

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 323/2012**

Date of Decision : October 16th, 2015

H.S. BEDI Petitioner
Through Mr.Madhav Khurana, Adv. with
Mr.Aalam Nijjar, Adv.

versus

INDERJEET SINGH Respondent
Through Ms.Sangeeta Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present petition under Section 482 Cr.P.C. has been filed by the petitioner for quashing of complaint case no.6740/1 titled “Inderjeet Singh v. Kiran Pal Singh Choudhary & Ors.”, pending before the learned Metropolitan Magistrate, Tis Hazari Courts, Delhi, and the order dated 25.03.2011 summoning the petitioner under Section 420 IPC and the proceedings arising therefrom.

2. Factual matrix, emerges from the record, is that the complainant/respondent, namely, Inderjeet Singh has filed a criminal complaint against accused persons, namely, Kiran Pal Singh Chaudhary, IDEB Project (P) Ltd. and the petitioner-herein H.S. Bedi

alleging therein that Kiran Pal Singh represented to the complainant that he had good relations with the petitioner-herein and he would get allotted a land measuring 500 sq. meter @ Rs.2200/- per sq. meter in the name of the complainant in the Industrial Estate, Phase-I, Kashipur, Uttarakhand. The complainant made a total payment of Rs.10,94,998/- by way of cheques in favour of Kiran Pal Singh and IDEB Project (P) Ltd towards allotment and purchase of the said land. Despite making the payment, neither the allotment letter was issued nor was land allotted to the complainant. Despite repeated requests, the accused persons did not pay any heed. The cheques given were duly encashed by the accused. The complainant sent a legal notice dated 12.07.2008 to the accused persons, but despite its service, the accused persons did not allot the land to the complainant.

3. The learned Metropolitan Magistrate vide order dated 25.03.2011, summoned the accused persons while observing that a prima facie case for commission of offence under Section 420 IPC is made out against the accused persons.

4. Feeling aggrieved of the complaint and the summoning order, the petitioner has preferred the present quashing petition. It is

mentioned that the petitioner is the managing director of M/s IDEB Projects Ltd. (hereinafter referred to as “Company”) which is engaged in the engineering and construction work in various cities and has executed numerous projects all over India. The Company promoted an Industrial Estate in Mahua Kheda Ganj, Kashipur. In January 2007, the Company was approached by accused K.P. Singh for allotment of a plot in the said industrial estate. He represented that the plot was to be bought in the name of M/s KAI International in which he, Mr.Ashwani Khanna and complainant Mr. Inderjeet Singh were the partners. On 31.01.2007, earnest money was deposited by Mr.K.P. Singh and on 20.02.2007, the Company issued an allotment letter in favour of Mr. K.P. Singh i.e. partner of M/s KAI International. On 28.03.2007, the said firm defaulted in paying the next installment. On 02.04.2008, the Company received a letter from Mr.K.P. Singh requesting cancellation of allotment. On 14.07.2008, a legal notice was received by the Company from the complainant, which was duly replied.

5. The petitioner has taken the ground that the present case is duly covered by the judgment in case of *State of Haryana v. Bhajan Lal*,

(1992) *Suppl. 1 SCC 335*; from the perusal of complaint and documents, no offence is made out against the petitioner; there was no fraudulent or dishonest intention at the time of making promise by the petitioner; there was no inducement on the part of the petitioner; there is no concept of vicarious liability in criminal law; no overt act has been mentioned against the petitioner; the Trial Court had not conducted any enquiry under Section 202 Cr.P.C.

6. Argument advanced by the learned counsel for the petitioner is that the complainant has suppressed the fact from the Court that the allotment of plot was never in his name rather it was in the name of the partnership firm of which the complainant was one of the partners. Since the complainant and his partners did not pay the balance sale consideration, they requested for cancellation of allotment which was cancelled. In support of this contention, he relied upon the judgment in the case of *Samadhan Dhudaka Koli v. State of Maharashtra* 2008 (16) SCC 705 in which it was observed that no explanation has come as to why the prosecution suppressed the dying declaration; fairness in investigation as also trial is a human right of an accused and the State cannot suppress any vital document from the court only

because the same would support the case of the accused. On similar point, judgments in cases of *State of Orissa v. Debendra Nath Padhi (2005) 1 SCC 568* and *Harshendra Kumar D. v. Rebatilata Koley and others (2011) 3 SCC 351* have been relied upon.

7. On the other hand, learned counsel for the respondent has argued that the complainant was not the partner in firm M/s KAI International as contended by the petitioner. He has not even made any partnership firm with the co-accused. The complainant made the payment of Rs.10,94,998/- to the accused persons for allotment of land and its transfer, but allotment was never made and thus the respondent/complainant was cheated.

8. It is nowhere the case of the complainant/respondent that he was the partner of M/s KAI International. The contention of the petitioner that co-accused K.P. Singh was one of the partners and the said partnership firm made payments for allotment of plot, nowhere finds mention in the complaint made by the complainant. The allegations leveled by the complainant are specific i.e. that the petitioner-herein and co-accused K.P. Singh cheated the complainant in the name of getting the plot allotted in the industrial estate being

developed by the petitioner-herein. So, there is no basis in the contention of the petitioner that the complainant/respondent suppressed any material fact. Thus, the judgments in case of *Samadhan Dhudaka Koli* (supra), *Debendra Nath Padhi* (supra) and *Harshendra Kumar* (supra) are of no assistance to the petitioner as the same are distinguishable from the facts of the present case.

