IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 06.02.2015

W.P.(CRL) 266/2015

SHREYANS JAIN ..... Petitioner

versus

STATE OF NCT OF DELHI & ANR. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Mohit Kumar.

For the Respondents : Mr Mukesh Gupta, Additional Standing Counsel (Crl.) with SI Pankaj Tomar, PS-Kotwali.
Mr Manish Kumar Singh for Complainant.

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

CRL.M.A. 1780/2015 (Exemption)

The exemption is granted subject to all just exceptions.

The application is disposed of accordingly.

W.P.(CRL) 266/2015 & CRL.M.A.1779/2015

1. The present is a petition under Article 226 of the Constitution of India read with Section 482 CrPC 1973 seeking a prayer to quash the FIR

No.1004/2014 under Section 409 IPC registered at Police Station- Kotwali and the consequential proceedings/investigations emanating therefrom.

2. The petition is accompanied by an application under Section 482 CrPC seeking *inter alia* a stay of the investigation emanating from the subject FIR.

3. Learned counsel appearing on behalf of the petitioner assails the subject FIR principally on three grounds:- Firstly he submits that the FIR has been lodged belatedly; the second limb of his argument is that there is apparent contradiction between what has been stated in the bail application filed before the Sessions Court in Mumbai and the consequent settlement deed on the one hand and the subject FIR on the other; the third submission made on behalf of the counsel for the petitioner is that even if the FIR is read in its entirety it does not disclose the commission of an offence under the provisions of Section 409 IPC.

4. Learned counsel appearing on behalf of the petitioner has relied upon following decisions:-

1. ***Kishan Singh (D) through LRs v. Gurpal Singh & Ors.*****: 2010 Cri. L.J. 4710;**

2. ***G.K.Sawhney v. State & Anr.*: Crl.M.C. No.379/2009** decided on 12.09.2011 by a Single Judge of this Court.

5. The facts as are relevant for the adjudication of the present petition are that one Rajiv Aggarwal (complainant herein) is engaged in the diamond business at Raghushree Jewels, Keshav Market, Maliwara, Chandni Chowk, Delhi. Sometime in September, 2009 the petitioner approached the complainant and evinced interest in doing business with the latter. A perusal of the FIR reveals that the complainant exhibited several diamonds on the request of the petitioner, out of which the latter picked up certain diamonds for sale to parties on behalf of the complainant. Similar transactions are stated to have taken place between the complainant and the petitioner herein. On numerous occasions the petitioner requested other diamond jewellery sets from the complainant to be shown to the former's purported customers. Simultaneously, certain items of diamond jewellery were also brought to the complainant by the petitioner for sale. The complainant is stated to have repeatedly asked the petitioner to settle accounts in this behalf. However, the petitioner kept putting off settlement on one pretext or the other, principally that the diamonds supplied by the complainant had been selected by his customers and that they would be finally be paid for. However, no sale consideration in this behalf was forthcoming. The transactions between the petitioner and the complainant went on for the period between 20.09.2013 and 10.10.2013 when the petitioner received a call from one Sh.Manish Shah proprietor of Rahil Gems, Mumbai. The latter informed the complainant that the petitioner had taken diamonds jewellery from the said Sh.Manish Shah on the pretext that the same shall be sold to the complainant and had not paid for them. It was further disclosed that the petitioner was not responding to telephone call made to his mobile number. The FIR further reveals that suddenly on 11.07.2014 the Mumbai Police arrested the father of the complainant, who had retired from the family business, in a false, fabricated and frivolous FIR. I have been informed at the bar that the father of the complainant has since been released on regular bail after a settlement was arrived at between the complainant, his father and the said Sh.Manish Shah, proprietor of Rahil Jain. Even after this unfortunate incident the complainant made repeated demands to recover his outstanding from the petitioner in vain. Eventually, the complainant filed a complaint on 06.12.2014 which has resulted in the subject FIR.

6. On behalf of the State it has been urged that an FIR has been registered; investigations are ongoing; non-bailable warrants have been issued against the petitioner by the trial court concerned on 20.01.2015; the anticipatory bail applications filed on behalf of the petitioner in the subject FIR have been withdrawn by the petitioner from the court of the Additional District Judge, Tis Hazari Courts, Delhi.

7. Coming to the first submission made on behalf of the petitioner it is seen that the same does not hold water. The decision cited on behalf of the petitioner does not come to his aid because in that case the FIR had been filed long after a civil court had determined the suit against the complainant and was a counter-blast to the outcome of the civil dispute.

8. In the present case it is seen that the transaction between the parties continued from the month of September, 2013 to October, 2013 and the complaint has been filed in the month of December, 2014 after the complainant and his father had to undergo harassment at the hands of Sh.Manish Shah in the form of the registration of an FIR in Mumbai. This argument on behalf of the petitioner is thus devoid of merit and is consequently rejected.

9. The learned counsel for the petitioner has invited my attention to the settlement agreement arrived at between the complainant, his father and the said Sh.Manish Shah to urge that nowhere in the said settlement deed has it been stated that the complainant was the victim and that he had paid the petitioner for the diamonds jewellery supplied to him by the latter belonging to the said Sh.Manish Shah. Further he has urged that the involvement of the petitioner in those transactions is conspicuous by its absence in the settlement deed.

10. A bare reading of the deed of settlement as aforesaid makes it very clear that the submissions made on behalf of the petitioner in this behalf, to say the least, are not true. The settlement deed clearly records that the transactions between the parties were conducted through the offices of the petitioner and that it is the petitioner alone who has resorted to cheating and defrauding the parties to the settlement deed. The said submission on behalf of counsel for the petitioner is thus false and frivolous. It is rejected accordingly.

11. Coming to the last submission on behalf of the petitioner, a bare reading of the provision of Section 409 IPC discloses that where property is entrusted to a person in his capacity as an agent and the agent commits criminal breach of trust in respect of that property he shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

12. In my view the allegations against the petitioner in the FIR as aforementioned clearly make out a prima-facie case within the meaning of the provisions of Section 409 IPC. Whether these allegations are true or not are all matters of evidence which the trial court is required to examine. As aforementioned the investigation is still in progress. Consequently, the subject FIR cannot be quashed. Before parting with the case it would be incumbent upon me to allude to the fact that the present petition is an attempt by the petitioner to overreach the Sessions Court where the petitioner's bail applications have repeatedly been withdrawn by seeking a stay of the proceedings emanating from the subject FIR.

13. In view of the above discussion there is no merit in the present petition and the same is dismissed.

SIDDHARTH MRIDUL, J

FEBRUARY 06, 2015
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