

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

+ CRL.M.C. 2641/2008

GURPREET SINGH AHLUWALIA Petitioner
Through: Mr. Anil Sharma, Adv.

versus

STATE & ORS Respondents
Through: Mr. R.N. Vats, APP for the State.
Mr. Prashant Mendiratta, Adv. for
Respondent No.3.

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

% **ORDER**
21.10.2009

This is a petition under Section 482 of Code of Criminal Procedure for quashing the summoning order dated 30th January, 2008. The case of the complainant as disclosed in the complaint is that he was running Sartaj Hotel at A-3, Green Park, New Delhi. The petitioner, accompanied by his daughter, came to him for providing services such as catering providing breakfast, lunch and dinner to the guests who were to attend the wedding of the daughter from 9th November, 2002 to 13th November, 2002. It has been further alleged that the petitioner informed the complainant that he had recently purchased a farm house named Ahluwalia Farm House and gave the address of that farm house to him as Khasra No. 176, DLF, Chhattarpur Mandir Road, Delhi. Two post dated cheques, one of Rs.4 lacs and the other of Rs.7 lacs were handed over to the complainant. It has been further alleged in the complaint that the petitioner and his daughter took the complainant to Ahluwalia Farm House and the servants and family members present there acknowledged the petitioner to be the owner of that

huge farm house. According to the complainant, after marriage had been performed and the petitioner and his family members were fully satisfied the arrangements made by the complainant, the tents etc. put up by the complainant were removed. The cheques when presented on due date were dishonored for want of insufficient funds. Later on when the complainant made inquiry, he came to know that the petitioner had not purchased that farm house and had left that farm house after removing fittings and fixtures from there. One Mr. K.L. Gugnani met the complainant and informed him that the farm house belonged to him and in fact the petitioner had cheated him as well.

The main contention of learned counsel for the petitioner is that the dispute between the parties is essentially civil in nature and the civil suit filed by the complainant as well as complaint filed by him under Section 138 of Negotiable Instrument Act on account of dishonor of the cheques are still pending.

The case of the complainant as regards the alleged cheating is based on a specific allegation i.e. the petitioner had represented himself to be the owner of a farm house whereas in fact he was not the owner of that farm house. If a person obtains services worth lacs of rupees on credit and on the basis of post dated cheques by making misrepresentation as regards ownership of an immovable property the aggrieved party believes the representation made by him to be true and later on it transpires that the representation was factually incorrect as the accused was not the owner of the property, prima facie it would constitute an offence of cheating punishable under Section 420 of Indian Penal Code. But for the misrepresentation made by the petitioner and believed by the complainant to be true, the complainant would not have accepted post dated cheques and would not have provided services worth lacs of rupees to the petitioner. At this stage, it is not permissible for the court to go into the truthfulness or otherwise of the allegation made in the complaint. The court cannot embark into an inquiry at this stage to find out whether the petitioner had

actually claimed to be the owner of a farm house or not and whether services as alleged by the complainant were actually provided or not. These are the matters which require investigation during trial. The power of the Court under Section 482 of the Code of Criminal Procedure can be exercised to quash a criminal complaint only if the allegations made in the complaint, if taken as correct do not constitute an offence. In my view, it cannot be said at this stage that the allegations of the complainant to the effect that the petitioner had claimed to be owner of a guest house which was also shown to him and where the persons present at that time had endorsed the claim of the petitioner as regards ownership of that farm house was incorrect. This is not the case of the petitioner that he was actually the owner of that farm house. Therefore, there is no valid ground for quashing the proceedings pending against the petitioner in the court of the learned Metropolitan Magistrate. The petition is dismissed.

V.K. JAIN,J

OCTOBER 21, 2009

J