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

% Judgment *pronounced on: May 19, 2015*

\+ **CRL.M.C. 3369/2014 & Crl.M.A. Nos.11682/2014 & 18814/2014**

RAJESH KUMAR SINGH ..... Petitioner
Through Mr.Sudhir Nandrajog, Sr. Adv. with Mr.Abhay Kumar, Mr.Tenzing Tsering, Mr.Avdesh Kr. Singh and Mr.Khalid Akhtar, Advs.

versus

STATE OF NCT DELHI & ANR ..... Respondents
Through Mr.M.N.Dudeja, APP for the State along with SI Lokesh Sharma in person.
Complainant in person.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C seeking quashing of order dated 2nd July, 2014 passed by Additional Sessions Judge, Dwarka, Delhi in Application No.1406/14 titled as "*State vs Rajesh Kumar Singh*" whereby the application for cancellation of anticipatory bail was allowed on the ground that the petitioner failed to produce the original documents.

2. Brief facts of the case leading as per present petition are :

a. The petitioner filed a complaint before SHO, Police Station Sector-9, Dwarka on 10th November, 2011 against Sh. Jitendra Sharma-complainant for registration of an F.I.R in respect of cheating and criminal breach of trust by stating the fact that despite taking a sum of Rs. 25,00,000/- cash from the petitioner, the complainant neither handed over the original documents to the petitioner nor the physical possession of the flat which was earlier sold to the complainant by the petitioner, however the police did not register F.I.R. against the complainant.

b. The petitioner also filed a civil suit being CS (OS) 3236/2011 titled as '*M/s Millennium Infracon Pvt. Ltd. vs Jitendra Sharma'* for specific performance for agreement to sell and purchase dated 19th July, 2011 for the consequential relief(s) and permanent and mandatory injunction on 20th December 2011 which is still pending before this Court. In the said suit the petitioner had mentioned that the original documents were not in his possession.

c. As no action was taken by the police to register F.I.R. the petitioner had subsequently filed a complaint under Section 156(3) and 200 Cr. P.C. before Chief Metropolitan Magistrate, Dwarka on 26th April, 2012. In the above said complaint the petitioner had mentioned in para no. 15 as under : -

> "15. That the complainant and the witness had signed the aforesaid agreement, Respondent/Accused took the original Agreement along with him for getting the photocopy of the agreement and Respondent/Accused had assured the complainant at the earliest. The

complainant however kept on repeatedly asking Respondent/Accused for the original agreement for which Respondent/Accused repeatedly informed the complainant that whether the original is with Respondent/Accused or Complainant it does not make any difference and that Respondent / Accused will execute the sale deed on or before 10.11.2011."

d. On the basis of the above said complaint, the Metropolitan Magistrate had directed for registration of F.I.R. and accordingly, F.I.R. bearing No. 134/2012 was registered against the complainant on 27th June, 2012 at P.S Dwarka South, Delhi. The factum of taking the original documents by complainant was also recorded and reiterated in the said F.I.R.

e. The complainant got lodged F.I.R. No.63/2013 under Sections 380/448/34 IPC registered at Police Station, Dwarka South on 6th March, 2013 against the petitioner in a counterblast after 9 months of the earlier FIR.

f. On the registration of the above said FIR No. 63/13 dated 6th March, 2013, the petitioner moved an application for seeking anticipatory bail which was allowed by Additional Sessions Judge (Vacation Judge) on 17th June, 2013 who granted the anticipatory bail to the petitioner subject to furnishing a personal bond of Rs. 15,000/- with one surety of the like amount to the satisfaction of IO/SHO with the condition that the petitioner shall join the investigation as and when required by IO/SHO and will also produce all the documents i.e. Agreement to sell and money receipt (original). It is the case of the petitioner that he or his counsel had not heard the order properly about the additional condition with regard to producing of the original documents otherwise they ought to have mentioned to the trial court at that time itself that the same are in the possession of the complainant.

g. Thereafter, the complainant moved an application for cancellation of anticipatory bail of petitioner. In addition the petitioner also filed the reply to application for cancellation of anticipatory bail. The petitioner also moved an application for rectification/modification/correction of the bail order dated 17th June, 2013. The trial Court by order dated 2nd July, 2014 directed the petitioner to surrender before the IO within three days.

