

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

Date of Reserve: 7th September, 2010

Date of Order: 21st September, 2010

+CRL. M.C. 3842/2009 with Crl. M.A. No. 13091/2009

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21.09.2010

LALIT GARG & ORS.

... Petitioner

Through: Mr. M.R. Chawla, Mr. Gaurav Kaushik,
Advocates.

Versus

STATE & ORS.

... Respondents

Through: Mr Sunil Sharma, APP

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. Present Petition has been filed for quashing of Criminal Complaint filed against the petitioners under Section 418/420/120B IPC read with Section 34 IPC and summoning order dated 4th August, 2008.

2. A perusal of the order of learned Metropolitan Magistrate (MM) would show that learned MM, after reproducing some averments made in the complaint stated that the allegations leveled by the complainant against the accused were sufficient to constitute above offences and hence he summoned the accused persons. A perusal of record would

show that the complaint was filed by the complainant on 4th January, 2008, alleging therein that Agreement of Sell dated 28th December, 1994, was entered into by one Surinder Kumar Bhardwaj, Managing Director of M/s. L.B. Fans Pvt. Ltd. with Mr Sanjay Gulati, Proprietor of M/s. Asian Forgings & Allied Industries, in respect of property No. H-3, Sector-IX, New Okhla Industrial Development Area (NOIDA), District Ghaziabad, U.P. In terms of this Agreement to Sell, the above property under mortgage to State Bank of Patiala, New Delhi, was to be sold to complainant for a sum of ₹ 8.00 lakh. The complainant gave a Bank Guarantee of ₹ 5.00 lakh in favour of State Bank of Patiala and the accused was to get the documents of the property released from State Bank of Patiala and then execute a Sale Deed in favour of the complainant on receiving the balance consideration amount of ₹ 3.00 lakh. Shri Surinder Kumar Bhardwaj was to get the title deed released from the bank within a period of 8 months. However, it was stated in the Agreement to Sell that vacant and physical possession of the property had been handed over to the complainant. The complainant had appointed Smt. Kamal Gulati as its attorney for the management, control and supervision of the affairs of the property and for completion of sale and transfer of the property. It was mentioned that if terms and conditions of the agreement were not complied with by the seller, the purchaser (complainant) would be entitled to get Agreement to Sell implemented through Court of law by specific performance. This Agreement to Sell was get registered with Sub Registrar, NOIDA. Further,

on 29th December, 1994 i.e. on the very next date, the terms of agreement were changed between the parties and consideration was increased from ₹ 8.00 lakh to ₹ 16.00 lakh and it was agreed that M/s. Asian Forgings & Allied Industries shall pay an interest of ₹ 15,750/- per mensem towards balance amount of ₹ 16.00 lakh for a period of 8 months i.e. up to 31st August, 1995 to seller. It was also agreed that an amount of ₹ 16.00 lakh will be paid directly by M/s. Asian Forgings & Allied Industries to State Bank of Patiala upon release and registration of the property.

3. It is apparent from the record that a Winding up Petition was going on in respect of this company. This Winding up Petition was filed on 20th May, 1994, and the High Court of Delhi vide order dated 18th September, 1995, appointed an Official Liquidator for the Company. The complainant, who had entered into an Agreement to Sell dated 28th December, 1994, modified by Memorandum of Understanding (MoU) dated 29th December, 1994, did not take any action for 13 years in respect of this agreement despite the fact that no transfer of property was made in its favour and the 8 months period had expired in August, 1995 itself. No suit for specific performance was brought. If any cheating had been committed by anyone against the complainant, it came to knowledge of the complainant by the expiry of 31st August, 1995 when as per MoU the complainant was to stop paying interest and the documents were to be got released from the bank. The period of limitation for filing a complaint in respect of offence of

cheating under Section 418 IPC is 3 years and the complaint against the petitioner and the company would have been barred by limitation.

4. In order to constitute an offence under Section 420 IPC, it was necessary that the complainant should have deceived to deliver some property or to make alter or transfer whole or any part of the valuable security or something capable of being converted into a valuable security. In the present case, as per the complaint, notice and the document, the complainant had given only a bank guarantee to State Bank of Patiala for a sum of ₹ 5.00 lakh. The period of bank guarantee is not mentioned, but, it is obvious that this Bank Guarantee must have lapsed after eight months period within which the seller had to get the documents released from State Bank of Patiala. It is also apparent that no consideration was paid by the complainant either to State Bank of Patiala or to the seller at any stage in respect of the property, rather the Sale Deed shows that the possession of property was taken by the complainant and complainant was to pay only ₹ 15,750/- p.m. to the seller for a period of 8 months. Thus, if there was a delivery, the delivery was given by the seller/petitioner to the complainant and there was no delivery of any valuable security or any amount by the complainant to the seller. Under these circumstances, none of the ingredients of Section 420 IPC or Section 415 IPC, which defines cheating, were made out.

5. The complainant very well knew that the property was under mortgage of bank. It was for the bank to agree to release or not to release the mortgage within 8 months. The bank, it seems, was to receive much more amount than initially agreed amount of ₹ 8.00 lakh or ₹ 16.00 lakh. The Agreement to Sell was silent as to what was the amount payable to the bank. Under these circumstances, no offence of cheating was made out against the seller. The contention of the complainant before the Trial Court was that a Winding up Petition was filed by the seller in collusion with other Directors to deprive the complainant of the property. This averment is also not correct since record shows that Winding up Petition was already pending when the complainant entered into the Agreement to Sell.

6. Even otherwise, I consider that invoking criminal justice system after 13 years of entering into an Agreement to Sell, when right of the complainant under civil law had come to end was nothing but a gross misuse of criminal justice system. I, therefore, allow this petition and the complaint and summoning order are hereby quashed.

September 21, 2010
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SHIV NARAYAN DHINGRA, J.