

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

Date of Reserve: August 02, 2010
Date of Order: 13th September, 2010

+ Crl.M.C.No. 490/2010

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13.09.2010

Mool Chand Jain

... Petitioner

Through: Mr. Sidhartha Luthra, Sr. Advocate with
Mr. U.S.Aggarwal, Advocate, Mr. Rajat Bali, Adv.

Versus

State & Ors.

... Respondents

Through: Mr. O.P.Saxena, APP for the State
Mr. R.R.David & Mr. Pramod Kumar Singh,
Advocates for R-2&3

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

By this petition under Section 482 Cr.P.C. the petitioner has sought quashing of an FIR No.15/2010 PS Farsh Bazar registered under the directions of the learned MM under Section 156(3) Cr.P.C. and also sought quashing of order dated 4th February, 2010 passed by the learned MM giving directions for registration of FIR. It is submitted by the petitioner that criminal proceedings were launched by the complainants/respondents against the petitioner in a dispute of purely civil nature. The proceedings were launched malafidely by suppression of material facts and the complainants suppressed that civil litigation was pending between the parties and the criminal complaint filed by the complainants was an abuse of process of Court. The petitioner was falsely named in the complaint as accused person and the learned MM

without appreciating the facts directed for issuance of process. It is submitted that it was a fit case for quashing of FIR in terms of the judgment of Supreme Court in State of Haryana v. Bhajan Lal AIR 1992 SC 604. On the other hand, the respondents have submitted that present petition was not maintainable since FIR was registered against the petitioner after the learned MM had scrutinized the facts and considered that a cognizable offence was committed. Since the judicious scrutiny had already taken place no further judicial scrutiny was required. It was also submitted that investigation in the offence was going on and the accused was not cooperating in the investigation therefore he was declared P.O.

2. It is well settled law that criminal and civil proceedings can simultaneously proceed and a transaction can have colour of criminal act and civil act both. In the present case the complaint filed by the respondents/complainants would show that the petitioner had received a sum of Rs.15 lac from the complainant after representing that the company being run by the petitioner was in financial constraints and the award passed in favour of the company of the petitioner and against the NPCC Limited was under challenge and if the complainants invested finances, they would be made Directors and would be given shares of the company. The complainants believing the petitioner invested the money but later on found that the petitioner's sole intention was to grab the money and in order to grab the money, the petitioner indulged into forging of documents of the company. He prepared fake resolutions of the company, fake intimations were given to the complainants to remove them from the Director of the company and a fake list of shareholders and Form No.32 was filed in the office of Registrar of

Company Gwalior, MP. Though the complainants were shareholders but their names did not figure in the list of shareholders, so filed by the petitioners. The bank accounts from which the complainant and several other persons were issued cheques were illegally closed down on the basis of fake document. The petitioner had issued assurance letters dated 3rd February, 2007, 5th February, 2007 and 14th February, 2007 and a special power of attorney was also executed in the names of complainants, to accept the payment from NPCC and Form No.32 with RoC to appoint complainants as Directors but it was found later on that the petitioner did not regularize the company and rather gave misinformation to the RoC about the shareholders and Directors by creating fake and forged papers.

3. It is apparent from the reading of the complaint that the complaint disclosed commission of offence under Section 420 IPC and other provisions of IPC by the petitioner which required investigation at the hands of police, since the investigation was to be done from RoC office at Gwalior and other places. It is after considering all these facts that the learned MM had directed for registration of FIR and directed investigation.

4. I find that there was no ground to interfere with the order of the learned MM. The petition has no force and is hereby dismissed.

September 13, 2010
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SHIV NARAYAN DHINGRA, J.