

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

Reserved on: 6th February, 2013
Pronounced on: 18th February, 2013

+ **Crl.M.C.2568/2011**

ADARSH KAUR GILL

..... Petitioner

Through:

Mr.Ramesh Gupta, Sr. Advocate with
Mr. Muninder Dwivedi, Ms. Divya
Bhalla & Mr. Mohit Mathur, Advocates

Versus

STATE OF NCT OF DELHI & ORS.

..... Respondents

Through:

Ms. Rajdipa Behura, APP for the
State/Respondent No.1.
Mr. Sanjeev Mahajan with Mr. Bharat
Beriwal, Advocates for the Respondents
No.2 & 3.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. The Petitioner (Adarsh Kaur Gill) invokes inherent powers of the Court for quashing of FIR No.269/2001 dated 26.11.2001 registered in Police Station Tughlaq Road whereby the Petitioner is sought to be prosecuted under Sections 406/467 IPC.
2. Before advertng to the contentions raised on behalf of the parties, it would be appropriate to have an insight into the factual matrix which led to the filing of the FIR. Plot No.8A, Block No.11, now known as 3, Southend Road, New Delhi was leased out to R.B.S. Basakha Singh vide a lease deed executed on 21.10.1941. He transferred the perpetual

leasehold rights in respect of the earlier said property in favour of Smt. Abnash Kaur by a sale deed dated 18.01.1956. Smt. Abnash Kaur died in New Delhi on 10.06.1976. During her life time, she made a Will dated 06.02.1973 whereby she bequeathed 1/6th share in the earlier said property in favour of her son Kanwar Kishore Bindal(K.K.Bindal), brother Ajit Singh, her sisters Adarsh Kaur Gill, Surjit Kaur Gill, her niece Noorien Kaur Gill and her nephew Gurnir Singh Gill. Execution of the Will is not in dispute. Ajit Singh on the strength of the registered Will filed a Civil Suit No.2167/93 (in the year 1993) on the original side of Delhi High Court for partition and rendition of accounts, etc. etc. impleading remaining five beneficiaries including K.K. Bindal. A prayer was made in the said Suit for partition of the property by metes and bounds and by putting each of the party in actual physical possession of the share of his/her property. It was prayed that if partition of the property was not possible by metes and bounds, the same might be sold by public auction through the Court. The said Civil Suit was contested by Adarsh Kaur Gill(the Petitioner herein) who was also claiming herself to be a tenant in the property since the life time of its owner Abnash Kaur.

3. K.K. Bindal expired on 15.12.1995. The Delhi High Court by its order dated 12.07.2000 directed the legal representatives (LRs) of K.K. Bindal to be brought on record. On 12.10.2000, Ajit Singh expired and as per his Will dated 21.07.1997, his share was to be succeeded by Mrs. Surjit Kaur Gill(the Respondent No.3). She(Surjit Kaur Gill) was also appointed as administrator and executor of his(Ajit Singh's) estate in the property mentioned earlier. By an order dated 04.12.2000, the Delhi High Court substituted Mrs. Surjit Kaur Gill in place of Ajit Singh as the Plaintiff.

4. Sometime in the year 2001, Respondent No.2 along with some of the co-owners wanted to sell their undivided share in the property. For the said purpose, the Respondent No.2 and others applied to appropriate authority(Income Tax) in Form No.37-I to seek its no objection. It is alleged that at this stage(it is not even disputed by the Petitioner) the registered agreements to sell dated 08.04.1993 alleged to have been executed by late K.K. Bindal(in respect of 1/6th share) in favour of Noorien Kaur Gill, Adarsh Kaur Gill and NIDAS Estate Pvt. Ltd. was produced by the Petitioner before the appropriate authority(Income Tax) whereby K.K. Bindal's 1/6th undivided share was sought to be transferred in favour of earlier said three persons for a sale consideration of ₹9 lakhs each.
5. A complaint was lodged by the Respondent No.2 for herself as well as being the General Attorney of Surjit Kaur Gill stating that the registered agreements to sell dated 08.04.1993 were never produced by the Petitioner (herein) in the Civil Suit pending before the Delhi High Court and that the agreements to sell were forged by the Petitioner to cheat and defeat the valuable right of Respondent No.2 and other persons. After prolonged investigation, a report under Section 173 Cr.P.C. was presented. During the course of investigation, it was found that two cheques for ₹15,000/- each (out of sale consideration of ₹9 Lakhs each) were issued from the account of Ms. Malvika Rajkotia who was an attesting witness to the agreements to sell and that the sum of ₹15,000/- could not have been paid and the cheques were never encashed as there was just a balance of about ₹250/- only at the time of the alleged execution of the Agreements to sell. Thus, on the basis of the FIR, a charge sheet under Section 173 Cr.P.C. was filed against the Petitioner

for offences under Sections 406/467 IPC. In the charge sheet, it was stated that in the absence of any admitted signatures of K.K.Bindal, veracity of the alleged forged documents, that is, agreements to sell dated 08.04.1993 executed by K.K. Bindal could not be irrefutably established.

