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**IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**Writ Petition (Civil) No.1703 of 2011**

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RESERVED ON: MARCH 18, 2011  
PRONOUNCED ON: MAY 11, 2011

**DEEPAK KHOSLA**

**. . . PETITIONER**

Through : Petitioner-in-person.

*VERSUS*

**UNION OF INDIA & ORS.**

**. . .RESPONDENTS**

Through: Mr. A.S. Chandhiok,  
Additional Solicitor  
General with Ms. Jasbir  
Kaur, Mr. Gurpreet S.  
Parwanda and Mr. Piyush  
Sanghi, Advocates for the  
Union of India.

Mr. Viraj R. Datar,  
Advocate for the Delhi  
High Court.

Ms. Neha Kapoor,  
Advocate for Mr. N. Waziri,  
Advocate for the  
Government of NCT, Delhi.

**CORAM :-**

**HON'BLE MR. JUSTICE A.K. SIKRI**  
**HON'BLE MR. JUSTICE M.L. MEHTA**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

**A.K. SIKRI, J.**

1. The petitioner herein had filed a complaint dated 28.06.2008 with SHO, Police Station, Lodhi Colony against certain persons alleging that those persons had committed offences under Section 423 read with Section 120B, Section 409 read with Section 120B, Section 477A read with Section 109 Indian Penal Code (for brevity 'IPC'). FIR No.165/08 was registered and the Investigating Officer conducted detailed investigation. According to the I.O., no offence was made out against any of the persons and on that basis, he submitted cancellation report with the learned ACMM, Saket Courts, South District. The petitioner opposed this course of action chosen by the I.O. and pleaded before the learned ACMM that cancellation report be not accepted. After hearing the arguments, the ACMM passed orders dated 22.02.2011, *inter alia*, holding that the cancellation report filed by the I.O. was not acceptable as *prima facie* following offences were made out:

"i) The execution of sale deed dt. 01.05.06 between Dharam Dutt and Rajiv Puri. The sale amount was ₹ 9.5 lacs (or ₹ 9.5 lacs after adjusting ₹ 2 lacs paid by MRL). It is a false statement made dishonestly. The parties were Dharam Dutt, Rajiv Puri, Vinod Surha. It was done at the instance of Vikram Bakshi. So, offence U/s 423 IPC is made out. There appears to be an element of criminal conspiracy, so, offence U/s 120B IPC is also made out.

ii) The Directors were the agents of company. In MRL, on 01.05.06, the Directors were Vinod Surha and Wadia Prakash. They were very well aware that the agreement of buying the land is between Dharam Dutt and MRL. They were aware that ₹ 2 lacs were already paid. So, they were to protect the interest of MRL. They knowingly, got the sale deed of the land executed between Dharam Dutt and Rajiv Puri at the saying of Vikram Bakshi. So, prima facie there is offence U/s 409 IPC. There also appears to be an element of criminal conspiracy, so, offence U/s 120B IPC is also made out.

iii) From the above discussion regarding the entries in books of accounts of MRL, CPRL, AHRL, it appears that Neeraj Rustogi, Accountant of MRL and AHRL had made wrong entries in the books of accounts and thereby with full intention falsified it. Now, in this case, the employer of Neeraj Rastogi is MRL and AHRL. Further, it appears that the same is done at the instance of Vikram Bakshi since, this stand is taken by him in his reply. So, offence, U/s 477A IPC is attracted directly to Neeraj Rastogi and offence U/s 477A IPC read with section 109 IPC."

2. ACMM, therefore, took cognizance of the offence under Section 423, 409 and 477A IPC; offence under Section 423 read with Section 120B IPC; offence under Section 409 read with Section 120B IPC and offence of criminal conspiracy to fraudulently execute Sale deed dated 01.05.06 and criminal breach of trust by Agents/Directors of MRL i.e. under Section 120B IPC. Further, the ACMM has also directed summoning of accused persons under Section 204 Cr.P.C. as follows:

"i) Accused Wadia Prakash, Vinod Surha, Rajiv Puri are summoned for offence U/s 423 IPC.

