

\$~43 to 45 (*common order*)

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

Decided on: 17th July, 2018

+ CRL.MC. 2773/2016 & CRL.M.A.11822/2016

SUNIL BEDI & ANR. Petitioners
Through: Mr. Mohit Mathur, Senior Advocate
with Mr. Vishal Gera &
Mr. Abhishek Chauhan, Advocates

versus

STATE OF NCT OF DELHI & ANR. Respondents
Through: Mr. Akshai Malik, APP for the State
with SI Bharat Lal, PS Hauz Khas.

+ CRL.MC. 2784/2016 & CRL.M.A.11845/2016

KARAN BEDI Petitioner
Through: Mr. Mohit Mathur, Senior Advocate
with Mr. Vishal Gera &
Mr. Abhishek Chauhan, Advocates

versus

STATE OF NCT OF DELHI & ANR. Respondents
Through: Mr. Akshai Malik, APP for the State
with SI Bharat Lal, PS Hauz Khas.

+ CRL.MC. 2785/2016 & CRL.M.A.11847/2016

PINKY BEDI Petitioner
Through: Mr. Mohit Mathur, Senior Advocate
with Mr. Vishal Gera &
Mr. Abhishek Chauhan, Advocates

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Akshai Malik, APP for the State
with SI Bharat Lal, PS Hauz Khas.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. By order dated 18.01.2016 of the Metropolitan Magistrate on the complaint case (CC No.01/01/2013) of the second respondent (the complainant), the petitioners in these matters were summoned as accused to face criminal proceedings of accusations constituting offence punishable under Sections 420 read with Section 120-B of Indian Penal Code, 1860 (IPC). The said impugned order was passed by the Metropolitan Magistrate after preliminary inquiry into the complaint wherein pre-summoning evidence was adduced by the complainant and pursuant to directions of the Magistrate under Section 202 of the Code of Criminal Procedure, 1973 (Cr.P.C.), the police had carried out some investigation submitting a report based thereupon.

2. The background facts, succinctly put are that the second petitioner in the first captioned matter is a company engaged in the business of developing real estate and had undertaken a commercial project at Sector 62, village Nangali Umarpur, Tehsil & District Gurgaon, Haryana, the other petitioners being its directors. The complainant had statedly been induced to book a commercial space in the said project for which payments were made by him in October, 2007, it being alleged that the complainant was made to

believe that the project had all the necessary approvals, licences, etc., a builder buyer agreement having been executed in the year 2009 with assurance that the project would be completed and possession handed over within three years, but it being far from completion till filing of the complaint and even thereafter when the matter was under inquiry or being investigated into by the police. The core ground on which the complainant would allege the offence of cheating to have been committed is that the representation that the project was covered by all necessary licences was false to the knowledge of the petitioners since one of the crucial licences was granted in the year 2009 only.

3. The present petitions have been filed invoking the inherent jurisdiction of this court under Section 482 Cr.P.C. to pray for the quashing of the summoning order and the criminal complaint case and are pressed on the ground that there is unimpeachable evidence available to show that the second petitioner company had the necessary licence from the Town and Country Planning Department of the Govt. of Haryana, issued on 04.12.2007 (licence No.270 of 2007), reliance also being placed on another licence (licence No.2 of 2009) issued on 24.01.2009, copies of which documents have been submitted (pages 30 to 34 of the paper book of the first captioned petition).

4. Having heard the learned counsel on both sides and having gone through the record, this court finds no reason for this court to intervene at this stage of the process. The copy of the commercial

Premises Buyer's Agreement [Ex.CW1/C (colly)], copy whereof has been submitted (pages 78 to 102 of the paper book of the first captioned petition) which reveals that the land on which the project in question was to be developed is described in the said document as under:-

“(A) Shri Jagbir Singh Tanwar S/o Harbhajan Singh R/o Village Chandanhula, New Delhi is the absolute owner and in possession of land admeasuring 2.63775 acres comprising of Khasra Nos.8//9(8-0), 11(8-0) and 12 MIN(5-02) and Shri Rati Ram S/o Rupchand R/o Village & P.O. Tigra, District Gurgaon (Haryana) is the absolute owner and in possession of the land admeasuring 0.225 acres, comprising of Khewat No.62/62, Khatoni No.95, Khasra Nos.9//15 MIN (1-16) (hereinafter collectively referred to as the “Said Land”), situated at village Nangali Umarpur, Tehsil & District Gurgaon.”

5. Though it does appear that the said Buyer's agreement was executed on 03.04.2009, after the grant of the second licence on 24.01.2009, it cannot be ignored that part of the land concerning the project was not covered by the first licence issued on 04.12.2007. In these circumstances, where evidence has been shown of the petitioners having obtained from the complainant, deposits of consideration in 2007, there being no licence obtained respecting part of the land covered by the project at that stage, representations on the basis of which the complainant is stated to have been induced to pay part of the money were *prima facie* false.

6. In the above facts and circumstances, it would be just and fair that the issues of fact are left to be addressed by the trial court. This

court, thus, declines to intervene in exercise of its jurisdiction under Section 482 Cr.P.C

7. The petitions and the applications filed therewith stand dismissed.

R.K.GAUBA, J.

JULY 17, 2018

vk

