

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

% Decided on: 8th May, 2017

+ **CRL.M.C. 2255/2016 & Crl.M.A. 9471/2016 (stay)**

RAMAN KUMAR JUNEJA

..... Petitioner

Represented by: Mr. Suhail Dutt, Sr. Adv. with
Mr. Aditya Kr. Chaudhary,
Adv.

versus

STATE NCT OF DELHI & ANR

..... Respondent

Represented by: Mr. Ashok Kr. Garg, APP.
Mr. Vinod Tyagi, Adv. for R-2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By the present petition the petitioner seeks quashing of FIR No. 09/2009 registered at PS Civil Lines for offences punishable under Sections 406/420/120B IPC.

2. In the above-noted FIR after investigation, charge-sheet was filed and vide order dated 3rd February, 2016 the learned Metropolitan Magistrate directed framing of charge for offences punishable under Sections 406/420/120B IPC against the petitioner which order was assailed before the learned Additional Sessions Judge. The criminal revision petition filed before the learned Additional Sessions Judge was dismissed by the impugned order dated 23rd April, 2016.

3. The allegations of the respondent No.2 in the FIR were that in January, 2008 property dealer Bipin Jain contacted him and informed that one property dealer Anish Kumar Gupta told him that the petitioner is the owner of double storeyed built-up property bearing No.20/2 with roof rights measuring 442 sq. yards, situated at Rajpur Road, Civil Lines, Delhi along with passage ownership rights with freehold rights of the land underneath and was looking for a buyer. Since the complainant was also interested in buying a residential property, a meeting was arranged wherein the petitioner claimed himself to be the absolute owner of the said property and that the property was free from all encumbrances. The complainant agreed to pay the property for a total sale consideration of ₹6,74,00,000/-. An agreement was entered into on 18th January, 2008 and part payment of ₹20,00,000/- in cash and ₹60,00,000/- by 2 cheques was paid. Since the agreement did not include 'ownership right over the passage' and only mentioned 'easement rights over the passage', therefore dispute arose. Therefore the payment by cheque was stopped. A fresh agreement was entered into and at the time of entering into the agreement dated 7th July, 2008 the petitioner and the property dealer Anish Gupta showed photocopies of certain documents, registered gift deed as well as Will, to show the petitioner's ownership right over the entire property as well as the passage, however the photocopies of the said documents were not provided stating that the same will be provided at the completion of the sale proceedings. A sum of ₹10,00,000/- in cash and ₹60,00,000/- by cheque was paid besides ₹20,00,000/- in cash already paid. Though the sale deed was to be executed as per the agreement to sell dated 7th July, 2008 by 15th August, 2008 the time limit for execution of the sale deed was extended by 15th September, 2008 and again by 15th October,

2008, when the respondent No.2 came to know that the petitioner was not the absolute owner of the passage from the house to the Road. The petitioner misrepresented that he was the owner of the passage of the house on the main Road and induced the complainant to deliver ₹1.5 crores in all, till 7th September, 2008. He served legal notice dated 7th October, 2008 and asked the petitioner to return ₹3 crores as per the terms of agreement and filed the complaint on which the above-noted FIR was registered and after investigation, charge-sheet was filed.

4. Learned counsel for the petitioner contends that admittedly the first agreement entered into between the parties was dated 18th January, 2008 wherein only passage rights from the main Rajpur Road to the Kailash building was mentioned. Further the agreement to sell mentions as to how the petitioner became the owner of the property for the same belonged to his grand-father who executed a gift deed in favour of the grand-mother of the petitioner who later executed a Will dated 11th July, 1973. Both the gift deed and the Will were registered documents mentioning that the grand-father had only right of easement of the passage. Even in the Will this fact stands mentioned. Thus, merely because in the second agreement to sell dated 7th July, 2008 the petitioner failed to notice the insertion in a different typing on the second page wherein unscrupulously the words ‘along with the passage ownership rights’ were introduced, the petitioner cannot be said to have cheated or committed criminal breach of trust. Further, even as per the receipts duly executed between the parties it is clear that only property bearing No.20/2 Rajpur Road, Civil Lines, measuring 442 sq. yards was sold. Learned counsel for the petitioner submits that in the present petition under Section 482 Cr.P.C. this Court can even look into the impeccable

material which is in the form of statement on oath of the respondent No.2 in the civil suit filed by the respondent No.2 being CS(OS) No.2205/2009 wherein he admits having been shown the title deeds and documents at the time of execution of the agreement to sell. Hence the above-noted FIR and the proceedings pursuant thereto be quashed.

