

IN THE HIGH COURT OF DELHI: NEW DELHI

+ CRL. M.C. No. 3431/2010

% Judgment decided on: 5th May, 2011

NARESH AMAR

....PETITIONER

Through: Mr. Rajat Aneja, Adv.
Versus

STATE AND ANOTHER

.RESPONDENT

Through: Mr. M.P. Singh, APP for the
State.
Mr. V. Kanagaraj, Sr. Adv.
with Mr. Vipin Jain, Adv. for
R-2.

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

A.K. PATHAK, J. (Oral)

1. By this petition under Section 482 Cr.P.C., petitioner has prayed that the summoning order dated 24th July, 2009 passed by Chief Metropolitan Magistrate, Delhi (CMM) as well as complaint titled as "Ron Bijlani vs. Naresh Amar and another", be quashed.

2. Briefly stated, facts of the case are that the respondent No. 2 filed a complaint against the petitioner and his wife Smt. Vineeta Amar before the CMM praying therein that they be

summoned, tried and punished for the offences under Sections 403/406/420/506/34 and 120-B IPC. After recording pre-summoning evidence, CMM has held that a prima facie case was made out against the petitioner for having committed the offences punishable under Sections 406/506 IPC. As regards Smt. Vineeta Amar is concerned, it was held that no case was made out against her for her summoning.

3. It was alleged in the complaint that respondent No.2 was a senior citizen living in United States of America. Petitioner was his friend since 1996. In the month of February/March, 2002 respondent No. 2 contacted petitioner on phone and expressed his desire to purchase a plot of land admeasuring 200 sq. yds. at Gurgaon (Haryana), as he wanted to settle in India after his retirement. Respondent No. 2 visited India on 26th July, 2002 and met petitioner who assured that he will do the needful for the purchase of 200 sq. yds. plot at Gurgaon by the respondent No. 2. As per the petitioner cost of the plot would be about ₹20 lacs. Respondent No. 2 paid a sum of ₹3 lacs in cash along with two cheques both dated 1st August, 2002 and drawn on CFS Bank, Ozone Park, New York for US \$16000 and US \$ 597.51 respectively. These cheques were encashed by the petitioner on 12th August, 2002. During the respondent's visit to India between 26th January, 2004 to 24th May, 2004, petitioner stated that a plot in Phase-III, Gurgaon was identified and necessary documents would be executed in

favor of respondent No. 2 on payment of balance amount of ₹4 lacs. However, subsequently petitioner avoided to execute the documents despite several requests. Finally, on 15th December, 2004 petitioner refused to get the documents executed and hand over the possession of the plot to respondent No. 2. Thus, it was alleged that petitioner had committed criminal breach of trust and had misappropriated US \$ 16000, US \$ 597.51 and ₹3 lacs in cash of the respondent No. 2 to the petitioner. It was also alleged that petitioner had threatened the respondent No. 2 with dire consequences in case he demanded his money back.

4. Case of the petitioner is that he had extended a friendly loan of ₹13 lacs to respondent No. 2. To secure the loan respondent no. 2 had handed over possession of his Flat No. 236, Supreme Enclave, Mayur Vihar, Phase-I, Delhi-110091 to the petitioner with the assurance that he would not demand its possession till the loan amount was not paid. In order to avoid re-payment of ₹13 lacs to the petitioner respondent has filed present complaint on flimsy grounds. Allegations leveled in the complaint clearly show that disputes between the parties are purely of civil nature. Non-execution of documents pursuant to an oral agreement, at best, is case of breach of contract entailing civil liability and appropriate remedy of that is to file a suit for Specific Performance and not the criminal complaint. Learned counsel has contended that the complaint is nothing

but abuse of process of court and is liable to be quashed. Reliance has been placed on Murari Lal Gupta vs. Gopi Singh, (2005) 13 SCC 699. It is further contended that the averments made in the complaint were false to the knowledge of the respondent No. 2. Respondent No. 2 had filed a suit for recovery in the court of Additional District Judge, Delhi with the same allegations. Ex-parte decree has been passed in the said suit to the tune of ₹7,69,835/-. Petitioner has already taken steps to get the ex-parte decree set aside. Even otherwise, in the said suit, story of payment of cost of ₹3 lacs and cheque of US \$ 597.51 has been disbelieved, thus, falsifies the averment in the complaint. He further contends that in a civil suit pending between respondent No. 2 and his wife, respondent No. 2 has filed affidavit by way of evidence, wherein he has taken altogether a different stand. It was stated by him in the affidavit that US \$ 16,000/- was given by him to a friend which has not been returned to him. This shows that allegations leveled by the respondent No. 2 in the complaint were false and on the basis thereof no prosecution can continue. In nutshell, case of the petitioner is that the complaint has been filed with an ulterior motive to harass the petitioner and its continuance would amount to abuse of process of court.

