

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

% Judgment pronounced on : 29th June, 2015

+ **CRL.M.C. 3115/2011**

RAM DILAWRI & ANR. Petitioners

Through: Mr. Manish Aggarwal, Adv.

With Vikram Saini, Adv.

versus

STATE OF NCT OF DELHI Respondents

Through: Mr. Harish Malhotra, Sr.Adv. with
Mr. Mahir Malhotra, Adv. for the
complainant.

Mr. A.S. Chandhiok, Sr.Adv. with
Mr. Rishabh Bansal, Ms. Manmeet
Arora, Adv. for applicants i.e. Daljit
Singh and Sarvjit Singh in Crl.M.A.
No.3354/2015

Mr.M.N. Dudeja, APP for State

CORAM:

HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioners have filed the present petition under Section 482 Cr.P.C. for setting aside the order dated 11th July, 2011 passed by Additional Sessions Judge-03, South East, Saket Courts, New Delhi, whereby the criminal revision of the respondent was allowed and the petitioners were asked to face the trial in the matter.

2. FIR No.517/2006 in the present case was registered under Sections 420/120B IPC on the complaint of Sh P.K. Jolly/respondent No.2 against the petitioner No.1 being the Directors of M/s Hari Steel

and General Industries represented to the complainant/respondent No.2 that he is the owner of property No. A-22, Mohan Co-operative, Industrial Estate, Mathura Road, New Delhi. Respondent No.2/complainant agreed to purchase the half of their property for a sum of Rs. 22 crores and part payment of Rs. 4 crores was paid at the time of execution of Memorandum of Understanding dated 24th May, 2003. There were allegations in the complaint that the petitioners were unable to complete the formalities. The petitioners thereafter returned back the part payment of Rs.1,10,00,000/- and a sum of Rs. 2.90 crores was retained by them for getting the formalities completed at their end. It was further alleged in the complaint that petitioners had agreed to stop the misuser of property and get the property cleared from MCD dues as well as DDA. But they did not take any steps to transfer the property in his name. The complainant/respondent No.2 further alleged that he came to know in the meanwhile that petitioners have agreed to sell the aforesaid property to Sarvjeet Singh and Daljeet Singh.

3. The petitioners were granted anticipatory bail in the aforesaid FIR by this Court on 20th December, 2006 and at the time of grant of anticipatory bail, this Court directed the petitioners to deposit Rs.3 crores with the Registrar General of this Court in order to show his bonafides, which was subsequently deposited.

4. The petitioners also filed a petition under Section 482 Cr.P.C. for quashing of the FIR No.517/2006 registered at P.S. Sarita Vihar,

New Delhi, which was withdrawn on 12th February, 2009 with the liberty to file fresh petition, after framing of charge if any.

5. The Additional Chief Metropolitan Magistrate by order dated 21st July, 2010 discharged the petitioners holding that no case was made out against the petitioners. However, against the discharge order dated 21st July, 2010, the State (not the complainant) preferred a revision petition bearing No.28/2010 before the Session Court. The Additional Sessions Judge vide its order dated 11th July, 2011 allowed the revision petition holding that an offence under Section 420/120-B IPC is made out and directed the petitioners to face the trial. Aggrieved by the order dated 11th July, 2011 passed by Additional Sessions Judge, the petitioners preferred the present petition before this Court.

6. Case of the petitioners

i) The allegations in the complaint that the petitioners cheated with respondent No.2 by entering into Memorandum of Understanding (MOU) dated 24th May, 2003. The petitioner No.1 being a director of the company M/s Hari Steel and General Industries Ltd. entered into MOU with respondent No.2/complainant in respect to the property bearing No. A-22, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi for sale of the property for a total consideration of Rs. 22 crores out of which a sum of Rs.4 crore was paid by the respondent No.2/ complainant as earnest money and balance payment was to be made after certain formalities to be completed.

- ii) However, the respondent No.2/complainant committed breach of some terms and conditions of the agreement and did not come forward to fulfill his part and obligation of the agreement within time therefore, as per the terms and conditions of the agreement and the same automatically stood cancelled. It is admitted that the respondent No. 2/complainant had received Rs. 1.10 crore by cheque from the petitioners and on the back of cheque, it was mentioned that "MOU stands cancelled".
- iii) The respondent no.2/complainant filed a civil suit bearing CS (OS) No.1508/2005 titled as 'Parveen Kumar Jolly vs M/s Hari Steel and others' which is pending for adjudication, and along with the suit, the respondent No.2/complainant (plaintiff in the suit) sought interim relief by filing an application under Order 39 Rule 1 and 2 CPC.
- iv) By order dated 28th October, 2005, this Court was pleased to grant ex-parte ad-interim injunction subject to the plaintiff/respondent No.2 depositing Rs.9.10 crore and giving bank guarantee of Rs.10 crore within two weeks from the date of order and in the meanwhile the petitioners were directed not to alienate, assign, sell, transfer or create third party interest in the property in question.
- v) Instead of complying with the order dated 28th October, 2005, the respondent No. 2/complainant filed a complaint with Police authorities which was converted into the impugned FIR in 2006.

