

HIGH COURT OF DELHI: NEW DELHI

+ Writ Petition (Crl.) No. 1266/2009

Judgment reserved on: 23rd October, 2009
% Judgment delivered on: 27th October, 2009

BHANWARLAL BOTHRA Petitioner
Through: Mr. Subhashish Mohanty,
Adv.

Versus

STATE & ORS. Respondents
Through: Mr. Lovkesh Sawhney, APP
for the State.

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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

A.K. PATHAK, J.

1. Petitioner (complainant before the trial court) has filed this writ petition praying therein that the order dated 4th April, 2009 passed by the learned Additional Sessions Judge in revision petition No. 74/2007 as well as the order dated 12th January, 2004 passed by the learned Metropolitan Magistrate in criminal complaint case no. 950/2000 be set

aside. It has been further prayed that trial court be directed to make further enquiry into the commission of offence by respondent nos. 2 to 4 (accused) and decide the complaint in accordance with law.

2. Brief facts of the case are that the petitioner filed a complaint in the court of Chief Judicial Magistrate, Patna against the respondents under Sections 403,406,420,467,471,504,323 read with Sections 120-B and 34 of Indian Penal Code. Promod Bothra, proprietor of M/s Bothra Brothers, is son of Bhanwarlal Bothra. Firm M/s Bothra Brothers are share brokers. Complaint was filed through Shri Bhanwarlal Bothra. It was alleged in the complaint that sometime in the month of September, 1991 respondent nos. 2 to 4 came in the office of M/s Bothra Brothers and showed their willingness to sell some of the shares owned by them and their relatives. They also handed over share certificates together with duly signed transfer deeds to the firm. This sale transaction was done by the respondent nos. 2 to 4 till January-February, 1992. Shares were sent to respective companies for recording the transfer. However, some of the shares were received back

as bad delivery on the ground that signatures of the transferor differed. When this fact was brought to the notice of respondent no. 1, he obtained a power of attorney in his name, duly executed by respondent nos. 2 and 3. Thereafter, fresh transfer deeds were signed by him. Shares were again sent to the companies for registering the transfer. However, again so many shares were received back unregistered on the ground that power of attorney was not duly registered with the said companies. Besides this, respondent nos. 2 to 4, who were Non Resident Indians, had also not obtained permission from Reserve Bank of India resulting in non registration of so many shares in the name of transferee(s). It was alleged that the respondent nos. 2 to 4 had put their wrong signatures on the transfer deeds. Despite the fact that so many shares were received back as bad delivery, respondents realized the value of all the shares from the petitioner by filing complaint in the State Consumer Disputes Redressal Commission, Delhi. It was further alleged that on 6th June, 2000 respondent no. 2 came to Ashiana Plaza, Patna to settle the matter but

instead of settling the matter he picked up fight with the complainant and abused him.

3. At the pre summoning stage petitioner examined himself and one Shri Shiv Nandan Rai. Thereafter, Chief Judicial Magistrate, Patna vide order dated 30th August, 2000 ordered for summoning of respondent nos. 2 to 4, under Sections 420 and 323 IPC only.

4. Respondent nos. 2 to 4 preferred a transfer petition in the Supreme Court which was allowed and the complaint case was transferred to the Court of Chief Metropolitan Magistrate, Delhi. Respondents filed an application under Section 245 Cr.P.C. in the court of learned Metropolitan Magistrate, Delhi seeking their discharge. During the pendency of said application respondents also preferred a writ petition in this Court being CrI. M. (M) No. 3509/2002 which was disposed of vide order dated 18th July, 2003. It was ordered that grievance of the respondent can be remedied by directing the trial court to dispose of the application, for recalling the summoning order, within two months. High Court passed this order in view of the

decision of the Supreme Court in ***K.M. Mathew vs. State of Kerala*** reported in ***1992 (1) SCC 217***.