5. Per contra, learned Senior Counsel for the respondent has vehemently contended that the complaint case cannot be

quashed by the High Court in exercise of its inherent power under Section 482 Cr.P.C. at this nascent stage. High Court cannot sift and weigh the material placed on record to form an opinion whether or not a, prima facie, case against the accused is made out. Inherent powers cannot be exercised to stifle a legitimate prosecution. The remedies under the criminal law and civil law are not mutually inclusive but co-intensive; they differ in their content, scope and consequence and, therefore, even when a civil remedy is available, a criminal prosecution is not barred. As per the Senior Counsel, complaint discloses commission of offences under Sections 406/506 IPC against the petitioner and the same were sufficient to summon the petitioner.

6. The principle providing for exercise of the power by a High Court under Section 482 Cr.P.C. to quash a criminal proceeding is well settled. The court shall ordinarily exercise the said jurisdiction, inter alia, in the event the allegations contained in the FIR/complaint, even if on face value are taken to be correct in their entirety, does not disclose commission of an offence. This jurisdiction has to be exercised to prevent abuse of process of law or otherwise to secure the ends of justice. If the court is satisfied that prosecution has been launched to harass and victimize the accused then High Court will be justified in quashing the proceedings.

7. First of all, I am of the view that complainant has taken inconsistent stand in different litigations. In the complaint, he has alleged that he intended to buy a plot in Gurgaon and for this purpose he had approached the petitioner. Petitioner assured that he will assist respondent in purchasing of a plot of land admeasuring 200 sq. yds. at Gurgaon in State of Haryana. On his this assurance, he had paid ₹3 lacs in cash, two cheques of US \$ 16000 and US \$ 597.51 each; whereas in the civil litigation pending between him and his wife he has deposed that he had extended loan of US \$ 16000 to the petitioner in the year 2002 but the said amount had not been returned by him. He had obtained ex-parte decree against him but the same was merely a paper decree having remained unexecuted. It would be relevant to refer to the relevant paras of the affidavit, which read as under:

“36. That the deponent further says that he had give a loan of US \$ 16,000 to one Sh. Naresh Amar who had not returned the loan to the deponent, although deponent had filed a suit against him and had been granted a decree against Mr. Naresh Amar but that is only a paper decree and the same has not been executed till date and the execution of the same is pending. A copy of the decree sheet is Ex. DW-1/18

“37. The said loan was advanced to Sh. Naresh Amar in the year 2002 from the personal savings of the deponent working in US during 1998 to 2002.”

8. Inconsistent stand taken by him clearly falsifies allegations in the complaint. Even in the ex-parte judgment

passed by the Additional District Judge, Delhi plea of respondent No. 2 that he had paid ₹16 lacs to the petitioner has been disbelieved and decree has been passed for much lower amount. Facts mentioned above clearly show that no prima facie case is made out against the petitioner for having committed the offence under Sections 406 IPC. As regards allegations of threats are concerned the same are too vague and are not sufficient enough to attract the ingredients of Sections 506 IPC. The exact words spoken by the petitioner have not been reproduced in the complaint. Thus, in my view, Trial Court was not right in summoning the petitioner.

9. That apart, the present complaint in the facts of this case appears to be nothing but abuse of process of court. The court cannot be utilized for any oblique purpose. The disputes between the parties are purely of civil nature and the appropriate remedy available to the respondent No. 2 was to avail civil remedy, which in fact, he has already availed. Criminal complaint appears to have been filed with an ulterior motive to harass the petitioner and continuance of the same against the petitioner would, thus, amount to abuse of process of the court.

10. For the foregoing reasons, present petition is allowed. Complaint case titled as “Ron Bijlani vs. Naresh Amar and another” pending in the court of CMM, Delhi as well as summoning order dated 24th July, 2009 is quashed.

Crl. M.A. NO. 16942/2010 (stay)

Disposed of as infructuous.

A.K. PATHAK, J.

MAY 05, 2011

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