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

% Judgment delivered on: 09.05.2018

\+ CRL.M.C. 4682/2014 & Crl. M.A. 15933/2014

NAVEEN MALHOTRA ..... Petitioner

versus

STATE & ANR. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Vivek Sood, Sr. Adv. with Mr. O.P. Gulapani and Ms. Prachi Gupta, Advs.

For the Respondents : Mr. Mukesh Kumar, Addl. PP for the State with SI Sunil Dagar
Mr. Vikas Walia, Adv. for R-2

CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT
09.05.2018

SANJEEV SACHDEVA, J. (ORAL)

Crl. M.A. 965/2018 (condonation of delay)

For the reasons stated in the application, the delay in refilling the petition is condoned. The application is allowed.

Crl. M.A. 964/2018 (application on behalf of the petitioner for taking additional ground)

Since the grounds sought to be urged are purely legal, for the reasons stated in the application, the application is allowed, Petitioner is permitted to urge addition grounds.

CRL.M.C. 4682/2014

1. The petitioner impugns order dated 30.09.2014 whereby the Revisional Court has dismissed the revision petition of the petitioner impugning order dated 12.08.2014 whereby a direction was issued by the Trial Court under Section 156 (3) of the Cr. P.C. to register an FIR and investigate the matter thereafter.

2. The complainant-R-2 had filed a complaint with the police contending that the petitioner with the intention of cheating and committing a fraud on the complainant had approached the complainant for the purposes of availing a loan in the sum of Rs. 5.50 crores without having the intention to repay the same. It is contended that a fraudulent representation was made with regard to financial soundness of the accused company as well as its Director and accordingly complainant was induced in advancing a business loan of Rs. 5.50 crores.

3. It is contended that it was represented that the accused was sole and exclusive owner of the said property free from all encumbrances. Accordingly, the loan was sanctioned and disbursed after creating a mortgage in favour of the complainant. Subsequently the complainant got to know that the entire property had already been mortgaged with an NBFC. Not only was the property mortgaged with a non-banking financial corporation, the petitioner had even registered sale deeds of

separate floors in favour of third parties.

4. It is alleged in the complaint that the said business loan of Rs. 5.50 crores was disbursed after execution of the separate loan agreements. The original sale deed in respect of the first floor of the said property was deposited with the complainant. Since the police did not act upon the complaint of the complainant, a complaint under Section 156(3) of the Cr. P.C. was filed before the Trial Court.

5. The petitioner, being aggrieved by the order of the Trial Court directing registration of the FIR, impugned the same before the Revisional Court. The Revisional Court by the impugned order dated 30.09.2014 rejected the revision petition.

6. Learned Senior Counsel for the petitioner contends that the Trial Court while passing the impugned order directing registration of an FIR did not apply its mind and had passed a mechanical order. Further it is contended that since earlier FIRs being FIR No. 48, 49 and 50 of 2013 under Sections 420/34 of the IPC Police Station Defence Colony, New Delhi had been registered with regard to the same property, there is an overlap of the alleged transaction in the said FIRs. Therefore, direction could not be issued for registration of the subject FIR on the same cause of action.

7. I am unable to accept either of the contentions of the learned counsel for the petitioner.

8. By the impugned order dated 12.08.2014, the Trial Court held as under:-

"5. Heard. Record perused. Copies of the loan documents executed by accused no. 2 on behalf of accused no. 1 have been placed on record. The schedule annexed to deed of mortgage executed on 29.09.2010 of the said agreement shows that first floor of property bearing No. A-331, Defence Colony had been hypothecated in favour of the complainant. The complainant has also placed on record a copy of sale deed dated 12.09.2010 whereby the second floor of said property has been sold by accused no. 2 in favour of accused no. 1.

6. Even though the said sale deed pertains to the second floor of the said property, however, the complainant has also placed on record copy of FIR No. 48/13, 49/13, 50/13 whereby it has been alleged that the 1st floor, ground floor and 2nd floor property of the said property was in fact sold by the accused persons to other complainants namely Raj Gaurav Wadhwa, Ltd. Gen. Rajinder Kumar Mehta, Jagdeep Singh respectively. In FIR No. 48/13 it is alleged that the first floor of the said property was sold to complainant Raj Gaurav, despite the fact that the Debt Recovery Tribunal had passed a restraint order qua the said property. As per the allegations in the said FIR the said property already stood mortgaged with Punjab & Sind Bank and despite that the first floor of the said property had been sold to complainant Raj Gaurav.

7. Thus, from the perusal of the said FIR and the loan documents placed on record by the complainant, it appears that prima facie cognizance offence is made out against the accused persons. As already stated, separate

FIRs have already been registered in respect of the said property, however the same does not bar the registration of another FIR in case of a fresh/different cause of action as in the present matter. Moreover, even though the documents are stated to have been executed in Kailash Colony, Nehru Place, however, since the property is situated in Defence Colony, therefore, FIR can be registered with PS Defence Colony.

8. In view of the aforesaid reasons, the application u/s 156(3) Cr. P.C. is hereby allowed. SHO is directed to register an FIR in the present matter under relevant provisions of law and to send the copy of the same to this court on the next date of hearing."

9. Perusal of the order dated 12.08.2014 shows that the Trial Court has duly applied its mind to the records of the case and after due application of mind has directed the registration of the FIR. Further, it may be noticed that the Revisional Court has noticed that the accused had built the subject property consisting of a basement, first floor, second floor and third floor with a loan taken from M/s Religare Finevest Ltd. after mortgaging the entire property.

10. Subject property was sold floor-wise to four different persons without disclosing the factum of the property having been mortgaged. Three of the buyers of various floor, learning about the encumbrances on property lodged FIRs with the Police Station Defence Colony for the offence of cheating.

11. The Revisional Court has noticed that during investigation of

the subject FIRs it was disclosed by the accused that not only the accused had executed sale deeds to four different persons he had also executed three sale deeds in favour of his own company of which he is a Managing Director and these sale deeds were used by him for availing loan from various banks and for getting the existing limits enhanced. The complainant in the present case is party to the subsequent transaction that had taken place after the sale deeds were registered in favour of the complainant in the above referred FIRs.

12. The contention of the learned Senior Counsel for the petitioner is that since there is already an FIR registered, no subsequent FIR could be registered for the same offence. The FIR referred to above being FIR No. 48, 49 and 50 of 2013 under Sections 420/34 of the IPC Police Station Defence Colony, New Delhi pertain to the alleged offence of cheating having been committed by the petitioner for selling a property which already stood mortgaged.

13. Subject complaint and FIR allege that the petitioner, after executing the said three sale deeds, further executed sale deeds in favour of his own company and used those subsequent sale deeds in the name of his company, for obtaining finance from the complainant. The subject alleged offence qua respondent no. 2 is subsequent in point of time and completely independent of the transaction that was entered into between the petitioner and the complainants in the FIRs referred to above. Those FIRs and the subject FIR are on a distinct

and different cause of action.

14. In view of the above, I find no error in the view taken by the Trial Court as well as Revisional Court in directing registration of the FIRs.

15. Learned Addl. PP for the State further submits that the investigation is nearly complete and charge sheet is likely to be filed shortly.

16. In view of the above, I find no merit in the petition. The petition is accordingly dismissed.

SANJEEV SACHDEVA, J

May 09, 2018
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