Accused Vikram Bakshi alongwith these three accused is also summoned for offences U/s 423 IPC read with section 120B IPC.

ii) Accused Wadia Prakash, Vinod Surha, Rajiv Puri are summoned for offence U/s 409 IPC. Accused Vikram Bakshi alongwith these three accused is also summoned for offences U/s 409 IPC read with section 120 B IPC.

iii) Accused Neeraj Rastogi is summoned for offence U/s 477A IPC. Accused Vikram Bakshi is summoned for offence U/s 477 A IPC read with section 109 IPC.

iv) Accused Wadia Prakash, Vinod Surha, Rajiv Puri and Vikram Bakshi are summoned for offence U/s 120B IPC i.e. Conspiracy to fraudulently execute Sale Deed dt. 01.05.06.

v) Accused Wadia Prakash, Vinod Surha, Rajiv Puri and Vikram Bakshi are summoned for offence U/s 120B IPC i.e. for criminal breach of trust by agents/directors of MRL.”

3. The petitioner is naturally happy with the aforesaid orders passed by the learned ACMM. At the same time, he fears that the aforesaid accused persons who are summoned by the ACMM may file petition under Section 482 of the Code of Criminal Procedure and or Article 227 of the Constitution of India and/or under Section 397 Cr.P.C. challenging the said orders. Apprehending that incase such a petition is filed by the aforesaid accused persons, they may seek and get an *ex parte* interim order, the petitioner wants to put them to caveat. For this reason he has lodged Caveat Petition under Section 148A read with Section 151 of the CPC in

this Court with a prayer that such petition be not listed without five days advance notice to the petitioner and no *ex parte* order be passed without notice to him. The Registry has put objection to the maintainability of this Caveat application purportedly on the ground that the Caveat filed under the provisions of Code of Civil Procedure is not entertainable in criminal proceedings. Challenging this action of the Registry of this Court, the present petition is preferred by the petitioner with the following prayers:

- “a) Issue a writ of mandamus, and direct the Hon’ble Delhi High Court to register his caveats, present and future, under proceedings expected to be instituted under the Code of Criminal Procedure.
- b) Issue a writ of mandamus, and direct the Hon’ble Delhi High Court that the provision to register caveats even in respect of proceedings under the Code of Criminal Procedure be incorporated into the Rules of the court, and applicable to the Hon’ble Delhi High Court as well as all its subordinate Courts.
- c) Issue a writ of certiorari, striking down the current provision in the Rules of the Delhi High Court relating to caveats.
- d) To grant costs for the petition.

- e) And pass such other order or further order or orders as this Hon'ble Court may deem fit and proper under the circumstances of the case."

4. Section 148A of the Code of Civil Procedure, 1908 reads as under:

**"148A. Right to lodge a caveat**

(1) Where an application is expected to be made, or has been made, in a suit or proceeding instituted, or about to be instituted, in a Court, any person claiming a right to appear before the Court on the hearing of such application may lodge a caveat in respect thereof.

(2) Where a caveat has been lodged under sub-section (1), the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been, or is expected to be, made under sub-section (1).

(3) Where, after a caveat has been lodged under sub-section (1), any application is filed in any suit or proceeding, the Court, shall serve a notice of the application on the caveator.

(4) Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator at the caveator's expense, with a copy of the application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application.

(5) Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred

to in sub-section (1) has been made before the expiry of the said period.”

5. Ordinarily, it cannot be disputed that Section 148A which finds place in the Code of Civil Procedure, applies to civil proceedings. The Code of Civil Procedure regulates the procedure for conducting proceedings in civil suit. Preamble to the Code of Civil Procedure makes it clear, which reads as under:

“An Act to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature.”

6. It is also beyond the pale of doubt that the CPC is a complete code in itself. It applies to the proceedings, which are initiated under this Code and all rights and remedy provided in the Code have to be looked into, in respect of those proceedings, under this Code. All other manners or all procedures are impliedly prohibited. This principle has been reiterated recently by the Patna High Court in the case of ***Kapildeo Prasad Vs. Ramanand Prasad***, AIR 2007 Pat 1.

7. Section 9 of the CPC further makes it abundantly clear that it applies to suits of a civil nature. It is not necessary here to delve into the question as to what kind of suits would be covered by the expression ‘suits of civil nature’. Suffice is to point out, for our purpose, that the proceedings emanating from FIR No.165/08 are

obviously not of civil nature. They are the proceedings initiated under the Code of Criminal Procedure alleging criminal offence punishable under IPC and are regulated by the procedure contained in Code of Criminal Procedure.

