

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.REV.P.645/2013

Date of Reserve: 02.09.2015
Date of Decision: 09.09.2015

ISHAK KHAN Petitioner
Through: Mr.I.S.Kapur, Advocate.

versus

HAZRAT ALI & ORS. Respondent
Through: Ms.Rajni Gupta, APP.
SI Manoj Kumar PS Bhalswa Diary
Mr. Amit Rao, Adv. for R2 & R3.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J.

1. The present petition is directed against the revisional order dated 3.8.2013 passed in Criminal Revision No.26/13 in connection with CC No.70/1 whereby the order of the Metropolitan Magistrate dated 15.2.2013 for registration of the FIR against the respondent Nos.1 to 3 was set aside.
2. The revisionist had filed a complaint bearing CC No.70/1/11 under Section 200 of the Code of Criminal Procedure on 12.10.2011 along with an application under Section 156(3) of the Code of Criminal Procedure for offences under Sections 420/467/468/471 and 34 of the IPC against respondent Nos.1 to 3.
3. The facts alleged in the complaint were that on 15.10.2010

respondent No.1 had sold a plot of land measuring 50 sq.yards situated in khasra No.32, Janta Vihar, Mukandpur, Delhi to the revisionist. The revisionist had paid a sum of Rs.1,05,000/- to respondent No.1 on 15.10.2010 and had issued a cheque bearing No.748356 dated 20.11.2011 for a sum of Rs.75,000/- as part payment.

4. It was averred in the complaint that respondent No.1 was initially not ready to accept the cheque but later agreed to keep the cheque as security with a promise to return the cheque when cash payment of the entire sale consideration would be made. The petitioner thereafter arranged for entire balance amount of Rs.1,85,000/- and went to the house of respondent No.1 for giving the same to him. Respondent No.1 was not available at home. The revisionist/petitioner contacted respondent No.1 on phone who asked the petitioner to make the payment to his son i.e. respondent No.3 and receive the aforementioned cheque which was accepted as security and also to take receipt of the amount paid by the petitioner. Pursuant to such a direction of respondent No.1, respondent no.3 received the cash amount of Rs.1,85,000/- from the petitioner and handed over the cheque to him. Before handing over the cheque, signature was appended by respondent No.3 behind the cheque as a receipt of his having received the total amount of Rs.2,90,000/- towards full and final payment of the entire consideration amount. Thereafter, it has been alleged in the complaint that the plot was handed over to the petitioner who raised a boundary wall and constructed a room. This was done before the execution of the conveyance deed.

5. Respondent No.1, as alleged in the complaint, dilly dallied and

did not execute the sale deed. Several complaints were made to the police but to no avail. Ultimately a complaint was filed under Section 200 of the Code of Criminal Procedure along with an application under Section 156(3) of Cr.P.C for offences under Sections 420/467/468/471 and 34 of the IPC.

6. Acting on the aforesaid application under Section 156(3) of the Code of Criminal Procedure, learned Magistrate, on 12.10.2011 called for a status report from the police on such complaint.

7. In the meantime, it has been alleged an FIR No.8/12 (P.S.Bhalswa Dairy) was instituted by the respondents under Sections 447/420/468/471 and 120B IPC. The aforesaid case according to the petitioner was lodged only for the purposes of diluting the complaint case filed by the petitioner against the respondents. The petitioner, had to take anticipatory bail in the aforesaid FIR lodged by the respondents.

8. On 15.2.2013, the learned Metropolitan Magistrate, Rohini Courts allowed the application of the petitioner under Section 156(3) and directed for registration of the FIR against respondent Nos.1 to 3.

9. A perusal of the order dated 15.2.2013 passed by the Metropolitan Magistrate reflects the application of mind by the Magistrate. The relevant part of the order of the Magistrate reads as hereunder:-

“Although there is one civil dispute going on between the parties, but it does not restrict the complainant to file a criminal case against the accused for the criminal conduct and offences. Therefore, keeping in mind the submissions made by the counsel for the complainant and after going

through the entire material available on record, this court is of the view that prima facie it appear that cognizable offences in committed against the complainant. Therefore, the application of the complainant for registration of FIR is allowed accordingly. SHO concerned is directed to register the case FIR under appropriate sections and to file compliance report on 07.03.2013.”

10. The aforesaid order of the Metropolitan Magistrate was challenged by the respondents by way of revision before the learned Sessions Judge (01), North, Rohini Courts, Delhi vide Criminal Revision No.26/13.

