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

\+ W.P.(CRL) 1421/2013

SHAMBHU PRASAD SINGH

..... Petitioner

Through: Ms. Geeta Luthra, Sr. Advocate with Mr. S.S.Sisodia, Advocate

versus

STATE & ORS

..... Respondent

Through: Mr. Rahul Mehra, Standing Counsel with Mr. Jamal Akhtar, Advocate

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

% **01.08.2016**

The present petition has been preferred to seek the quashing of FIR No. 24/13 dated 02.02.2013 registered at PS EOW under Sections 420/467/468/471/506/120-B IPC against the petitioner on the complaint of respondent No.2.

Before I proceed to deal with the petition on merits, I may observe that during its pendency, the parties arrived at a settlement dated 21.10.2013. The salient terms of this settlement are found recorded in the order dated 18.11.2013. The said salient terms read as follows:

1. The Second Party shall pay a sum of Rupees One Crore and Eighty Lacs to first party and the schedule for the payment

shall be by way of ten instalments i.e. 1. Rs.5.50 lacs already paid on 30/09/2013, 2. 19.50 lacs on 23/10/2013, 3. 15.00 lacs on 25/11/2013, 4. 25.00 lacs on 20/12/2013, 5. 20.00 lacs on 20/01/2014, 6. 15.00 lacs on 20/02/2014, 7. 25.00 lacs on 20/03/2014, 8. 20.00 lacs on 20/04/2014, 9. 20.00 lacs on 20/05/2014 and 10. 15.00 lacs on 20.06.2014. It has been agreed that all the above payments totalling Rs. One Crore and Eighty lacs shall be paid by second party by way of demand draft/ pay order / RTGS in favour of first party and in addition to that 9 post dated cheques of abovementioned dates and amount shall also be given as security by the second party from the account of Shambhu Prasad Singh to the first party at the time of signing of this agreement.

2. It has been agreed between the parties that apart from the aforesaid amount the second party shall transfer and hand over the peaceful vacant possession by executing the title deed of property bearing Khasara no.17/516 of Village: Nayigudi, Mandal: Moreradi, Tehsil: Pokharan, Dist.: Jaisalmer, Rajasthan in favour of designated/authorised representative of first party before the next date of hearing before the Hon'ble High Court of Delhi i.e. 28.10.2013. In this regard it has been agreed that the second party shall handover the original title deed of aforesaid property situated at Rajasthan on or before 23.10.2013 to the first party. It has been further agreed that at the time of executing the sale deed of the aforesaid property by the second party in favour of the first party the aforesaid property shall be free from all encumbrances and no other person/institution/bank shall have any right, title or interest in the aforesaid property in any manner whatsoever. It has been agreed between the parties that the first party shall sell the above mentioned Rajasthan property and the sale consideration shall be adjusted in the last instalments (extended) and the earlier schedule as mentioned above shall be the same and the sale consideration shall not be adjusted in the earlier instalments in any event whatsoever.

3. It has been agreed between the parties that the second party shall also get an affidavit regarding no right, interest or claim of any kind on property bearing number T-11, Green Park Extension, New Delhi and/or from the first party, from the office bearers/authorised signatory of National Thinkers Forum and hand over the same to the first party on or before 27.10.2013 and one copy of the same shall also be filed in the Court by the authorised person of National Thinker forum.

4. It has been further agreed that on receipt of aforesaid amount of Rs. One Crore and Eighty lacs the first party shall give a statement or file affidavit as respondent before the Hon'ble High Court in the quashing petition filed by the second party, to the effect that the first party has no grievance or objection if the FIR no.24.13, PS EOW, Delhi is quashed.

5. It has been agreed that both the parties undertakes to abide by the aforesaid terms and condition. The second party also undertakes that in case of non payment of above said instalments the cheques given as security shall be honoured on presentation. It has further agreed that in case of non payment of agreed amount or in the event on non executing the sale deed of aforesaid property the present agreement stand redundant as of no agreement had been reached between the parties and whatever amount received by the first party shall be forfeited and in that event the first party shall pursue the case a per law.

The said order also records that in pursuance to the agreement, Rs. 25 lakhs had been paid to the complainant by the petitioner. An NOC in respect of property No. T-11, Green Park Extension, New Delhi, had been issued, and that the property bearing Khasra No. 17/516 of village Nayigudi, Mandal: Moreradi, Tehsil Pokharan, Distt. Jaisalmer, Rajasthan, had been transferred to the complainant. The Court also recorded the particulars of the six post-dated cheques delivered by the petitioner to the complainant.

It is not in dispute that out of the amount of Rs. 1.8 crores payable by the petitioner to the complainant under the settlement, only an amount of Rs. 62.50 lakhs has been so paid. It is also not in dispute that the instalments which were required to be paid in terms of the settlement dated 21.10.2013, were actually not paid beyond the amount of Rs. 62.50 lakhs.