9. It was further argued that the petitioner had no intention to cheat the complainant nor did he ever induce the complainant to part with his money. The total sale consideration of the plot was Rs.44,77,600/-. On 20.02.2007, the Company issued allotment letter to Mr.K.P. Singh along with the payment schedule for the balance payment. The firm of the complainant defaulted in making the payment as per schedule. It is further argued that even the complainant had not made the total payment.

10. In support of the above contentions, judgment in case of *Hridaya Ranjan Prasad Verma and others v. State of Bihar and another* (2000) 4 SCC 168 has been relied upon in which it was observed that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the

accused at the time of inducement which may be judged by his subsequent conduct. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is, at the time when the offence is said to have been committed. To hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. On similar point, judgments in the cases of *Inder Mohan Goswami and another v. State of Uttaranchal and others* (2007) 12 SCC 1; *V.Y. Jose and another v. State of Gujarat and another* (2009) 3 SCC 78; *M/s Thermax Ltd. & ors. v. K.M. Johny & ors.* 2011 (11) SCALE 128; *Subhkaran Luharuka & another v. State (Govt. of NCT of Delhi & another* 2010 (3) JCC 1972 and *Vesa Holdings P. Ltd. and another v. State of Kerala & others* 2015 SCC Online SC 238 have been relied upon.

11. As per the allegations leveled by the complainant/respondent, he was inducted by both the accused persons to make payment for allotment of land in the industrial estate developed by the petitioner-herein. It has come on record that payments in the name of the

Company of the petitioner-herein and co-accused K.P. Singh were made by the complainant/respondent. The record further reveals that the payments made by the complainant by way of cheques were encashed by the accused persons but despite having received the payment, the land was never allotted to the complainant, rather the allotment letter was issued to the co-accused K.P. Singh, which shows dishonest and fraudulent intention on the part of the petitioner-herein also to deceive the complainant for making the payment. No explanation has come on record that despite receiving the payment from the complainant as to why allotment of land in his favour has not been made. When it is the specific stand of the complainant/respondent that he was not the partner in M/s KAI International, the dishonest and fraudulent intention of the accused persons including the petitioner-herein is apparent in inducing the complainant/respondent. Therefore, the judgments in cases of *Hridaya Ranjan Prasad Verma* (supra), *Inder Mohan Goswami* (supra), *V.Y. Jose* (supra), *M/s Thermax Ltd.* (supra), *Subhkaran Luharuka* (supra) and *Vesa Holdings P. Ltd.* (supra) do not render any assistance to the petitioner as not applicable to the facts and circumstances of the

present case.

12. Next limb of argument advanced by the learned counsel for the petitioner is that as per Section 202 (1) of the Cr.P.C., it is obligatory for the Magistrate to either conduct enquiry himself or have it conducted by a police officer. It is argued that the Trial Court did not direct the police to check the veracity of the allegations made in the complaint. In support of this contention, judgment in case of *Savera Sidhu v. Harleen Sidhu and another* 2010 Law Suit (P&H) 442 has been relied upon in which it was observed that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and that would be sufficient for the complainant to succeed in bringing charge home of the accused.

Section 202(1) of the Cr.P.C. reads as under:

“Postponement of issue of process.- (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under section 192, may, if he thinks fit, [and shall, in a case where the accused is residing at a

place beyond the area in which he exercises his jurisdiction] postpone the issue of process against the accused, and either inquiry into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding.”

13. In the present case, it is apparent from the record that the learned Magistrate conducted the inquiry under Section 202 Cr.P.C. through a police officer. It was reported by the police that co-accused K.P. Singh once executed an agreement with the complainant, but the same was subsequently cancelled as the complainant could not pay the installments to the Company of the petitioner-herein. It was also reported by the police that the payments were made by the complainant. The impugned order passed by the learned Magistrate also shows that to satisfy himself, the pre-summoning evidence of the complainant was called. The complainant got himself examined and made the specific allegations against the accused persons in his examination. Documentary evidence was also placed on record by the complainant.

14. The order under challenge passed by the learned Magistrate clearly shows that there was sufficient material on record in the form

of oral evidence as well as documentary evidence before the learned Magistrate to summon the petitioner as an accused. Before calling the complainant to produce pre-summoning evidence, the learned Magistrate conducted inquiry through the police to satisfy himself about the allegations leveled in the complaint. Upon satisfaction of the learned Magistrate, the petitioner was summoned as an accused. The petitioner does not get any assistance from the judgment in case of *Savera Sidhu* (supra), as there is sufficient material before the Trial Court to summon the petitioner which is duly reflected from the order passed by him.

15. In view of the above discussion, the petitioner has failed to make out any ground for exercising the inherent powers of this Court under Section 482 Cr.P.C. for quashing the order dated 25.03.2011, passed by the Trial Court.

16. Consequently, the present petition is dismissed.

(P.S.TEJI)
JUDGE

OCTOBER 16, 2015
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