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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 23.12.2015

W.P.(CRL) 3086/2015

GULAB SINGH ..... Petitioner
Through: Mr. A.K. Bhattacharya, Advocate

versus

STATE OF NCT OF DELHI & ANR ..... Respondents
Through: Mr. Avi Singh, ASC (Criminal) for R-1
Mr. Rakesh Malhotra, Advocate for R-2

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

CRL.M.A.18924/2015 (Exemption)

Exemption granted subject to all just exceptions.

The application is disposed of accordingly.

W.P.(CRL) 3086/2015

1. The present is a petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code) seeking quashing of FIR No.0936/2015, under Sections 420/34 IPC, registered at Police Station- Punjabi Bagh insofar as it names Gulab Singh, the sole petitioner herein.

2. Mr. A.K. Bhattacharya, learned counsel appearing on behalf of Gulab Singh would urge that Gulab Singh who is an employee of the DDA has nothing to do with the commercial transactions that led to the registration of the subject FIR. Mr. Bhattacharya would then urge that Gulab Singh is not the owner of the subject property. Mr. Bhattacharya would also urge that a civil suit being CS (OS) No.26/2015 instituted by the present complainant against the owner of the subject property, arraying him as a party defendant, is pending before this Court and that by way of order dated 27.01.2015, Gulab Singh who was defendant No.3, has been deleted from the array of parties. In this behalf, the order dated 27.01.2015, passed by Joint Registrar (Judicial) of this Court has been brought to my notice which reads as under:-

> "I.A. No.203/2015 (seeking exemption from filing the certified copies)
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> Head and perused the file. Counsel undertakes to file the same at the time of admission/denial of the documents.
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> CS(OS) 26/2015
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> In view of the submission and facts and circumstances of the case, defendant No.3 is necessary dragged and made as a party who has nothing to do with the claim. Hence, the defendant No.3 is deleted from the array of the defendant as submitted.
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> Accordingly, summons of the defendant Nos.1 and 2 be issued by all the modes, including dasti as well,

returnable for 21.04.2015. Steps be taken within two weeks."

3. In other words, it is strenuously and repeatedly urged that Gulab Singh has been dragged into the subject dispute when he has absolutely nothing to do with it as is borne out from the order dated 27.01.2015 extracted hereinabove.

4. On the contrary, Mr. Avi Singh, learned Additional Standing Counsel (Criminal) appearing on behalf of the police would invite my attention to the allegations made in the subject FIR to urge that Gulab Singh had everything to do with the subject FIR.

5. It would, therefore, be relevant to extract the subject FIR in order to bring the allegations and accusations made against Gulab Singh:-

> "NG-1955/SHO/PB. 8.9.15, dated 08/09/2015 To, The Station House Officer, Police Station Punjabi Bagh, New Delhi, Sub: Complaint against Maninder Shah Singh S/o. Sh. T. Shah Singh, Smt. Paramjit Kaur, W/o Sh. Maninder Shah Singh both R/o House No.134, Ground Floor, State Bank Nagar, Paschim Vihar, New Delhi-110063 and Gulab Singh, S/o Sh. Banke Singh, R/o 10/17 Jai Dev Park East Punjabi Bagh, New Delhi committing the offence of criminal breach of trust and cheating 406/420/34/120-B of Indian Penal Code. Respected Sir, I have been constrained to encroach your precious time due to unlawful acts of the aforesaid persons, who have duped me by their nefarious designs for committing the act by them constituting criminal breach of trust and cheating.

