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

+ CRL.A.866/2015

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Date of Decision: 30.08.2017

VED PRAKASH YADAV Appellant
Through: Mr. R.M. Sinha, Advocate.

versus

SANJAY KUMAR Respondent
Through: Mr. A.K. Singh, Advocate.

**CORAM:-
HON'BLE MR JUSTICE ASHUTOSH KUMAR**

ASHUTOSH KUMAR, J (ORAL)

1. The appellant has challenged the orders dated 05.02.2015 and 22.07.2015 passed in M No.20/13 by the Additional District Judge-6, South District, New Delhi whereby proceedings under Section 340 of the Cr.P.C has been initiated against him and a direction has been given for lodging a complaint against the appellant respectively.
2. Facts which are necessary for the disposal of the present appeal are as hereunder.
3. The respondent/Sanjay Kumar had entered into an agreement with the appellant for purchase of flat No.8, First Floor, Property No.21-22, Khasra No.29, Krishna Nagar, Humayunpur, Delhi for a consideration amount of Rs.40 lakhs. Pursuant to such an agreement, an amount of Rs.15 lakhs was admittedly paid to the appellant by the

respondent. However, the property could not be conveyed as the balance of the consideration amount was not paid by the respondent. It is the case of the appellant that the agreement to sell was cancelled and the property in question was sold to one Shailesh Kumar Awasthi on 10.10.2008. The property was purchased by Mr. Shailesh Kumar Awasthi on the condition that only the appellant shall be responsible for the litigation with regard to cancellation of agreement with the respondent.

4. The appellant thereafter, on 16.02.2010 filed a suit for a decree of permanent injunction against the respondent restraining him from interfering with the peaceful possession of the aforesaid property in question. Shortly thereafter i.e on 28.03.2010, the respondent lodged an FIR bearing No.64/2010 dated 28.03.2010 against the appellant for the offences under Sections 420/468/471 and 120B of the IPC. It was alleged therein that despite having received money from the respondent, the property in question was not being conveyed by the appellant. The appellant was however, granted bail by the learned MM on his depositing a sum of Rs.15 lakhs in Court.

5. The appellant also moved for quashing of the FIR but the same was rejected. Thereafter, the appellant preferred SLP(Crl) No.532/2013 which was allowed by taking into account that the appellant had deposited a sum of Rs.15 lakhs with the Trial Court at the time of grant of bail. The Supreme Court, thus, was of the view that under such circumstances, there was no reason to prosecute the appellant any further and the criminal proceedings arising out of the FIR No.64/2010 was quashed. However, the Supreme Court at the

same time directed that if the respondent was so aggrieved, he could move the Civil Court for appropriate orders in accordance with law. The amount which was deposited by the appellant was thus directed not to be released without the orders from the Civil Court.

6. The respondent had also filed an application under Section 340 of the Cr.P.C before the Supreme Court but the same was disposed of along with SLP (CrI) No.532/2013.

7. The order of the Supreme Court of India is extracted below for ready reference:-

*IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 238 OF 2014
(arising out of SLP (CrI.) No. 532 of 2013)*

VED PRAKASH YADAV & ANR.APPELLANT(S)

VERSUS

STATE, N.C.T. OF DELHI & ANR. ..RESPONDENT(S)

O R D E R

Leave granted.

Heard counsel on either side.

Respondent No.1/State could not produce any document to show that the appellant had duped others and no other FIR has also been produced before us. Further, it is also clearly stated in the order itself that the property was offered to respondent No.2, but he did not pay the amount, hence, it was sold to somebody else in the year 2008.

Mr. Kailash Vasdev, learned senior counsel appearing for the appellant, submitted that the appellant has deposited a sum of 15 lakhs with the trial court at the time of granting bail and, in such circumstances, there

is no reason to prosecute him under Section 420/120-B of the IPC. Accordingly, the criminal proceedings arising out of FIR No. 64 dated 28.03.2010 stand quashed.

All the same, if respondent No.2 is so aggrieved, he can move the civil Court for appropriate orders, in accordance with law.