8. It is also clear from the language of Section 148A of the CPC that it applies to application in a suit or proceedings instituted or about to be instituted in a Civil Court. The expression 'in a suit or proceeding instituted or about to be instituted in a Court' occurring under Section 148A of the CPC necessarily relates to civil proceedings in a Civil Court, as this expression has to be read in the light of Section 9 of CPC, which stipulates that Courts shall have jurisdiction to try all suits of a civil nature.

9. Furthermore, the availability of Section 148A of CPC is in respect of suits and civil proceedings and recourse to this provision cannot be taken even when a petition is filed under Article 227 of the Constitution of India. This is so held authoritatively by the Kerala High Court in the case of **Harikishan Vs. Jacob, AIR 2005 Kerala 220**. Direct question posed by the Court was that:

“Does a caveat petition lie in the Court to petition under Article 226 of the Constitution of India?”

10. The Court took note of Explanation to Section 141 CPC, which provides that CPC would not apply to proceedings under Article 226 of the Constitution of India and answered the question by holding that no Caveat petition was permissible under Article 226 of the Constitution. We may also reproduce the following discussion by the Rajasthan High Court in the case of **Sahab Ram & Anr. Vs. State of Rajasthan & Ors.** 2000 (2) WLN 554 which has direct bearing on the issue:-

“9. Attempts have been made by the accused persons in criminal cases to obtain hearing before passing of the order of cognizance. The Hon'ble Supreme Court in Smt. Nagawwa v. [Veeranna Shivalingappa Konjalgi](#) reported in 1976 CriLJ 1533 has categorically held as under:

‘It is not province of the Magistrate to enter into a detailed discussion of the merits or demerits of the case nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one. In proceedings under Section 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not.’

10. Unless an order of cognizance is recorded against the accused no accused is entitled to address the court. The only aspect which has been recognised is that the accused may remain present to watch the proceedings. Thus, unlike the civil proceedings wherein the original and appellate proceedings an adversary is entitled to hearing, in criminal

matters an accused has been denied hearing before any order is passed by the criminal court taking cognizance.

11. In criminal matters apart from the accused the other party is the State. The right of the accused as has been noted aforesaid has been denied by the Supreme Court. When the accused has no right of hearing, the State has also not been granted any opportunity of hearing by way of caveat. In bail matters a provision has been made that as and when an application for bail is to be considered by the court a notice to the Public Prosecutor is a must. There too it is only a mandatory notice. The State is not granted hearing by virtue of any caveat Proviso to Section 439(1) is referred in this regard, which reads as under:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

Thus in the scheme of criminal law, the provisions of caveat have not only been provided but is generally not enforced also.

12. The learned Counsel for the applicant has fairly conceded that he has not been able to lay his hands on any case where caveat was enforced in criminal matters. He relied only on Rule 159 of the High Court Rules. This rule is only procedural. Substantive provision of caveat is not provided in it. Right to lodge caveat has not been prescribed in the rule.

14. In view of the fact that the Code of Criminal Procedure, substantive law

governing the criminal procedure, makes no provision for caveat, the right of the applicant to lodge a caveat is without any legal sanction. There having no legal sanction behind the caveat lodged by the applicant no consequences follow. Consequently, no order can be passed to recall the orders of admission and stay. The stand of the applicant is thus negated. The matter will now be considered on merits after hearing both the parties as the same has been admitted."

11. Notwithstanding, the aforesaid position, the petitioner still makes a fervent plea that such caveat filed by him be entertained.

He supports his plea on the following basis:-

(i) The law has evolved, and most proceedings are now "hybrid", unlike the monochromatic stereotypes they were, say, in 1908 when the Code of Civil Procedure was promulgated, or in 1929 when the Letters Patent were formulated.

(ii) After promulgation of the amended of the Code of Criminal Procedure in 1973, there is no such "artificial" distinction (or no more such distinction, assuming without admitting that such distinction previously existed or correctly existed previously) as a "civil court" or a "criminal court".

Today all "seats of justice" (for want of a better phrase) are "civil courts", which term also includes the previously-understood conventional-parlance concept (albeit, erroneous) of a "criminal court".

In support, Mr. Khosla relies upon the judgment of

Supreme Court in the case of **Keshab Narayan**

***Banerjee & Ors. Vs. The State of Bihar* (2000)**

1SCC 607.

