

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.M.C. 345/2005 and CrI.M.A. 1090/2005**

Decided on 31.01.2011

IN THE MATTER OF :

RATTAN SINGH GUPTA ..... Petitioner  
Through: Mr. Amit Khemka, Advocate

versus

STATE & ANR. .... Respondents  
Through: Mr. N.P. Sahni with Mr. R.Sinha, Advocates  
for respondent No.2/DCTT Appropriate Authority.

**CORAM**

**\* 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 under Section 482 of the Cr.PC against the order dated 22.05.2004 passed by the learned ASJ, dismissing the revision petition preferred by him against an order dated 07.12.2002 passed by the learned ACMM, Delhi in Complaint Case No.179/2002 filed by the respondent for the offence punishable under Section 276AB read with Section 278B of the Income Tax Act (hereinafter referred to as '**the Act**').

2. In a nutshell, the allegation in the complaint filed by the respondent is that a statement in form No. 37-I was filed by accused No.3 to 6 and one Smt. Meena Mittal with the appropriate authority under Section

269UC of the Act, in respect of Industrial plot No.52, Sector VI, Faridabad. In the course of enquiry, it transpired that accused No.3 to 6, who have not been impleaded by the petitioner in present petition, had already entered into an agreement to sell the same plot to the petitioner/accused No.7 on 03.04.1996 for a sum of ₹80 lacs. It is the case of the respondent that Section 269UC of the Act mandates that no transfer exceeding the prescribed limit, in relation to any immovable property, can be made by way of a sale or exchange or lease for a term of not less than 12 years and no possession of such a property can be allowed to be taken or retained in part performance of the contract covered under Section 53-A of the Transfer of Property Act, unless an agreement for transfer is entered into amongst the parties at least four months before the intended date of transfer, reduced into writing in the form of statement, as laid down in Form No.37-I of the Act, by each or either of the parties to such a transfer on behalf of the other, and furnished in duplicate to the appropriate authority. As per the respondent, the aforesaid prescribed procedure was not followed by accused No.3 to 6 or by the petitioner/accused No.7, in respect of the agreement to sell entered into by them on 03.04.1996. As a result, the aforesaid complaint was filed by the respondent department in the year 2002, against the petitioner/accused No.7/purchaser and accused No.3 to 6/sellers, for the violation of the mandatory provisions of Section 269UC of the Act.

3. Summoning order was issued by the learned ACMM to the accused on the aforesaid complaint. The petitioner/accused No.7 filed an application in the court of the learned ACMM, praying *inter alia* for recall of the summoning order and for his discharge in the proceedings arising out of the aforesaid complaint. In the said application, it was contended by the

petitioner that he had made part payment of ₹24,17,660/- to accused No.3 to 6, the sellers as on 14.09.1998 and that he had also given Form 37-I to them, duly signed by him, to get the income tax clearance but they kept deferring the matter on one pretext or the other. Since the sellers failed to perform their part of the obligations under the contract, the agreement did not fructify into a sale and later on, the petitioner came to know that accused No.3 to 6 had sold the property in question to one Smt. Meena Mittal and Shri Ashok Kumar Mittal on 05.06.1996. The second argument urged on behalf of the petitioner was that the land, subject matter of the complaint, was situated at Faridabad and hence, Delhi Courts did not have the jurisdiction to entertain the complaint. It was also alleged that the complaint was barred by limitation.

4. The respondent/Department filed a reply to the aforesaid application and opposed the prayers made therein. After hearing the parties, the learned ACMM passed an order dated 7.12.2002, declining to recall the summoning order or discharge the petitioner. Aggrieved by the aforesaid order, the petitioner filed a revision petition before the learned ASJ under Section 397 of the Cr.PC, which came to be dismissed by the impugned order dated 22.05.2004. Hence, the present petition.

5. The main plank of the arguments raised on behalf of the petitioner is that no notice to show cause was issued to him by the Department, prior to the filing of the aforesaid complaint against him, wherein he has been impleaded as accused No.7. It is stated that the petitioner has a vested right to receive notice to show cause because in the absence of a notice and a reply filed thereto, the complaint could not be filed by the respondent. It is secondly urged that Delhi Courts do not have

the territorial jurisdiction to entertain the complaint as the plot in question is situated at Faridabad and further, there was no adjudication *qua* the petitioner in Delhi. It is also urged by the counsel for the petitioner that though notice of the aforesaid argument of lack of territorial jurisdiction of the Courts at Delhi was taken before the court below, a specific finding was not returned in the impugned order.