That the matrix of the complaint is as:- I was looking to buy a property, since Gulab Singh was known to me and he was aware about this fact. He came along with aforesaid persons represented to me that they are the absolute owner of the property bearing No.B-2/133, Paschim Vihar, New Delhi-110063. After inspecting the property, deal, struck between me and them and Mr. Gulab stood as guarantee of the transaction as he was known to both of us. Believing upon their assurance, I consented to purchase the subject property for a sum of Rs.1,75 Crores and in testimony of same an agreement to sell dated 05.01.2011 was executed and a sum of Rs.20 Lacs was paid in advance amount. It was agreed by them which was reduced in writing that as per terms of clause 9, they undertook to get the property converted to freehold. Mr. Gulab Singh who is employed with DDA undertook that he will facilitate the conversion of the subject property from leasehold to freehold and needless to only upon his assurance, I entered into the agreement dated 05.01.2011. On 23.08.2011 aforesaid persons contacted me for further payment on the pretext that it is required for making the payment with DDA, though it was not obligation of undersigned even then I paid a sum of Rs.10 Lacs by way of cheques bearing No.281342 and 281343 both dated 23.08.2011 drawn on Bank of Baroda, Rampura, Delhi-110035 at the instance of Gulab Singh, thereafter I am running behind aforesaid persons but they all have not intimated the outcome of conversion of the subject property to freehold. However, after repeated follow up, I learnt that aforesaid persons have never applied for conversion into freehold, rather the subject property is under litigation meaning thereby they have misrepresented undersigned at the inception of execution of agreement to sale qua subject property. When I informed them about initiation of legal proceedings against all of them then they refunded Rs.5 Lacs to myself and further assured that either they will transfer the same property in my name within two more months otherwise will refund double of the advance amount. Mr. Gulab Singh on behalf of aforesaid persons guaranteed the making of payment of Rs.50 Lacs vide undertaking dated 15.08.2014, however, they all failed to abide by that undertaking, now it is evident that they all in collusion cheated me by inducing me to buy the subject property and they all were very well aware that the subject property is under litigation and they all took Rs.25 Lacs from me and despite their undertaking not paid Rs.50 Lacs as undertaken by them. That by their aforesaid conduct, it is clear that even at the time of execution of agreement to sell qua said property, they were having a malafide intention and they all have intentionally did not make the payment and thus they have malafides and malicious intention even at the time of receipt of Rs.20 Lacs as advance amount qua said property and thus the aforesaid persons have caused wrongful loss to undersigned and wrongful gains to themselves, thereby committing an offence punishable under Section 420 of the Indian Penal Code. That the act of the aforesaid persons are serious in nature and they all acting in concert with others have indulged in criminal act and has concealed this material fact from our knowledge. That their custodial interrogation is necessary and same will reveal the ramification of the offences and police investigation is necessary to collect evidence in regard to conspiracy and the other persons involved therein. That now it is apparent they all in collusion misrepresented to me and they were having malafides intentions at the time of entering into agreement and thereafter with their dishonest intention they deliberately, intentionally, dishonestly diverted my funds for their personal use and did not paid back to me. Further, from their conduct it is apparent that despite having knowledge of the fact that they have

> misappropriated and converted the proceeds and as such have committed the act of cheating/criminal breach of trust. They have taken the calculated risk as such they are liable to booked for the commission of the offence under Section 406/420 of IPC and their custodial interrogation is required for the recovery of the amount. In view thereof, undersigned request you to kindly lodge an FIR against all of them and initiate inquiry and if possible issue lock of notice against them and there is apprehension they may flee of the country. Thanks, Yours faithfully, Sd/Hindi (Sanjay Sangwan) S/o Late Sh. Ram Kala R/o H.No.7 Gali No.10, Madan Park, East Punjabi Bagh, New Delhi-110026. To, Duty Officer, PS Punjabi Bagh to register a case U/s 420/34 IPC, as prima facie offence U/s 420/34 IPC is made out from the contents of the complaint. Further investigation of the case may be handed over to the undersigned by order SHO/Punjabi Bagh. Sd/English SI Vimram Singh, D-5022, PIS No.28070659, P.S. Punjabi Bagh, N. Delhi.8/9/15."

