

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

Reserved on: 8th February, 2013
Pronounced on: 18th February, 2013

+ CRL.M.C. 7712/2006 & CRL.M.A.13083/2006

KAVITA GUPTA & ANR Petitioners

Through: Mr.P.K.Seth, Advocate

versus

SANJAY KOCHAR AND ANR Respondents

Through: Ms.Suman Kapoor, Advocate

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Petitioners invoke inherent powers of this Court under Section 482 of the Code of Criminal Procedure(“the Code”) for quashing of a criminal complaint by the Respondent for offence punishable under Sections 417, 418, 420, 465, 467, 468 and 471 IPC.
2. The case of the Petitioner is that on 16.11.1989 Budhu (Respondent No.2, now deceased) entered into an agreement to sell with her in respect of Plot No.C-12, Zafarabad Residential Scheme, Shahdara for a sale consideration of ₹3,60,000/-. A sum of ₹1,45,000/- was paid by the Petitioner to the Respondent No.2 as earnest money. Since the Respondent No.2 avoided to execute the sale deed, the Petitioners filed a

suit being Suit No.937/1993 for specific performance of the contract on 18.10.1993 against the Respondent No.2. The Respondent No.2 contested the Suit. However, the Suit for specific performance of the contract was decreed by the Court of learned Additional District Judge(“A.D.J.”), Delhi on 18.09.1998. On 11.10.1999, the Petitioners took out the execution of the earlier said decree. On 26.07.2001, the Respondent No.1(the complainant) filed objections to the execution of the decree against him. The objections preferred by the Respondent No.1 were dismissed by the Court of learned A.D.J., Delhi by an order dated 29.07.2005. In the meanwhile, the Respondent No.1 also filed a Suit for declaration and injunction against the Petitioners and the Respondent No.2 on 27.04.2002 with the prayer that the decree obtained by the Petitioners was not binding upon him. The Suit was dismissed on the ground that the remedy under law was available to Respondent No.1 by filing objections in the execution proceedings. A RFA No.391/2001 was also filed by the Respondent No.1 against the judgment and decree in Suit No.937/1993 which is still pending in Delhi High Court.

3. It is urged by the learned counsel for the Petitioners that from the sequence of events, it is amply clear that they could not have practised any fraud to obtain the decree for possession against the Respondent No.2. The Petitioners entered into an agreement with the erstwhile owner(Respondent No.2) in the year 1989 much before the Respondent No.1 entered into an agreement to sell and thus there cannot be any forgery or cheating or any other offence committed by the Petitioners in respect of Plot No.C-12, Zafrabad Residential Scheme, Shahdara. The learned counsel for the Petitioners argues that even if it is assumed that agreement to sell was entered into by the Respondent No.1 with the

Respondent No.2 on 14.06.1993 (as alleged by the Respondent No.1), the Petitioners could not be said to be guilty of commission of the offence as alleged as they had entered into a agreement to sell almost four years before the agreement as propounded by the First Respondent. It is stated that, in the circumstances, the continuance of the criminal complaint on the basis of which the Petitioners have been summoned to face trial would be an abuse of the process of the Court requiring intervention of this Court to quash the same.

4. On the other hand, the learned counsel for the Respondent No.1 very strongly canvasses that the execution of the agreement to sell dated 16.11.1989 propounded by the Petitioners is disputed by the Respondent No.1. She argues that on the basis of the agreement to sell dated 14.06.1993, the Respondent No.2 not only handed over the original documents, that is, the original sublease executed by the DDA in favour of the Respondent No.2, no objection certificate, possession letter etc. etc. but even possession of the plot No.C-12, Zafrabad Residential Scheme, Shahdara was handed over to Respondent No.1. In this view of matter, the agreement dated 16.11.1989 is claimed to be a sham document by the Respondent No.1. In spite of the Petitioners having obtained a decree on the basis of the same, its genuineness is very much in dispute and the Appeal filed by the Petitioners against the judgment and decree dated 10.09.1998 is still pending before the Delhi High Court.
5. It is very well settled that inherent powers under Section 482 of the Code though very wide have to be invoked sparingly and with circumspection only (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of the Court and (iii) otherwise to secure the ends of justice.

In *Satish Mehra v. State(NCT of Delhi) & Anr.*, (Criminal Appeal

No.1834/2012) decided on 22.11.2012, the Supreme Court held that inherent powers of the High Court to quash an FIR or a criminal complaint can be invoked where the allegations made in the complaint even if admitted do not disclose any offence. The relevant part of the report in *Satish Mehra* is extracted hereunder:

“15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extraordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfy the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed....”

6. The criminal proceedings are quashed by the High Court in exercise of its inherent powers under Section 482 of the Code on the premise that the criminal prosecution should not be and ought not to be permitted to denigrate into a weapon of harassment or persecution.
7. In *Janta Dal v. H.S. Chowdhary & Ors.*, (1992) 4 SCC 305, the Supreme Court, while referring to the inherent powers to make orders as may be necessary for the ends of justice, clarified that such power has to be exercised in appropriate cases *ex debito justitiae*, that is, to do real and substantial justice, for administration of which alone the Courts exist.

