

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

Judgment delivered on : June 13, 2016

+ CRL.M.C. 4615/2015 & CrI.M.A. No.16549/2015 (Stay)

HORAM SINGH Petitioner

Through: Mr.Pankaj Vivek, Advocate.

versus

RAMAN MONGA Respondent

Through: Mr.A.K. Dhupar, Advocate

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. By this petition filed under Section 482 of Cr. P.C. the petitioner has sought to challenge the order dated 23.07.2015 passed by learned Additional Session Judge, Tis Hazari Courts, Delhi in CrI. Revision No.161/3, whereby the order passed by learned Additional Chief Metropolitan Magistrate summoning the petitioner in CC No.138/P/14 was upheld.

2. The brief facts necessary for disposal of the present petition are that the respondent has filed a complaint u/s 200 Cr.P.C. alongwith application under Section 156(3) Cr.P.C. for the offences punishable under Section 420/467/468/471/506/120B IPC against three accused persons (including petitioner herein)

with contention that he was induced by petitioner Horam Singh to enter into a Collaboration Agreement with alleged Ved Prakash Mahna and his wife Kiran Mahna in respect of property bearing No. 29/39, West Patel Nagar, New Delhi. As the said property was in old structure, Ved Prakash Mahna offered him to demolish the entire property and reconstruct the same in four storied building. It is further alleged that as per agreement, after completion of the building, the lower ground floor and upper ground floor were to be retained by Ved Prakash and his wife whereas the first floor and second floor were to be retained jointly by complainant Raman Monga and petitioner Horam Singh. It is further alleged that during the course of said construction work, Ved Prakash fraudulently and dishonestly executed a registered sale deed dated 28.02.2004 in respect of first floor in favour of petitioner Horam Singh and Smt. Kiran Mahna stood witness of the said alleged sale deed. It is further alleged that as per the collaboration agreement the complainant Raman Monga and petitioner Horam Singh were in the joint share of first floor and second floor but the alleged accused persons fraudulently and dishonestly and without the consent/permission of complainant Raman Monga, executed the alleged sale deed in respect of the first floor of the property no. 29/39 in favour of petitioner Horam Singh. Vide order dated 8th August 2011, Trial Court dismissed the application u/s 156(3) Cr.P.C. and called upon the complainant to lead pre-summoning evidence. After obtaining the pre-summoning evidence, Trial Court vide impugned order summoned

the accused No. 1 (Ved Prakash Mahna) and accused no. 2 (petitioner) u/s 420 IPC.

3. The petitioner filed a criminal revision petition before the Court of learned Additional Session Judge and vide order dated 23.07.2015, wherein the learned Additional Session Judge had dismissed the criminal revision preferred by the petitioner while upholding the order of summoning the petitioner passed by learned Additional Chief Metropolitan Magistrate in CC No.138/P/14 for the offence punishable under Section 420 of IPC. Aggrieved by the same, the petitioner preferred the present petition before this Court.

4. Mr. Pankaj Vivek, learned counsel for the petitioner contended that the learned Additional Session Judge has dismissed the revision petition filed by the petitioner without dealing with any of the contentions of the petitioner. It is contended on behalf of the petitioner that the petitioner had not raised any factual defence in the revision petition and had only relied upon the complaint and pre-summoning evidence to show that no case under Section 420 IPC is made out as there was no evidence of dishonest intention at the time of delivery of property or at the time of entering into the collaboration agreement.

5. Learned counsel for the petitioner further contended that the learned Additional Chief Metropolitan Magistrate as well as learned Additional Session Judge failed to appreciate the fact that the summoning of an accused has serious consequences for the accused/petitioner as he has to face trial in a criminal case which may

go on for years altogether. In support of his contentions, learned counsel for the petitioner has placed reliance on the judgment in ***Pepsi Food v. Special Judicial Magistrate*, AIR 1998 SC 128**. It is also contended that the entire allegations as stated in the pre-summoning evidence and complaint did not make out a case of cheating rather it could have been held to be merely a case of breach of contract. Moreover, the ingredients of cheating as defined under Section 415 of the IPC were not made out from the record of the case.