(iii) an appeal against a criminal proceeding is, in itself, not a “criminal” proceeding.

12. In support of the aforesaid argument Mr. Khosla gave number of examples. He submitted that for violation of orders passed in injunction application in a suit, contempt petition under Order 39 Rule 2 of the CPC is to be filed which is in the nature of “civil” proceeding, the contempt proceedings are undoubtedly “criminal” proceedings governed by the Code of Criminal Procedure. Similarly, in a civil suit when an undertaking is given to the Court and it is violated, it amounts to contempt and though contempt petition will be filed in civil proceedings, the same would be governed by Cr.P.C. Likewise, even the Letters Patent allows an LPA against an order passed in exercise of criminal jurisdiction if the Single Judge declares that the case is fit one for appeal. He also pointed out that various provisions under the Companies Act, like Section 4 (c), Section 209-A (5), Section 388 (B) (4), Section 477 (7), Section 643 of the Act specially provide that proceedings under those provisions shall be governed by the CPC. Further, Section 10-E (4D) of the Companies Act provides that every Bench shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973,

and every proceeding before the Bench shall be deemed to be a judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code, 1860. On the other hand, Section 234 (4), Section 240 (4), Section 454(5A), Section 621 (1A), and Section 621-A as well as Section 624 specifically stipulate that these proceedings would be governed under the Code of Criminal Procedure. According to Mr. Khosla, these examples would show that the distinction between a 'civil court' and 'criminal court' is artificial and most of the proceedings are now 'hybrid' in nature. He also referred to the judgment of the Supreme Court in the case of **S.A.L. Narayan Row Vs. Ishwardas Bhagwandas**, AIR 1965 SC 1818 on the basis of which he submitted that a criminal proceeding are defined as those which result, or are intended to result, in death, or incarceration or fine or forfeiture of property for any of the parties at their close. On this basis it was argued that the proposed/contemplated petition which the accused persons may file against summoning order passed by the learned Metropolitan Magistrate would not result in any of the aforesaid penal consequences and, therefore, should not be treated as "criminal proceedings" but be given the colour of "civil proceedings" for the purpose of entertaining caveat under Section 148 of the Act. At the end, plea was made that conventional wisdom for treating these proceedings as "criminal proceedings"

should be given a go by and due recognition be given to the manner in which law had evolved over a period of time giving go by to rigid stereotypes adherence to such concepts in the name of procedure. It was submitted that the main purpose in mind is to do substantive justice and the law should be evolved in that very direction further by passing appropriate orders keeping in view the prayers made in this writ petition. For this purpose, the petitioner also referred to the following observations of Full Bench of Madhya Pradesh High Court in the case of **Laxminarayan Vs. Shivilal Gujar**, AIR 2003 MP 49:-

“The term 'Law' is applied and taken recourse to herald the incandescent attributes of civilisation with stupendous felicity and the advancement of society is conditioned by the appropriate legal evolution. Sometimes the law is conceived as 'jus naturale', at times as 'jus civile' and some other times it is equated with 'jus honorarium'. But the term 'jus' is always important. 'Jus' should never succumb to 'joss'. That is why it has been said that the law is not the study of words alone but a penetration into the study of nature within and nature without which are projected through words that have the moving power of life. For that Simon pure reason William Shakespeare spoke : "The Law hath not been dead, though it hath slept".

13. Mr. Khosla also sought to distinguish the judgment of Rajasthan High Court in **Sahab Ram & Anr.**(supra) on the ground

that it was passed on 21<sup>st</sup> December, 1999 i.e. 11 years ago prior to the amendment in Cr.P.C. w.e.f. 31<sup>st</sup> December, 2009 by virtue of which now the original complainant has the right to co-prosecute. It was further submitted that the said judgment is *per incuriam* as it failed to notice many pronouncements of the superior courts setting out that many proceedings which are of criminal nature are actually governed by the procedure set out under the Code of Civil Procedure. Furthermore, the petitioner in this case was accused person with no right to be heard whereas in the present case the petitioner is the complainant with every right to be heard. Mr. Khosla also submitted that judgment of Kerala High Court in the case of **Harikishan Vs. Jacob** (*supra*) would be of no consequence when the Delhi High Court by virtue of an amendment of 1996 leading to insertion of Rule 1-A to the Rules Book, it was mandatory to serve advance copy of the writ petition to specified respondents and, therefore, the requirement of caveat had become redundant in Delhi.

