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

\+ **W.P.(CRL) 900/2012 & Crl.M.A.7821/2012**

Date of Reserve: 13.08.2015
Date of Decision: 23.09.2015

PANKAJ BAJAJ ..... Petitioner
Through: Mr. Manav Gupta and Ms. Esha Dutta, Advs.

versus

STATE NCT OF DELHI & ANR. ..... Respondents
Through: Ms. Richa Kapoor, ASC with Mr.Rohit Kaul, Adv. Mr.Subodh K. Pathak, Adv. for R-2.

\+ **W.P.(CRL) 916/2012 & Crl.M.A.12078/2012**

RASHMI BAJAJ ..... Petitioner
Through: Mr. Manav Gupta and Ms. Esha Dutta, Advs.

versus

STATE NCT OF DELHI & ANR. ..... Respondents
Through: Ms. Richa Kapoor, ASC with Mr.Rohit Kaul, Adv. Mr.Subodh K. Pathak, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J.

1. The petitioners in the aforesaid petitions have sought quashing of the FIR bearing registration No.234/2011 (P.S.Crime Branch) dated 14.9.2011 instituted under Sections 420/467/468/471/120B of the

Indian Penal Code ('IPC' for short). During the pendency of the present petition, charge sheet was submitted on 25.7.2013 under Sections 420/467/468/471/120B IPC read with Sections 3/4/9 of Delhi Land (Restriction on Transfer) Act, 1972 read with Sections 118(5) and 118(7) of Delhi Cooperative Societies Act, 2003. As a result thereof, a prayer was made on behalf of the petitioners for amending the relief to be sought and thereby seeking quashing of the charge sheet as well.

2. In order to appreciate the contention of the parties, it is necessary to refer to the first information report lodged by respondent no.2.

3. It has been averred in the complaint by respondent no.2 that she is the owner of plot No.A-20, New Friends Colony, New Delhi admeasuring 435 sq.yards and she is the legal heir of late Rajender Dev Sharma in terms of the aforestated property. The aforesaid land was allotted to her father in his capacity of being a member of New Friends Cooperative House Building Society, by a perpetual sub lease dated 16.6.1982, duly executed in his favour. It has been stated in the complaint that in compliance of the aforesaid allotment, possession of the property was handed over to her father. Subsequently, the allotment to her father was cancelled by Delhi Development Authority on account of violation of the terms of allotment. The respondent no.2 filed a petition before the Delhi Development Authority praying for restoration of the allotment of the said plot of land. Her representation was acted upon and the plot was restored in her name by the Delhi Development Authority vide letter No.F-27(902) 78/CS/NC/3881

dated 12.5.2009 issued by Deputy Director (CS), Delhi Development Authority with the condition that the restoration charges as applicable shall be paid.

4. The respondent no.2, was asked to deposit the restoration charges amounting to Rs.24,875/- which was deposited with the concerned authorities on 13.5.2009 and thereupon, the plot in question was restored in her favour.

5. It is further alleged that when she visited the plot on 18.5.2009, she found that construction of a building was going on and in fact the construction had come upto the roof of the ground floor. No such construction activity was spotted by her when she had visited the said plot of land on 2.5.2009. That time, the plot was absolutely vacant.

6. On enquiry, the respondent no.2 came to learn that Pankaj Bajaj (petitioner in W.P.(CRL) 900/2012), a builder, has been raising construction over the said plot of land in connivance with one Mr.R.L.Jaggi, President of New Friends Cooperative House Building Society. It was also learnt that Pankaj Bajaj and S.D.Bajaj were claiming to be the owners of the said plot of land. A complaint was made to the police but no action was taken. Pankaj Bajaj was informed by respondent no.2 and her husband that DDA had already issued a letter on 22.1.2009 restoring the possession of the plot of land to respondent no.2. Pankaj Bajaj was also made to learn that the society had unauthorisedly sold the said plot to him when the society was not competent to do so as the allotments could only be made by the DDA after considering the eligibility and seeking clearance from the Registrar of the Cooperative Societies.

7. The aforesaid intimation to Pankaj Bajaj did not yield any result; on the contrary Pankaj Bajaj threatened respondent no.2 of dire consequences.

