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

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Decided on: 27.11.2017

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CRL. REV. P. 173/2014

A.K. SINGLA

..... Petitioner

Through: Ms. Anita Gupta, Advocate.

Versus

MADHU GARG & ANR

..... Respondents

Through: Ms. Maninder Aacharya, Sr.
Advocate with Mr. S. Mukerjee,
Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This petition impugns the order and judgment dated 09.12.2013 passed by the learned Additional Sessions Court, setting aside the summoning order dated 28.05.2012 passed by the learned Metropolitan Magistrate and also dismissing the complaint under section 156(3) read with section 200 Cr.P.C dated 14.05.2007 filed by the petitioner for offences punishable under sections 468/469/471/420/120-B of the Indian Penal Code, 1860.

2. The facts of the case as per the petitioner are that a civil dispute arose between one Ms. Pooja Agarwal and respondent no.2 over ownership of property bearing House no. 141, Pocket No. 21, Sector-24, Rohini, Delhi

which is pending before the Delhi High Court (CS (OS) No. 211/07) in which an ex-parte stay was granted on 05.02.2007 in favour of the plaintiff- Ms. Pooja Agarwal. She sent the notice of the case with plaint and other documents, along with the stay order, to the respondents. It was served upon the latter on 09.02.2007. Therefore, both the accused persons came to know about the pendency of the said case. It is alleged that both the accused persons had filed a false and an ante dated report with the police on 15.01.2007 to (i) counter the said civil suit to harass, blackmail and extort monies from the petitioner on the basis of the false FIR No. 369/2007 and one G.D. Gupta and (ii) to use the said false FIR for grabbing the possession of the suit property.

3. The learned counsel for the respondents contends that the complaint dated 15.01.2007 had already been lodged by the respondent and the same was duly considered in addition to the complaint dated 09.02.2007 filed by the respondent no.2; that in registration of the said FIR there was no concealment of any information.

4. The learned counsel for the petitioner contends that from a bare perusal of the FIR, it is evident that a forged ante-dated report dated 15.01.2007 has been made the basis of the registration of the FIR; that even a copy of the same has been annexed with the rukka and the FIR as well; that these facts were entirely over looked by the impugned order. It is further contended that the said order erroneously assumed that the accused persons were summoned only for offences punishable under section 420 IPC read with section 34 IPC; that it failed to address the summoning of the accused persons qua section 120-B IPC; that indeed, the court itself

observed that the accused persons are liable to be prosecuted under section 180 IPC, yet it dismissed the complaint and set aside the summoning order.

5. The petitioner further submits that the court has erroneously observed that the petitioner/complainant was required to examine the Public Information Officer who replied to his RTI application; that the deposition on behalf of the police that there is no PP Register regarding the said complaint, has not been addressed or dealt with by the impugned order; that the impugned order has limited itself to the aspect of a DD Register whereas maintenance of a DD register was never an issue; that the order has failed to appreciate the fact that the forged complaint dated 15.01.2007 is stated to be entered in a PP Register by the respondents; that CW-1 was a police officer from the Police Station concerned, whose evidence has completely falsified the reply of the police to the RTI application, and that in order to make the PIO an accused, a meeting of mind of the said PIO has to be proved with the accused persons. He also argues that the order has erroneously given preference to a reply under the RTI Act over the deposition of police before the court of law.

6. From the perusal of the FIR no 369/2007, it is clear that the complainant has not mentioned that there was any complaint dated 15.01.2007 regarding theft of document on 14.01.2007. Therefore, the police has not registered the aforementioned FIR on the basis of alleged forged document dated 15.01.2007. Cheating is defined under section 415 of the IPC which reads as under:-

“Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any

property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Thus, the basic ingredients of cheating as per Section 415 IPC are:

1. Fraudulent or dishonest inducement of a person by deceiving him.
2. the person who was so deceived was induced to give any property to any person.
3. or the person so deceived should be induced to do or omit to do anything which that person (deceived) would not do or omit if he was deceived.
7. It is the case of the respondents that the petitioner has failed to provide any reason for not arraying Mr. Manish Aggarwal (PIO) as an accused in his complaint and/or for not calling him as a witness especially since the petitioner contends that the RTI reply dated 14.05.2007 is false; that at this stage the petitioner, cannot re-agitate/ re-open the issue of correctness of committing offence of forgery and/or criminal conspiracy and/or false information by respondents, as the summoning order dated 28.05.2012 has attained finality apropos the petitioner.
8. This court is of the view that prima facie, there is neither any allegation in the complaint nor any evidence which shows that the respondents herein had induced anyone to deliver any property or to bring the allegation under section 415 of the IPC. Therefore, the allegation of

cheating is not made out. Nor is there any explanation or reason for the petitioner not examining the Public Information Officer to prove his case. Apropos the argument that there is no entry in the Daily register of 15.01.2007 regarding complaint of that day, the RTI reply specifically states that the complaint was registered at Police Post (PP) Vijay Vihar. Hence, logically there would be no simultaneous record of the same at PS South Rohini. The petitioner was unable to provide any material to show that the complaint dated 15.01.2007 was either ante-dated or was forged. The petitioner also failed to show as to why he has not examined any witness from Police Post Vijay Vihar and/or Virender (who made enquiries on the complaint dated 15.01.2007) when admittedly the RTI reply dated 14.05.2007 states that the said complaint was entered at Serial no. 77 at P.P Register Vijay Vihar and was marked to H.C. Virender.

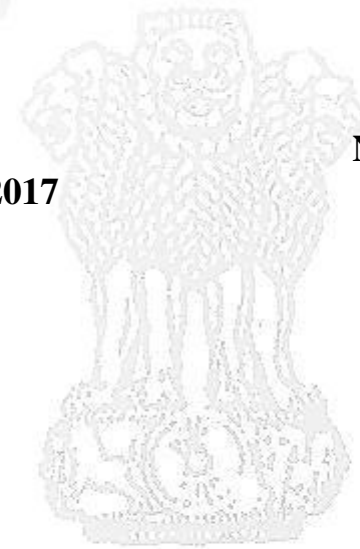
9. The impugned order has noted that the FIR has not been registered because of the complaint dated 15.01.2007 which was allegedly forged by the complainant nor had the police officials done or omitted to do anything on the basis of the said alleged forged complaint. The impugned order also did “not find any other allegation in the complaint or any evidence of PW-1 and PW-2 that the revisionist had induced anyone to deliver any property or to do or omit to do any act” which he otherwise would have done. Hence, it concluded that the ingredients of cheating were not attracted. It further noted that CW-1 had stated that there is no entry in P.S. South Rohini with regard to the said complaint. “But it is a fact that D.D. Register is maintained in every police post. If register has been destroyed, it cannot be said that there was no D.D. Register on 15.01.2007 or there was no entry of complaint

dated 15.01.2007 made by Rampat Garg”. The impugned order held that prima facie it could not be held that complaint dated 15.01.2007 was not made. It was of the view that there was no evidence to summon the revisionist for offences under sections 420/34 IPC. Accordingly, the impugned order for summoning the revisionist was set aside and as a corollary, the complaint too was dismissed.

10. In view of the above, no ground is made out for interference with the impugned order. The petition is without basis and is accordingly dismissed.

NOVEMBER 27, 2017

NAJMI WAZIRI, J.



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