The amount already deposited by the appellant shall not be released without getting orders from the civil Court.

The appeal is allowed and the charges framed against the appellant stand quashed.

.....J.
(K.S. RADHAKRISHNAN)

.....J.
(VIKRAMAJIT SEN)

NEW DELHI,
JANUARY 24, 2014

8. The suit which was filed by the appellant was withdrawn vide order dated 22.02.2014.
9. In the aforesaid suit, the appellant is alleged to have made a categorical statement that he is the owner and in possession of the property in question. Finding such statement to be incorrect as the property in question had already been sold to one Mr. Shailesh Kumar Awasthi, the respondent filed an application under Section 340 of the Cr.P.C, in the suit, for proceeding against the appellant for having made a wrong statement knowingly.
10. The Trial Court viz. the learned Additional District Judge-6, South District, New Delhi, taking into account the admission of the appellant that the property was sold to Mr. Shailesh Kumar Awasthi in

2008 and rejecting the explanation of the appellant that only symbolic possession was handed over to Shailesh Kumar Awasthi whereas actual possession remained with him, by order dated 05.02.2015, initiated proceedings against the appellant under Section 340 of the Cr.P.C for having made a wrong statement in the suit. After enquiry, by order dated 22.07.2015, the learned Trial Court came to the conclusion that such a wrong statement in the suit attracted the mischief of Section 209 of the IPC, which offence is squarely covered under clause (b) of Section 195 of the Cr.P.C punishable under Section 340 of the Cr.P.C, directed the lodging of a complaint against the appellant.

11. It has been submitted on behalf of the appellant that the statement made in the suit regarding the ownership and possession of the property in question being in the hands of the appellant was not incorrect. It was meant for the purposes of obtaining permanent/mandatory injunction against the respondent for not causing any interference in the peaceful enjoyment of the said property. True it is that the property was conveyed to one Mr. Shailesh Kumar Awasthi but the possession still remained with the appellant. The property in question was not conveyed to the respondent only on the ground that the balance consideration amount was not paid.

12. It was further submitted on behalf of the appellant that the prospective vendee of the property viz. Mr. Shailesh Kumar Awasthi had made it very clear that any litigation with respect to the cancellation of the Agreement to Sell with the respondent, shall be the responsibility of the appellant only and not the vendee. Under such

circumstances, the statement made in the suit regarding the ownership and possession of the property in question cannot be held to be a wrong/misleading statement.

13. Mr.R.M.Sinha, learned advocate appearing for the appellant has drawn the attention of this Court to the provision of Section 209 of the IPC which reads as hereunder:-

“209. Dishonestly making false claim in Court.—Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.”

14. A bare reading of the section, it has been argued, reveals that what is punishable is the fraudulent or dishonest disclosure before a Court of law with the sole intent of injuring or annoying any person. Without the fraudulent and dishonest disclosure to the Court with the intent to injure or annoy any person, the mischief of Section 209 IPC would not be attracted. The suit was filed for the purposes of obtaining mandatory injunction as against the respondent. Admittedly, even when Rs.15 lakhs had been paid to the appellant by the respondent, the possession of the property in question had not been handed over to the respondent. For the sale to have been effected, the balance amount had to be paid by the respondent. Thus for all practical purposes the respondent did not have any dominion over the property in question. Thus the purpose of the statement regarding the ownership and the possession of the property in question was only for preventing any injury or annoyance to him and not to any other. There is nothing on

record, it has been urged, to suggest that Mr. Shailesh Kumar Awasthi, by the time the suit had been filed, had come in possession of the property in question.

15. It has next been urged that Section 340 Cr.P.C is to be invoked only in such cases where perjury is deliberate and conscious and the conviction is reasonably probable or likely. In **Chajoo Ram vs. Radhey Shyam and Anr.**, AIR 1971 SC 1367, the Supreme Court has held as hereunder:-

“7. The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge.”

(emphasis added)

16. Similarly, in **Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr.**, AIR 2005 SC 2119, the Supreme Court has further reiterated:-

“23. In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section

195(1)(b), as the section is conditioned by the words 'court is of opinion that it is expedient in the interests of justice'. This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice."

