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

\+ CRL.M.C. 1901/2011

% *Judgment delivered on:18th November, 2011*

RAJIV KUMAR & ANR. ..... Petitioner
Through : Mr. Jivesh Kumar Tiwari, Adv.

versus

STATE & ORS. ..... Respondent
Through : Ms. Rajdipa Behura, APP.
Mr. Pawan Kumar, Adv. for R2.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment? YES
2. To be referred to Reporter or not? YES
3. Whether the judgment should be reported in the Digest? YES

SURESH KAIT, J. (Oral)

1 Learned counsel for the petitioner submits that on complaint of Respondent No. 2 an FIR No. 553/3005 was registered against the petitioners unde Section 409/419/420/465/468/471/120-B Indian Penal Code, 1860 P.S. Shalimar Bagh. Thereafter, the investigation was

transferred to P.S. EOW. Thereafter, the Chargesheet was filed in the court and charges are yet to be framed.

2 Learned counsel for the petitioner submits that on 18.08.2008, the respondent NO. 2 acknowledges that he has received an amount of Rs.7,44,445/0 as full and final payment/settlement against HDFC Bank as they recovered the said amount from the petitioners.

3 After receiving the said amount from HDFC Bank, respondent No. 2 authorised HDFC Bank Limited to deal with petitioner directly.

4 He further submits that HDFC Bank after satisfying the said amount of giving it to respondent No. 2 has issued no objection certificate to get the FIR quashed and on behalf of respondent No. 2.

5 Respondent No. 2 is personally present in the court today.

6 This court has specifically asked respondent No. 2 in which year, this amount was misappropriated, he replied in the year 2005. I note the total amount of Rs.7,44,445/- has been received under compulsion against the principle amount Rs.7,12,355/- after 03 years. Thus, he has not even received simple interest on the principle amount.

7 Though respondent No. 2 has no objection against the quashing of the instant FIR, learned APP for State submits that the petitioners have

cheated upon respondent No. 2 and petitioners are of the nature of cheating as is clear from the order dated 24.10.2008, whereby the Hon'ble Haryana and Punjab Court has quashed FIR No. 260/2006 dated 03.05.2006 registered under Sections 406/468/120B Indian Penal Code, 1860.

8 Learned APP has referred ***State of Haryana & Ors Vs. Bhajan Lal, 1992 AIR 604*** and submits that the principles laid down are as under:-

> *"8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide- 3 myriad kinds of cases wherein such power should be exercised:-*
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> > *(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their*

entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. [305D-H; 306A-E]"

9 Learned APP further relied upon the judgment of Hon'ble Supreme Court in ***State of A. P. Vs. Gourishetty Mahesh & Anr Criminal Appeal No.1252/2010 decided on 15.07.2010***. She also relied upon ***Sushil Suri Vs. CBI & Anr*** decided in ***Criminal Appeal No.1109/2011 on 06.05.2011.***

10 Relying upon the aforesaid decisions, she submits these petitioners do not deserve any leniency from the court, they may again commit the same offence after getting this FIR quashed.

11 In view of the above discussion, I am not inclined to quash the FIR.

12 Criminal M.C. 1901/2011 is accordingly dismissed.

13 No orders as to costs.

SURESH KAIT, J

NOVEMBER 18, 2011
j