6. Learned counsel for the petitioner has also raised the contention regarding inordinate delay of more than 7 years in making the first complaint to police as the alleged execution of the sale deed dated 28.02.2004 was during the construction stage i.e. in the year 2004 itself but the learned Additional Chief Metropolitan Magistrate failed to consider this aspect. Learned counsel for the petitioner also raised the contentions regarding discrepancies in recording of the evidence of the complainant and his mother, recorded at pre-summoning stage. As per the learned counsel for the petitioner, in case any violation is found to be made by the petitioner in complying with the terms and conditions of the collaboration agreement, the Court ought to have left the parties to avail their legal remedies in civil law. It is further contended that the learned Additional Chief Metropolitan Magistrate did not arrive at any conclusion that the agreement dated 26.04.2003 was obtained by fraud nor did the Court arrive at any finding that the accused deceived and induced the complainant to deliver any property or to do or omit to do anything which he would have not done unless

so deceived. It is further contended that the major part of sale consideration was paid by bank draft, therefore, it cannot be said that the petitioner had suffered wrongful loss or the petitioner had made a wrongful gain.

7. Mr. A.K. Dhupar, learned counsel for the respondent contended that there is no illegality or infirmity in the order passed by learned Additional Chief Metropolitan Magistrate as well as by learned Additional Session Judge while upholding the order of summoning the petitioner in a case under Section 420 IPC, therefore the present petition filed by the petitioner is liable to be rejected outrightly.

8. I have heard the submission made by both the sides and also gone through the contents of the petition as well as the impugned order passed in this case.

9. After careful scrutiny of the case in hand, this Court observes that the admitted facts between the parties are that there was a collaboration agreement executed between the complainant and the accused (petitioner herein), according to which the complainant and the petitioner were entitled to sell the first and second floors of the developed property to any person of their own choice. It is also an admitted fact that the petitioner in his sole capacity on 28.02.2004 had got registered the first floor of the property in his name.

10. This Court is conscious of the fact that the complaint filed by the respondent relates to the offence under Section 420 IPC and there

are specific allegations made against the petitioner in the complaint itself. This Court also finds that the petitioner had raised some factual as well as legal issues regarding issuance of summoning order, which in the considered opinion of this Court can be adjudicated during trial. So far as the summoning order passed by the Trial Court is concerned, this Court is of the considered view that in deciding whether a process should be issued, the Trial Court can take into consideration improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations. It is also a settled principle that the Trial Court has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by it. In the considered opinion of this Court, once the Trial Court has exercised its discretion, it is not for this Court, to substitute its own discretion for that of the learned Additional Chief Metropolitan Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused.

11. It would be relevant to refer to the decision in ***Dy. Chief Controller of Imports and Exports v. Roshanlal Agarwal and Ors.*** (2003) 4 SCC 139, wherein the Hon'ble Supreme Court, held as under:

“9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction.

Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

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“The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order.”

12. In ***U.P. Pollution Control Board v. Dr. Bhupendra Kumar Modi and Anr.*** (2009) 2 SCC 147, this Court, in paragraph 23, held as under:

“23. It is a settled legal position that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused.”

13. This Court observes that the complaint was filed in this case against the petitioner for the offence punishable under Section 420 of

IPC and there are very clear and specific allegations against the petitioner which can be adjudicated during trial of the case. So far as the grounds taken by the petitioner herein are concerned, those are the subject matter of trial and need not to be tried here. The petitioner has filed the present petition under Section 482 of Cr. P.C. seeking quashing of the summoning order dated 26.11.2014 passed by the learned Additional Chief Metropolitan Magistrate, and this Court primarily ought to see as to whether any prima facie case has been made against the petitioner or not and in the considered opinion of this court, the court below had found prima facie material available on record to summon the petitioner.

14. After going through the contents of the petition as well as the impugned orders, this Court does not find any illegality or infirmity in the impugned orders passed by learned Additional Chief Metropolitan Magistrate as well as learned Additional Session Judge.

15. Resultantly, the present petition filed by the petitioner is dismissed and the petitioner is directed to appear before the Trial Court and to take appropriate legal remedies as available under the law.

16. Before parting with the order, this court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the present petition. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of

fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

17. A copy of this order be sent to Trial Court for information.

18. With aforesaid directions, the present petition stands dismissed.

JUNE 13, 2016
pkb

(P.S.TEJI)
JUDGE

