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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Criminal M.C. No.3282 of 2009 & C.M. Appl. No.11125 of 2009

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27.08.2010

VIJAY AGGARWAL

..... Petitioner

Through: Mr. Praveen Kumar Rai, Advocate.

Versus

EMIRATES BANK INTERNATIONAL

.....Respondent

Through: Mr. Rishab Raj Jain, Advocate.

Reserved on: 9th August, 2010

Pronounced on: 27th August, 2010

JUSTICE SHIV NARAYAN DHINGRA

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

J U D G M E N T

1. The present petition has been filed by the petitioner under Article 227 of the Constitution of India for quashing the proceedings initiated against the petitioner by the respondent on the ground that summoning of petitioner was not warranted by the facts as disclosed in the complaint.

2. Brief facts relevant for the purpose of deciding this petition are that the complainant M/s. Emirates Bank International (respondent) filed a criminal complaint before Chief Judicial Magistrate, Ahmednagar, Maharashtra against petitioner and three more persons, all close relatives of the petitioner, under Sections 415/418/420 read with Section 120-B and Section 34 IPC. The learned Judicial Magistrate at Ahmednagar after recording pre-summoning evidence took cognizance of the offence and summoned all the four respondents including petitioner. Thereafter, the petitioner approached the Supreme

Court for transfer of the case from Ahmednagar to Agra. However, the Supreme Court transferred the criminal complaint to the competent court at Delhi. Thus, the criminal complaint was transferred from Ahmednagar to the court of learned Metropolitan Magistrate at Patiala House Courts, Delhi. After the criminal complaint was transferred, this petition has been filed by the petitioner for quashing the complaint qua him. It is submitted that the complaint does not disclose any cause of action against the petitioner and summoning of petitioner by the Judicial Magistrate at Ahmednagar was bad in law. There was no act ascribed to the petitioner.

3. A perusal of the complaint shows that Ajay Aggarwal, brother of the petitioner, had availed facilities from the complainant bank and had incurred a liability of 19,250,344.69 dhiraams as on June, 1984. The bank became apprehensive that this amount would not be paid and, therefore, pursued the matter with Ajay Aggarwal. Ajay Aggarwal entered into an agreement dated 27th June, 1984 with complainant bank whereby he acknowledged the liabilities to the above extent towards complainant and assured the complainant bank about his creditworthiness, solvency and gave guarantee to make the payment.

4. The complainant submitted that the present petitioner was proprietor of M/s. Kajeco Industries, Sultan Ganj, Agra, U.P. and at Kosikalan, District Mathura, U.P. The present petitioner appointed Sh. Kedar Nath Aggarwal as his attorney. On the basis of this attorney accused Ajay Aggarwal and Kedar Nath Aggarwal entered into sole selling agency agreements. The present petitioner appointed Ajay Aggarwal as all in all of his concern in Dubai and as his agent for UAE. On the basis of this power of attorney accused persons got registered their above mentioned agency agreement with Reserve Bank of India. It is submitted that all the accused persons in fact had entered into a

criminal conspiracy in India to play fraud and cheat the complainant and in furtherance of this conspiracy, the entire documentation and manipulation was done to induce and lure the complainant bank to give loans and banking facilities and ultimately the complainant bank was cheated for huge amount of 19,250,344.69 dhrams.

5. Counsel for the petitioner submitted that the only act assigned to the accused was execution of power of attorney on the basis of which his father, that is, Kedar Nath Aggarwal and his brother Ajay Aggarwal gave guarantees and entered into agreement with the complainant bank. He submits that merely because he executed power of attorney cannot be a ground to implicate him. Giving guarantees was an individual act of Kedar Nath Aggarwal, his father, and he cannot be held liable for the act of his father.

5. It is well settled that the cognizance is always taken of the offence and not of the offenders. The complainant in this case has prima facie shown how a conspiracy was hatched up to lure the complainant bank to give huge amounts of loan and credit facilities on the basis of documentation, while there was no intention to pay this amount back. It is well known that conspiracies are always hatched in secrecy and direct proof of conspiracies is hard to come. Conspiracy can be inferred only by circumstances and the chain of events. The petitioner was summoned by the court of Judicial Magistrate, Ahmednagar on the basis of material placed before him. At the time of taking cognizance and summoning of accused, a Magistrate is not supposed to enter into a detailed analysis of evidence and to see whether the evidence would result into conviction or not. It is sufficient if the Magistrate considers that there was enough material to infer involvement of the petitioner in commission of offence or in conspiracy. Since the petitioner was allegedly involved in a conspiracy and there was sufficient material before the Judicial Magistrate showing that the petitioner had executed power of attorney in favour of

accused Kedar Nath Aggarwal, who in turn, executed guarantees on the basis of power of attorney in favour of the complainant bank, I consider that no fault can be found with summoning order. I also consider that in view of the fact that the offences for which the petitioner has been summoned are warrant trial offences since it is a complaint case, the accused will get full opportunity to show that he was not involved in the conspiracy or not involved in the offence of cheating coupled with Section 120-B IPC at the charge stage.

6. It is settled law that quashing of FIR or a complaint must be done only in rare cases where all facts disclosed in complaint if considered true do not constitute an offence. It is not such a case.

7. I find no ground to quash the complaint even qua the petitioner. The petition is hereby dismissed.

SHIV NARAYAN DHINGRA
[JUDGE]

AUGUST 27, 2010
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