The powers possessed by the High Court under Section 482 of the Code are very wide plentitude and the powers require great caution in its exercise. The High Court, being the highest Court exercising criminal jurisdiction in a State, has inherent powers to make any order for the purposes of securing the ends of justice. Being an extraordinary power, it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate Court of its powers.

8. At this stage, it would be appropriate to refer to the averments made in the criminal complaint filed by the Respondent No.1. The Respondent No.1 in the criminal complaint averred that he entered into an agreement to sell with the Respondent No.2 on 14.06.1993. Along with the Power of Attorney, Will, Affidavit, Undertaking, the original documents of lease deed etc., the possession of plot was also handed over to him. He stated that he got the site plan of the plot sanctioned for carrying out the construction. He obtained extension by raising construction which was going to expire in the year 2001. It was only in May, 2001 when the Respondent No.1 had started the construction that the Petitioners appeared through their representatives and tried to obstruct the construction work at the spot. It would be apposite to extract paras 1, 2, 3, 4 5, 6, 7 and 10 of the complaint hereunder:

“1. That the complainant is a bona fide purchaser of plot NO.C-12, Zafrabad Residential Scheme, Shahdara, Delhi, purchased by him from accused No.1 against consideration of payment. The complainant purchased the said plot from accused no.1 on execution of Power of Attorney/ General Power of Attorney/special Power of Attorney /Will/ Affidavit/Undertaking/No Objection Certificate/Possession letter etc. the complainant purchased the same on 14.06.93 and possession of the said plot was handed over to the complainant along with all the original documents pertaining to the said plot

including original Perpetual Lease Deed, and possession letter, sanctioned site plan and receipts etc. regarding payments of said plot.

2. That at the time of transfer of plot No.C-12, Zafrabad Residential Scheme, Shahdara, Delhi, the accused No.1 also executed the documents to the effect that there is no lease, mortgage, encumbrance of any kind upon said plot and it was made assured by the accused No.1 to the complainant that the accused No.1 is not having any liability qua suit plot and he alone is the owner of the plot No.C-12, Zafrabad Residential Scheme, Shahdara, Delhi.

3. That the complainant possessed the said plot alongwith documents and raised boundary wall, one temporary shed and also installed one hand pump in the said plot. The complainant bona fide believing the version of the accused No.1 and believing himself to be the owner of the said plot retained the same.

4. That the complainant got the site plan of the plot sanctioned for carrying out construction and wanted to carry out construction over the said plot within the time extended by DDA, which was going to be expired in the end of 2001, for construction of the same.

5. That in the beginning of the month of May, 2001, the complainant stored building material at the said plot and filed the base and further was raising walls of the room, but all of a sudden the accused Nos.2 & 3 appeared through their representatives and tried to obstruct the construction work at the spot. The complainant reported the matter to the local police at P.S. Welcome, Shahdara, Delhi.

6. That later on, the accused Nos.2 & 3 filed an Injunction Suit on false pretext that they have purchased the plot No.C-12, Zafrabad Residential Scheme, Shahdara, Delhi from accused No.1 and further for restraining the complainant from carrying out any construction over said plot and obtained injunction order in their favour.

7. That the accused Nos.2 & 3 had already obtained a judgment and decree in their favour and against accused No.1 with respect to possession of plot No.C-12, Zafrabad

Residential Scheme, Shahdara, Delhi on the basis of alleged Agreement to Sale, entered by the accused No.1 in favour of accused Nos.2 & 3, dated 16.11.89, for the sale of the plot No.C-12, Zafrabad Residential Scheme, Shahdara, Delhi vide judgment and order dated 18.09.98 in Suit No.937/93, titled 'Kamlesh Gupta & Another v. Budhu & Others'. However, the complainant was neither party to those proceedings nor was aware of those proceedings as the same were never disclosed by accused No.2 or other accused.

10. That the accused Nos. 2 & 3 have also manufactured the documents in their favour, in order to establish their claim qua plot No.C-12, Zafrabad Residential Scheme, Shahdara, Delhi and further on the basis of the said forged document filed a suit for Specific Performance against accused No.1, and obtained the decree of possession while establishing their title over said plot of land by playing fraud upon the Hon'ble Court. Now the accused No.1 is also trying to change his stand in order to have further wrong full gain to himself."

9. It is well settled that the disputed questions of fact are not to be gone into for quashing a criminal proceeding under Section 482 of the Code. It is true that the Petitioners claims that they entered into an agreement to sell with the Respondent No.2 on 16.11.1989. Of course, the Petitioners have obtained a decree against the Respondent No.2 on the basis of the said agreement to sell, which has been challenged in RFA.No.391/2001 pending in the High Court by the Respondent No.1, that is, the complainant, although, he was not a party to the proceedings before the learned A.D.J.
10. It is very intriguing to note that the Petitioners never requested Respondent No.2 to provide the original documents in respect of Plot No.C-12 which according to Respondent No.1 are in his possession. Respondent No.1 in the complaint alleged that he got the site plan of the plot sanctioned for carrying out the construction within the time extended

by the DDA. The execution of the alleged agreement to sell dated 16.11.1989 and the circumstances under which it was entered into will be in the shape of defence of the Petitioners which they will be entitled to take before the Trial Court.

11. In view of the above discussion the Criminal Complaint cannot be quashed at this stage. The Petition is accordingly dismissed.
12. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 18, 2013
pst