(emphasis added)

17. Thus a Court is prima facie, required to come to a conclusion after holding a preliminary enquiry that there has been a deliberate and conscious effort to misguide the Court, thereby causing interference in the administration of justice. Apart from the aforesaid requirement, it is also necessary for a Court to decide whether such prosecution is necessary in the interest of justice, before embarking upon the invocation of Section 340 of the Cr.P.C.

18. As opposed to the aforesaid contention of the appellant, it has been submitted on behalf of the respondent that the statement made by the appellant in the suit regarding the ownership and possession of the property in question was patently false, misleading and the same was made for the ulterior purposes of misguiding the Court. Had this not been deliberate and intentional, the appellant would surely have stated about the factum of the respondent having first offered to purchase the property in question and had also deposited Rs.15 lakhs.

19. Mr.R.M.Sinha, learned advocate for the appellant however, has submitted that though the aforesaid fact has been stated in the body of the suit but the bonafide of the appellant can also very well be seen from the fact that he stakes no claim over the money (Rs.15 lakhs) which has been deposited by him in the Trial Court at the time of bail.

20. From the perusal of the records of this case, it becomes very clear that the purpose of the statement in the suit regarding the possession and ownership of the property in question, was to seek permanent injunction against the respondent. This could not be construed as any intentional or fraudulent disclosure before the Court to attract the mischief of Section 209 of the IPC. What the learned Trial Court has failed to appreciate is that it had to address the issue of the interest of justice also before deciding to proceed against the appellant under Section 340 of the Cr.P.C.

21. The provision of Section 340 of the Cr.P.C falls under Chapter XXVI, which deals with “provisions as to offences affecting the administration of justice”. In the aforesaid Chapter, offences committed in or in relation to a proceeding in the Court, or in respect of a document produced or given in evidence in a proceeding in the Court have been provided for and a provision is made for the Court to make a complaint in respect of such offences if the Court is of the view that it is expedient in the interest of justice that an inquiry should be made into an offence.

22. Clause (b) of Section 195(1) Cr.P.C authorizes such Court to examine prima facie and then make a complaint after having recorded a finding to that effect as contemplated under Section 340(1) Cr.P.C.

23. In the opinion of this Court, no prima facie case has been made out which if unrebutted, would end in conviction. There is no element of interest of justice and expediency involved. More so, in this case when the appellant does not intend to stake any claim over the money which was deposited in the Trial Court at the time of grant of bail in the FIR lodged by the respondent.

24. The Supreme Court of India while dealing with the SLP (CrI) No. 532/2013 filed by the appellant, directed that the respondent may move the Civil Court for appropriate orders in accordance with law and further directed that the amount so deposited by the appellant shall not be released without the orders from the Civil Court.

25. This Court has been informed that a suit has been filed for recovery of the aforesaid amount which was deposited by the appellant in the Trial Court at the time of bail. However, learned counsel appearing for the respondent has stated that deliberately, the respondent is not accepting the notices in the suit. Mr.R.M.Sinha, learned counsel for the appellant, on the aforementioned submission on behalf of the respondent, has accepted a copy of the notice and has stated that this fact shall be communicated to the appellant.

26. Finding the impugned orders of the Court below to be not in consonance with law and the parameters of Section 340(1) read with Section 195(1)(b) of Cr.P.C, this Court is constrained to set aside the aforesaid two orders.

27. The proceedings before the Court below were stayed by order dated 07.08.2015, passed by this Court. However, if any complaint pursuant to the aforesaid impugned orders has been lodged, the same

shall be deemed to have been withdrawn.

28. However, before parting, it is again made clear that this Court has passed the order on the assumption that the money which has been deposited by the appellant in the Trial Court at the time of bail (which is the same amount what has been paid by the respondent to the appellant), shall be withdrawn by the respondent through appropriate procedure of law and over which the appellant shall not stake any claim.

29. With the aforesaid observations, the appeal is allowed and disposed of.

ASHUTOSH KUMAR, J

AUGUST 30, 2017

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