

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

% *Judgment Reserved on:06th October, 2009*
Judgment Delivered on:13th October, 2009

+ **CRL.M.C.1782/2009**

PUNIT PRUTI & ORS. Petitioners
Through: Mr.Mahish Vashisht, Adv.

versus

STATE GOVT. OF N.C.T. OF DELHI & ANR.
..... Respondents
Through: Mr.Ramesh Gupta, Sr.Adv. with
Ms.Seema Gulati &
Mr.Bharat Sharma, Advts.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. On 16.7.2008 petitioners had been summoned on the charge sheet filed under Sections 420/469/471/120B of the IPC, Police Station Chitranjan Park. The petitioner no.1 is Punit Pruti, petitioner no.2 is Sameer Pruthi, both are the sons of petitioner no.3 Diwan Chand Pruthi. This order of summoning is the subject matter of the present petition.

2. The undisputed facts are that Mr.L.R. Aggarwal and Mr.Rajesh Aggarwa, directors, of M/s Krishi Rasayan Exports Pvt.

Ltd. had business dealings with petitioner no.1 in real estate. The Haryana State Industrial Development Corporation (hereinafter referred to as the HSIDC) floated a scheme for development of an Industrial Technology Park at Manesar, Gurgaon, Haryana. Petitioner no.1, Mr.L.R.Aggarwal his son Rajesh Aggarwal and one Gurinder Singh Kamboj had agreed to form a company in the name of M/s Krish Techno Park Pvt. Ltd. to be registered with the Registrar of Companies, Jalandhar, Punjab in order to prepare a project report for allotment of 10 acres of land for the development of this I.T.Park. A sum of Rs.50 lacs was arranged and deposited in favour of HSIDC, Panchkula pursuant to an application for allotment of land but the said application was rejected. The amount of Rs.50 lacs was refunded by the HSIDC in the name of M/s Krish Techno Park Pvt. Ltd. which had been incorporated in July 2006.

3. Parties thereafter desired that final accounts between them be settled and a post dated cheque bearing no.143403 dated 30.11.2006 for Rs.50 lacs drawn on the Bank of India, Chandigarh Branch was issued by petitioner no.1 in favour of M/s Krishi Rasayan Exports Pvt. Ltd. The said cheque was, however, dishonoured and accordingly a complaint under Section 138 of the Negotiable Instrument Act was filed by M/s Krishi Rasayan Exports Pvt. Ltd. against petitioner no.1 and petitioner no.2 which is pending disposal in the court of Metropolitan Magistrate, Kolkatta.

This complaint is dated 27.4.2007. On 14.7.2007 M/s Krishi Rasayana Export Pvt. Ltd. filed a complaint against the petitioners herein namely Punit Pruthi, Sameer Pruthi and Diwan Chand Pruthi, petitioner nos.1 and 2 being the directors of M/s Krish Techno Park Pvt. Ltd. After investigation charge sheet was filed under Sections 420/469/471/120B of the IPC and cognizance was taken vide impugned order dated 16.7.2008.

4. The facts as detailed supra are not in dispute.

5. Learned counsel for the petitioner has assailed the impugned order primarily on three grounds:

a)- It is submitted that the Delhi Courts have no jurisdiction to try the present complaint which is an FIR under Section 420/468/471/120B of the IPC; no cause of action had taken place in Delhi; the offer for allotment of land was made at Manesar by the HSIDC; the project report was submitted to the HSIDC at Panchkula; cheque of Rs.50 lacs was deposited with HSIDC, again outside the jurisdiction of the Delhi Courts; the proposal was also rejected by HSIDC which is again outside the jurisdiction of Delhi Courts. As such no cause of action has arisen within the territorial jurisdiction of Delhi; trial of the present proceedings are barred.

b)- The FIR is a gross abuse of the process of the court as a complaint under Section 138 of Negotiable Instrument Act

on the same cause of action has already been filed. The notice dated 01.3.2007 issued under Section 138 Negotiable Act does not whisper a word about any allegation of cheating; so also the subsequent complaint which is also silent on the said aspect. The belated complaint under Section 420 of the IPC in the month of July 2007 is an afterthought and a gross misuse of the process of the court only to harass and pressurize the petitioners. Reliance has been placed upon a judgment of the Hon'ble Apex Court reported as (2000) II SCC 636 G. Sagar Suri & Another vs. State of U.P. & Others to substantiate the submission that where a complaint under Section 138 of Negotiable Instrument Act had already been filed and no explanation has been offered as to why in the said complaint details of the offence now contained in the present FIR had not been mentioned, it is apparent that the subsequent complaint is an abuse of process of law; a chagrined and frustrated litigant should not be permitted to give vent to his frustration by cheaply invoking the jurisdiction of the criminal Court in such a manner.

