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

Date of Decision: May 22, 2015

\+ CRL. M.C. No.1360/2012

M.P. SHARMA ..... Petitioners

Through: Mr. Jai Gupta & Mr. Amit Verma, Advocates

versus

STATE & ORS. ..... Respondents

Through: Ms. Nishi Jain, Additional Public Prosecutor
Mr. Rakesh Tikku, Senior Advocate with Mr. Naresh Sharma & Mr.Sandeep Kumar, Advocates for respondent No.2

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

<u>JUDGMENT</u>

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In a complaint under Sections 420/506/34 of the IPC, *M.P.Sharma Vs. Smt. Amita Chaturvedi & ors.*, respondents were summoned as accused by the trial court and the revision petition preferred by respondents No. 2 & 3 stands allowed vide impugned order.

At the hearing, learned counsel for petitioners submitted that the impugned order discharging respondents No.2 & 3 for the offence in question is liable to be quashed on the ground that the impugned order is based on conjectures and surmises. Attention of this Court is drawn to paragraphs No. 8 & 9 of the impugned order which read as under:-

'Coming to the merits of the case, the respondent has not filed any document on record to show that he has in fact, made any payment in cash or by way of a cheque to the petitioners or that he was promised 50% share holder in the plot in question allotted by UPSIDC Ltd. in favour of petitioner No.1. The respondent has annexed photocopy of a bank draft (Mark-X) along with the complaint stating that he had prepared the same from his own bank account in the name of UPSIDC and handed over same to the petitioners for onward transmission to UPSIDC Ltd. However, no evidence has been led by the respondent to show that this draft was in fact, got prepared by him from his bank account.

9. Even if be assumed that the amount mentioned by the respondent in his complaint was paid by him to the petitioners, at the most it can be said that he had provided loan for the said amount to the petitioners. I do not find any element of cheating anywhere apparent from the record."

Learned counsel for second and third respondent had placed on record short synopsis to support the impugned order and to submit that the trial court order discloses non application of mind. It was submitted that petitioner had induced respondents No. 2 and 3 to invest their savings in property and accordingly, they had purchased property-Plot No.316, Sector-23, Gurgaon, Haryana, which was adjacent to the property/ house of petitioner and respondent had paid the amount to petitioner as agreed. It was vehemently denied that petitioner had ever paid ₹2,00,000/- in cash to respondents and infact, the entire amount for the purchase of plot was arranged by respondent No.2 out of her own funds. It is submitted that when respondent had not agreed to get the construction work done from petitioner, he started harassing, threatening, blackmailing and defaming respondents and the complaint in question is false, frivolous and vague and that the dispute between the parties is of civil nature and no criminal offence is made out. In support of above submissions, reliance is placed upon decisions in *Pepsi Food Vs. Special Judicial Magistrate* 1998 AIR (SC) 128; *Ram Biraji Devi & Anr. Vs. Umesh Kumar Singh & anr.* 2006 JT (11) 133; *Inder Mohan Goswami & anr. Vs. State of Uttranchal & ors.* 2007 (12) SCC 1; *V.Y.Jose & anr. Vs. State of Gujarat & anr.* 2009 AIR SCW 307; *Gajratj Jain Vs. State & anr.* 2008 (147) DLT 93; *Veer Prakash Sharma Vs. Anil Kumar Aggarwal & anr.*; *Ajay Mitra Vs. State of Madhya Pradesh* 2003 (3) SCC 11; *Kusum Sandhu & anr. Vs. Ved Prakash Narang* 2009 CrLJ (Del) 1078 and *Suresh Vs. Madadevappa Shivappa Danannava & anr.* 2005 JCC (1) 405.

Upon hearing and on perusal of the impugned order as well as trial court's order of 18th May, 2011, material on record and the decisions cited, I find that except for bald assertion, petitioner has neither oral nor documentary evidence to *prima facie* to show that he had paid ₹2,00,000/- in cash to respondents No.2 & 3. Infact, second and third respondents have relied upon bank draft (Mark –X), which was got prepared from their account to show that the payment towards the UPSIDC plot was made by respondents No. 2 and 3. Summoning of respondents No. 2 & 3 by the trial court fails to take note of this vital aspect. The alleged threat purportedly extended by respondents No.2 & 3 does not appear to be plausible at all. Averments in the complaint are quite ambiguous and improbable on the face of it.

To test the validity of a summoning order, the parameters to be applied as reiterated by Apex Court in *Pepsi Foods Ltd. & Anr. V. Special Judicial Magistrate & Ors.* (1998) 5 SCC 749 are as under:-

> *"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. 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. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to illicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."*

Trial court has failed to take note of the vital facts of this case, which have been duly considered by the Revisional Court in the impugned order.

The Apex Court in *State of Orissa v. Ujjal Kumar Burdhan* (2012)

4 SCC 547 has reiterated that inherent powers of this Court under Section 482 of the Cr.P.C. are to be exercised in exceptional cases. Pertinent observations of the Apex Court in *Ujjal Kumar (supra)* on this aspect are as under: -

> *"It is true that the inherent powers vested in the High Court under Section 482 of the Code are very wide. Nevertheless, inherent powers do not confer arbitrary jurisdiction on the High Court to act according to whims or caprice. This extraordinary power has to be exercised sparingly with circumspection and as far as possible, for extraordinary cases, where allegations in the complaint or the first information report, taken on its face value and accepted in their entirety do not constitute the offence alleged. It needs little emphasis that unless a case of gross abuse of power is made out against those in charge of investigation, the High Court should be loath to interfere at the early/premature stage of investigation."*

Applying the afore-noted dictum of Apex Court in in *Pepsi Foods Ltd.* and *Ujjal Kumar Burdhan (Supra)* to the facts of instant case, I find no palpable error in the impugned order of 1st December, 2011 and so, this petition is dismissed.

(SUNIL GAUR)
JUDGE

MAY 22, 2015
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