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

\+ W.P.(CRL) 1425/2016

NITIN KUMAR AGGARWAL

..... Petitioner

Through: Mr. Mukul Gupta, Sr. Advocate with Mr. Sunil Kumar Goel, Advocate

versus

STATE OF NCT OF DELHI & ANR

..... Respondent

Through: Mr. Hari Haran, Sr. Advocate with Mr. Sanjay Manchanda & Mr. Siddharth S. Yadav, Advocates Ms. Sumi Anand, Advocate

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

<u>O R D E R</u>

% **13.07.2016**

This writ petition is filed to seek quashing of the FIR No. 136/2013 registered under Sections 420/120B IPC at police Station EOW, against the petitioner. The petitioner seeks quashing of the FIR on the premise that the disputes between the parties were civil disputes and the FIR could not have been registered in these circumstances. I may observe that the petitioner moved Bail Application No. 2626/2014 wherein he was granted anticipatory bail. The anticipatory bail was granted on the premise that the petitioner sought to project his bona fides to pay to the complainant the amounts in respect where of the offence of cheating was alleged. The petitioner, in fact, made payment of some of the amount. In this regard, reference may be made to orders dated 05.03.2015, 27.05.2015 ad 03.07.2015, which read as follows:

> *"**05.03.2015***
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> *1. The petitioner has not made deposit of Rs.1 Crore 60 Lakhs in terms of the previous order.*
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> *2. Mr. Malhotra, learned senior counsel for the petitioner submits that the petitioner had approached the bank for obtaining a loan, however, the bank stated that the loan shall be granted only after 10.04.2015. He submits that to show bona fide of the petitioner, his father Mr. Prem Prakash Aggarwal has also come to the Court along with the original title deeds of the property bearing No.278, Katra Peran, Tilak Bazar, Delhi.*
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> *3. Mr.Malhotra submits that the father of the petitioner is willing to and hereby creates an equitable mortgage in favour of the complainant for the outstanding amount of Rs.1 Crore 60 Lakhs and for the interest on the entire liability of the petitioner to the tune of Rs.2 Crores 10 Lakhs @ 8% per annum from the date the said amount was paid by the complainant by the petitioner, till the amount is completely refunded. In furtherance of and with the intention of creating an equitable mortgage, he has deposited the original title deeds with the Investigating Officer (IO) in Court, which have been accepted by the IO and shall be preserved by him in case it becomes necessary to enforce the mortgage.*
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> *4. Mr. Malhotra has further submitted that the petitioner requires time up till 15.04.2015 to make deposit of Rs.1 Crore 60 Lakhs as directed.*
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> *5. At this stage, the matter was passed-over to enable the petitioner and the complainant to arrive at a settlement.*
>
> *6. After the parties have met, they have informed that the parties have arrived at a settlement.*

7. Under the settlement, the complainant has agreed to receive, and the petitioner has agreed and undertaken to pay an amount of Rs.2 Crores 10 Lakhs to the complainant along with interest @ 8% per annum for the entire period the amount has been retained by the petitioner, in full and final settlement of the disputes between the petitioner and the complainant, upon the said payment of the principal amount of Rs.2 Crores 10 Lakhs being made on or before 15.04.2015 and the payment of interest @ 8% per annum, as aforesaid, being made on or before 25.05.2015.

8. The petitioner has already deposited a Fixed Deposit Receipt (FDR) with the IO for the amount of Rs.50 Lakhs. The petitioner is agreeable that the said amount upon liquidation be released to the complainant. The IO shall take the FDR along with the complaint to the bank concerned, and have the same liquidated. A pay order shall be prepared by the Bank in the name of the complainant and delivered by the IO to the complainant without any delay. The said amount shall be given credit for the purpose of computation of interest on the date the amount is received by the complainant.

9. Upon complete payment of the principal amount along with interest, as aforesaid, all disputes between the parties shall stand settled and it shall be open to the parties to apply for quashing of the proceedings/ FIR. Subject to compliance of the terms of the settlement by the petitioner, no coercive steps shall be taken against the petitioner.

10. It is, however, made clear that this settlement does not pertain to the disputes between the complainant and Mr. Kailash Nath Gupta and his son Mr.Siddharth Gupta.

11. Learned counsel for Mr. Kailash Nath Gupta and Mr.Siddharth Gupta has tendered three FDRs aggregating to Rs.10.5 Lakhs, which have been received by the IO. The said deposit has been made in terms of the order, whereby Mr. Kailash Nath Gupta and Mr. Siddharth Gupta were granted bail on 23.12.2014 in Bail Application No.2785/2014.

12. List on 27.05.2015."

*"**27.05.2015***

1. Since the last date, i.e. 05.03.2015, the petitioner has made payment of Rs.90 Lakhs to the complainant. The balance amount payable is Rs.70 Lakhs along with interest @ 8% per annum, which according to learned counsel for the complainant, comes to Rs.1,64,74,952/-, as on 31.05.2015.

2. Learned counsel for the petitioner submits that the petitioner wishes to make payment of the outstanding amount of Rs.70 Lakhs and the interest accrued, however, the petitioner needs more time to arrange the funds.

3. On the other hand, learned counsel for the complainant submits that the rate of interest being only 8% per annum, the same is way below 18% per annum, as provided in the Negotiable Instruments Act. Since the rate of interest to which the complainant would be entitled is 18% per annum, learned counsel submits that a low rate of interest is proving to be disincentive for the petitioner to make payment of the remaining amount in terms of the schedule fixed by this Court.

