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

*Judgment delivered on: 20<sup>th</sup> July, 2015*

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**Crl. M.C. No.2843/2015**

SATISH GUPTA

..... Petitioner

Represented by: Mr. Rohit P. Ranjan,  
Mr. Bikash Shaw and Ms. Ritu  
Gautam, Advocates.

Versus

NCT OF DELHI & ORS.

..... Respondents

Represented by: Mr. Neeraj Kumar Singh,  
Additional Public Prosecutor  
for the State with SI Sanjeev  
Mandal, PS R.K. Puram.

**CORAM:**

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

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

**Cr. M.A. No. 10148/2015 (for exemption)**

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

**CRL.M.C. 2843/2015**

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner has assailed the order dated 18.07.2014 whereby the learned Additional Sessions Judge (ASJ), Saket Courts, New Delhi, dismissed the Criminal Revision No.08/2014 filed by the petitioner against the order dated 19.04.2012,

which is also impugned in the instant petition, whereby the respondents No. 2 and 3 were discharged in case bearing FIR No.175/2012 registered at Police Station R.K.Puram for the offence punishable under Section 506 of the Indian Penal Code, 1860, (for short 'IPC') by the learned Trial Court.

2. Learned counsel appearing on behalf of the petitioner submits that the present petition has been filed on the ground that both the courts below have passed the impugned orders on irrelevant considerations ignoring the relevant material on record. Both the courts below have made a roving inquiry while considering the case on framing of charge/discharge, as if the courts were deciding acquittal of the respondents after completion of the entire trial.

3. It is further submitted that the learned ASJ as well as the Trial Court have failed to appreciate that at the stage of framing of charge only a *prima facie* case has to be seen, however, from bare perusal of the impugned orders, it is clear that both the courts below have not only made a roving inquiry but also weighed the evidence in detail as if they were considering the acquittal or conviction and not considering the case qua framing of charge/discharge.

4. Learned counsel submits that while passing the impugned orders, both the courts have failed to appreciate the chargesheet, the supplementary chargesheet and the documents relied upon by the police, which also include statements of the witnesses recorded under Section 161 of the Code of Criminal Procedure, 1973, (for short 'Cr.P.C.'), which *prima facie* make out a case under Sections

420/406/506 IPC read with Section 120-B IPC against the private respondents.

5. Learned counsel argued that there was an agreement between the petitioner and Abu Malik (respondent No.3 herein), by which petitioner was induced by making a false promise that petitioner would be a partner and would get 49% share of the profits of film 'Zordar', which was never provided to the petitioner. Rather same has been misappropriated by Abu Malik for wrongful gain to himself and wrongful loss to the petitioner. Thus, the findings of both the courts below are completely perverse and accordingly, the impugned orders are bad in law and liable to be set aside.

6. On perusal of the orders passed by the courts below, it is clear that the learned Trial Court has considered the allegations appearing in the chargesheet and also recorded the statement of the complainant/petitioner on 31.01.2004, in which he clarified that he did not press his complaint against accused Anu Malik. Accordingly, finding sufficient grounds to proceed against respondents No.2 and 3, Ashok Chauhan and Abu Malik respectively, the learned Trial Court summoned them.

7. However, the learned Trial Court was of the view that there were certain aspects which had not been investigated by the police, therefore, vide order dated 29.04.2011 directed the SHO to conduct further investigation. Accordingly, matter was further investigated and supplementary chargesheet was filed in the court on 10.10.2011 primarily focusing the issues raised by the court.

8. Accordingly, after considering the arguments, the learned Trial

Court vide order dated 19.04.2012 discharged the respondents holding that no case was made out against them.

9. Sh. Krishan Kumar and Sh.Avinash Sharat, Advocates, defended respondent No.2 Ashok Chauhan before the learned ASJ. According to them, instance of complaint is nothing but a bundle of lies as no such incident had ever taken place. It has been argued by them that since the complainant had been shifting his stand time and again, he was rightly disbelieved by the learned Trial Court. Attention of the court below was drawn towards various incongruous statements made by the complainant from time to time which indicate hollowness in his stand. It has also been contended that though the allegations were same against all the accused persons, however, complainant withdrew his complaint against Anu Malik, which fact in itself indicates that his only intention was to misuse the criminal justice delivery system as a tool to extract money.

10. As far as accused Abu Malik is concerned, it has been argued before the learned Trial Court that there was never any case of false promise or allurements. According to him, complainant had already filed a Summary Suit in the competent court of jurisdiction in Mumbai and since the civil litigation was taking some time, complainant fabricated a concocted story as his prime object was to entangle private respondents in a criminal litigation in Delhi so that money could be extracted from them.