6. Thus, Mr. Ramesh Gupta, learned Sr. Counsel for the Petitioner argues that a person cannot be prosecuted on mere suspicion. He heavily relies on an order dated 07.07.2008 wherein the learned counsel for the Respondent No.2 is alleged to have admitted the signatures of Late K.K. Bindal on the agreement. The relevant portion of the order dated 07.07.2008 is extracted hereunder:

*“Present: Sh. M.M. Sharma, Ld. Counsel for the applicant
Sh. K.K. Vyas, DCP, Crime with Sh. Deepak, ACP,
Crime
IO Inspector Shanker Banerjee*

I have heard the submissions made by the IO as well as the DCP concerned. What I gather from the submissions so made is that no substantive investigation has been done so far. The allegations in this matter are of forgery with regard to the agreement to sell, allegedly executed by K.K. Bindal.

IO submits that the admitted signatures of K.K. Bindal could not be obtained so far, however, he will make efforts to obtain the signatures from the case file which is pending in the Hon’ble High Court. Ld. Counsel for the applicant submits that said case file does not contain any admitted signatures of late Sh K.K. Bindal, moreover, it is not disputed that the agreement does contain the signatures of K.K. Bindal. However, these signatures were taken without his consent and when he was not in full senses.”

7. The thrust of the argument advanced by the learned Sr. Counsel on behalf of the Petitioner is that admittedly the Petitioner was a tenant in the property with a right to sublet the same during the life time of Abnash Kaur. Therefore, there could not have been any offence of criminal breach of trust. Moreover, since the counsel for the Respondent No.2 admitted the signatures of K.K. Bindal on the agreements to sell, there was no question of forging the same.
8. The learned Sr. Counsel argues that there is a presumption of valid execution of the registered document and relies on a report of the Supreme Court in *Prem Singh & Ors. v. Birbal & Ors.*, AIR 2006 SC 3608. The learned Sr. Counsel fervently argues that the dispute between the parties, if any, was of a civil nature and the criminal proceedings in the circumstances are an abuse of the process of the Court. The learned Sr. Counsel presses into service report of the Supreme Court in *Thermax Ltd. & Ors. (M/s) v. K.M. Johny & Ors.*, (2011) 13 SCC 412, where it was held as under:

“49. The entire analysis of the complaints with reference to the principles enunciated above and the ingredients of Sections 405, 406, 420 read with Section 34 IPC clearly show that there was inordinate delay and laches, the complaint itself is inherently improbable and contains the flavour of civil nature and taking note of the closure of earlier three complaints that too after thorough investigation by the police, we are of the view that the Magistrate committed a grave error in calling for a report under Section 156(3) of the Code from the Crime Branch, Pune. In view of those infirmities and in the light of Section 482 of the Code, the High Court ought to have quashed those proceedings to safeguard the rights of the appellants. For these reasons, the order passed by the Judicial Magistrate, First Class, Pimpri in CC No. 12 of 2002 on 20-8-2007 and the judgment of the High Court dated 11-1-2008 [WP (Cri) No. 1622 of 2007 order dated 11-1-2008 (Bom)] in Criminal Writ

Petition No. 1622 of 2007 are set aside. The complaint filed by Respondent 1 herein is quashed.”

9. On the other hand, Mr. Sanjeev Mahajan, learned counsel for the Respondents No.2 and 3 states that the report under Section 173 Cr.P.C. filed by the investigating officer is at threshold. The summons were ordered to be issued against the Petitioner only on 07.06.2011. The learned Metropolitan Magistrate(“M.M.”) is yet to form an opinion whether a prima facie case is made out against the Petitioner or not.
10. The learned counsel for the Respondents No.2 and 3 tries to have a different interpretation to the order dated 07.07.2008 by changing the placement of the coma and full stop. He argues that even if any statement was made by the learned counsel for the Respondent No.2(complainant), in a criminal case, that could not bind the complainant. The learned counsel contends that it is well settled that for the purpose of quashment of an FIR, the High Court would not go into the disputed questions of fact and if on the evidence collected by the prosecution there are grounds for proceeding or there is a strong suspicion, the High Court will not interfere with the proceedings. He urges that the conduct of a party may give rise to a civil dispute as well as a criminal offence and the aggrieved party can avail the remedies accordingly. He relies on para 17 of the report in *MEDCHL Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. & Ors., (2000) 3 SCC 269*, where the Supreme Court laid down as under:

“17. On a careful reading of the complaint, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Sections 415, 418 and 420 cannot be said to be totally absent on the basis of the allegations in the complaint. We, however,

hasten to add that whether or not the allegations in the complaint are otherwise correct has to be decided on the basis of the evidence to be led at the trial in the complaint case but simply because of the fact that there is a remedy provided for breach of contract, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy available to the appellant herein. Both criminal law and civil law remedy can be pursued in diverse situations. As a matter of fact they

“are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import”. (vide Pratibha Rani v. Suraj Kumar [(1985) 2 SCC 370 : 1985 SCC (Cri) 180]) (SCC p. 383, para 21)”

11. The learned counsel for the Respondents No.2 and 3 referred to a number of circumstances to contend that the three agreements to sell cannot be genuine and the Petitioner's prosecution at this stage should not be stalled.
12. It is admitted case of the parties that the Respondent No.2 filed the earlier mentioned Civil Suit on the original side of Delhi High Court in the year 1993. K.K. Bindal was alive at that time. The agreements to sell alleged to have been executed on 08.04.1993 by K.K.Bindal in favour of Noorien Kaur Gill, Adarsh Kaur Gill and NIDAS Estate Pvt. Ltd. are purported to have been registered on 21.04.1993. It is true that there is an initial

presumption of a valid execution in favour of the registered document. The presumption, however, is rebuttable and the onus of proof to rebut the presumption is on the person who denies valid execution of a registered document. The property in question measures about 1.336 acres and is known as property No.3, Southend Road, New Delhi as is mentioned on the opening page of the agreements to sell dated 08.04.1993. Even if the Respondents plea that value of the property in question at the relevant time was over ₹10 crores and three fake agreements to sell for ₹9 Lakhs each were brought into existence, as it is now not permissible to enter into any transaction with respect to property of above ₹10 Lakhs without obtaining NOC from competent authority under the Income Tax Act is not attached any value, it has to be borne in mind that Civil Suit No.2167/1993 was filed on the original side of the Delhi High Court in the year 1993. The Petitioner filed her written statement in the year 1995. She was completely silent about execution of agreements to sell in her favour. Further K.K. Bindal expired on 15.12.1995. The Petitioner and Noorien Kaur Gill were already party to the Civil Suit. If the agreements to sell were genuine, the Petitioner would have surely pleaded the agreement to sell in her favour and would not have allowed the three legal heirs of Late K.K. Bindal to be substituted. Apart from this, on the face of it, the documents cannot be said to be genuine at this stage as a meagre amount of ₹15,000/- purported to be paid through cheque from the account of Ms. Malvika Rajkotia at the relevant time had a balance of just about ₹230/- to 250/-. The circumstances narrated above do point out towards the non-genuineness of the agreements to sell dated 08.04.1993 propounded by the Petitioner.

13. It is urged by the learned Sr. Counsel for the Petitioner that there is neither oral nor any documentary evidence with regard to forgery of the agreements to sell which is the foundation of the charge sheet. It is contended that in the absence of any oral evidence, it cannot be said that the document is forged. I have already observed earlier that in this case there are strong circumstances which show the guilty mind of the Petitioner. The evidence collected by the prosecution is yet to be analysed by the learned M.M.
14. I have gone through the order dated 07.07.2008 passed by the learned M.M. recording submission made by the learned counsel for the Respondent No.2 regarding obtaining K.K. Bindal's signature when he was not in his full senses. I would not attach much importance to this admission to throw out the Petitioner's prosecution at this stage. The forgery/procuring of an agreement to sell by fraud might have civil as well as criminal consequences. At this stage, simply because a civil remedy is also available cannot foreclose the criminal offence committed by a person.
15. The learned Sr. Counsel for the Petitioner draws my attention to the averments in the report under Section 173 Cr.P.C. that the Petitioner was a tenant of Abnash Kaur with a right to sublet the premises. Obviously, if the Petitioner has lawfully inducted a subtenant/ tenants and had appropriated the rent received by her, there cannot be any criminal breach of trust. Since the Petitioner's prosecution at least for the offence under Section 420 IPC cannot be quashed at this stage. I shall refrain from making any further observation with regard to the offence under Section 406 IPC. The Petitioner will be entitled to urge this point at the time of framing charges.

16. The Petition is accordingly dismissed.
17. The learned M.M. shall decide whether a prima facie case is made out against the Petitioner or not without being influenced by the observations made hereinabove as the same were necessary for the disposal of the Petition under Section 482 of the Code preferred by the Petitioner.
18. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

FEBRUARY 18, 2013

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