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THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 12.12.2011

Pronounced on: 03.01.2012

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BAIL APPLN. 967/2011

NARESH JAIN

..... Petitioner

Through: Mr. S.C Buttan and Mr. Himanshu
Bhuttan, Advocates

versus

STATE

..... Respondent

Through: Ms. Fizani Husain, APP for State
with Insp. Jominder Singh PS
Model Town
Mr. Rajesh Khanna, Advocate for
complainant

And

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W.P.(CRL) 736/2009

NARESH JAIN

..... Petitioner

Through: Mr. S.C Buttan and Mr. Himanshu
Bhuttan, Advocates

versus

STATE

..... Respondent

Through: Mr. Dayan Krishnan, ASC for state
Mr. Rajesh Khanna, Advocate for
complainant

M.L. MEHTA, J.

1. This order shall dispose of above mentioned writ petition and bail application filed by the petitioner. The writ petition is filed for quashing of FIR No. 76/2009 and order dated 21.02.2009 of MM whereby the learned MM had directed for registration of FIR under section 153(6) of Cr. P.C. against the petitioner under section 420, 467, 468, 471 and 120-B IPC.

2. The complainant Satish Kumar Jain made a complaint before the Metropolitan Magistrate whereupon the Magistrate ordered for registration of the FIR. Revision against the order of MM came to be dismissed by the Court of learned ASJ vide his order dated 18.05.2009.
3. The allegations as set out in the complaint are that the complainant was well acquainted with the petitioners and his mother Mrs. Surinder Kanta Jain (since deceased). Their premises plot No. 97, admeasuring 200 square yards in Khasra No. 642/329/331, situated in village Chowkri, Mubarikabad, West Sarai Rohilla, Old Rohtak Road, Shehzada Bagh Extension, Delhi was taken on rent by the firm of the wife of the complainant some time in 1980. In pursuance of the agreement, the complainant along with others purchased the said premises vide registered sale deed dated 20.09.1995 for a sum of Rs. 2,25,000/-. One of the witnesses of the sale deed executed by Surinder Kanta Jain was the petitioner herein Naresh Jain, who was none else but her son. The other joint purchasers were Smt. Rajni Jain and Smt. Manila Jain.
4. At the time of execution of agreement and also sale deed it was represented to the complainant that the original sale deed in the name of Surinder Kanta Jain has since been lost and a public notice was also given in this regard in newspaper Navbharat Times on 9.8.1995. After the purchase of property, the ownership rights were re-organized and co-vendee i.e. Rajni Jain relinquished her ownership rights in favour of the complainant and his wife Manila Jain. The property was mutated in the names of new owners with effect from 1998 in MCD records. It is alleged by the complainant that fact of the property being already mortgaged by the petitioner came to his knowledge in April, 2006 when the valuers M/s HCA Technology Service Pvt. Ltd. visited the property for preparation of valuation report. After

learning this fact, the complainant sent a legal notice dated 19.05.2006 to Indian Overseas Bank asserting his ownership rights, which was replied on 12.04.2007 reasserting the facts of the property being mortgaged by the petitioner. It was learnt by the complainant that the loan with regard to the property was taken over by Indian Overseas Bank from Punjab National Bank.

5. The petitioner also filed suit No. 167/2007 against the complainant seeking relief of declaration and cancellation of sale deed dated 20.09.1995. The suit was filed by taking up a plea that Surinder Kanta Jain had taken a loan from the complainant in lieu of which she had signed certain documents. She has further stated in that suit that the property was mortgaged by her with Punjab National Bank in the year 1993. The civil court had declined relief to the petitioner vide its order dated 31.05.2007.