The submission of Ms. Luthra is that the petitioner is not in default of the said settlement, inasmuch, as, the cost of the land situated at Jaiselmer, Rajasthan-already transferred to the complainant, had to be adjusted from the instalments. Learned counsel submits that as per the valuation of the petitioner, the said land is valued at over Rs. 1 crore. She submits that the complainant has not come forward to agree on the valuation of the said land. In case the same is so valued and agreed upon, the remaining amount, if any, shall be paid by the petitioner to fulfil the terms of settlement.

On the other hand, the submission of learned counsel for the complainant/respondent No.2 is that the petitioner has blatantly breached the terms of the said settlement. The terms of the settlement were clear that the post-dated cheques had to be honoured upon presentation. Clause 2 of the settlement reproduced above makes it abundantly clear that the sale consideration was to be "*adjusted in the last instalments (extended) and the earlier schedule as mentioned above shall be the same and the sale consideration shall not be adjusted in the earlier instalments in any event whatsoever.*" Therefore, even if the sale consideration was found to be more than the amount payable under the last instalments i.e. Rs. 15 lakhs, that was not to be a reason of stopping payment of the earlier instalments. Learned counsel submits that since the post-dated cheques issued by the petitioner towards the remaining instalments were also dishonoured, no question of the settlement fructifying arose.

I cannot agree with the submission of learned Senior Counsel for the petitioner with regard to the justification offered for dishonour of the cheques tendered towards payment of the earlier instalments. It is clear from a reading of the scheme evolved by the parties under their settlement, that all the cheques towards payment of the settlement amount of Rs. 1.80 crores had to be honoured. Even if the sale consideration eventually arrived at was more than Rs. 15 lakhs, which was the last instalment payable on 20.06.2014, the payment of the earlier instalments could not be interacted by the petitioner unilaterally. It is thus clear that the terms of the said settlement dated 21.10.2013 have been breached by the petitioner, and the said settlement cannot be a reason to allow the present petition and quash the FIR and the proceedings there under.

Turning to the merits of the present case, the submission of Ms. Luthra, learned Senior Counsel for the petitioner is that the crux of the allegation against the petitioner is that the petitioner had represented that the property bearing No. T-11, Green Park Extension, New Delhi, was unencumbered when the same was sold to the respondent vide sale deed dated 12.06.2012, whereas, the complainant alleges that the same was not unencumbered.

According to the petitioner, the said property was transferred for a meagre amount of Rs. 5.17 crores – which had been taken as a loan from the complainant, even though, the market value thereof was Rs. 8 crore at the relevant time. In my view, this aspect is not relevant at all for the present purpose.

The sub-stratum of the FIR is that the petitioner had represented that the said property-when transferred to the complainant, was encumbered. However, subsequently, an entity viz. National Thinker's Forum sought to stake the right to occupy the property on the ground that the property had been let out to them. According to the complainant, the said entity was a sister concerns of the entity of the petitioner, namely, M/s Dynamic Shells Pvt. Ltd., and the petitioner and his wife were the interested persons in the National Thinker's Forum. The petitioner was the General Secretary of the said forum and was also operating the bank account of the said forum as the sole signatory. He also had the PAN Card of the National Thinker's Forum. All these allegations are, obviously, refuted by the petitioner.

The submission of Ms. Luthra is that in terms of the settlement dated 21.10.2013, the said National Thinker's Forum has given up its claim in respect of any portion of the property bearing No. T-11, Green Park Extension, New Delhi, and the grievance of the complainant, therefore, does not survive.

The submission of Ms. Luthra that, since National Thinker's Forum has forsaken its claim in respect of any portion of the said property, the FIR would not survive, has no merit. Once an offence has been committed, it is no answer to say that the grievance of the complainant has been remedied and, therefore, the Court should quash the FIR. A perusal of the FIR shows that there are several other allegations apart from the aforesaid against the petitioner, including, that of impersonation. A perusal of the counter affidavit filed by the State also shows that there are serious allegations against the petitioner. It is well settled that the extra-ordinary jurisdiction of this Court to quash the FIR would be exercised in rare and few cases with utmost caution, where, on a reading of the FIR itself, no offence is made out. This certainly cannot be said about the present case. Therefore, I find no merit in this petition and the same is dismissed.

At this stage, Ms. Luthra, has made a grievance that the charge-sheet has not been filed in the case till date, despite the orders passed by this Court. Mr. Mehra, on the other hand, submits that the report under Section 173 Cr.P.C. shall be filed within two months from today.

I may observe that the grievance in relation to the non-filing of the final report does not appear to be justified, keeping in view the fact that the petitioner has been moving back and forth by claiming one of the other settlement from time to time and that the FIR be quashed on the basis of settlement.

VIPIN SANGHI, J

AUGUST 01, 2016
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