3. It is the case of petitioner that the petitioner never stated in his bail application that the original documents is in possession with him rather all the time, at various places he stated that original documents is in the possession with the complainant. In the civil suit filed by the petitioner before this Court, the petitioner mentioned in para no. 13 of the plaint that the original documents are in the hands of the complainant. It is argued that IO of the case filed the application for discharge of complainant in petitioner's FIR and filed the final report for closing the investigation. It is submitted that on one side the IO of the case had been demanding original documents and on the other hand filed the closure report in the same chain of causation with respect to the same property and the same IO also filed an application under Section 182 IPC for prosecuting the petitioner and

on the other side the IO of the case filed an application for cancellation of bail of the petitioner. It is submitted that the IO of the case was well aware about the civil suit and also well aware of the fact that original documents are not in the hands of the petitioner and merely statement was recorded by the IO who simply denied about the same in the case of the complainant.

4. After registration of the Sale Deed dated 19th July, 2010 it came to the knowledge of the complainant that his name had been wrongly mentioned as "Jitendera Sharma" instead of "Jitendra Sharma". Thus, on 13th October, 2010 a Rectification Deed was executed for the correction of the complainant's name in the Sale Deed dated 19th July, 2010. It is submitted that the said third floor with roof right is still in the name and possession of the complainant and as per the belief of the petitioner, the said third floor was rented out to one Shri U.P. Singh, having mobile nos. 0968319772 and 09311319772 who has been residing there for the last one year.

5. Thereafter, first floor of the said property was sold to one Smt. Jagrati Ghai and second floor was sold to Smt. Anjana Ghai respectively without roof right, vide registered Sale Deed dated 1st October, 2011 before Sub-Registrar-IX, Distt South West, New Delhi for total consideration of Rs. 31 Lakhs. The registered sale deed was collected by the parties from the Sub-Registrar Office after one month period. The parties while collecting the said Sale Deed from the Sub-Registrar Office realized that instead of the "First and Second floors", the word ""Ground & First floor" was wrongly mentioned in the said Sale Deed. Therefore, the parties asked the petitioner to make

necessary correction/rectification of the said mistake. Upon receiving the said information the petitioner agreed for the same and the same was duly rectified vide Rectification Deed dated 5th December, 2011.

6. The petitioner sold the fourth floor to Smt. Kanchan Gupta without roof right vide registered Sale Deed dated 5th December, 2011 for total consideration of Rs. 32 Lakhs. This sale deed makes it clear that the roof right of fourth floor is given to the complainant.

7. The suit was restored vide order dated 20th March, 2015 and by order dated 22nd January, 2015 passed in the suit dismissing the same for non- prosecution was recalled and the next date of hearing was given as 26th May, 2015.

8. On the contrary, the case of the complainant is that the petitioner filed the false civil suit before this Court on the basis of forged/false Agreement to Sell. As far as criminal matter is concerned it is stated that the case was wrongly closed on the basis of a false report that the disputes between the parties have been compromised, as the complainant has been provided another flat on the 2nd Floor of the same building. The case of the complainant is that as a matter of fact due to pressure from the higher authorities the DCP/ACP again called the complainant on 1st November, 2011 in his office and when the complainant entered inside of the office, he found that the petitioner was already present there. The DCP/ACP (South West) on being pressurized by the press people and social workers had tried to settle the problem and directed the petitioner to handover the 2nd floor of the property in favour of the complainant, since the complainant was staying outside the building along with his wife and children. The

ACP had also asked the complainant to accept the 2nd floor for the time being instead of the flat on the 3rd floor with roof right. ACP also assured the complainant that later on the petitioner may hand over the floor to the complainant. Thus, he was compelled to accept the temporary arrangement and entered into the flat on the 2nd floor of the property and the goods of the complainant were shifted from the 3rd floor to the 2nd floor of the property.