6. The order of the learned Magistrate has been assailed on various counts by the petitioner viz (i) the amount of sale deed being Rs. 2,25,000/- which is much less than the actual value of the said property; (ii) the filing of the FIR at P.S. Model Town which has no jurisdiction qua the residence of either the petitioner or the complainant; (iii) the complaint could not lie before the Magistrate without approaching the concerned police authorities under Section 154(3) Cr. P.C., (iv) the property was never sold by the petitioner and his mother and only a loan of the amount of Rs. 2,25,000/- was taken by late Smt. Surinder Kanta Jain from the complainant. It is stated by learned counsel for the petitioner that the dispute is merely of civil in nature and the complainant by way of registration of FIR has given a criminal colour to the case. It is also argued that there has been a delay in filing the FIR by the complainant and that the present FIR has been lodged

by the complainant as an afterthought frivolous attempt to implicate the petitioner herein and to succumb to the illegal demand of the complainant.

7. I have heard learned counsel for the petitioner and the complainant and also APP.

8. With regard to the question of amount of sale being Rs. 2,25,000/-, the complainant has placed on record an affidavit dated 21.9.2010 stating that the total sale consideration which was agreed upon between the parties was Rs. 26,50,000/-. It was insisted by the petitioner and his mother to pay the entire consideration in cash except a sum of Rs. 2,25,000/- to be paid by demand draft. The cut of the said sale consideration to the tune of Rs. 6,50,000/- was agreed to be on account of tenancy rights and possession of M/s Adarsh Packaging Industries as the said firm was occupying the premises as tenants. Further Rs. 2,00,000/- was reduced out of the total sale consideration for possession and tenancy rights of M/s Oswal papers which was occupying some of the portions of the property in question. A sum of Rs. 2,25,000/- was paid to Smt. Surinder Kanta Jain through demand drafts which have been mentioned in the sale deed executed by her in favour of the complainant, Smt. Manila Jain and Smt. Rajni Jain to which the petitioner was a witness himself. That the balance amount of Rs. 15,75,000/- which was paid in cash was contributed by all the three buyers in equal proportions by selling the jewellery of the female members of the family. Hence it can be prima facie seen that the question of consideration of the sale being Rs. 2,25,000/- has been satisfactory accounted for by the complainant.

9. With regard to the question of jurisdiction, it is a matter of fact that the property was mortgaged with Model Town branch of the Indian Overseas Bank who is also a defendant in the aforesaid civil suit filed by the

complainant at Tis Hazari Courts for declaration, cancellation of mortgage deed and for permanent injunction. Having regard to this fact it can be prima facie said that there was no illegality in registration of the FIR at Model Town police station.

10. It is the contention of the petitioner that before applying to Magistrate under Sec 156(3) Cr.P.C., a person is obliged to make an application under Section 154(3) Cr.P.C. This contention is apparently contrary to law. There is no bar under the Cr.P.C. for a person to approach the Magistrate directly with a written complaint disclosing a cognizable offence. The power of the Magistrate is found under Section 190 in Chapter XIV of the Cr.P.C. The various options open to a Magistrate have been laid down in the judgment of the Hon'ble Supreme Court in **Madhu Bala Vs. Suresh Kumar**, (1997) 8 SCC 476:

“7. On completion of Investigation undertaken under Section 156(1) the officer in charge of the Police Station is required under Section 173(2) to forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government containing all the particulars mentioned therein. Chapter XIV of the Code lays down the conditions requisite for initiation of proceedings by the Magistrate. Under Sub-section (1) of Section 190 appearing in that Chapter any Magistrate of the first class and any Magistrate of the second class specially empowered may take cognizance of any offence (a) upon receiving a complaint of facts which constitutes such offence; (b) upon a 'police report of such facts; or (c) upon information received from any person other than a police officer, or upon his own knowledge that such offence has been committed. Chapter XV prescribes

the procedure the Magistrate has to initially follow if it takes cognizance of an offence on a complaint under Section 190(1)(a).

