

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

Judgment decided on: May 31, 2011

+ **Crl.M.C. 2815/2008**

PRAVEEN KUMAR JAIN

Through:

.....PETITIONER

Mr.R.N.Mittal, Sr. Advocate with
Mr. Manoj Kumar, Advocate.

Versus

STATE & ORS.

Through:

.....RESPONDENTS

Mr. Sunil Sharma, APP for R-1.
Mr.N.K.Sharma, Advocate for R-2 to
R-4.
R-5 & R-6 (proforma respondents)

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

AJIT BHARIHOKE, J.(ORAL)

1. Praveen Kumar Jain, the petitioner herein, vide, this petition under Section 482 of the Code of Criminal Procedure(CrPC) is seeking quashing of summoning order dated 17th March, 2008 passed by learned Metropolitan Magistrate in Complaint Case No. 36/01 titled 'Ishwanti Devi & Ors. Vs. Manoj Kumari & Ors.' qua him, whereby the petitioner has been summoned to undergo trial for offences under Section 420 IPC read with Section 120B IPC.

2. Facts relevant for the disposal of this petition are that respondent No.2 Ishwanti Devi is the widow of Late Dharampal Singh and respondents No.3 and 4 are her sons from the said marriage. Respondent No.6 Joginder Singh is also the son of Late Dharampal but from his first wife. Petitioner is the person to whom respondent No.6 sold the disputed plot of land.

3. Respondents No.2 to 4 filed a complaint being CC No.36/1 titled `Ishwanti Devi and Ors. Vs. Manoj Kumari and Ors' claiming that Dharampal Singh was owner of a plot measuring 200 sq. yards being Municipal No.WZ-234A, Gali No.10, Hastal Road, Uttam Nagar, with a room constructed thereon. After the death of Dharampal Singh, a family settlement took place pursuant to which 100 sq. yards of said plot along with the constructed room fell to the share of respondent No.6 Joginder Singh and his brother whereas remaining 100 sq. yards vacant area fell to the share of complainants (respondents No.2 to 4). It is alleged in the complaint that even after the settlement, respondent No.6 tried to take forcible possession of 100 sq. yards of land which fell to the share of respondents No.2 to 4 in the family settlement. Respondents No.2 to 4 were therefore constrained to file a suit for permanent injunction wherein the statements of parties were recorded and respondents No.2 to 4 withdrew the civil suit. Thus, respondent

No.6 came into possession of the vacant plot on behalf of all the legal heirs of late Dharampal Singh.

4. The grievance of the complainants (respondents No.2 to 4) is that despite of undertaking given before the court, respondent No.6 sold the share of the complainants (respondents No.2 to 4) to the petitioner and executed the documents of transfer.

5. In support of her complaint, respondent No.2 Ishwanti Devi examined herself, respondent No.3, Record Clerk, Office of Sub-Registrar Janak Puri and a Record Clerk from Tis Hazari Courts. On the basis of said preliminary evidence, learned M.M. summoned respondents No.5 and 6 as well as the petitioner as accused person to undergo trial for the offence under Section 420 IPC read with Section 120B IPC.

6. Learned Shri R.N.Mittal, Senior Advocate appearing for the petitioner has submitted that summoning of the petitioner Praveen Kumar Jain under Section 420 IPC read with Section 120B IPC is illegal and unwarranted for the reason that if the allegations in the complaint are true, the petitioner who is a bona fide purchaser is himself a victim of fraud. He contended that neither the complaint nor the evidence led by the complainant in preliminary evidence make out any case of complicity of the petitioner in conspiracy to

cheat, as such, the impugned summoning order qua the petitioner is liable to be quashed.

7. Learned counsel for the respondent, on the other hand, has submitted that the petitioner Praveen Kumar Jain was fully aware of litigation between the parties. He was aware that Manoj Kumari (respondent No.5) from whom he allegedly purchased the plot in question through documents such as General Power of Attorney, Agreement to Sell, Will, receipt and possession letter etc. was not the owner of the plot and she had no right to sell the same. Despite that, he intentionally entered into a conspiracy with respondents No.5 and 6 to defeat the rights of respondents No.2 to 4 and entered into a sham transaction of purchase of property from Manoj Kumari (respondent No.5). Thus, his involvement in conspiracy is prima facie apparent and he has been rightly summoned by the learned M.M.

8. I have considered the rival contentions. Certified copy of the complaint filed by respondents No.2 to 4 is annexed to the petition as Annexure P5. Its authenticity is not disputed by respondents No.2 to 4. On perusal of the complaint, it transpires that but for the vague allegations regarding complicity of the petitioner with respondents No.5 to 6 to cheat, there is no specific allegation pertaining to facts and circumstances which may, prima facie, lead

to conclusion that petitioner was party to conspiracy and in order to attain the object of conspiracy to cheat the complainant, he indulged in execution of purchase documents pertaining to the plot in question with respondents No.5 and 6. Only allegations against the petitioner are in Paras 9 and 12 of the complaint which are reproduced thus:-

“9. That the accused No.1 and 2 had full knowledge that they do not have any power of Authority to sell or transfer to a third party the property in question. Similarly in the absence of any document of title with regard to the said property the accused No.3 knew it well that the accused No.1 had no authority or power to execute any document for the purpose of sale or transfer in his favour. In this set of facts on the instigation of accused No.2 the accused No.1 has intentionally and wilfully misrepresented herself as owner of the property in question by concealing the material facts and accused No.3 on intentionally entered into such illegal and unlawful act with the accused No.1 and 2 and received the delivery of the property in question. Therefore, all the accused have conspired with each other for the abetment of the offence and put the complainants into greater loss, and are liable to be punished.

.....

12. That all the accused have conspired and committed various criminal offences while cheating the complaints in delivering and taking over the possession of the property in question for which they have become liable to be punished.”

9. Aforesaid allegations, in my view, are general in nature. Though, in Paras 9 and 12, it is generally stated that petitioner was aware that respondent No.5 had no authority or legal right to sell

the property in question to him, he intentionally and wilfully entered into conspiracy with respondents No.5 & 6 and received the delivery of the property in question, but there is no specific allegation to indicate how the petitioner was aware of the dispute between respondents No.2 to 4 on one hand and respondents No.5 & 6 on the other or that respondent No.5 had no right to sell the property in question. Even the preliminary evidence does not spell out about any meeting of mind between the petitioners and respondents No.5 and 6 which may show existence of conspiracy between petitioner and respondents 2 to 4. Therefore, in my opinion, the complaint does not disclose complicity of the petitioner in conspiracy to commit offence under Section 420 IPC for which he has been summoned. It may be noted that in Para 8 of the complaint, respondents No.2 to 4 have admitted that they found the petitioner in possession of the plot in question and when they asked as to how he was in possession, he informed that he had purchased the property from respondent No.5 and he even showed them the documents of his title, namely, General Power of Attorney and duly registered Will etc. From the aforesaid allegations, it is apparent that petitioner is a bona fide purchaser and if respondent No.5 had no right to sell the property, he himself is a victim. The trial court has failed to take notice of this fact.

10. The result of above discussion is that neither the complaint nor the evidence adduced by the complainant in preliminary enquiry, prima facie, make out the complicity of the petitioner in the alleged offence under Section 420 IPC or conspiracy to commit said offence. Therefore, the continuation of the proceedings against the petitioner on the basis of said summoning order would amount to abuse of process of law. Accordingly, the summoning order of learned M.M. dated 17.3.2008 qua the petitioner is hereby set aside and petitioner is discharged.

11. Petition is disposed of accordingly.

(AJIT BHARIHOKE)
JUDGE

MAY 31, 2011

ks/akb