 |

ORDER
20.04.2009

1. The prayer in this petition under Section 482 of the Code of Criminal Procedure 1973 ('CrPC') is for the quashing of FIR No. 92 of 2003 under Sections 420/468/471/448/452 of Indian Penal Code ('IPC') registered at Police Station Nangloi, Delhi and all proceedings consequent thereto pending in the court of the learned Metropolitan Magistrate ('MM'), New Delhi.

2. The aforementioned FIR was registered at the instance of Jai Prakash Sharma (Respondent No.2) who happens to be a younger brother of the Petitioner Jai Kishan Sharma who is named as accused No.1 in the

aforementioned complaint. The allegation inter alia in the FIR was that the complainant Jai Prakash Sharma had handed over a Maruti Car to the Petitioner by remitting the first cash down payment for the same to the dealer. He continued to pay the instalments to the Bank and in between he also gave cash payment to his brother i.e. the Petitioner here. Earlier the complainant had deposited a sum of Rs.1,80,000/- with the Petitioner and when asked about it, the petitioner had shown a plot measuring about 150/200 sq.yards and the petitioner had advised the complainant to construct a house thereon. Later it transpired that there was a dispute over the land. When asked about the complete documentation, the Petitioner avoided the question. It is stated that the disputes arose between the brothers and later on the Petitioner started showing the property to other parties and asked the complainant to vacate the house constructed by him. It is further stated that on 18th January 2003 the Petitioner along with other brother Mahavir Sharma got the complainant forcibly vacated from the premises.

3. It is stated in the FIR that the Sub Inspector Sudesh Ranga entertained the complaint of the complainant. On 7th February 2003 he got the case registered and started investigation. He prepared the site plan and sized a General Power of Attorney from the complainant and seized some other documents as well.

4. In the final report filed in the matter it was indicated that the police

arrested Jai Kishan Sharma, Petitioner and the other accused and as per the orders of the Assistant Commissioner of Police ('ACP'). The investigation was entrusted to Inspector N.R. Naryan and later to Raj Kumar Sharma. In the cancellation report it is stated that Sudesh Ranga had arrested the accused persons by illegal methods and that no forgery has been committed as alleged by the complainant. It was concluded that the complainant had with malafide intention taken revenge against his brother Jai Prakash Sharma and got some documents prepared in his own name whereas the property was still in the possession of the Petitioner. It was also contended that the complainant had failed to produce any evidence from which it could be inferred that he gave any money to his brother Jai Kishan Sharma. As regards the car it was stated that it had already been recovered for the complainant by Sub Inspector Sudesh Ranga as it was registered in the name of the complainant.

5. The learned MM considered the protest petition as well as untraced report filed by the police. It was held that "careful perusal of complaint and report under Section 173 CrPC reveals that whole investigation is conducted to investigate the genuineness of ownership documents of both the parties. However perusal of the complaint reveals that complainant nowhere alleged the fabrication and production of any documents by the accused. Complainant himself stated that no documents were prepared by the accused nor any documents of the said plot were handed over to the complainant by the accused. It appears that while conducting the

investigation, IO fails to look into the complaint of the complainant. It is pertinent to mention that investigation should be conducted, keeping in view complaint of the complainant and the offence disclosed by the complainant in the complaint. Therefore in the present case investigation should be conducted as per the complaint dated 18th January 2003 of the complainant.”

6. Accordingly the learned MM gave a direction rejecting the untraced report and directing the matter to be reinvestigated through any competent officer not below the rank of ACP in his direct supervision.

7. This petition was listed for hearing on 11th September 2006. While notice was directing to issue to Respondents the impugned order was stayed. A very detailed reply was filed by the Respondent No.2 to the petition where it was pointed out that the learned MM had not taken cognizance of the offence against the Petitioners. He had only rejected the final report and directed investigation which he was competent to do. A reference was made to the judgment of the Supreme Court in ***Hemant Dhasmana v. CBI 2001 SCC (Crl) 1280***. Reliance is also made to the judgment in ***Minu Kumari v. The State of Bihar 2006 (2) JCC 769*** and the judgment of this Court in ***Laxmi Narayan Gupta v. Commissioner of Police 2006 (2) JCC 1058***.

8. As regards the maintainability of the petition at the instance of the

Petitioner, who has not yet been summoned by the learned MM, learned counsel for the Petitioner was unable to satisfy this Court about the locus of the Petitioner to challenge such order. It requires to be noticed that the case is still at the pre-cognizance stage and the Petitioner is yet to be summoned. The question of their being aggrieved by the order of the learned MM rejecting the untraced report of the police and directing the investigation does not arise.

9. It is accordingly held that the petition at the instance of Jai Kishan Sharma who is yet to be summoned in FIR No. 92 of 2003, is not maintainable as such. It is then submitted that the prayer in this petition for quashing of the FIR itself. In order to appreciate the plea it has to be seen whether on reading of the FIR as a whole it can be said that not even a prima facie case is made out for proceeding against the Petitioner for the aforementioned offence. This Court is unable to come to such a conclusion on reading the FIR as a whole. Further the points raised by the Petitioner in support of the prayer for quashing the FIR which cannot be entertained by this Court in the proceeding under Section 482 CrPC. As already pointed out the petition itself is premature since the Petitioner is yet to be summoned in the aforesaid FIR.

10. Consequently while leaving it open to the Petitioner to raise all points urged in this petition at the appropriate stage before the trial court as and when the Petitioner is summoned in accordance with law, this petition is

dismissed. The interim order dated 11th September 2006 stands vacated.
The application also stands dismissed.

CrI M A No. 4177/09 (u/s 340 CrPC)

11. As far as this application under Section 340 CrPC filed by the Petitioner is concerned, the same is not entertained as such since in any event the decision of this Court has not been passed on the documents produced by Respondent No.2 herein.

12. The trial court record be sent back immediately along with a certified copy of this order to the concerned trial court.

S.MURALIDHAR, J

APRIL 20, 2009
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