Therefore, the complainant/respondent No.2 himself failed to perform the obligation and commit fraud upon the petitioners.

- vi) The respondent No.2/complainant by taking undue advantage of his own wrongs and in the garb of the Memorandum of Understanding dated 24th May, 2003 filed a complaint against the petitioners to the police by concealing the order of this Court and got the FIR registered against the petitioners, which is gross abuse of process of the Court. Admittedly, the respondent No.2/complainant filed the complaint after filing a civil suit against the petitioners.
- vii) After due investigation, the concerned IO filed Challan/report under Section 173 Cr.P.C and the Additional Chief Metropolitan Magistrate discharged the petitioners at the stage of charge vide its order dated 21st July, 2010 by considering all the given facts and circumstances, holding that the dispute is purely civil in nature and there is no malafide intention on the part of the petitioners. Rather, the respondent No.2/complainant himself failed to fulfill his obligations. It is pertinent to point out here that the fact of the applicants with respect to the agreement to sell dated 3rd May, 2005 was also considered along with Memorandum of Undertaking dated 24th May, 2003 at the time of discharge.

7. It is submitted by the learned counsel for the petitioners that petitioners have already cancelled their earlier Memorandum of Understanding because the complainant/purchaser failed to fulfill his

obligation as per the same. They were free to enter into other agreement to sell. It is submitted that the petitioners have informed the new buyers at the time of meetings about the earlier agreement. Despite the fact, the new buyer was ready to enter into agreement to sell by the petitioners and therefore it is incorrectly alleged by the new buyers that they were induced or any type of concealment on their part with regard to entering into second agreement. There is no proper investigation by IO, otherwise no case is made out against the petitioners. The IO filed the charge sheet, but after consideration, the Additional Chief Metropolitan Magistrate discharged the petitioners therefore, the opinion of the IO does not make any difference.

8. It was the case of the complainant before the trial Court that as per Memorandum of Understanding dated 24th May, 2003, as per clause 3 the petitioners had assured that the said portion of the property is free from all sorts of encumbrances (registered or unregistered) but during investigation it was found that the accused company was liable to pay misuser charges amounting to Rs.5,42,40,740/- to DDA and further that property was offered as a security to SBI Nehru Place for a sum of Rs. 50 lakhs vide loan agreement dated 5th April, 2008 and further hypothecation of future and present rent in respect of the property in reference for loan of Rs.82 laks from Corporation Bank under agreement of hypothecation. It was further found during investigation that a property tax to the tune Rs.2,16,46,860/- was also due and payable on 31st March, 2003 and inquiry revealed that accused No.1 did not make any progress with

respect to conversion of lease hold rights to free hold rights and it came to the notice of the complainant that by concealing the previous Memorandum of Understanding dated 24th May, 2003 had agreed to sell the property to Sh Daljeet Singh and Sh. Sarvjeet Singh vide agreement to sell dated 3rd May, 2005 for a total sale consideration of Rs.55 crores out of which 5 crores were paid as a part payment.

9. The amended memo of parties was filed by the petitioner on 25th July, 2013 by impleading the complainant as respondent No.2.

10. In response, the case of the petitioners before the revisional court is that as the complainant P.K. Jolly was paid a sum of Rs. 1.10 crores and it was decided between the parties that the said MOU on receiving of this payment of Rs.1.10 crores stands terminated. Therefore, there is no question of concealment of the first MOU at the time of execution of the second agreement to sell dated 3rd May, 2005 with Daljeet Singh and Sarbjeet Singh. It was also submitted that from the second agreement to sell the complainant had received only Rs.2 crores and the last two pages of MOU dated 3rd May, 2005 were forged by Daljeet Singh and Sarbjeet Singh and had not received the payment of Rs.3 crores as mentioned in the said agreement to sell dated 3rd May, 2005. The petitioners relied upon his statement which he made during the civil proceedings before the Court.

11. Learned counsel for the petitioners argued that for establishing the offence of cheating, it is required to show that the person had fraudulent or dishonest intention at the time of making promise or

representation from him making failure to keep promise subsequently, such a culpable intention right at the beginning i.e. at the time when the promise was made cannot be presumed. The conduct of the petitioners at the time of signing of the MOU clearly indicates that there was no fraudulent or dishonest intention. Hence as here was absence of dishonest or fraudulent act/intention, the question of committing offence under Section 420 IPC does not arise, more particularly when the petitioners at the time of MOU did not make any false or misleading representation neither any dishonest act of inducement on his part to do nor omit to do anything which he could not have done or omitted to have done it. He submitted that admittedly, the matter is pending before a civil court and the decision of the competent court of law is required to be taken in this behalf essentially that the disputes between the parties is a civil dispute.