6. A plain reading of the above FIR discloses *prima facie* the commission of an offence under Section 420 IPC by Gulab Singh. The subject FIR clearly propounds that it was Gulab Singh, who orchestrated the entire transaction and allegedly duped the complainant herein. It would be relevant at this stage to point out that it is alleged that Gulab Singh executed a guarantee to ensure the repayment of a sum of Rs.50 Lacs on 15.10.2014 to the complainant in the subject FIR.

7. Mr. Bhattacharya, learned counsel appearing on behalf of the petitioner was asked a pointed question as to under which category; as prescribed in ***State of Haryana vs. Bhajan Lal*** reported as **1992 Supp. (1) SCC 335;** the subject FIR fell so as to be considered for quashing. Mr. Bhattacharya unequivocally stated that he does not have an answer to that query.

8. The first submission made on behalf of Gulab Singh that he had nothing to do with the subject transaction, is *prima facie*, untenable and contrary to the record. The order dated 27.01.2015 passed by the Joint Registrar (Judicial), Delhi High Court, relied upon by Gulab Singh does not come to his aid, inasmuch as, only a party to a civil transaction or one who have privity of contract with the plaintiff, can be arrayed as a proper and necessary party. Furthermore, the order relied upon by Gulab Singh is not a speaking order and does not categorically state either the facts or the circumstances of the case or even the submissions made on behalf of Gulab Singh, before coming to a conclusion that he has been unnecessarily dragged into the proceedings.

9. In the landmark decision in ***State of Haryana vs. Bhajan Lal*** *(supra)* the Supreme Court enunciated the following category of cases where extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 of the Code can be exercised by the High

Court either to prevent abuse of the process of any court or otherwise to secure ends of justice:-

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
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> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
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> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
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> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

10. In the above decision, the Supreme Court categorically entered a caveat to the effect that the extraordinary power under Article 226 of the Constitution should be exercised sparingly in rarest of rare cases. The Supreme Court further held that reliability of the allegations made in the FIR cannot be examined by the Court at that stage. The dictum of the Supreme

Court in ***State of Haryana vs. Bhajan Lal*** *(supra)* was reiterated by the Supreme Court in ***Som Mittal vs. Government of Karnataka*** reported as **(2008) 3 SCC 574.** In ***Som Mittal*** *(supra)* the Supreme Court expressed itself as follows in elucidating and elaborating the meaning of expression “rarest of rare case”:-

> “9. When the words “rarest of rare cases” are used after the words “sparingly and with circumspection” while describing the scope of Section 482, those words merely emphasise and reiterate what is intended to be conveyed by the words “sparingly and with circumspection”. They mean that the power under Section 482 to quash proceedings should not be used mechanically or routinely, but with care and caution, only when a clear case for quashing is made out and failure to interfere would lead to a miscarriage of justice. The expression “rarest of rare cases” is not used in the sense in which it is used with reference to punishment for offences under Section 302 IPC, but to emphasise that the power under Section 482 CrPC to quash the FIR or criminal proceedings should be used sparingly and with circumspection. Judgments are not to be construed as statutes. Nor words or phrases in judgments to be interpreted like provisions of a statute. Some words used in a judgment should be read and understood contextually and are not intended to be taken literally. Many a time a judge uses a phrase or expression with the intention of emphasising a point or accentuating a principle or even by way of a flourish of writing style. Ratio decidendi of a judgment is not to be discerned from a stray word or phrase read in isolation.”

11. In the present case, as aforementioned, no cogent ground has been urged on behalf of Gulab Singh warranting exercise of the extraordinary power of this court under Article 226 of the Constitution of India to quash the subject FIR. In my considered view, a *prima facie* case of commission of an offence within the meaning of the provisions of Section 420 IPC is made out against Gulab Singh. Further, as aforementioned, Gulab Singh has been unable to point out under which category, as enunciated by the Supreme Court in ***State of Haryana vs. Bhajan Lal*** *(supra)* the subject FIR ought to be quashed.

12. In view of the foregoing discussion, the present petition is devoid of merit and is dismissed.

SIDDHARTH MRIDUL, J

DECEMBER 23, 2015
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