

\$~15

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

Judgment delivered on: 15th October, 2015

+ **CRL.M.C. 1668/2015**

COL. (RETD.) AJAY AHLAWAT & ANR Petitioners

Represented by: Mr.Rauf Rahim, Advocate.

Versus

STATE OF NCT OF DELHI & ANR Respondents

Represented by: Mr.Hirein Sharma, Additional
Public Prosecutor for the State with
Inspector Satender Sangwan and SI
Arvind Kumar Singh P.S. Hauz
Khas.

Mr. Dayan Krishnan, Senior
Advocate with Mr. Apurv Chandra,
Ms. Shikha Pandey and
Mr. Nishant Rai, Advocates for
Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

CRL.M.C. 1668/2015

1. Vide the present petition, the petitioners seek directions thereby to quash FIR No.1408/2014 registered at Police Station Hauz Khas, New Delhi, for the offences punishable under Sections 406/420 IPC.

2. Learned counsel appearing on behalf of the petitioners submits that the petitioner No.1, complainant and one Mr. Deepak Udar, joined together and get incorporated company titled as 'M/s Royal Hunting Hotels Private Limited" and all three agreed to contribute an amount of Rs.30%, 50% and 20% respectively. Accordingly, they purchased a

heritage property belonging to Maharaja of Bharatpur.

3. The allegations in the FIR against the petitioners are of receiving money from 2003 to 2010 as the petitioners and the complainant were close friends since long. Further allegations are that they did not contribute their share and have siphoned off the money contributed by the complainant and Mr. Deepak Udar.

4. Learned counsel for the petitioners further submits that claim of the claimant is that he contributed a sum of Rs.3.27 Crores. Out of which, the petitioners have siphoned off an amount of Rs.1.25 Crores. However, the fact is that the complainant had withdrawn an amount of Rs.1.99 Crores (which fact is disputed by the learned senior counsel appearing on behalf of the complainant/respondent No.2). Thus, out of total sum of Rs.3.27 Crores, remaining amount is Rs.1.28 Crores. The property in question was purchased for an amount of Rs.1.89 Crores, and a sum of Rs.11 Lacs was spent qua registration charges of the said property. Moreover, an extensive amount has also been spent on the improvement of the property in question by the petitioners.

5. Learned counsel submits that the present dispute is of civil nature and that the complainant has filed the complaint with ulterior motive and the petitioner unnecessary being dragged in the present case. He further submits that in this case transactions were started in the year 2003 and continued upto 2010 and the FIR has been registered in the year 2014. Thus, there is delay in lodging the FIR. It is also submitted that if a transaction is of civil nature, than FIR cannot be registered against the same.

6. To strengthen his arguments, learned counsel for the petitioners relied upon the case of ***V.Y. Jose & Anr. Vs. State of Gujarat & Anr.***

(2009) 3 ACC 78, wherein the Apex Court held as under:-

“18. A matter which essentially involves dispute of a civil nature should not be allowed to be the subject matter of a criminal offence, the latter being not a shortcut of executing a decree which is non-existent. The Superior Courts, with a view to maintain purity in the administration of justice, should not allow abuse of the process of court. It has a duty in terms of Section 483 of the Code of Criminal Procedure to supervise the functionings of the trial courts.”

7. Also relied upon the case of **Suneet Gupta Vs. Anil Triloknath Sharma & Ors. (2008) 11 SCC 670**, wherein held as under:-

“15. Having heard the learned Counsel for the parties and having considered the rival contentions, in our opinion, it cannot be said that the High Court was wrong in quashing criminal proceedings. It is clear from the case put forward by the appellant himself that virtually the proceedings were 'civil' in nature.