12. The present petition was filed in September, 2011 and is pending for final disposal. After the expiry of 4 ½ year, in March 2015 an application bearing No.3354/2015 has been filed by the two applicants namely Daljit Singh and Saravjit Singh seeking impleadment as respondents. It is stated in the application that the petitioners further entered into an Agreement dated 3rd May, 2005 with the applicants/intervenors with respect to, *inter alia*, the entire property for a total consideration of Rs.55,50,00,000/- out of which the applicants/intervenors paid Rs.5,00,00,000/-. The petitioners/accused concealed the factum of dealing with respondent No. 2 from the applicants/intervenors while entering into the Agreement dated 3rd

May, 2005, thereby inducing the applicants/intervenors to enter into the said Agreement dated 3rd May, 2005 and parting with Rs. 5 crore. It is so recorded in the Charge Sheet.

13. It is stated on behalf of applicants that the charge sheet is based on, *inter alia*, complaint dated 14th November, 2005 of respondent No.2/complainant as well as complaint dated 19th November, 2005 filed by the applicants/intervenors. Indeed statement under Section 161 Cr.P.C. of the applicants/intervenors was also recorded, which forms a crucial part of the prosecution's case. Separate cases were not registered for the said two complaints as the grievance of the applicants/ intervenors was already mentioned in the complaint of respondent No.2. Therefore, it is submitted that the applicants/intervenors, being directly aggrieved by the criminal acts of the petitioners/accused have a right to be heard in the present proceedings. Hence they may be impleaded as respondents in the matter by allowing the prayer of the present application. The petitioners have filed the reply to the application.

14. It is stated in the reply that the present application is totally on different cause of action, i.e., in respect of the agreement to sell dated 3rd May, 2005 and nothing to do with the cause of action of the present petition. If the applicants/intervenors have any cause of action with respect to their agreement to sell, they are free to take independent proceeding whatsoever against the petitioners but in the present petition they have no right to intervene, however the facts with respect to the agreement to sell dated 24th May, 2003 are

already on record and if this Court deems fit, it can consider the submission of the applicants but it is not required for the applicants to intervene in the present proceedings against the petitioners.

15. It was also pointed out that the applicants have filed a civil suit independently against their agreement to sell by taking all the grounds against the petitioners as they want but they have no right to intervene in the present proceeding by filing the false and frivolous application. Thus the application is liable to be dismissed as there is no provision to intervene in the pending proceeding by filing any application. The question of inducement of the applicants does not arise as it is a written agreement. The dispute is sub-judice before this Court. The opinion of the IO is denied. The orders of the trial Court has been reiterated whereby the petitioners were discharged.

16. It is submitted by the petitioner's counsel that the complainant is a land grabber, he along with applicants Daljit Singh and Sarvjit Singh are forcing and threatening the senior citizens who are more than 80 years old to sell the property in low price. They are NRI and are residing in Canada and both are suffering from many ailments. They are also unable to attend the hearing personally in criminal proceedings. They undertake to appear in civil matter if their presence is essential at the time of trial. They are inclined to resolve all their disputes with the complainant as well as the applicants by paying double amount paid by them along with any interest fixed by the Court in order to avoid further harassment from the hands of these builder mafia as they have already suffered mentally and

physically as they have been tortured at the hands of the complainant who had mixed up with the applicants in order to take the suit property at any cost.

17. It is admitted position that the respondent No. 2 filed a civil suit bearing CS (OS) No. 1508/2005 much before the complaint filed with Police Authorities. The applicant's suit is pending before this Court.

18. It is a well settled law that "in a suitable case where the criminal proceedings are pending, the same can be quashed by the High Court in exercise of its inherent power if the Court felt that dispute raised by the respondent was purely of a civil nature as observed by Supreme Court in **Sardar Tirlok Singh & Others vs Satya Deo Tripathi**, (1979) 4 SCC 396.

19. It is also observed by Supreme Court in **Mohammad Ibrahim & Others vs. State of Bihar & Another**, (2009) 8 SCC 751 "This Court as time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes".

20. It is further observed by Supreme Court in ***Paramjeet Batra vs. State of Uttarakhand***, (2013) 11 SCC 673 "While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court"

21. It is also observed by Supreme Court in ***Vijaya Rao vs. State of Rajasthan***, 2005 (7) SCC 69 "Except using the expressions "fraudulent misappropriation" and "malafide intention", the allegations in the complaint do not at all disclose as to how the appellant can be found guilty of the offence under Section 420 IPC. The ingredients constituting Section 420 are conspicuously lacking in the complaint. All the courts have failed to address themselves to the crucial question whether as far as the appellant is concerned any offence under Section 420 or for that matter any offence under Section 409 has been committed. Even going by the allegations in the complaint,

allowing the criminal proceedings to go on against the appellant, would result in abuse of the process of the court".