11. It is an admitted fact that Abu Malik knew Ashok Chauhan but no criminality can be inferred merely from such acquaintance between the two. It has also been claimed that there was no cheating as such

and moreover when movie “Zordar” was released, complainant/petitioner was given due credit as he was shown co-producer of that film.

12. So far as the aspect of cheating was concerned, the learned ASJ opined that Delhi Courts have no jurisdiction to entertain or try any alleged offence related to inducement or cheating. Moreover, the application, which had been filed before the learned Trial Court way back in 2002, was very brief and vague on this score. Complainant merely claimed that he was induced in the year 1996 and made investment believing the assurances and representation of accused and when he demanded the money, same was not paid. Such application was essentially confining itself to the incident related to threat. Complainant never wanted any action by Delhi Police as regards alleged cheating.

13. The learned ASJ further observed that there seem to be no dispute that complainant/petitioner and Abu Malik were earlier running a partnership firm under the name and style of ‘M/s Aim Films Production No.1’, which went into disarray and eventually became defunct. In lieu of capital contribution of Rs. 15.85 lacs made by the complainant/petitioner in such partnership business, complainant and respondent No.3 Abu Malik entered into an agreement on 07.10.1997 in Bombay, whereby Abu Malik agreed to assign Television Doordarshan Rights in respect of film “Zordar” to complainant/petitioner. According to complainant, he was cheated as TV rights had been given by Abu Malik to others also and in this regard attention of the learned ASJ was drawn towards letters issued

by M/s Dimple Video Distributors and M/s Shiv Shakti Enterprises.

14. It is not in dispute that the agreement in question was executed in Mumbai in 1997 and if at all complainant/petitioner felt that he had been cheated or induced to enter into an agreement, he should have filed a complaint or report in Mumbai as cause of action pertaining to the alleged inducement had taken place in Mumbai and not in Delhi.

15. As per the complainant, on 08.03.2002, when he was present in his office, respondent No.2, Ashok Chauhan had come there accompanied by four unknown persons and told him that they all had been sent by respondent No.3 Abu Malik and Anu Malik and openly threatened the petitioner and told him to forget about his money and not to demand the same from Malik brothers in future and while leaving the office, they also openly threatened by brandishing revolver like arm. But the petitioner contended before the learned ASJ that he has no grouse against Anu Malik.

16. As per the application moved by the complainant/petitioner under Section 156 (3) Cr.P.C., such incident had taken place in his office but he has nowhere mentioned as to where such office was situated. According to complainant, on 08.03.2002 at about 6.00 PM, respondent No.2 Ashok Chauhan along with four unknown persons had intruded and barged into his office claiming that they had been sent by respondent No.3 Abu Malik and Anu Malik. However, it was not clear as to how the petitioner knew the name of Ashok Chauhan. The learned ASJ has observed that if someone was to threat in such a manner, such person would not, himself, reveal his name. Complainant has nowhere claimed that he already knew Ashok

Chauhan and, therefore, it was quite surprising as to how he was able to reveal name of Ashok Chauhan.

17. According to the allegations as per application under Section 156 (3) Cr.P.C., while leaving, all such persons, i.e., four unknown persons and Ashok Chauhan openly threatened by brandishing a revolver like arm. This indeed was a serious allegation. In such a situation, the petitioner was supposed to first report to the police, i.e., report dated 09.03.2002, however, the complainant/petitioner has nowhere claimed therein that any such intruder was armed or that any such intruder had brandished any arm.

18. The learned ASJ recorded that additionally respondent Abu Malik was being linked with such incident dated 08.03.2002 for two reasons. Firstly, Ashok Chauhan himself claimed that he had been sent by Abu Malik and secondly on the basis of CDR. The details of the concerned subscribers have not been collected at all and there was nothing to show as to who was the subscriber of various important numbers, i.e., 9810136864, 226604944 or 9820009087. Additionally, no certificate under Section 65 B of the Indian Evidence Act in support of such CDR has ever been collected.

19. Consequently, vide order dated 18.07.2014, the learned ASJ upheld the order dated 19.04.2012 passed by the learned Trial Court.

20. In view of the above recorded facts, it is established that the aforementioned impugned orders have been passed by the courts below after considering the material placed on record. Moreover, the petitioner has failed to show any illegality or perversity in the orders noted above. Therefore, I do not find any discrepancy in the orders

dated 18.07.2014 and 19.04.2012 passed by the courts below.

21. In view of the above, I find no merit in the instant petition. The same is accordingly dismissed *in limine*.

**SURESH KAIT  
(JUDGE)**

**JULY 20, 2015**

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