

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

Decided on: 15th March, 2013

+ CRL.M.C. 3933/2011

SANAGUL

..... Petitioner

Through: Ms. Sangita Bhayana, Advocate

versus

STATE NCT OF DELHI & ANR

..... Respondents

Through: Ms. Rajdipa Behura, APP for the State
along with SI Jagdish pal, P.S. Kamla
Market.
Mr. Amit Gupta, Advocate for the
Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Petitioner invokes the inherent powers of this Court under section 482 of the Code of Criminal Procedure (Code) for quashing of FIR No.86/2011 under Sections 471/420/463/468 IPC registered in Police Station (PS) Kamla Market.
2. A civil suit for cancellation of a sale deed dated 24.10.2007 in respect of the Second Floor of property No.2325-26, Ward No.7, Gali Meer Madari, Mohalla, Rodgaran, Delhi-110006 was filed by the Petitioner against the Respondent No.2 on the ground that the Respondent No.2 fraudulently got executed the above said sale deed on the pretext of execution of the lease deed in respect of the earlier said property. In support of the Civil Suit, the

Petitioner placed on record some rent receipt purported to have been signed by the Respondent No.2 as a tenant. The Respondent No.2 denied that she was a tenant in the premises in question or that she had ever signed any rent receipt for the aforesaid property. On the complaint filed by Respondent No.2, the instant FIR was registered. Forensic Science Laboratory (FSL) report has been received which shows that the signatures appearing on the rent receipt do not tally with her (Respondent No.2) admitted signatures 'A-1' to 'A-9'.

3. Referring to the FSL report, it is urged by the learned counsel for the Petitioner that even though the signatures do not tally with the signatures of Respondent No.2, yet there is no evidence that Respondent No.2's signatures were forged by the Petitioner. Thus, the learned counsel for the Petitioner states that the FSL report is of no consequence and registration of the FIR and any proceedings on its basis would be just an abuse of the process of the Court and an unnecessary harassment to the Petitioner. Thus, the learned counsel for the Petitioner prays for quashing of the FIR.
4. On the other hand, Ms. Rajdipa Behura, the learned APP who is assisted by Mr. Amit Gupta, Advocate for the Respondent No.2 submits that in the FIR it was specifically stated that the rent agreement and the rent receipt have been forged by the accused(Petitioner herein) in order to make a false ground that the complainant was merely a tenant under the accused. Thus, on the allegations as stated in the FIR, it cannot be said that no offence is made out against the Petitioner. The question as to who had forged the documents is to be gone into only during the course of trial. Suffice it to say, at this stage, that prima facie the forged documents were used by the

Petitioner.

5. The case is squarely covered by the report of the Supreme Court in *C.P. Subhash v. Inspector of Police Chennai & Ors.*, 2013 II AD (S.C.) 258 where while setting aside the order of the High Court quashing the FIR, the Supreme Court observed that where the complaint lodged by the complainant whether before the Court or before the jurisdictional police station makes out a commission of an offence, the High Court should not in the ordinary course invoke its power to quash such proceedings except in rare and exceptional circumstances. The Supreme Court quoted with approval the observation in *Rajesh Bajaj v. State NCT of Delhi* (1999) 3 SCC 259, where it was held as under:

“If factual foundation for the offence has been laid down in the complaint the Court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR. (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence.”

6. The Supreme Court further referred to its decision in *State of Madhya Pradesh v. Awadh Kishore Gupta*, (2004) 1 SCC 691 wherein it was observed that the power under Section 482 of the Code should be exercised with great caution and the Court should refrain from stifling legitimate prosecution. The observations of the Supreme Court in *Awadh Kishore Gupta* are extracted hereunder:

“The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power

requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code.”

7. In *J.P. Sharma v. Vinod Kumar Jain & Ors*, (1986) 3 SCC 67, the Supreme Court observed that for the purpose of a Petition under Section 482 of the Code, the truthness and veracity of the allegations made in the FIR is not to be examined, what is required to be seen is whether on the basis of the allegations made a cognizable offence has been committed or not. The report is extracted hereunder:

“The High Court erred in quashing the criminal proceedings

under Section 482 Cr.P.C. on an erroneous basis when on prima facie being satisfied the Metropolitan Magistrate had taken cognizance of the alleged offences. The question at this stage, is, not whether there was any truth in the allegations made but the question is whether on the basis of the allegations, a cognizable offence or offences had been alleged to have been committed. The facts subsequently found out to prove the truth or otherwise on the allegation is not a ground on the basis of which the complaint can be quashed. Taking all the allegations in the complaint to be true, without adding or subtracting anything, at this stage, it can be said that a prima facie case for trial had been made out. That is the limit of the power to be exercised by the High Court under Section 482 Cr.P.C. The High Court in the instant case has exceeded that jurisdiction.”

8. Turning to the facts of the instant case. On the basis of the material on record, it cannot be said that the allegations made in the FIR do not disclose commission of a cognizable offence. The Petitioner very much relies on the rent agreement and the rent receipt in the Suit filed by the Petitioner for cancellation of the sale deed. The Petitioner's plea that the rent receipt/rent agreement might have been forged by the Respondent No.2 herself cannot be accepted at this stage. In any case, the Petitioner has not been able to show that prosecution of the FIR in question is an abuse of the process of the Court or is otherwise not in the interest of justice.
9. The Petition, therefore, has to fail; the same is accordingly dismissed.
10. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

MARCH 15, 2013/pst