22. It is observed by this Court in ***Sarwan Kumar Malhotra v. A. K. Malhotra*** in Crl.M.C. No.446/2004 decided on 22nd October, 2007 that "*when the parties were litigating on the issues at a civil form, the criminal proceeding could not continue and liable to be quashed*".

23. From the entire gamut of the matter, it appears to the Court that the act of respondent No.2 in the present case is to create undue pressure on the petitioners to sell the suit property to him as it is evident that the complaint on which the FIR was registered was given much after the institution of civil suit in this Court, which is pending for enforcement of agreement/ MOU arrived at between the parties. The complainant who in the said order was granted the interim order against the petitioners not to dispose of the suit property subject to deposit of Rs.9.10 crores, but he failed to deposit the said amount. As he could not deposit the amount, in order to put the pressure upon the petitioners, he filed the criminal complaint on the same facts against petitioners who are senior citizens. According to them, the deal was already cancelled. Once the interim order is vacated due to non-compliance of order, it appears that the complainant had adopted the different route to file the criminal complaint so that the suit property should become case property. In a way, the complainant/respondent No.2 tried to secure the deal and get protected indirectly. No party in this manner can be allowed to abuse the process of Court. Although, this Court is aware that if valid case

of cheating and forgery is made out, both proceedings can continue simultaneously. Most of the facts in the present litigations are disputed facts which have to be considered and to be decided by the Civil Court. The complainant's and the applicants' suit are already pending. The most important fact is that the criminal revision was not filed by the complainant/ respondent No.2 against the order of discharge passed by the trial Court. It was filed by the State. Even respondent No.2/complainant was not made as a party to the said revision petition. The order of the trial Court discharging the petitioners was never challenged by the complainant. Now, after allowing the revision petition filed by the State, the complainant came into the picture and was opposing the prayer. The Additional Sessions Judge/Revisional Court has totally ignored the relevant facts of the matter as well as bars of General Principles and set-aside the order of the trial Court. Thus, the impugned order passed by Additional Sessions Judge is liable to be set aside as the same is illegal and against the law. It is a perverse order. Similarly, the two applicants in CrI.M.A. No.3354/2015 were neither the parties in the trial Court proceedings nor they were parties in the criminal revision petition. Their suit against the petitioners is already pending for disposal. They are unable to satisfy the Court as to how the application filed by them for impleadment after long delay of four years is maintainable. No doubt the applicants are at liberty to take necessary action in accordance with law. The application filed by them is wholly misconceived, not maintainable and the same is

dismissed. All pleas raised in this application are the subject matter of the suit filed by them.

24. A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties is pending, the courts would not permit a person to be harassed. The present case in hand does not fall in that category where cognizance of the offence could have been taken by the Court, at least after having gone through the FIR, which discloses only a civil dispute. The petitioner cannot be allowed to go through the rigmarole of a criminal prosecution for long number of years, even when admittedly a civil suit has already been filed against the petitioners by the respondent No.2/complainant, and is still sub-judice.

25. It is settled law that this Court is empowered under Section 482 of Cr.P.C. to interfere with the order passed in the revision petition if the same is perverse and contrary to law, in order to prevent abuse of the process of the Court.

26. In view of the aforesaid reasons, the present case is a fit case where the impugned order is liable to be set aside. It is clarified that the suits filed by the complainant and the applicants shall be decided as per their own merits and without any influence of this order as the Court does not wish to express any opinion on merits. All pleas raised by them are allowed to be considered by the Civil Court.

27. Therefore, looking at the matter from many angles, I am of the considered opinion that the prosecution of the petitioners for commission of the alleged offences would be clear abuse of the

process of law. The FIR under these circumstances deserves to be quashed. The impugned order is set aside by quashing the FIR in question lodged by respondent No.2.

28. Therefore, it is directed that the proceedings in FIR No.517/2006 dated 4th October, 2006 lodged at P.S. Sarita Vihar against the petitioners, under Sections 420/120-B IPC pursuant to the complaint dated 14th November, 2005, pending before Additional Chief Metropolitan Magistrate, South East, Saket Courts, New Delhi are accordingly quashed. However, the amount of Rs.3 crores deposited by the petitioners with the Registrar General of this Court while being granted the anticipatory bail shall remain intact and the fate of the said deposit would be considered at the time of deciding the suit filed by the complainant.

29. The present petition and all the pending applications are accordingly disposed of.

30. The parties to bear their own costs.

(MANMOHAN SINGH)
JUDGE

JUNE 29, 2015