14. We are not convinced with any of the aforesaid submissions of Mr. Khosla. The argument predicated on “hybrid” proceedings would be of no avail. It is a different matter that some act on the part of one of the party in a civil case may amount to committing an offence under IPC or in other law and, therefore, that act is to

be dealt with suitably and having regard to the fact that such an act would constitute an offence it would be governed by Code of Criminal Procedure. However, at the same time, example of violation of injunction order in a civil suit which amounts to contempt as given by him is wrong as those proceedings are not governed by the Code of Criminal Procedure. Even if it be so, that would not mean that the main suit which is tried and is of civil nature, its character would be altered thereby. Similar would be the answer to various proceedings under the Companies Act.

15. What is not to be forgotten is that Section 148 A of the CPC finds place in the Code of Civil Procedure which Code is meant to regulate civil suits triable by civil courts. As per Section 9, the courts (commonly called as civil courts) are to try the case of civil nature. Section 148 A of the CPC also applies to 'application in a suit or proceeding instituted or about to be instituted in a court' which has reference to civil court. In this backdrop the relevant question would be as to whether Code of Civil Procedure will have any application to the proceedings under Section 482 of the Cr.P.C. as these are the contemplating proceedings in which the petitioner has lodged the caveat. Plainly, answer has to be in the negative. Those proceedings unquestionably are under Cr.P.C. and by no stretch of imagination provisions of CPC can be made

applicable. Furthermore, these proceedings, which are likely to be filed, emanate from the orders passed by the learned Metropolitan Magistrate in a FIR registered under various provisions of Indian Penal Code. The learned Metropolitan Magistrate has passed orders dated 22<sup>nd</sup> February, 2011 after taking cognizance of the offences under the IPC and has summoned the accused persons. These are definitely criminal proceedings which are governed by Cr.P.C. and even in those proceedings none of the provisions of the CPC is applicable or can be invoked. In so far as Cr.P.C. is concerned, no provision for such a caveat is made. Therefore, caveat under Section 148A of the CPC cannot be filed in these proceedings. We are in agreement with the view taken by the Kerala High Court in **Harikishan Vs. Jacob** (supra) and by Rajasthan High Court in **Sahab Ram & Anr.** (supra). Civil Procedure Code and Code of Criminal Procedure are two distinct Codes which prescribe procedure in respect of the proceedings in civil suits and criminal proceedings respectively as stipulated in these Codes. Whereas, provision for caveat is made in CPC, Legislature in its wisdom has not provided for any such provisions in this regard in so far as Code of Criminal Procedure is concerned. We thus, hold that caveat as filed by the petitioner in criminal proceeding is not maintainable.

16. It is also not possible to issue any mandamus or direction to the High Court to make a provision for registering caveat even in respect of proceedings under the Code of Criminal Procedure. As pointed out above, Cr.P.C. is enacted by the Parliament. It is for the Legislature to make such a provision in Cr.P.C. In any case, no mandamus of this nature can be issued as there is no vested right in the petitioner to claim such a provision or no legal obligation on the part of the High Court to frame such a rule.

17. No doubt, the petitioner is the complainant in the FIR and on the basis of his complaint, investigation was carried out and the learned Metropolitan Magistrate has now taken cognizance of certain offences. He would, therefore, naturally be interested in those proceedings which may be filed by the accused persons challenging the summoning orders. At the same time, it is also to be kept in mind that the order of the Ld. MM can be set aside only after the notice to the petitioner and after hearing him. In that view of the matter, he is not going to be prejudiced if the accused persons file any such proceedings. However, fear of the petitioner is that the accused persons may get ex parte stay of the order passed by the learned MM. To that extent, petitioner may suffer and, therefore he wants to be heard when such a petition proposed/file by the accused persons is heard in his absence.

However, in the absence of any provision for caveat we cannot salvage the situation. It for the Parliament to take care of such circumstances by introducing appropriate provision in the Cr.P.C.

18. Insofar as present writ petition is concerned, we do not find any merit and dismiss the same.

**(A.K. SIKRI)**  
**JUDGE**

**(M.L. MEHTA)**  
**JUDGE**

**MAY 11, 2011**  
pmc/skb