c)- The last submission of the learned counsel for the petitioner is that the ingredients of Section 420 of the IPC which necessary entail –

i). Deception;

ii). Fraudulently or dishonestly inducing any person to deliver any property or;

iii). To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit are clearly missing in the instant case. No act of inducement on the part of the petitioners has been alleged by the complainant. Reliance has been placed on judgments reported as (2007) 7 SCC 373 Vir Prakash Sharma vs. Anil Kumar Agarwal & Anr. and (2009) 1 SCC (Crl.) 996 V.Y. Jose and Anr. vs. State of Gujrat & Anr. to substantiate his submission that in the absence of the existence of the said ingredients the alleged offence of cheating is not made out and the complaint is liable to be quashed.

6. These submissions have been opposed by the learned counsel for the non-applicant.

7. It is stated that the cause of action has arisen within the jurisdiction of the Delhi Courts and the deception and misrepresentation by the petitioners was practiced by the petitioners in the transaction and the negotiations conducted between the parties while there were in Delhi. The ingredients of Section 420 of the IPC are different and distinct from the offence as contained in Section 138 of the Negotiable Instruments Act and the pendency of civil proceedings by themselves do not bar the

prosecution of a criminal complaint; this is clear from the tenor of the provisions of Section 138 of Negotiable Instruments Act and the offence as detailed in Section 420 of the IPC.

8. Submissions have been appreciated and the record has been perused.

9. It is not in dispute that the petitioners herein are all residents of M-255, Greater Kailash. This address has been mentioned by them in their memo of parties. M/s Krishi Rasayan Exports Pvt. Ltd. of whom the complaint Mr.L.R.Aggarwal is a director has its office at Hemkunt Tower, Nehru Place. This is also the address given by the petitioner in the present petition. It is also not in dispute that the negotiations and the discussions between the parties took place while they were in Delhi and the cheque of Rs.50 lacs had been issued by petitioner no.1 to M/s Krishi Rasayan Exports Pvt.Ltd. while they were in Delhi.

10. Chapter XIII of the Code deals with jurisdiction of the Criminal Courts in inquiries and trials. Section 177 incorporates the ordinary/general rule of jurisdiction, as stated above, while the Sections following it, viz., 178 to 182 embody the exceptions. The general principle of law is that all crime is local and the jurisdiction to try a person for an offence depends upon the crime having been committed within the area of such jurisdiction. Section 182 states that any offence which includes cheating may, if the deception is practiced by means of letter of telecommunication messages, be

inquired into or tried by any Court within whose local jurisdiction such letters or messages were sent or were received; and any offence of cheating and dishonestly inducing delivery of property may be inquired into or tried by a Court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person.

11. In 1982 CLJ 1492 Bhola Nath Arora vs. State the territorial jurisdiction of the Court to try the offence under Section 420 of the IPC had been questioned; the ratio of the said judgment states that the place where deception has been practiced and the inducement made would have the jurisdiction to try the offence.

12. In AIR 1957 SC 857 Mubarak Ali Ahmed vs. The State of Bombay, Hon'ble Supreme Court while dealing with the question of jurisdiction of a criminal Court where the complainant was doing business from Goa and appellant at that time was in Karachi; the transactions between the two parties having been held through telephone, telegram and letters and at no time the appellant having been in Goa during the entire period of commission of the offence and he being only at Karachi, Pakistan; the Hon'ble Apex Court after examining the ingredients of Section 420 of the IPC had held that although the mis-representation and the deception was organized by the appellant while he was in Pakistan yet the consequences of the deception i.e. delivery of the

property had taken place in Bombay and as such the Courts in India would not be precluded from trying the said offence.

13. In the instant case it is apparent from the aforestated position at law that the jurisdiction of Delhi Courts is not ousted.

