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

+ W.P.(CRL) 57/2016

NAMITA SHARMA

..... Petitioner

Through: Mr. Ravinder Tyagi, Ms. Kartika
Tyagi, Kanishka Tyagi and Divya
Singhal, Advocates

versus

THE STATE (GOVT OF NCT OF DELHI) & ANR

..... Respondent

Through: Ms. Kamna Vohra, ASC for the State
a/w SI Sachin Yadav, PS Sarai
Rohilla.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
28.07.2016

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The present petition has been preferred to seek the quashing of FIR No.62/2015 dated 29.05.2015 registered u/s 420 IPC at PS Sarai Rohilla, which is still pending investigation. The aforesaid came to be registered on an application filed by the complainant u/s 156(3) Cr PC before the CMM (North), Tis Hazari Courts, Delhi.

The background facts are that one Taruna who was the owner of the property bearing No.M-212, Shastri Nagar, Sarai Rohilla, Delhi entered into an agreement with the complainant to sell the said property for Rs.18 lacs. According to the complainant, initially he made a payment of Rs.50,000/- on the date when the agreement was entered into. The complainant claims that the date of fulfilment of the agreement was kept as 17.01.2011, but was later on changed by the owner Taruna to 12.02.2011. The date was further extended for execution of the requisite documents on one pretext or the other.

The complainant claimed that the owner Taruna took further part payment from the complainant amounting to Rs.2.50 lacs which was to be adjusted towards the cost of the flat. The complainant claimed to have learnt through reliable sources that the property was in the name of Taruna's maternal grandfather who had bequeathed the property in the name of his wife, his daughter Shobha Khurana (mother of Taruna) and Taruna. The complainant further claimed that Taruna falsely claimed to be the owner of the property and executed the agreement with the complainant without getting the share of her mother transferred in her own name. The mother of Taruna passed away.

The complainant also claimed to have learnt through reliable sources that after the death of the Taruna's mother, Taruna had forged and fabricated some documents of her mother with regard to the property in question and other properties. The complainant claimed in her notice to Taruna that the complainant had been deceived fraudulently and induced into paying Rs.3 lacs and, therefore, she was liable to be prosecuted u/s 420 IPC.

A legal notice dated 21.10.2014 was issued by the complainant to Taruna making the aforesaid allegations. I may observe that this was not the first notice issued by the complainant to Taruna. She had earlier sent a legal notice on 13.10.2014 making similar allegations. To the said notice dated 13.10.2014, Taruna had sent a reply on 17.10.2014, wherein the stand was that the date for fulfilment of the agreement was 14.03.2011. By that date, the complainant had to make payment of the remaining sale consideration of Rs.17.50 lacs. Thereafter, the requisite documents were required to be executed in favour of the complainant and possession handed over. She claimed that the earnest money paid to her was liable to be forfeited since the complainant did not make payment of the remaining sale consideration upto 14.03.2011 and that she had forfeited the said amount.

I may observe that till this stage, the petitioner was nowhere in the picture. The petitioner then entered into an agreement with Taruna and purchased the said property from Taruna vide registered sale deed dated 22.10.2014 for Rs.24 lacs. The petitioner also purportedly took physical vacant possession of the property from the vendor Taruna at the time of execution of the sale deed.

The submission of learned counsel for the petitioner is that the complainant has already filed a civil suit for specific performance of her agreement with Taruna, which is pending. The petitioner has also filed a civil suit being C.S. (OS) No.1117/2015 titled Namita Sharma v. Pooran & Anr., wherein this court has restrained the defendants from selling, alienating or transferring the suit property till further orders. Defendant no.1 in the said suit is the complainant in the FIR in question.

The submission of learned counsel for the petitioner is that even if the complaint/FIR is read as a whole, it does not disclose the commission of any offence by the petitioner, much less an offence u/s 420 IPC. The submission is that the petitioner has not deceived either the vendor Taruna or the complainant Pooran, and the petitioner has not fraudulently or dishonestly induced any person to deliver any property to the petitioner or to cause any person to consent that any person shall retain any property. So far as the rights of the complainant Pooran are concerned, they have not been compromised by the petitioner while entering into the sale transaction with Taruna/ the owner. Whatever rights the complainant Pooran has, he is entitled to pursue the same in his own suit. The issue whether, or not, he would be entitled to a decree for specific performance as claimed by him against the defendant in the suit would be decided by the civil court.

Learned counsel submits that the petitioner has stepped into the shoes of the owner Taruna and would equally be bound by the said decree since he had notice of the existence of the said agreement to sell executed by Taruna in favour of Pooran and entered into the sale transaction with Taruna with open eyes by taking a calculated risk. It is pointed out that the suit for specific performance was filed by Pooran only after the execution of the sale deed by Taruna in favour of the petitioner and no proceedings were pending on the said date.

A bare perusal of the complaint/FIR does not disclose the commission of any offence by the petitioner in any provision, much less section 420 IPC. The petitioner has not deceived or fraudulently or dishonestly induced either the owner Taruna or the complainant Pooran into giving up any interest in

property. In my view, the present is a fit case for exercise of jurisdiction by this court to quash the FIR in question qua the petitioner. The same is, accordingly, quashed qua the petitioner.

The petition stands disposed of.

VIPIN SANGHI, J

JULY 28, 2016

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