4. Since the petitioner has made payment of Rs.90 Lakhs since the last date, I am inclined to grant more time to the petitioner for making payment of the balance amount, including the outstanding interest. However, the same is subject to the condition that the petitioner shall file an affidavit disclosing the effective steps that it has taken and proposes to take to discharge the remaining liability before the next date. It is also subject to the condition that in case the payment is not made within two months, as prayed for by the petitioner, the Court shall consider raising the interest from 8% per annum to a higher rate after hearing the parties.

5. List on 03.07.2015.

6. Dasti."

*"**03.07.2015***

Counsel appearing on behalf of the applicant states that *the affidavit in terms of this Court dated 27.05.2015 has been filed. However, the same is not on record. A copy thereof has been handed over in Court today.*

Mr. Mohit Mathur, learned Senior counsel appearing on behalf of the applicant states that as undertaken before this Court on numerous occasions, the applicant wishes to make payment of the outstanding amount of Rs.70,00,000/- (Rupees Seventy Lakhs) and the interest accrued thereon in terms of the order of this Court dated 05.03.2015. However, the applicant needs some more time to arrange the funds.

Mr.Mohit Mathur, learned Senior Counsel further undertakes to make the balance payment outstanding along with the interest accrued thereon at the rate of 8% per annum on or before 03.11.2015. In this behalf, he requests that the original title deed of the property bearing No. 278, Katra Peran, Tilak Bazar, Delhi which is lying with the IO in terms of the order of this Court dated 05.03.2015, be returned to the applicant in order to enable the applicant to sell the said property and utilize the proceeds to pay the complainant all the amounts that would be outstanding on the date of actual payment. It is ordered accordingly. The applicant shall file an undertaking supported by an affidavit, with regard to the offer made by him, before this Court within a period of two weeks from today.

In view of the aforesaid, Mr. Sanjay Manchanda, learned counsel who appears on behalf of the complainant does not oppose the grant of pre-arrest bail to the applicant subject to the applicant complying with the undertaking made by him before this Court and joining investigation as and when called by a police officer. It is made clear that the respondents would be at liberty to approach this Court in the event the applicant does not comply with the undertaking given to this Court for modification/clarification/cancellation of the present order.

The interim order dated 04.12.2014 is made absolute and in the event of his arrest, the applicant shall be enlarged on bail *on his furnishing personal bond in the sum of Rs.1,00,000/- (Rupees One Lakh) with two sureties of the like amount to the satisfaction of the Arresting Officer/Station House Incharge subject to further condition that he shall join investigation and make himself available as and when called upon by a police officer.*

The application is disposed of accordingly. The pending application also stands disposed of.

Dasti."

Since these orders were not complied with, the complainant moved an application i.e. Crl.M.A. No. 16769/2015 to seek cancellation of the order dated 03.07.2015. This application was taken up, inter alia, on 02.12.2015, when the petitioner appeared in person. The order passed on the said date reads as follows:

*"**Crl.M.A.16769/2015***

The present is an application under Section 439(2) read with Section 482 of the code of Criminal Procedure, 1973 (Cr.P.C.) praying as follows:-

a) Cancel the anticipatory bail granted to the petitioner in FIR No. 136/2013, PS-EOW, Mandir Marg, New Delhi;

b) Direct the petitioner to re-deposit the title deeds of the property against which he had created an equitable mortgage in favour of the complainant, in terms of orders dated 05.03.2015;

c) Direct the IO to hand over such title documents to the complainant/applicant enabling the applicant to take appropriate action in that regard.

Mr.Nitin Kumar Aggarwal, the non-applicant (bail applicant) appears in person and says that the original title deed of the property bearing No. 278, Katra Peran, Tilak Bazar, Delhi *shall be handed over to the IO in the subject FIR during the course of the day today. Mr. Aggarwal further states that he shall pay the following sums to the applicant (complainant) in the subject FIR on the following dates:-*

1. *Rs. 35,00,000/-on or before 02.01.2016.*
2. *Rs.35,00,000/- on or before 02.02.2016*
3. *Rs.50,00,000/- on or before 02.03.2016*
4. *Rs.50,00,000/- on or before 02.04.2016*

The following sums include the interest due on the principle sum at the rate of 8% per annum.

Ordered accordingly.

Mr.Aggarwal states that an undertaking supported by an affidavit qua the offer made by him in Court today, which has been accepted, shall be filed positively within a period of two weeks from today.

It is made clear that in the even the original title deed of the property as afore-stated is not provided to the IO in the subject FIR during the course of the day today or the undertaking as directed is not filed within the period stipulated hereinabove, or the instalments as undertaken are not paid on the respective dates, the interim protection granted to Mr.Nitin Aggarwal may be vacated by this Court.

With the above directions, the application is disposed of accordingly."

However, the petitioner did not comply with the terms agreed to by him on 02.12.2015 and consequently, another Crl.M.A. No. 1711/2016 was moved by the complainant to seek cancellation of bail. That application is still pending.

In view of the aforesaid conduct of the petitioner, this Court is not inclined to exercise its discretionary jurisdiction to entertain the present petition.

The writ petition is accordingly dismissed.

VIPIN SANGHI, J

JULY 13, 2016
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