

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

+ **Crl. M. C. No.953/2011**

Date of Decision : 13.05.2011

Mukesh Gambhir

..... Petitioner

Through: Mr. V. Sharma, Adv.

Versus

State (Govt. of NCT of Delhi) & Ors.

..... Respondents

Through: Mr. S. K. Tyagi, Adv. for complainant.

Mr. P. K. Bhalla, Adv.R-2

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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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 |

V.K. SHALI, J. (oral)

1. This is a petition filed by the petitioner for quashing of an FIR 245/2007, under Section 420 IPC registered by P.S. Paharganj, Delhi. The ground for quashing the FIR is that the petitioner has settled the dispute with the respondent no.2/complainant and further that the Regional Manager, ICICI Bank Ltd., who is also under cloud in the said FIR has also given his consent.
2. Briefly stated the prosecution's case is that the FIR 245/2007 was registered under Section 420 IPC by P.S. Paharganj, Delhi on the complaint lodged by Mr. Anil Bansal, Director, M/s Svavlambi Apparels/respondent no. 2. In the complaint,

it was stated that the respondent no. 2 is a limited company and had taken a car loan vide agreement no. LADEL00001639901 from the respondent no. 3/ICICI Bank for purchase of a Maruti Esteem VXI car bearing registration no. DL 9C J 0979. It is stated that as per the terms and conditions of the loan agreement, the respondent no. 2/complainant was paying a monthly installment of Rs.15,307/-. It is alleged that in the month of November and December, 2005, the respondent no. 2 received a telephonic call from the ICICI Bank that a cheque issued by the respondent no. 2 for an amount of Rs.11,793/- has been dishonoured. The respondent no. 2 noted the fact that the cheque which was stated to have been dishonoured was for an amount of Rs.11,793/- while as the EMI which was being paid by him was Rs.15,307/-. The respondent no. 2 received a letter dated 16.01.2006 from the respondent no. 3 advising that a sum of Rs.12,014/- had fallen due and payable against the car loan account. The respondent no. 2 in a bona fide manner deposited certain installment with the respondent no.3. It was detected during the course of the correspondence by the respondent no. 2 that the loan agreement to which the respondent no. 3 was making reference was LUDEL00004441500 which was different from the car loan agreement of the respondent no.2.

3. The respondent no. 2 through its Director approached the respondent no. 3 and brought to their notice that a monthly installment which was paid in order to liquidate the loan amount is to the tune of Rs.15,307/- while as the respondent no. 3 in its correspondence was all along talking about an installment @ Rs.11,793/- and therefore, there is some discrepancy. It transpired that the present petitioner, who is also a Director of the respondent no.2 company had allegedly forged a resolution dated 24.08.2005 authorizing him to take a loan from the respondent no. 3 for purchasing a second hand car and in order to show that a said loan was utilized by him for purchase of Maruti Esteem VXi car bearing registration no. DL 9C J 0979 against which the car loan had been sanctioned by the respondent no. 3 in favour of the respondent no.2. On account of this discrepancy the respondent no. 2 lodged a report with P.S. Paharganj, Delhi against the officials of the Bank as well as the present petitioner who was allegedly a Director of the respondent no.2 company.
4. After investigation, the charge sheet is stated to have been filed and the case is pending for trial. The civil cases were also instituted between the respondent no.2 and the respondent no 3 making present petitioner as a party. So far as the civil cases are concerned, they are purported to have been settled by the respondent no. 2 and the respondent no.

3 with the help of Mediation as it was a simple civil transaction regarding the retrieval of the money. It is while settling the said civil litigation i.e. two suits, one filed by the respondent no. 2 against the respondent no. 3 and the other filed by the respondent no. 3 against the respondent no. 2 making the present petitioner as a party that the parties have resolved that they will also get the said FIR quashed and that is why the present petition has been filed.

5. I have heard the learned counsel for the petitioner, the respondent as well as the learned APP for the State and have gone through the record.
6. The learned APP has contested the prayer of the petitioner for quashing of the FIR on the ground that merely because the civil dispute between the respondent no. 2 and the respondent no. 3 have been settled that should not be a ground for quashing of an FIR for an offence of cheating in which allegations regarding forgery of documents purported to be the resolution of the company have been leveled against the present petitioner. It has been contended by the learned APP that the case under Section 420 IPC is compoundable with the permission of the Court but in the instant case, there are wider ramifications in the sense that officials of the public institutions namely a bank which is purported to have given a loan on the basis of a forged resolution to the present petitioner which shows the prima facie complicity of the bank

officials also. The documents of the car, the person proving to sell the car were not taken by the respondent no.2 and therefore, the FIR may not be quashed.

7. The learned counsel for the petitioner on the contrary stated that since the matter has been settled amicably between the parties, therefore, the FIR and the consequent proceedings which are pending in the Court of the learned Elaka Magistrate may be quashed. So far as the respondent no. 3 bank is concerned, it was stated that its officials may not be summoned as an accused in the trial and subject to this they have no objection if the FIR is quashed.
8. There is no doubt about the fact that an offence under Section 420 IPC is compoundable with the permission of the Court provided it does not affect only two parties and is in the nature of a civil dispute. But in a case where the offence of cheating or forgery as alleged in the FIR is made out, it has a wider ramification which not only has a deleterious effect on day to day functioning of the bank but also on the moral values of the people as it may send signals to the accused that they can get away with impunity and therefore, the FIR ought not to be quashed merely because the parties have settled.
9. In the instant case, the present petitioner is one of the main accused who has committed the offence of cheating with a great deal of deliberation, in as much as there is a definite

allegation against him that he had forged a resolution of the respondent no. 2 company on 24.08.2005, authorizing him to take a loan. Further, he had the audacity of showing to have utilized the said car loan to purchase the second hand car which in itself was already purchased from the loan, having been granted by the very same bank to the respondent no.2. This shows the great deal of pre planning and deliberation on his part to commit an offence of cheating in a calculated manner. In case, the FIR's in offences of this nature are quashed merely on the compromise of the parties concerned, it will set not only a bad precedent but would also give impetus to persons with such proclivities to commit the offence with impunity.

10. For the above mentioned reasons, I feel that it is not a fit case for quashing of the FIR 245/2007, under Section 420 IPC registered by P.S. Paharganj, Delhi and the consequent proceedings initiated on the basis of the said FIR merely because parties have settled their civil disputes. I, accordingly, dismiss the petition.

V.K. SHALI, J.

May 13, 2011
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