8. From a combined reading of the above provisions it is abundantly clear that when a written complaint disclosing a cognizable offence is made before a Magistrate, he may take cognizance upon the same under Section 190(1)(a) of the Code and proceed with the same in accordance with provisions of Chapter XV. The other option available to the Magistrate in such a case is to send the complaint to the appropriate Police Station under Section 156(3) for investigation. Once such a direction is given under Sub-section (3) of Section 156 the police is required to investigate into that complaint under Sub-section (1) thereof and on completion of investigation to submit a 'police report' in accordance with Section 173(2) on which a Magistrate may take cognizance under Section 190(1)(b) - but not under 190(1)(a). Since a complaint filed before a Magistrate cannot be a police report in view of the definition of complaint referred to earlier and since the investigation of a 'cognizable case' by the police under Section 156(1) has to culminate in a police report the complaint as soon as an order under Section 156(3) is passed thereon - transforms itself to a report given in writing within the meaning of Section 154 of the Code, which is known as the First Information Report (FIR). As under Section 156(1) the police can only investigate a cognizable 'case', it has to formally register a case on that report."

11. In **Popular Muthiah V. State** (2006) 7 SCC 296, the Hon'ble Supreme Court has held that the power to direct investigation under section 156(3) is to be read with Section 190 Cr. P.C.

12. The question of there being sale of the said property as claimed by the complainant and refuted by the petitioner, it is observed that such disputed questions of facts are triable by the trial court and it is neither appropriate nor possible at this stage to go into all this. As per the Supreme Court in ***Malwa Cotton & Spinning Mills Ltd. Vs. Virsa Singh Sidhu*** (2008) 17 SCC 147 when such disputed questions of facts are involved petition under Section 482 Cr.P.C. will not lie. The FIR cannot be quashed at the threshold. Having regard to the factual matrix of the case, the learned MM was of the opinion that prima facie case is made out against the petitioner.

13. In ***Srinivas Gundluri & Ors. Vs. M/s. Sepco Electric Power*** reported in 2010(3) Chandigarh Criminal Cases (SC) 247 the Hon'ble Supreme Court has held in para 13 that while directing the police to investigate under Section 156(3) of Cr.P.C., the Magistrate has not committed any illegality and in para 14 of the judgment it has been held that

“14. Neither the chare-sheet nor the final report has been defined in the Code. The charge-sheet or final report whatever may be the nomenclature, it only means a report under Section 173 of the Code which has to be filed by the police officer on completion of his investigation. In view of our discussion, in the case on hand, we are satisfied that the Magistrate in passing the impugned order has not committed any illegality leading to manifest injustice warranting interference by the High Court in exercise of extraordinary jurisdiction conferred under Article 226 of the Constitution of India. We are also satisfied that learned single judge as well as the Division Bench rightly refused to interfere with the limited order passed by the Magistrate. We also hold that challenge at this stage by the appellants is pre-mature and the High Court rightly rejected their request.”

14. In *State of Bihar Vs. Rajendra Agrawalla*, (1996) 8 SCC 164, the Supreme Court has shed light on the power of this Court under Section 482 Cr. P.C. The relevant portion of the judgment is reproduced hereunder:

“It has been held by this Court in several cases that the inherent power of the court under Section 482 of the Code of Criminal Procedure should be very sparingly and cautiously used only when the court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the court, if such power is not exercised. So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the first information report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the offence alleged. At that stage it is not open for the court either to sift the evidence or appreciate the evidence and come to the conclusion that no prima facie case is made.”

15. In AIR 2006 SC 2780, *M/s. Indian Oil Corporation Vs. NEPC India Pvt. Ltd.*, the Hon’ble Supreme Court has held that the allegations were sufficient to constitute offence. I.O.C. initiated several civil proceedings to safeguard its interest, but it does not follow therefrom that the criminal remedy is barred or I.O.C. is stopped from seeking such remedy. It was held that since the allegations in the complaint were sufficient to constitute the offence, the High Court was not justified in quashing the proceedings. It was further held that the contention of the respondents that they have no intention to cheat or dishonestly divert or misappropriate are defenses that will have to be put forth and considered during the trial and they are not

grounds for quashing the complaint at the threshold. At this stage we are only concerned with the question whether the averment in the complaint spelled out the ingredients of the criminal offence or not.