xxxx

xxxx

xxxx

18. The High Court, in our opinion, rightly considered the facts in their proper perspective and observed that the dispute related to settlement of accounts between principal and its agent; the principal being M/s Johnson & Johnson Ltd. and the agent being M/s K.M. Agencies (earlier) and M/s Mangla Agencies (later). The High Court also noted that it was M/s K.M. Agencies which informed the principal i.e. M/s Johnson & Johnson Ltd. that M/s K.M. Agencies had closed its business and the business was thereafter continued by M/s Mangla Agencies and all drafts be issued in favour of M/s Mangla Agencies. The High Court took note of the fact that even the complainant had informed the principal that there was dispute

between the partners of M/s K.M. Agencies and hence no payment should be made to M/s Mangla Agencies till the dispute was finally resolved between the parties. That, however, does not give rise to criminal liability and entitle the complainant to initiate criminal proceedings, particularly when M/s Johnson & Johnson Ltd. substituted in the Company record name of M/s Mangla Agencies in place of M/s K.M. Agencies. The resultant effect of substitution of name was that whatever sums were due to M/s K.M. Agencies were considered to be due to M/s Mangla Agencies.

xxxx

xxxx

xxxx

25. In the case in hand, the High Court was right in coming to the conclusion that a civil dispute - pure and simple - between the parties was sought to be converted into a criminal offence only by resorting to pressure tactics and by taking police help which was indeed abuse of process of law and has been rightly prevented by the High Court.

26. For the foregoing reasons, in our view, the order passed by the High Court is in consonance with law and requires no interference. The appeals deserve to be dismissed and are, accordingly, dismissed.”

8. On this issue, also relied upon the case of ***Binod Kumar & Ors. Vs. State of Bihar & Anr. (2014) 10 SCC 663*** and ***Paramjeet Batra Vs. State of Uttarakhand & Ors. (2013) 11 SCC 673***.

9. For delay in lodging of FIR, learned counsel for the petitioners relied upon the case of ***Kishan Singh (Dead) Through LRs Vs. Gurpal Singh & Anr. (2010) 8 SCC 775***, wherein the Apex Court held as under:-

“21. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case, there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal. (Vide Sahib Singh v. State of Haryana AIR 1997 SC 3247).

22. In cases where there is a delay in lodging a FIR, the Court has to look for a plausible explanation for such delay. In absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the Civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (Vide Chandrapal Singh and Ors. v. Maharaj Singh and Anr. AIR 1982 SC 1238; State of Haryana and Ors. v. Ch. Bhajan Lal and Ors. AIR 1992 SC 604;

G. Sagar Suri and Anr. v. State of U.P. and Ors.
AIR 2000 SC 754; and Gorige Pentaiah v. State of
A.P. and Ors. (2008) 12 SCC 531). ”

10. The fact remains that vide the present petition, the petitioners are seeking quashing of the FIR in question. In the status report filed by the State, it is stated that the petitioner No.1 has joined the investigation and filed his written submissions. During investigation, details qua the receipts and payments inclusive of Company 's vouchers of expenses incurred and money required to purchase and develop the demised property, i.e., Kishan Mahal Palace. However, receipts of the expenses provided by the petitioners as mentioned in the status report upto the year 2009 and all receipts are of cash payment.

11. It is also stated in the status report that the petitioners have provided total 510 vouchers and no work order was submitted by the petitioner No.1. Thus, the dubious and vague expenditure totalling to Rs.3,71,56,261/- has been shown in various manners in the name of M/s Royal Hunting Hotels Private Limited.

12. It is not in dispute that two other suits, i.e. one before the Company Court and other before the Original Side of this Court are pending between the petitioners, respondent No.2 and Mr. Deepak Udar.

13. Keeping in view the allegations against the petitioners and the status report, the dispute is the subject matter of the investigation which is at the preliminary stage. It is not in dispute that the vouchers filed by the petitioners shall be considered by the Investigating Officer and thereafter, if required, chargesheet will be

filed. Therefore, at this stage the FIR in question cannot be quashed especially when the investigation is in progress.

14. Moreover, for determination of the issues as raised in this petition, extensive documentary evidence is required to be examined. Thus, this Court cannot conduct mini trial, which is otherwise not permissible under the law. The judgments relied upon by the counsel for petitioners are not relevant in the facts and circumstances of the present case especially when investigation is going on.

15. In view of the above noted facts, I do not find any merit in the present petition. The same is dismissed accordingly.

Crl.M.A.Nos.6035, 11460 & 11741 of 2015

With the dismissal of the petition itself, the present applications have become *infructuous*. The same are dismissed accordingly.

**SURESH KAIT
(JUDGE)**

OCTOBER 15, 2015
sb