6. *Per contra*, counsel for the respondent submits that it is a case of pre-emptive purchase of land. He refers to the provisions of Section 269UC to urge that it is a substantive law and deals with restrictions placed on transfer of immovable property. He submits that the law mandates that form 37-I must be furnished by a party to a sale transaction in the manner as provided for in the said Section, failing which no transfer of any immovable property shall be effected. He also seeks to advert to Section 269UL of the Act, which deals with restrictions on registration etc. of documents in respect of transfer of immovable property. Sub-Section (2) of the said Section contemplates that no person shall do anything or omit to do anything which will have the effect of transfer of any immovable property unless the appropriate authority certifies that it has no objection to the said transfer. It is submitted by the learned counsel that admittedly, in the present case, not only had money been paid by the petitioner to accused No.3 to 6 in part sale consideration, part possession of the property in question in the form of two rooms had also been delivered by accused No.3 to 6 to the petitioner without obtaining a no objection from the appropriate authority. It is further asserted that the complaint filed by the respondent is maintainable in Delhi and merely because the property is situated in Faridabad cannot be the sole consideration to decide the question of

jurisdiction, more so when there is a notification issued under the Income Tax Act, which confers jurisdiction in respect of the properties situated at Faridabad on the appropriate authority at Delhi and also since enquiries regarding the property in question were conducted from Delhi and the office of the appropriate authority is situated at Delhi.

7. Counsel for the respondent further states that the powers vested in this Court under Section 482 of the Cr.PC are extraordinary in nature and cannot be invoked by the petitioner in the facts of the present case, when he had already approached the learned ACMM by filing an appropriate application, where relief as prayed for was refused, whereafter a revision petition was filed before the learned ASJ, which has also been rejected. It is, therefore, submitted that there is no miscarriage of justice or abuse of the process of court for the present petition to be maintained. In support of the aforesaid arguments, reliance is placed on the judgments in the cases of General Sales P. Ltd. vs. Gopal Mukherje, ITO reported as **(1987)166 ITR 77 (Del)** and A.L. Mehta vs. NIIT Ltd. & Anr. reported as **2009 (2) JCC 1033.**

8. This Court has heard the counsels for the parties and examined the documents placed on record. Insofar as the first submission made by the counsel for the petitioner regarding the absence of notice to show cause to the petitioner, is concerned, there is substance in the submission of the counsel for the respondent that the law does not mandate any notice to show cause in a case of the present nature and that once a complaint is filed and prosecution proceedings are initiated for violation of the provisions of Section 269UC of the Act, the petitioner would have an opportunity to take all the defences that may be available to him in law while contesting the

complaint. In the case of General Sales P. Ltd. (supra), a Single Judge of this Court had turned down a similar plea raised by the accused therein and held that the question of whether the accused was entitled to an opportunity to show cause, prior to the launching of prosecution against him can be taken up as a preliminary objection before the trial magistrate.

9. In the case of Asstt. Commr. v. Velliappa Textiles Ltd. reported as **(2003) 11 SCC 405**, where the question before the Supreme Court was whether an opportunity to be heard should have been granted to the accused before granting sanction for prosecution of certain offences under the Income Tax Act, it was held as under : -

**"5. ... The authority giving the sanction should prima facie consider the evidence and all other attending circumstances before he comes to a conclusion that the prosecution in the circumstances be sanctioned or forbidden. But he is not required to hold any inquiry to satisfy himself as to the truth of facts alleged."**

**"7. ... An order of sanction, by itself, does not have the effect of a conviction or imposing a penalty causing any injury of any kind on the accused. The accused will get full opportunity to defend himself in the trial and the trial will take place in accordance with the procedure established by law.** In *Administrative Law* by David Foulkes (7th Edn.), p. 285, the law on the applicability of the principles of natural justice viz. affording an opportunity of hearing at a stage anterior to the actual commencement of the proceedings before the court or tribunal has been stated as under:-

"Where the administration is merely initiating a procedure or seeking to establish whether a prima facie case exists, the courts will not be likely to extend the statutory procedure at least where it gives a full opportunity to be heard later in the proceedings..." (emphasis added)

In light of the aforesaid judgments, the plea taken by the

petitioner regarding absence of show cause notice is turned down.