16 In *State (Govt. of NCT of Delhi) Vs. DAM Probhu & Anr.* 2009(1) Crimes 351 (SC), the Hon'ble Supreme Court has reaffirmed the law that when the stand as taken by the respondent was essentially their defence, which is to be considered at the time of trial, threshold interference would not be appropriate.

17. In *R.P. Kapoor Vs. State of Punjab*, AIR 1960 SC 866 it was held that the Hon'ble Court would be reluctant to interfere with the criminal proceedings at as interlocutory stage.

18. In *Ashabai Machindra Adhagale Vs. State of Maharashtra*, 2009(1) Crimes 304(SC) the Hon'ble Supreme Court has held that the inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and more so when the evidence has not been collected and produced before the Court and the issue involved, whether factual or legal are of magnitude and cannot be seen in their true perspective without sufficient materials.”

19. It is also pertinent to note that the possession of the said property lies with the complainant. It is more than a decade that the suit for declaration and injunction was filed by the petitioner against the complainant. It raises a valid question as to why there has been such a long delay in filing of the suit by the petitioner which has to be looked into by the trial court.

20. It is worthwhile to note that vide order dated 10.10.2011 the learned MM, Rohini Courts, has declared the petitioner as Proclaimed Offender and

ordered the proceedings under Section 299 Cr. P.C. to be conducted against him. It was noted by the MM that the petitioner has been non cooperative to the investigating agency and abused the court proceedings by adopting crafted tactics and hence evading arrest. Revision against the abovementioned order was dismissed by learned Sessions Judge. Vide earlier orders dated 9.5.2011 and 2.6.2011 the anticipatory bail applications of the petitioner were rejected. Despite having knowledge of the fact that the proceedings under Section 82 Cr.p.C have been initiated against him, the petitioner continued to remain absconding, resulting in the application under section 70(2) Cr. P.C. preferred by the petitioner being dismissed by the learned MM vide his order dated 02.12.2011 terming the application as abuse of process of law. It has been also been brought to my notice that the petitioner is involved in a fake currency note scam and was stated to be apprehended with fake Indian currency notes to the tune of Rs. 4.00 lakh and FIR No. 5/2005 was registered against him at P.S. Lodhi Colony. It is also a matter of record that Credit Limit facility of Punjab National Bank enjoyed by the petitioner was got enhanced by the petitioner from time to time.

21. The question of condonation of delay has been answered by the learned Supreme Court in *N. Balakrishnan Vs. M. Krishnamurthy* 2008 (228) ELT 162 (SC)

“It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range maybe uncondonable due to a want of acceptable explanation whereas in certain other cases,

delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturbed such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.”

22. The complainant came to know about the fact of the mortgage in the year 2006 after which a legal notice was sent by him to the Indian Overseas Bank which was replied in the year 2007. It was in the year 2007 that a civil suit was preferred by the petitioner against the complainant which came to be decided in favour of the complainant. The complainant had also filed an application under RTI to Indian Overseas Bank for disclosing the details with respect to the said mortgaged property. Having regard to the circumstances it can be said that the complainant took all the necessary steps before approaching the MM for registration of FIR since from the time of coming to know of the fact of property mortgaged by the petitioner. Hence, it can be said that prima facie there was no inordinate delay in approaching the learned MM and whatever delay occasioned is prima facie satisfactorily explained by the circumstances that unfolded.

23. In view of the above discussion, I am of the view that it is not a case where the allegations did not merit order of investigation by the learned MM. The Ingredients of the complaint point towards a prima facie case

being made out against the petitioner and it is not desirable to thwart the investigation by the police at this stage. It is only at the time of trial that the merits of the case can be decided.

24. Having regard to the above discussion, the writ petition and bail application of the petitioner are hereby dismissed.

M.L. MEHTA, J.

JANUARY 03, 2012

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