9. The complainant has referred order dated 2nd July, 2014 passed by Additional Sessions Judge in connection with the FIR No. 63/13, under Section 448/452/380/420/467/471/506/120B IPC., P.S. Dwarka South, (Crime Branch), Delhi wherein it was held as under:

> "............... once the accused was beneficiary of the said documents, therefore the said original document must have been in possession of the accused and further that at no point of time the accused had taken the stand even after passing of considerable period since grant of his anticipatory bail that the original of the said documents is not in his possession or that the same is in possession of complainant. They have further submitted that. the original purported Agreement to Sell dated 19.07.2011 regarding the property in question, vide which the accused had claimed that the complainant had agreed to sell back the property in question to him, has been found to be false during investigation as in stamp paper in which the said document was typed, was found to have been issued from the concerned treasury to the particular stamp vendor on 21.09.2011 and hence the said purported Agreement to Sell could not have been executed, prior to the issuance of the said the stamp paper from the treasury. They have also contended that as per the claim of the accused, the aforesaid Agreement to Sell regarding the property in question was executed in Delhi on 17.09.2011, but the complainant was found to be present in Mumbai on that

date and records regarding to and fro air journey of the complainant from Delhi to Mumbai have been collected and mobile phone call detail records of the complainant reveal that he was in Mumbai on that date and not in Delhi, as claimed by the accused. They have also submitted that as per the claim of the accused, the said Agreement to Sell was executed in the office of the accused at Sector 8, Dwarka, and the same was witnessed by two witnesses namely Vijay Kr. Choudhary and Santosh Shukla. However, during investigation both the witnesses were found to be associates of the accused having made numerous mobile communications with the accused during the relevant period and also from the call detail records from the mobile phones of both the witnesses were found that both of them were not present at Dwarka but somewhere else."

10. It is stated that by the complainant that petitioner did not bother to comply the conditions of the bail order dated 17th June, 2013 till 2nd July, 2014 when his bail was cancelled and till today, he did not produce the original documents of Agreement to Sell and the Money Receipt dated 19th July, 2011 to the I.O. inspite of receiving notice under Section 160/91 Cr.P.C. The IO wanted to arrest the petitioner for his custodial interrogation and for the collection of original documents and relevant evidences, but could not arrest him since the petitioner is absconding since 2nd July, 2014. In order to protect and shield his wrong acts of fraud and cheating, the petitioner filed the present petition under Section 482 Cr.P.C to set aside the order dated 2nd July, 2014, so that he would be absolved from producing the original documents i.e. Agreement to Sell and Money Receipt which were prepared by him by forging the signature of the

complainant and if the said documents are produced before the I.O., then the same will be sent to the CFSL and the true picture will come before the Court. Being afraid of the same, the petitioner filed the present petition before this Court to protect his series of wrong acts and deeds which tantamount to offences under Section 420/468/406/471/34 IPC.

11. It is urged by the complainant that the petitioner has suppressed a vital and material fact before this Court that the Agreement to Sell was executed on 17th September, 2011, but the stamp duty of the same was purchased from treasury on 21st September, 2011. Moreover, as per the Investigation Report of the I.O., on the alleged date of execution of the alleged Agreement to Sell, the complainant was at Mumbai, and the alleged witnesses of the alleged Agreement were present in U.P. Hence, the custodial interrogation of petitioner is very essential to collect the evidences and to unearth the truth, which has not been done till today due to adamant attitude of the petitioner.

12. It is alleged that petitioner had violated the conditions of the anticipatory bail order and the IO has moved an application for cancellation of the anticipatory bail of the petitioner. Hence, the anticipatory bail was cancelled on 2nd July, 2014 and directed the petitioner to surrender before the I.O., but instead of surrendering before the I.O., the petitioner moved an application before the same Court for extension of time to file an appropriate application before this Court, but on perusal of the report dated 8th July, 2014 of the I.O., the Additional Sessions Judge dismissed his prayer.

13. In additional affidavit dated 21st March, 2015 filed on behalf of the petitioner, it was deposed that the Company got the layout plan prepared for the construction of individual Builder Floor on Plot no. 76 through Architect C.S. Solanki and the same was duly sanctioned by the DDA on 20th May, 2010. The Company constructed the building having total four floors with parking on Plot No. 76 within the sanction plan of the DDA viz. ground parking, 1st, 2nd 3rd and 4th Floor.