10. On the point of absence of territorial jurisdiction in Courts in Delhi to entertain the criminal complaint, it is not disputed in the present case that prior to filing the complaint, enquiries were conducted by the Department in respect of the transaction, and the accused No. 3 to 6 were participating in such an enquiry. Further, it is, admittedly, the case of the petitioner himself that he duly signed a Form 37-I and handed it over to accused 3 to 6/sellers for submitting the same to the appropriate authority prior to the transaction, and they defaulted in making compliances stipulated under the Act. In compliance with Section 269UC of the Act, it was incumbent on the petitioner to have submitted Form 37-I himself as the onus to do so is placed on both, the seller and the purchaser. Having abdicated the duty placed on him under the Statute and having opted to rely on accused Nos.3 to 6 to make compliances, the petitioner cannot be permitted to turn around now and claim at the threshold of the proceedings that no adjudication *qua* him took place in Delhi, to vest territorial jurisdiction in Delhi Courts.

11. Further, the provisions of Sections 177 and 178 as set out in Chapter XIII of the Cr.PC are clear. Section 177 stipulates that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. Section 178 has further widened the scope by stating that when it is uncertain in which of several local areas an offence is committed, or where an offence is committed partly in one local area and partly in another, or where the offence is continuing one, and continues to be committed in more local areas than one, or where it consists of several acts done in different local areas, it may be inquired into or tried

by a Court having jurisdiction over any of such local areas. In the case of Satvinder Kaur v. State (Govt. of NCT of Delhi) reported as **(1999) 8 SCC 728**, the Supreme Court held as under : -

“**14.** Further, the legal position is well settled that if an offence is disclosed the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the FIR, *prima facie*, discloses the commission of an offence, the court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. It is also settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482 CrPC to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same *per se*; it has no jurisdiction to examine the correctness or otherwise of the allegations.”

12. It is thus clear that if on a *prima facie* view of the averments made in the complaint filed before it, the Court finds that the offence or some part of it was committed within its jurisdiction, then the complaint can be entertained by it. In the present case, the notification issued under the Income Tax Act vests jurisdiction on the appropriate authority at Delhi, to initiate action in respect of transactions relating to properties both at Delhi and Faridabad is also relevant. In such circumstances, merely because the property in question is situated at Faridabad would not disentitle the Courts in Delhi to entertain a complaint pertaining to transfer of such a property. The contention of the counsel for the petitioner that the complaint is liable to be returned at the threshold, on account of lack of territorial jurisdiction of the Courts at Delhi is therefore rejected.

13. Lastly, with regard to the submission of the counsel for the

petitioner, that the objection with regard to jurisdiction of the Courts at Delhi was not specifically dealt with either by the learned ACMM or by the appellate court, it is a settled law that if various grounds are taken by a party to assail an order and though each of them is not specifically dealt with in the judgment/order, but ultimately, the petition is dismissed or the relief is declined, it has to be assumed that the Court duly considered the said pleas on merits before declining the relief prayed for, even if not specifically elaborated in judgment/order. It is relevant to note that the learned ACMM specifically noticed the objection raised by the petitioner with regard to territorial jurisdiction and the reply thereto filed by the respondent/Department. Merely because the said plea was not rejected in so many words in the operative para of the order dated 07.12.2002 cannot be a ground to entertain the present petition.

14. Even otherwise, there is no illegality, infirmity or arbitrariness in the impugned order dated 22.05.2004, which would result in a serious miscarriage of justice, for this Court to exercise its extraordinary powers under Section 482 of the Cr.PC. In view of the above, the present petition is dismissed.

15. It is, however, clarified that the petitioner shall be entitled to take all the pleas that may be available to him in law before the learned ACMM, including the plea of lack of territorial jurisdiction as well as that of absence of show cause notice before launch of prosecution along with other preliminary objections, if any, and the same shall be considered and disposed of in accordance with law.

16. At this stage, counsel for the petitioner states that taking into consideration the fact that the petitioner is a senior citizen, aged 78 years

and is suffering from various age related ailments, his presence before the trial court may be exempted. He further states that the power of attorney of the counsel for the petitioner has already been filed before the trial court and the petitioner assures the Court that as and when the trial court requires his presence in court, he shall appear before it. It is directed that if the petitioner has filed/files an appropriate application seeking exemption from personal appearance before the trial court, the same shall be considered and disposed of in accordance with law. Till the said application is disposed of, the appearance of the petitioner shall remain exempted through counsel.

17. The petition is disposed of alongwith the pending application.

JANUARY 31, 2011  
rkb

(HIMA KOHLI)  
JUDGE