14. The second and the third submission of the learned counsel are intertwined and can be dealt with co-jointly. Complaint under Section 138 of Negotiable Act has been filed on 27.4.2007 and is undisputedly pending in the court of Metropolitan Magistrate Kolkotta. Present complaint has been filed on 14.7.2007 wherein it has been averred that the petitioner did not inform the complainant about the initial refund of Rs.50 lacs by HSIDC and they had retained the said amount with them fraudulently and dishonestly. It was only after a follow up that the complainant came to know that the accused persons had not shown the name of Mr.Rajesh Aggarwal and Mr.L.R. Aggarwal as directors of M/s Krish Techno Park Pvt. Ltd. although their names had been shown as directors in the project report submitted to the HSIDC. On further inquiry it was revealed that although the names of Mr.Rajesh Aggarwal and Mr.L.R. Aggarwal have been given as Directors in the original application yet their names stood deleted in the articles of association fraudulently by submitting false resignation letters which were forged and fabricated as they did not bear the signatures of Mr.L.R. Aggarwal and Mr.Rajesh Aggarwal. The report of the CFSL, Rohini dated 11.3.2008

supports this contention as contained in the complaint and the resignation letters purportedly issued by Mr.L.R. Aggarwal and Mr.Rajesh Aggarwal have not been signed by them. The complaint further recites that after several dates a meeting has been arranged between the parties when the petitioners herein had issued a post dated cheque of Rs.50 lacs which stood dishonoured; the said cheque had not been returned back to the complainant but had been mis-appropriated by the petitioner in connivance with the bank officials of Chandigarh. The complaint further recites that it was a fraudulent and dishonest inducement by the petitioner to the complainant which had led the complainant to part with Rs.50 lacs as application fees.

15. The ingredients of cheating is defined in Section 415 of the IPC entail a fraudulent or a dishonest inducement of the complainant to either deliver any property or to consent that any such person shall retain any property or intentionally inducing the complainant to do or omit to do anything which he would not do or omit to do if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. Illustration (f) to the said Section of the Indian Penal Code, provides a clue to the mind of the legislature in such matters. The said illustration is as under:-

"A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money. A not intending to repay it. A cheats."

16. On its plain language it is manifest from this illustration that what is material is the intention of the drawer at the time the cheque is issued, and the intention has to be gathered from the facts on the record. If from the circumstances it is established that the failure to meet a cheque was not accidental but was the consequence expected by the accused, the presumption would be that the accused intended to cheat.

17. In 1996 JCC 590 M.M. Monga vs. Union of India, it has been held by a co-ordinate Bench of this Court that a complaint under Section 138 of Negotiable Instrument Act is not a bar for filing a complaint under Section 420/120 B of the IPC if a prima facie case is made out.

18. In 2009(2) JCC (NI)73 R.P. Mathur Prop. RLF vs. S.R.P. Industries Ltd it has been held that the offence under Section 138 of Negotiable Instrument Act and the offence under Section 420 of the IPC are two distinct and separate offences with different ingredients and under two separate enactments; separate punishments are provided for the two sets of the offences; proceedings against an accused at the initial stage can be quashed only if on the face of the complaint or on the papers accompanying the same no offence is constituted. The offence under Section 138 of Negotiable Instrument Act is completed when once the cheque issued was dishonoured and the said dishonor of cheque is brought to the notice of the drawer of the cheque;

whereas for the offence under Section 420 of the IPC, it is necessary for the prosecution to establish that the accused had no intention of paying anything and knowing that the cheque would be dishonoured he had issued the cheque which had ultimately been dishonoured. Ingredients of Section 420 of the IPC and Section 138 of Negotiable Instruments Act are distinctly different and operate in two different spheres.

19. The judgment relied upon by the learned defence counsel as reported in "G. Sagar Suri" supra is distinct in its own facts; in the course of the investigation of the said FIR it had been recorded that both G. Sagar Suri and his wife Shama Suri were not the directors of M/s Ganga Automobiles Pvt. Ltd which had been taken into account while quashing the FIR against them under Section 482 of the Cr. P.C.

20. It is apparent that in the instant case the complainant had been induced by the petitioners that they would be floating a joint company in the name of M/s Krish Techno Park Pvt. Ltd. of whom the complainant Mr.L.R. Aggarwal and Mr.Rajesh Aggarwal would also be the directors; it was on this inducement that the complainant had invested money in the project which did not fructify; after several deliberations a cheque of Rs.50 lacs was issued by the petitioner to the complainant which was dishonoured. The dishonest intention of the petitioner can also be gathered from the letters of resignation purported to have been

issued by Mr.L.R.Aggarwal and Mr.Rajesh Aggarwal to the Registrar of Companies to delete their name from the articles of association of their newly floated company i.e. M/s Krish Technopark Pvt. Ltd. which as per the report of CFSL are not in their handwritings.

21. Prima facie ingredients of the offence of which cognizance has been taken are made out. There is no merit in the revision petition. It is dismissed.

(INDERMEET KAUR)
JUDGE

13th October, 2009
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