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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: September 04, 2018

+ CRL.M.C. 496/2016

MUKUL TRIVEDI

.... Petitioner

Through: Mr. Arun Francis, Advocate with
petitioner in person

versus

STATE & ANR

..... Respondents

Through: Mr. Mukesh Kumar, APP for the
State

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On the criminal complaint (CC no.543/2012 – new no.26132/2008) of the respondent (complainant), the Metropolitan Magistrate, by his order dated 30.08.2013, declined to issue any process and dismissed the case under Section 203 of the Code of Criminal Procedure, 1973 (Cr. PC). The said order was challenged before the court of sessions invoking its revisional jurisdiction (criminal revision no.120/2013) which was allowed by order dated 26.02.2014 holding, *inter alia*, that a *prima facie* case of dishonest intention had been made out and the complaint merited being proceeded with further. Against this backdrop, the Metropolitan Magistrate issued summons to the petitioner (hereinafter referred to as “the accused”) by order dated 10.03.2014.

2. The petition at hand was filed invoking the inherent power of this court under Section 482 Cr. PC to pray for quashing of the proceedings in the said criminal complaint case.

3. The petition came up for hearing on 28.08.2018. After some hearing, the counsel representing the petitioner, on instructions, sought permission to withdraw the petition reserving the right to raise all the contentions set out in the petition before the trial court where the matter has been pending at the stage of pre-charge evidence. The said prayer was granted and the petition was dismissed as withdrawn.

4. On 30.08.2018, application (Crl. M.A. 31313/2018) was moved seeking recall of the said order dated 28.08.2018 with the submission that the prayer for withdrawal was made “*inadvertently*”, it being a “*bonafide mistake*”, the petitioner being a layman, though present in the court at the time of hearing on 28.08.2018, having not understood the implication of such withdrawal of the matter.

5. Though the grounds on which the recall of the order dated 28.08.2018 has been sought do not appeal to reason, the call for withdrawal having been taken under legal advice, there being no case of inadvertence, since a decision on the petition on merits is insisted, the order has been recalled and the petition restored to be decided on its merits.

6. The background facts leading to the criminal complaint being filed, simply put, relate to an agreement to sell which was concededly executed by the petitioner (accused) in favour of the second respondent (complainant) on 16.11.2005. A copy of the said agreement has been submitted. It would show that the accused had agreed to sell one-half share of property bearing no.91, admeasuring

636.2 sq. yd. situate at Jor Bagh, New Delhi in favour of the complainant for a total consideration of Rs.5.5 Crores out of which Rs.2.05 Crore was received by him as earnest money, the balance being payable at the time of execution and registration of the sale deed. The parties had agreed at the said stage that the balance payment would be made on or before 30.06.2006 against handing over of the vacant peaceful possession of the property being sold and also at the time of execution and registration of the sale/ transfer documents. The said date i.e. 30.06.2006 was extended three times, lastly for and upto 25.09.2006.

7. The accused by the present petition would rely on communication dated 25.09.2006 addressed to him by the complainant calling him upon to execute the documents and complete the performance of his part under the agreement to sell, stating, *inter alia*, that he was ready with the funds and stamp papers. The accused also places reliance on his reply dated 29.09.2006 in response thereto indicating that the complainant had failed to perform his part of the agreement “*on or before the stipulated date*” and accordingly the agreement to sell had become unenforceable in law. It is pointed out that in the said reply dated 29.09.2006 the accused had communicated to the complainant that the amount paid by him “*shall be returned as and when request is made in this behalf*”.

8. The impugned orders were passed on the criminal complaint presented (on 25.03.2008), after a suit for specific performance had been instituted on 03.10.2006 by the complainant. The complainant would allege that the accused never had the intention of satisfying the agreement and refers in this context to not only the agreement to sell

but also the payments which were made from time to time, he having statedly extended the time for completion of the contract and having refused to perform his part of the agreement when balance money had been kept ready and had even been offered. It may be mentioned in this context that it has been the stand of the complainant, as is more elaborately set out in the civil suit pleadings whereof are also part of the material on which the complaint is being pressed, that he had approached the accused one week prior to the date 25.09.2006 personally and also given reminders telephonically on the following dates intimating that he was ready and willing to pay the balance sum against delivery of vacant physical possession inspite of which the accused would not respond.

9. On first blush, it does appear that the case is primarily of civil flavor. But then, the allegations of the complainant that the accused never had the intention of performing his part of the contract and that he had dishonestly and illegally retained the huge amount of Rs.2.05 Crores after the agreement to sell was executed on 16.11.2005, cannot be lightly brushed aside. The issues of facts arise which cannot be properly addressed in the jurisdiction under Section 482 Cr. PC. [see: *Rajiv Thapar and Ors. vs. Madan Lal Kapoor*, (2013) 3 SCC 330].

10. The allegations of the complainant that he had made contact with the accused one week prior to 25.09.2006 to intimate that he was ready with the balance money cannot be disbelieved at this stage of the process. In that view of the matter, the contention of the accused on the basis of select material i.e. notice dated 25.09.2006 and reply dated 29.09.2006, cannot be accepted without permitting the

petitioner to adduce his evidence, such evidence led at the stage of pre-charge evidence presently underway being, of course, subject to being tested, *inter alia*, through the process of cross-examination.

11. In the given facts and circumstances, the view taken by the revisional court in the order dated 26.02.2014 leading to the summoning order being passed by the Magistrate on 10.03.2014 cannot be faulted.

12. The petitioner had chosen the correct course on 28.08.2018 reserving the right to raise all his contentions before the trial court. The petition being devoid of merits is dismissed with cost of Rs.25,000/- to be deposited with Delhi High Court Legal Services Committee within a week.

R.K.GAUBA, J.

SEPTEMBER 04, 2018

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