8. It was alleged that a suit for declaration and perpetual injunction was filed by aforesaid Pankaj Bajaj on the basis of false, forged and fabricated documents for the purposes of depriving the respondent no.2 of her valuable legal rights with respect to the said property.

9. It was, therefore, alleged that the accused persons including the petitioners, had hatched a conspiracy to grab the land in question and have made themselves liable to be prosecuted.

10. The aforesaid FIR was investigated by the police and charge sheet was submitted, as stated earlier, on 25.7.2013 under Sections 420/467/468/471/120B IPC read with Sections 3, 4 & 9 of Delhi Land (Restriction on Transfer) Act, 1972 read with Sections 118(5) and 118(7) of Delhi Cooperative Societies Act, 2003.

11. During the investigation, it was found that huge chunks of land measuring 828 Bighas and 15 biswas situated in village Kilokari and Khizrabad was notified under Section 4 of the Land Acquisition Act, 1894 in the year 1959. There was a further notification under Section 6 of the Land Acquisition Act in the year 1969. The land which was acquired vide award no.49/72-73 included the plot in question namely A-20, New Friends Colony, New Delhi. The aforesaid plot was carved out of khasra number 60/3 which originally was owned by one Mr.Bishambar Dayal and his family.

12. The acquired land was allotted to the New Friends Cooperative House Building Society through its president R.L.Jaggi (father of accused M.L.Jaggi) and Secretary Sh.Bal Mukand. The allotment was by way of an agreement in which certain terms and conditions were fixed which were to be abided by the society.

13. Plot No.A-20, New Friends Colony, New Delhi was allotted to the father of respondent no.2 by way of a sub lease on 16.8.1982 by the DDA and the possession was also handed over to him. The allottees of Plot Nos.A-13, A-14 and A-19 had settled and compromised their disputes, out of Court, with Bishambar Dayal, the original owner who had filed a writ petition against the DDA and the society. Aforesaid A-20, the plot in question, remained under litigation. In the year 1992, plot no.A-20 was sold by the father of respondent no.2, in violation of terms and conditions of the lease agreement. The allotment was therefore cancelled. Later, at the request of respondent no.2, the sub lease was restored in favour of respondent no.2 after payment of restoration charges by her.

14. In the meantime, the investigation revealed, a settlement was arrived at between the New Friends Cooperative House Building Society and Bishambar Dayal, the original owner. Neither the respondent nor her father were made party to the aforesaid compromise or were made aware of said out of Court settlement. Later in the year 2004, one of the members of the society namely Lt.Col.D.R.Thukral requested for withdrawal of his membership which was accepted and the amount which he had paid was refunded

to him. Petitioner Rashmi Bajaj [W.P (Crl.) No.916/2012] was inducted in place of D.R.Thukral without taking any necessary approval of the registrar of the cooperative societies. The minutes book of the society also appeared to have been manipulated by Mr.M.L.Jaggi with the help of one Nakul Chand, Office Superintendent of the society.

15. On investigation, the original minutes book of the society was found to have been tampered. Resolution no.6 which related to plot no.A-20 was found to have been interpolated after applying whitener over the earlier writing. The members of the managing committee of the society also disclosed before the investigating agency that the minutes/resolutions were not written in front of them rather they were jotted down after the meeting and behind their back at the instance of M.L.Jaggi.

16. A false affidavit also was stated to have been submitted by petitioner Rashmi Bajaj to New Friends Cooperative House Building Society on 9.12.2004 for getting membership in the aforesaid society. She is said to have sworn an affidavit that she did not own any plot of land in Delhi nor does her husband or anyone of her dependants have any plot of land or house in Delhi. The husband of petitioner Rashmi Bajaj namely S.D.Bajaj is the owner of plot No.A-118, New Friends Colony, New Delhi and house no.200, Sukhdev Vihar, New Delhi. Thus petitioner Rashmi Bajaj swore a false affidavit, clearly violating the provisions of Section 5(1) (e) of the byelaws of the New Friends Cooperative House Building Society. After petitioner Rashmi Bajaj became, in an unauthorised manner, a member of the society, she

transferred her membership to her son Pankaj Bajaj (Petitioner in W.P.(CRL) 900/2012) on 25.2.2005 within a period of three months which also was in violation of Clause 9(1) of the bye-laws of New Friends Cooperative House Building Society.

