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

*Judgment delivered on: 6<sup>th</sup> July, 2015*

+ CRL.M.C. 2643/2015

SANJAY KUMAR

..... Petitioner

Represented by: Mr. Vishwendra Verma,  
Adv.

versus

THE STATE

..... Respondent

Represented by: Mr. Ravi Nayak, APP for  
State with SI Narender Singh, PS-Chawla.

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KAIT**

**SURESH KAIT, J. (Oral)**

**Crl. M.A.9440/2015 (for exemption)**

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

+ **CRL.M.C. 2643/2015**

1. Vide the present petition, petitioner seeks directions thereby setting aside the order dated 19.06.2015 issued by Id. Magistrate, Dwarka Court, Delhi in case FIR No. 561/2014, registered at PS-Chawla for the offences punishable under Sections 420/467/468/471/120-B/34 IPC.

2. Ld. Counsel appearing on behalf of the petitioner submits that petitioner is protected under Sections 41A of Cr.P.C and Police cannot arrest any accused without issuing notice under Sections 160 and 41A Cr.P.C. However, in the present case, IO has not issued such notice and petitioner never evades his arrest.

3. Ld. Counsel further submits that if any person is not directly involved in the case and his name came during the investigation, then the IO is supposed to issue notice to such person to join the investigation. If he fails to appear, only thereafter the IO can get the Non-Bailable Warrants against such person from the concerned Court. However, in the present case, petitioner is nowhere connected with the offence and his name came during the investigation. Therefore, the IO has surpassed all the provisions of law and the decision of various courts, whereby such procedure has been condemned.

4. To strengthen his arguments, Id. Counsel has relied upon a case of *Arnesh Kumar v. State of Bihar 2014 VII AD (S.C.) 697* and the case titled as *Santosh Kr. Singh v. The State of Jharkhand through Vigilance in Cr. M.P. 3283 of 2013* decided by the High Court of Jharkhand on 21.01.2014.

5. Allegations against the petitioner are that petitioner claimed that Rifakat Ali is his partner. The plot was initially purchased by Binod Kumar Upadadhyay, Nagendra Yadav, Mahesh Rai and earnest money of Rs.1 Lac was paid to Rifakat Ali & Sanjay

(petitioner herein). But the same amount was adjusted when the trio agreed to sell the property to Sudhir Kumar Singh (the complainant). Thereafter, the petitioner was part of every deal. The possession was taken over and all the payments were made to Sanjay (petitioner) in the presence of Rifakat Ali at his given address, i.e., C-53, Upper Ground Floor, Jeewan Park, Delhi in the presence of Binod Kumar Upadhyay and Nagendra Yadav.

6. The statement of witnesses have been recorded by the IO thereby it is established that the petitioner was instrumental in selling the plot in question who has created an unverified antecedent person namely Rifakat Ali and also created fake, bogus and forged chain of documents for initiating the process of selling of plot in question through fake identity person namely Rifakat Ali. With the help of forged documents of the plot induced the complainant, thereby causing wrongful loss of 30.5 Lacs to the complainant.

7. To my satisfaction, I have gone through the case file of the IO, according to which, IO had made all efforts to arrest the petitioner. However, he was not available at the given address. Thereafter, he moved an application before the concerned Magistrate and the said Magistrate passed the impugned order whereby issued NBW against the petitioner.

8. The judgments cited by the petitioner are beneficial to the petitioner in case his name has come during the investigation

and the punishment therein is up to 7 years. However, in the present case, name of the petitioner is in the FIR itself and it has been supported by the statements of 3 witnesses recorded by the Police.

9. In view of above, Section 41A of Cr.P.C. and the judgments cited by the counsel for the petitioner are not relevant in the facts and circumstances of the present case. Moreover, Section 467 IPC itself is punishable up to life imprisonment.

10. Therefore, I find no discrepancy in the order passed by the Id. MM on 19.06.2015.

11. Accordingly, the petition is dismissed.

**Crl. M.A.9439/2015 (for Stay)**

Dismissed as infructuous.

**SURESH KAIT, J**

**JULY 06, 2015**

*jg*