5. Learned counsel for the respondent No.2 on the other hand contends that this Court even in this petition under Section 482 Cr.P.C. will not look into the statements recorded in the civil suit and appreciate the evidence of the civil suit. Further on the ingredients of the FIR, offence under Section 406/420/34 IPC is made out and misrepresentation was made by the petitioner that he was the owner of the passage as well, thus inducing him to enter into an agreement to sell.

6. Admittedly as noted in the FIR, the first agreement to sell between the parties was on 18th January, 2008 wherein the built-up property bearing No.20/2, with roof rights upto sky, land area measuring 442 sq. yards, building known as 'Kailash' situated at Rajpur Road, Civil Lines, Delhi along with the passage right from the main Rajpur Road to the Kailash building was agreed to be sold for a total sale consideration of ₹6,74,00,000/- (Rupees six crores seventy four lacs only). The said agreement to sell clearly noted how ownership of the property admeasuring 442 sq. yards devolved on the petitioner. It was stated that the property was acquired by Smt. Kaushalya Devi Pahwa by virtue of a gift deed duly registered at document No.8518 on 10th December, 1969 where after Smt. Kaushalya Devi Pahwa executed a Will dated 11th July, 1973 in favour of the petitioner.

7. A perusal of both the documents i.e. gift deed and the Will show that Dr. Mathra Das Pahwa who donated the property to his wife Smt. Kaushalya Devi Pahwa and Smt. Kaushalya Devi who executed a Will in favour of the petitioner only had a right of easement of passage from the main gate. The sale consideration in both the agreement to sell continue to be 6,74,00,000/- and as noted in the first agreement to sell dated 18th January, 2008 earnest money of ₹80 lakhs was paid out of which ₹20 lakhs was cash and ₹60 lakhs by way of two cheques one for ₹5 lakhs and the other for ₹55 lakhs. Admittedly, this amount of ₹60 lakhs was not encashed by the petitioner. At the time of agreement to sell dated 7th July, 2008 the total sale consideration continued to be ₹6,74,00,000/- with a further cash advance of ₹10 lakhs. The second agreement notes that ₹60 lakhs have been paid vide cheque No.439881 drawn on Punjab National Bank and the same is typewritten. This could have been done only by the complainant who had in his possession the cheque and had drawn the same. Further the receipts also note that the same was in lieu of earnest money against sale of double storeyed built-up property bearing No.20/2 with roof rights upto sky land area, measuring 442 sq. yards, building known as 'Kailash' situated at Rajpur Road, Civil Lines with freehold rights of the land underneath. There is no mention in the two receipts of the ownership rights in the passage. If the version of the respondent No.2 is to be accepted that the petitioner informed him that he owned the passage and thus the same was also a part of the agreement to sell, the receipt would have mentioned the area of the passage besides the area of the double storeyed built-up property which measures 442 sq. yards.

8. As noted above it is not the case of the respondent No.2 that finally the sale deed was executed and only ₹30 lakhs in cash were paid and the cheque of ₹60 lakhs. Further the petitioner has placed on record the statement of the respondent No.2 on oath recorded in CS(OS) 2205/2009 wherein he admitted that he was shown the title deeds at the time of negotiations. In the said statements he did not state that the title documents deed shown at the time of negotiations were not the once which are now recovered during the course of investigation. Hence in view of the admitted facts in the complaint and the documents collected during the course of investigation and the impeccable material in the form of statement of respondent No.2 on oath in the civil suit, this Court finds that the ingredients of offences punishable under Section 406/420 IPC are not made out.

9. The Supreme Court in the decision reported as (2013) 3 SCC 330 Rajiv Thapar & Ors. Vs. Madan Lal Kapoor while laying down the guidelines for quashing of a FIR and the proceedings pursuant thereto in exercise of its power under Section 482 Cr.P.C. by the High Court, delineated the steps to be taken to determine the veracity of prayer as under:

“29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and

circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.”

10. Consequently, FIR No. 09/2009 under Sections 406/420/120B IPC registered at PS Civil Lines and the proceedings pursuant thereto are hereby quashed.

11. Petition and application are disposed of.

**(MUKTA GUPTA)
JUDGE**

**MAY 08, 2017
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