17. FSL report confirms that the minutes book of the New Friends Cooperative House Building Society was manipulated and tampered with. Thus charge sheet was submitted against the petitioners under the aforementioned sections of IPC, Delhi Land (Restriction on Transfer) Act, 1972 and Delhi Cooperative Societies Act, 2003.

18. Assailing the first information report as well as the charge sheet, the petitioner submitted that respondent no.2 and the DDA were parties to the writ petition No.764/1971 filed by the erstwhile owners of the property and were also privy to the settlement of disputes between the society and the erstwhile owners. It was a matter of record, it has been argued, that a compensation of Rs.48 lakhs was paid by the society to the erstwhile owners and the aforesaid money was taken by the society from the petitioner Pankaj Bajaj. The society had thereafter transferred the plot to petitioner Pankaj Bajaj by executing a transfer letter dated 13.6.2005 and thereafter a sale deed on 26.3.2007.

19. A grievance has been laid by the petitioners that after lapse of several years, respondent no.2 had applied for restoration of the sub lease with respect to plot no.A-20. The petitioners had lawfully purchased the aforesaid property and without hearing them, the sub lease was unilaterally restored in favour of respondent no.2.

20. It has been submitted that petitioner Pankaj Bajaj filed CS(OS)

No.1114/2009 seeking declaration and permanent injunction against respondent no.2 in which an order was passed granting stay from dispossession. However, the learned Single Judge dismissed the said suit vide order dated 01.07.2013. The petitioner challenged the abovesaid order by way of a Regular First Appeal. The Division Bench of the Delhi High Court, in RFA (OS) No.72/2013, set aside the said order and the matter was remanded for trial. Thus the civil suit is still pending adjudication. The petitioners, therefore, have contended that the order dated 14.9.2011 whereby the complaint lodged by respondent no.2 was sent under Section 156(3) for institution of a regular case was absolutely unwarranted and uncalled for.

21. It was further argued that no offence can at all be said to have been made out against the petitioners under Section 420 of the IPC as the ingredient of fraudulent intention is missing from the very inception. The case primarily has a civil flavour and the prosecution of the petitioners by way of a police case is nothing but an abuse of the process of the Court. It has been submitted that respondent no.2 is only trying to arm-twist the petitioners for meeting her unlawful demands. It is submitted that there is a basic difference between a false/forged document and a false statement in a document. It is not the case of the prosecution that the petitioners had forged the signature of any other person or that petitioner Rashmi Bajaj portrayed herself as somebody else. Thus, no offence of forgery also can be said to have been made out against the petitioners.

22. The further contention of the petitioners is that the provisions of Sections 3/4/9 of the Delhi Land (Restriction on Transfer) Act, 1972 and Sections 118(5) and 118(7) of the Delhi Cooperative Societies Act, 2003 are not applicable to the facts of this case as the petitioners have purchased the property from the society with the knowledge and consent of DDA by way of a registered sale deed dated 26.3.2007.

23. The learned counsel for the State on the other hand pointed out that after a threadbare investigation into the offences the police has submitted charge sheet against the petitioners. The petitioners would have an opportunity to assail the aforesaid investigation report if the same is acted upon and cognizance is taken against the petitioners. The petitioners would also get an opportunity of seeking their discharge at the appropriate stage. It was, therefore, argued that the FIR and the charge sheet which clearly disclose the commission of offences under the various sections of the IPC and other acts should not be interfered with and the criminal prosecution should not be stifled at the threshold.

24. Learned counsel for the petitioners countered such an argument by making a reference to two decisions of the Supreme Court in Pepsi Foods Ltd and Another vs. Special Judicial Magistrate, 1998(5) SCC 749 and Ashok Chaturvedi and Ors vs. Shitul H.Chanchani, 1998(7) SCC 698 wherein it has been held that though the Magistrate trying a case has jurisdiction to discharge the accused at any stage of trial if he considers the charge to be groundless but that would not mean that the accused would not be able to approach the High Court under Section 482 of the Code of Criminal Procedure or under Article 227 of the

Constitution to have the proceedings quashed against them when no offence is made out.