5. Thereafter, learned Metropolitan Magistrate heard the arguments of both the parties on the said application. Case of respondent nos. 2 to 4 before the learned Metropolitan Magistrate was that they had entrusted certain shares to share broker namely M/s Bothra Brothers for selling the same in the market. Shares were sold and Shri Promod Bothra realized a sum of Rs. 9,15,673/- towards sale consideration. He issued fifteen cheques in favour of respondents, for the said amount. However, on presentation, cheques were returned dishonoured, except the three cheques for small amounts. Respondent no. 2 issued notice under Section 138 of Negotiable Instruments Act to the complainant and pursuant thereof a sum of Rs. 4 lakh was paid. For the balance amount respondents approached the State Consumer Disputes Redressal Commission, Delhi by filing a complaint against the complainant wherein balance amount was directed to be paid to the respondents along with interest, damages and costs. Since order was not complied with, therefore,

execution petition was filed. Complainant took the plea of “bad deliveries”. However, this plea did not find any favour with the State Consumer Disputes Redressal Commission, Delhi. Complainant challenged the order of State Consumer Disputes Redressal Commission before the National Consumer Disputes Redressal Commission but his appeal was dismissed on 3rd January, 1996. Special Leave Petition preferred by him was also dismissed vide order dated 8th July, 1996. Only thereafter complainant paid the amount ordered by the Commission in monthly instalments of Rs.30,000/- each.

6. In the above facts and also on the basis of rival contentions raised by both the parties, which have been narrated in the preceding paras hereinabove, learned Metropolitan Magistrate came to the conclusion that the complaint was false and had been instituted with a view to harass respondent no. 2, who was an old man of seventy six years. Learned Metropolitan Magistrate was also of the view that no case under Sections 420/323 IPC was made out against the respondents. Petitioner had not made any efforts to get the deficiency regarding bad delivery rectified.

Transactions took place sometime in the year 1992 but no action was taken upto the year 2000, by the complainant. Respondents recovered the payment, by initiating legal proceedings against the complainant and matter went up to the Supreme Court. Only thereafter, complaint was filed which shows that same was false. Learned Metropolitan Magistrate also took note of the fact that there was no occasion for respondent no. 1 to go all the way from Delhi to Patna, in order to settle the matter with the complainant, after his entire dues had been recovered. Keeping in mind all the above facts, learned Metropolitan Magistrate was of the view that complaint was not genuine and was filed with a view to harass respondent no. 2.

7. Aggrieved by the order of learned Metropolitan Magistrate, respondent preferred a revision petition bearing criminal revision no. 74/2007 before the learned Additional Sessions Judge, which came to be dismissed on 4th April, 2009. Learned Additional Sessions Judge the view that complaint was instituted with a view to harass respondent no. 2, who had managed to recover his rightful dues after a prolonged litigation. Learned Additional Sessions Judge

held that accused can be discharged by the Magistrate at any stage of the proceedings, in exercise of its power under Section 245(2) Cr.PC.

8. In my view, concurrent findings of the court below cannot be interfered by this Court on merits in exercise of its supervisory powers. In exercise of its power under Article 226 and 227 of the Constitution, this Court can interfere with the findings of the court below only if the same are perverse and based on no material. In this case, courts below have arrived at a conclusion that complaint was false and had been filed in order to harass respondent no.1, who was around seventy six years old. I find no justification to interfere with the view taken by the subordinate courts. Share transactions took place in the year 1992. After certain shares were received back unregistered on the ground that the signatures on the transfer deeds differed from the original signatures of the transferor available on the records of companies, respondents cooperated and issued fresh transfer deeds, duly signed by respondent no.1, accompanied with the power of attorney duly executed by respondents no. 2 and 3

in favour of respondent no.1. This fact itself shows that at the time when sale transaction took place between the parties, respondents had no intention to deceive the complainant in any manner whatsoever. Statement of complainant recorded at pre-summoning stage also does not disclose ingredients of the offence of cheating. Inordinate delay in filing of complaint, as also the events which took place in between the sale transaction till filing of the complaint also disclose that complaint had been filed in order to harass the respondents. Entire transaction took place in Delhi. Complainant was also carrying on his business as share broker at Delhi. In spite of this, complaint was filed at Patna. This also reflects on the conduct of the complainant and indicates that complaint was filed to harass the respondents.

9. Petitioner has placed reliance on ***Mahant Abhey Dass Vs. S.Gurdial Singh & Ors.***, reported in **AIR 1971 Supreme Court 834**. In my view, this judgment is in different facts and is of no help to the petitioner. In the said case, in the facts, it was held that a prima facie case, was made out against the accused and he should not have

been discharged under Section 253 (2) Cr.P.C. However, in this case, courts below have categorically held that the complaint was false and had been filed to harass the respondents. This view was taken by the courts in view of the material available on record.

10. In view of the above discussions, I do not find any merit in this petition.

11. Dismissed.

A.K. PATHAK, J

OCTOBER 27, 2009

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