

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.M.C. 535/2011 & CrI.M.A. No.2059/2011**

Decided on 21.02.2011

IN THE MATTER OF :

PEATREE ENTERPRISES P.LTD.

..... Petitioner

Through : Mr. Gurbaksh Singh, Adv.

versus

STATE & ORS.

..... Respondents

Through : Mr. M.N. Dudeja, APP for the State.

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7* HON'BLE MS.JUSTICE HIMA KOHLI

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| 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 the judgment should be reported in the Digest? | Yes |

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner company under Section 482 Cr.P.C. praying *inter alia* for quashing of the orders dated 12.11.2010 passed by the learned ASJ in Criminal Revision Petition No.39/2010 and the order dated 19.7.2010 passed by the learned ACMM, whereby the complaint case filed by the petitioner company against the respondents was dismissed on the ground that the dispute between the parties was purely civil in nature and that no further police investigation was required. It was further observed by the learned ASJ that no offence was disclosed from the facts set out in the complaint as well as from a perusal of the testimony of the witnesses examined on behalf of the petitioner/complainant.

2. In the impugned judgment, the learned ASJ considered the order dated 19.7.2010 passed by the learned ACMM, and after examining the facts of the case on the basis of the trial and upon hearing arguments of the counsel for the petitioner, dismissed the revision petition with the observation that the case was purely civil in nature and in case the petitioner company had any grievance against the respondents, the remedy was available to it under the civil law for seeking recovery of the amount.

3. Briefly stated, the facts of the case, as per the petitioner/complainant, are that in August, 2002, respondents No. 3 & 4 visited the office of the petitioner company and both the parties entered into a collaboration to develop a land owned by the respondents. As per the petitioner, respondents No.3 & 4 projected to the petitioner company that the land in question was free from all kinds of disputes and encumbrances, and that if the petitioner company would invest funds in the project, it would receive huge profits later. As a result, a Memorandum of Understanding dated 6.8.2002 was executed between the parties. At the time of signing the MOU, the petitioner company paid a sum of ₹11.00 lacs to the respondents towards part financial investment in the aforesaid project. However, thereafter when the petitioner company got the papers of the said land verified, it came to know that a major part of the land in question was either under litigation or there were some encumbrances in respect of the said land. Immediately thereupon, the petitioner company approached respondents No.3 & 4 for cancellation of the MOU. This was followed by execution of a document on 13.8.2002 between the petitioner company and respondents No.2 & 3, cancelling the earlier MOU dated 6.8.2002.

4. In the aforesaid agreement, it was specifically recorded that all the cheques including the cheque of ₹28.00 crores given by the petitioner company in pursuance to the earlier MOU dated 6.8.2020, would be returned and stand cancelled. After a gap of over three years, the petitioner company filed the aforesaid complaint under Sections 406/420/120B IPC read with Section 200 Cr.P.C., based on its claim that the respondents/accused had not refunded ₹11.00 lacs to it, and praying *inter alia* for registration of FIR against the respondents and for taking appropriate steps against them.

5. Vide order dated 15.7.2005, the application of the petitioner/complainant filed under Section 156(3) Cr.P.C. seeking directions for registration of FIR was declined and the petitioner/complainant was directed to lead evidence in its favour under Section 200 Cr.P.C. After completion of the entire evidence of the complainant, the matter was listed for arguments. Learned ACMM heard the arguments addressed on behalf of the petitioner company and arrived at the conclusion that the complaint case was filed by the petitioner company only to pressurize the accused persons to enable recovery of the amount of ₹11.00 lacs. The aforesaid complaint was dismissed on 19.7.2010 with the observations that there was no ground made out to summon the alleged accused persons in the said case and no further investigation was required.

6. Aggrieved by the aforesaid order, the petitioner company preferred a revision petition before the Sessions Court, which has also been dismissed vide order dated 12.11.2010, while upholding the order of the learned ACMM on the ground that there is no illegality, impropriety and incorrectness therein.

7. Counsel for the petitioner company states that at the time of considering the complaint, the court is not required to look into the subsequent events and ought to confine itself only to the averments made in the complaint, for taking appropriate action against the accused. Pertinently, the subsequent event being referred to by the learned counsel for the petitioner company is the cancellation of the MOU. It is relevant to note that the said cancellation of MOU finds mention in the complaint itself at paras 7 & 8 thereof. Furthermore, it is not disputed that at the time of cancellation of the aforesaid MOU on 06.08.2002, it was agreed that the post dated cheques worth ₹28.00 crores, which were issued by the petitioner company to the respondents, would be returned and would stand cancelled. Nothing precluded the petitioner company from making the refund of the sum of ₹11.00 lacs an additional condition for cancellation of the agreement. However, for reasons best known to the petitioner company, no such steps were taken by it at the relevant time. Instead, after the expiry of about three years, the petitioner company chose to file the aforesaid complaint in May 2005, which was dismissed by the learned ACMM.

8. This Court is inclined to agree with the observation of the learned ASJ that once the MOU was cancelled and the cheques worth ₹28.00 crores were returned to the petitioner company, there was no question of returning the cheques worth Rs.11 lacs. It was clearly a transaction between two companies and not between a company and an individual, who claimed that he had invested in the company and had been cheated. Both parties were in an equal bargaining position. Similar arguments have been addressed before this Court, as had been addressed before the learned ASJ, which are turned down as being devoid of merits. This Court has perused

the order dated 12.11.2010 passed by the learned ASJ as also the order dated 19.7.2010 passed by the learned ACMM, and does not find any illegality, perversity or miscarriage of justice therein for interference. Accordingly, the present petition is dismissed along with the pending application.

9. At this stage, counsel for the petitioner company states that the petitioner company be given liberty to seek its remedies against the respondent on the civil side. This liberty has already been granted to the petitioner company in the impugned order. In case, a civil remedy is available to the petitioner company, it may seek the same in accordance with law.

FEBRUARY 21, 2011
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(HIMA KOHLI)
JUDGE