25. Jurisdiction under Section 482 of the Code of Criminal Procedure has to be exercised with great care and caution and superficiality is not expected of the courts while exercising its jurisdiction under Section 482 of the Code of Criminal Procedure.

26. No doubt the High Court is required to see whether the offence alleged is essentially of a civil nature and has only been given a colour of criminal offence but it is also not to be forgotten that in cases where there is civil dispute, there is also a possibility of commission of a criminal offence and if the civil nature of the case and the criminal offence are so closely intertwined where segregation of the two aspects is not possible, the case cannot be discharged on that account.

27. Before evaluating and analysing the submissions made on behalf of the parties, it would be apposite to briefly refer to the scope and impact of the inherent powers of the High Court under Section 482 of the Code of Criminal Procedure.

28. In Sushil Suri vs. Central Bureau of Investigation and Another, (2011) 5 SCC 708, the Supreme Court at para 16 has enumerated the circumstances under which such powers could be exercised:-

> ***16.*** *Section 482 CrPC itself envisages three circumstances under which the inherent jurisdiction may be exercised by the High Court, namely, (i) to give effect to an order under CrPC; (ii) to prevent an abuse of the process of court; and (iii) to otherwise secure the ends of justice. It is trite that although the power possessed by the High Court under the said provision is very wide but it is not unbridled. It has to be exercised sparingly, carefully and cautiously, ex debito*

justitiae to do real and substantial justice for which alone the Court exists. Nevertheless, it is neither feasible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Yet, in numerous cases, this Court has laid down certain broad principles which may be borne in mind while exercising jurisdiction under Section 482 CrPC. Though it is emphasised that exercise of inherent powers would depend on the facts and circumstances of each case, but the common thread which runs through all the decisions on the subject is that the Court would be justified in invoking its inherent jurisdiction where the allegations made in the complaint or charge-sheet, as the case may be, taken at their face value and accepted in their entirety do not constitute the offence alleged."

29. In R.P.Kapur vs. State of Punjab, AIR 1960 SC 866, one of the earlier cases in which the Supreme Court has listed some of the instances where the inherent powers under Section 482 of the Cr.P.C could be exercised in quashing criminal proceedings. These are as hereunder:-

(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding as for example want of sanction;

(ii) Where the allegations in the FIR or the complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced which clearly or manifestly fails to prove the charge.

30. In several decisions, the Supreme Court has reiterated the

maxim *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable.

31. It is well settled that although the power possessed by the High Court under Section 482 Cr.P.C is very wide but the same cannot be invoked in an unbridled fashion. It has to be exercised sparingly, carefully and cautiously for delivering real and substantial justice. Where and when such powers would be exercised would be largely dependent on the special facts and circumstances of each case and no straight-jacket formulae could be enunciated. The thumb rule is that a legitimate prosecution cannot be halted midway.

32. Bearing the aforementioned aspect of justicing in mind and then having examined the allegations raised in the FIR and in the charge sheet, it prima facie appears to be a case where the interference of this Court at such preliminary stage is not required. It would be too much for this Court to give a final verdict as to whether the petitioners have or have not committed the offence of cheating under Section 420 of the Code of Criminal Procedure. The charge sheet discloses the commission of offence. Section 420 of the IPC provides punishment for cheating which has been defined under Section 415 of the Indian Penal Code. Similarly the definition of forgery is very wide and no distinction need be made at the present stage between a forged document and a false statement in a document.

33. The petitioners would be at liberty to raise the issues of non

applicability of the provisions of Delhi Land (Restriction on Transfer) Act, 1972 and Delhi Cooperative Societies Act, 2003 at the appropriate stage.

34. This Court, on the basis of the aforementioned discussion and taking into account the materials collected during the investigation is not inclined to quash the FIR or the charge sheet. The petitioners would be at liberty to raise all the grounds which they have raised in the present petition at the appropriate stage.

35. The petitions are dismissed with the aforesaid observations.

Crl.M.A.7821/2012 in W.P.(CRL) 900/2012 & Crl.M.A.12078/2012 In W.P.(CRL) 916/2012

1. In view of the petitions having been dismissed, no orders are required to be passed in the aforesaid applications.

2. Dismissed as having become infructuous.

SEPTEMBER 23, 2015 **ASHUTOSH KUMAR, J**

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