14. The Company sold third floor to the complainant along with roof right of the said property vide registered Sale Deed dated 19th July, 2010 before Sub-Registrar- IX, Distt South West, New Delhi for total consideration of Rs. 20 Lakhs. Since total four floors were completed prior to the sale of third floor, the roof right of fourth floor was understood to be sold to the complainant. The amount was paid through cheques vide different dates, the details of which are produced herein below:

1) Rs. 50,000/- bearing cheque No. 000083 dated 30.01.2008 drawn on SBI, New Delhi.
2) Rs. 3,00,000/- bearing cheque No. 663021 dated 30.05.2008 drawn on SBI, New Delhi.
3) Rs. 3,00,000/- bearing cheque No. 998666 dated 31.05.2008 drawn on SBI, New Delhi.
4) Rs. 10,00,000/- bearing cheque No. 000006 dated 03.05.2010 drawn on Yes Bank, New Delhi.
5) Rs. 3,50,000/- by cash.

The amount for the purchasing the property i.e. third floor was paid by the complainant three years prior to construction of the building, in fact, even prior to the issuance of sanction layout plan by the DDA, which shows that the petitioner and the complainant are known to each other even before the execution of the sale agreement.

15. In case the trial Court order is examined carefully, there are serious allegations against the petitioner. The petitioner is a builder. It is the case of the complainant that in order to remove the complainant, the petitioner has managed the show i.e. by filing of frivolous complaint and suit for specific performance. The said litigation is just an eye wash and afterthought in order to confuse the Courts by the petitioner as he had removed the complainant from the 3rd floor which was attached with terrace. Now the complainant cannot enjoy the said facility in view of the conduct of the petitioner.

16. Although the petitioner has denied all the allegations of complainant but at the same time, the petitioner has offered the complainant to take the roof above the fourth floor at any time. It has come on record that as far as disputed floor is concerned the same has already been sold to the third party.

17. It has come on record that at one point of time, the disputes between the parties were temporarily resolved when the complainant shifted his residence to 2nd Floor but the case of the complainant is that the said floor was taken under pressure of the police otherwise he always wanted to have the residence at the top floor with roof right as per agreement. One of the crucial facts of the matter is that the petitioner had sold the 4th Floor as alleged by the petitioner, (though as per complainant it is 3rd Floor), to the third party when the dispute

was under sub-judice. It is also unbelievable to accept the version of the petitioner that when the bail was granted to the petitioner and his counsel did not hear the additional condition to hand over the original documents to the IO, though the petitioner had his own version in this regard. All the pleas raised by the parties are to be tested after trial.

18. At present, it would not be proper to send the petitioner to judicial custody as no useful purpose would be served as he has stated that the original documents are not in his possession. It is also a matter of fact that earlier anticipatory bail was granted to him however, the same was cancelled due to non-compliance of condition but at the same time, it is also a matter of fact that the petitioner had sold the impugned floor which was earlier in the possession of the complainant (who was allegedly removed by the petitioner). The said floor was sold by the petitioner to third party during investigation and pendency of proceedings. In order to strike the balance at this stage and without expressing any opinion on merit, certain conditions are necessary to be imposed while confirming the impugned order of the trial court.

19. Considering the overall facts and circumstances of the matter and after having gone through the entire gamut, the present petition is disposed of by modifying the impugned order with the following directions:

i) The petitioner shall deposit 50% of the sale proceed received by him with the trial Court by way of bank draft within two weeks. In failure to do so, the petition shall be treated as dismissed and consequently the petitioner shall surrender before the trial court on 3rd June, 2015.

ii) The complainant without prejudice if he is keen so would be at liberty to take the possession of terrace from the petitioner as offered by him as per agreement within the period of four weeks if he opts.

iii) Trial court proceedings are expedited.

20. Subject to above mentioned terms, the interim order passed on 11th August, 2014 is made absolute. The petition is disposed of.

(MANMOHAN SINGH)
JUDGE

MAY 19, 2015