11. The Revisional Court, after recording the submission of the respondents herein that the dispute was civil in nature and there were no reliable witnesses of the factum of payment of Rs.1,05,000/- or Rs.2,90,000/- by the petitioner as well as non consideration by the Metropolitan Magistrate of the fact that one FIR No.8/12 under Sections 447/420/468/471 and 120B of the IPC had already been lodged against the petitioner by the respondents herein in which the petitioner had to seek anticipatory bail, set aside the order of the Magistrate directing the SHO of the concerned police station to lodge the FIR as prayed for in the application under Section 156(3) Cr.P.C by the petitioner. The reasons which weighed with the revisional Court was that the endorsement on the cheque (accepted as security) was by Shoaib Ali, son of Hazrat Ali (respondent no.1 in the present petition) who had to execute the agreement and the fact that FIR was lodged against the petitioner at the instance of the respondents.

12. The revisional order reflects that on mere denial of the

respondents of having signed on the agreement to sell and their having filed a case against the petitioner in the first instance, the order of the Metropolitan Magistrate directing for registration of FIR against the respondents was set aside.

13. Section 156 of the Code of Criminal Procedure reads as hereunder:-

156. Police officer's power to investigate cognizable case.

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above- mentioned."

14. Sub Section (3) of Section 156 empowers a Magistrate to order a police enquiry in case the Magistrate does not himself issue process at once. A Magistrate, if he has acted under chapter XV cannot proceed under Chapter XII. This sub-section empowers a Magistrate to order an investigation of an offence of which he may have taken cognizance under Section 190 which he could have done even before the examination of the complainant.

15. In the present case, on receipt of the complaint and an application under Section 156(3) of the Code of Criminal Procedure, a status report was called for by the Magistrate. The status report, when perused by the Metropolitan Magistrate gave him an idea that the

respondents were neither allowing the petitioner to enter in the jhuggi nor were returning the money which was taken by them for which sale consideration was accepted by the accused persons.

16. It was only after being satisfied that a prima facie case was made out against the accused persons that the prayer under Section 156(3) of the Code of Criminal Procedure was allowed. The order of the learned Magistrate does not reflect any illegality or irregularity. The allegations levelled in the complaint petition clearly made out a case of cheating, criminal breach of trust and forgery for the purposes of cheating.

17. The revisional order is capricious and is based on a meretricious reasoning that an earlier FIR in which the petitioner was made an accused was already in existence and investigation of such FIR would lay bare the truth. The revisional Court fell in error in accepting the plea of the respondents that the agreement to sell was forged and there was no witness of the payment of the sale consideration amount to the respondents. The Revisional Court lost sight of the fact that in a proceeding namely a revision against an order passed under Section 156(3), a verdict on the case lodged by the petitioner to be groundless, could not be given. The reasoning given by the Revisional Court for setting aside the order of the Metropolitan Magistrate is absolutely unacceptable.

18. It is beyond cavil that when there are rival versions with respect to the same episode, it would normally take shape of two different FIRs and investigation has to be carried out under both of them by the investigating agency.

19. A line of decisions by the Apex Court clearly elucidates that if a concerned police refused to register a case, it would be open for the Magistrate at any stage to direct the police to register a complaint brought to its notice and investigate the same.

20. A status report was initially filed indicating that the vigilance branch of the police enquired into the matter and found that a forged sale agreement was prepared by the petitioner. The status report further revealed that the cheque which has been referred to in the complaint was found to have been dishonoured due to insufficiency of funds. It was in this context that the signature of Shoaib Ali, respondent no.3 was obtained by the bank for the purposes of encashment of such cheque. It was not an acknowledgement of acceptance of Rs.2,90,000/- from the petitioner.

21. The aforesaid status report is obviously wrong. The cheque in question was not of the amount of Rs.2,90,000/-. According to the complaint the cheque which was accepted by the respondents as security was of Rs.75,000/-. Hence the endorsement behind the cheque could not have been obtained by the bank at the time of presentation of the cheque for encashment as the cheque amount was not for Rs.2,90,000/-.

22. The rejoinder filed by the respondents clearly repeated the contents of the status report.

23. Another status report was filed on 18.5.2015 in which it has been stated that the signature of the petitioner was found to have matched with the questioned documents as well as the specimen and admitted signatures by the FSL.

24. Thus the revisional order being absolutely devoid of merits and being in teeth of the provisions of law is set aside and the order of the Metropolitan Magistrate 15.2.2013 is restored. The case is remitted to the learned Metropolitan Magistrate to issue further necessary direction to the concerned police station for implementation of its order, if the complaint lodged by the petitioner, on his request has not been acted upon.

25. For the reasons recorded, the petition is allowed with the aforesaid observation

ASHUTOSH KUMAR, J

SEPTEMBER 09, 2015

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