

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

Date of Reserve: 27th September, 2010
Date of Order :11th November , 2010

+ W.P. (Crl.) No. 57 of 2010, Crl. M.A. No. 535/2010

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11.11.2010

C.S. AGARWAL

... Petitioner

Through: Mr. Pinaki Mishra, Senior Advocate with
Ms Ranjana Roy Gawai, Mr. Vijay Aggarwal and
Mr Shailesh Suman, Advocates.

Versus

STATE & ORS.

... Respondents

Through: Mr Ranjit Kapoor, ASC for the State with
Mr. Vaibhav Sharma, Advocate,
Mr. Ramesh Gupta, Sr. Advocate with
Mr. Rajinder Singh, Advocate for complainant.

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. This petition has been filed for quashing of FIR No. 264/2009 dated 23rd December, 2009, registered with Economic Offences Wing under Section 420/406/120-B IPC.

2. The petitioner in association with one Mr. D.K. Jain had formed a Company in the name of M/s Rockman Projects Limited (hereinafter referred to as "RPL") and the petitioner represented to respondent No. 3 that the petitioner controlled 250 acres of land in Gurgaon on Delhi-Jaipur Highway in Village Sidhrawali and for this land petitioner was having principal approval to develop a Special Economic Zone (SEZ). The petitioner showed a map of 250 acres of land/site and the principal approval letter received by the petitioner from Government of India for SEZ.

3. On the basis of this representation, the petitioner asked respondent No. 3 to invest in the project and it represented to the respondent that it had full authority to act on behalf of RPL and he had Board resolution in his favour to enter into a deal. The petitioner induced respondent to buy 74 per cent share in his Special Purpose Vehicle (SPV) for ₹ 185 crore and received an advance payment of ₹ 40.00 crore on behalf of RPL. It was represented to respondent No. 3 that RPL would transfer 250 acres of land owned and controlled by the petitioner to SPV when final SEZ notification from Government of India is received. A Memorandum of Understanding (MoU) was signed on 18th June, 2007 and advance payment of ₹ 40.00 crore was received by the petitioner in cheques. It was a condition that this advance payment of ₹ 40.00 crore would be refunded back to respondent No. 3 in case no SEZ notification was received by 31st December, 2008. A resolution signed by the petitioner and other Director Mr. D.K. Jain and land map of 250 acres signed by the petitioner was made part of the MoU. The petitioner received another amount of ₹ 3.00 crore from the respondent No. 3 towards this MoU. On 19th February, 2008 RPL also signed Shareholders' Agreement with respondent No. 3 and an FDI investor Xander with the condition that Shareholders Agreement will come into effect only if the final SEZ notification was issued by 31st December, 2008. It was agreed that in case no SEZ notification comes into force by 31st December, 2008, either the amount of ₹ 43.00 crore invested by the respondent No. 3 would be refunded or the land of 250 acres would be transferred in the name of respondent No. 3 on receiving the balance amount of consideration as per MoU. However, not only that notification was not received by 31st December, 2008, but, a public notice was issued by Mr. D.K. Jain in the Times of India on 31st December, 2008 itself, i.e. the date for refunding back the amount to respondent No. 3, revoking all authority given to petitioner to act on behalf of RPL. In September, 2009, the petitioner had published his own public notice that RPL had 99 years lease agreement with D.K. Jain's land

owing company for 250 acres of land and also had an Agreement to Sell in his favour for the entire land which he claimed were signed much before entering into the deal with the respondents. When respondent No. 3 demanded back his amount of ₹ 43.00 crore, this was not given back. Thereafter respondent No. 3 learnt that the petitioner had made a false statement to respondent No. 3 in respect of land itself in order to cheat the petitioner and the petitioner had also mis-represented that amount of ₹ 43.00 crore given by the respondent No. 3 shall be utilized for acquiring land. This amount was siphoned off by the petitioner and Mr. D.K. Jain together.

4. Respondent No. 3 did investigation of the facts at its own and came to know that the petitioner did not have 250 acres of land at its disposal as was stated at the first instance and the actual land at the disposal of the petitioner was only 170 acres. However, approval letter from the authority was obtained by mis-representing that the petitioner had at its disposal 250 acres of land. The minimum requirement for Industrial SEZ was 250 acres of land and the petitioner had an intention to cheat right from the beginning when it mis-represented to the respondent that it had 250 acres of land at its disposal while actually it was having only 170 acres of land. The petitioner then represented to respondent No. 3 that it had made a payment of ₹ 32.5 crore to M/s R.C. Developers in Delhi to buy additional land in Gurgaon to complete 250 acres of land. This representation was also found false by Economic Offence Wing (EOW) and M/s. R.C. Developers denied that it ever received ₹ 32.5 crore from the petitioner or RPL.

5. The investigation done by the EOW shows that the petitioner had, from the very beginning, a dishonest intention. It had mis-represented that it had 250 acres of land. ₹ 43.00 crore taken from respondent No. 3 was diverted to the pocket companies of Mr. D.K. Jain and petitioner and was mis-appropriated. This amount was not utilized towards purchase of land. The petitioner had entered into a MoU

with a company at Bombay called M/s Pan Card Club for same SEZ and it had taken ₹ 30.00 crore advance from them also. It was also revealed that part of the same 250 acres of land was given as collateral security by one of D.K. Jain's controlled companies for obtaining ₹ 22.00 crore loan from State Bank of Mysore contrary to Memorandum of Understanding.

6. It is argued by counsel for the petitioner that the petitioner had a 99 years lease agreement in respect of 250 acres of land. When counsel for the petitioner was asked to show 99 years lease agreement, it was found that lease agreement was a junk of paper, since the lease agreement was not registered and an unregistered lease agreement confers no title and does not create any lease. It was admitted by counsel for the petitioner that though MOU mentioned 250 acres of land but actual land available at the disposal of the petitioner was only 170 acres of land and not 250 acres of land. It was stated by petitioner that Mr. D.K. Jain, the other Director of the company had mis-represented to petitioner about the land holding and the petitioner was not aware that only 170 acres of land was available.

7. It is submitted that entire transaction was of civil nature. These transactions were entered by the complainant/respondent No. 3 with open eyes and equal bargaining power. There was no default on the part of the petitioner. The transaction had gone sour merely because the transaction could not go through and it does not amount to a criminal act.

8. It is an admitted fact that the company of Mr. D.K. Jain and petitioner made deliberate false representations. While the land available with the petitioner was not 250 acres, it was falsely represented to the Government, for taking approval in principal for establishing SEZ, that it had 250 acres of land available. It is not denied that petitioner entered into an Memorandum of Understanding with M/s Pan Card Club, Bombay. It has also not been denied that part of this land was mortgaged by

one of the companies of Mr. D.K. Jain to raise loan. It has also not been denied that despite receiving Rs. 43.00 crore from the respondent No. 3, no amount was utilized for purchasing the land as per Memorandum of Understanding and no documents of purchase of land were even prepared. It is not denied that amount of Rs. 43.00 crore was transferred to companies/firms of D.K. Jain and that of petitioner and the amount was not returned to Respondent No. 3 despite no notification of SEZ was received by 31st December, 2008 nor an offer of return of amount was made to respondent No. 3. It seems that a false fight was put up by the petitioner and D.K. Jain in order to play fraud to respondent No. 3. It is not a case where only civil action was warranted. It is a case where partners/Directors had fraudulent intention from the very beginning. I find no reason to quash this FIR. The petition is dismissed.

November 11, 2010
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SHIV NARAYAN DHINGRA, J.