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

%   Reserved on: 27th August, 2018
                                                    Decided on: 4th December, 2018

+   **W.P.(CRL) 1790/2017 and Crl.M.A. No. 9902/2017**

PRADEEP AGARWAL ... Petitioner

Represented by: Mr.Manoj Kr.Ohri, Sr.Advocate with Mr.Rohit Priya Ranjan, Mr.Gaurav Chauhan and Ms.Shweta Sharma, Advocates.

versus

STATE REPRESENTED BY: GOVT OF NCT OF DELHI & ORS ... Respondents

Represented by: Ms.Kamna Vohra, ASC for the State with Insp.Ishwar Singh, Crime Branch, R.K.Puram.
Mr.S.S.Gandhi, Sr.Advocate with Mr.S.M.Bhaskar, Advocate for respondent No.2.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition the petitioner seeks quashing of FIR No.60/2017 under Sections 420/34 IPC registered at PS Crime Branch and the proceedings emanating therefrom. The above noted FIR was registered on the complaint of Ms.Seema Narayen, received at SER/Crime Branch. The complainant reported that she has been defrauded to the tune of ₹2.80 crores by a deep-rooted conspiracy perpetrated by Pradeep Agarwal (the petitioner herein) and his brother Praveen Agarwal. The complainant stated that the petitioner approached her in December 2009 and lured her to buy an independent floor in a three-storied residential project about to be constructed by them on a plot area of 504 sq. yards bearing No.X-19, Hauz

Khas, New Delhi. The petitioner drew a rosy picture of the project and guaranteed that possession would be given in 24 months as the Building Plan was already sanctioned by MCD in the year 2008 and casually showed the sanctioned plan and a string of papers claiming that the plot was free from encumbrances and cajoled her to invest in the project.

2. In the same month, the petitioner repeatedly pressed her to invest in his project claiming that he was giving her a concessional price of ₹2.80 crores for the ground floor with the concession to pay in instalments as per her convenience. Relying on his representation and assurances, the complainant agreed to buy ground floor in their project at X-19, Hauz Khas, New Delhi. On 13th January, 2010, the petitioner brought an Agreement to Sell in respect of the ground floor of the above property and got signatures of the complainant in the presence of witnesses. The complainant then made a part payment of ₹21 lakh through cheques on 13th January, 2010.

3. However, no construction commenced at the site for two years. On persistent inquiries by the complainant, the petitioner started construction and in March, 2013, when the basic structure was ready the petitioner started demanding the remaining amount of ₹2.59 crores, which was also paid by the complainant through cheques. During that period, the complainant was also asking the petitioner to provide her the papers and the Agreement to Sell, which he had got signed on 13th January, 2010 but he only provided her the confirmation of the payment received by him and did not provide the agreement to sell document on the pretext that those were with his brother at Kolkata.

4. The complainant later came to know that the property was, in fact, under mortgage with the State Bank of India, Kolkata. On questioning him,

the petitioner neither gave any satisfactory answer nor provided the copy of the Agreement to Sell to the complainant. When she demanded back her money, the petitioner assured her that he would get everything sorted out before executing the actual Sale Deed; and to win over her trust, he offered her possession of the ground floor and promised that they shall execute the Sale Deed as soon as he would get the mortgage cleared.

5. The complainant asked the petitioner to put his assurance in writing but the petitioner dishonestly induced her to sign a Rent Deed showing that he was acknowledging the receipt of payment of ₹2.80 crores towards sale of the ground floor and mislead her by saying that the nominal monthly rent mentioned therein is only on papers which would be returned forthwith in cash as it was merely meant to give legitimacy to her possession. The petitioner further assured her that it shall be temporary arrangement till the time mortgage is cleared. Believing the representations of the petitioner to be true, she took possession of the ground floor of above premises under that sham Rent Agreement prepared by the petitioner with dishonest and fraudulent intention. The petitioner also obtained signatures of the complainant and her son on certain other documents on the pretext that the same were required to get the mortgage cleared from the bank as the petitioner also filed SA No.151/2014 before Debt Recovery Tribunal wherein the complainant was also made a party. She followed his instructions as she was assured to get the ownership of said property in her favour once mortgage was cleared.

6. On 6th February, 2017 Debt Recovery Tribunal allowed the application of the petitioner and the said mortgage was quashed. Thereafter, instead of transferring the said property in the name of the complainant as

promised, the petitioner transferred the said property to his brother's company namely M/s.Loharu Properties (P) Ltd., Kolkata on 13th February, 2017. On 9th March, 2017, the petitioner sent a letter along with a copy of the Sale Deed to complainant asking her to pay the rent to the new owner. She further alleged that she was fraudulently induced to sign the Rent Agreement, which she would not have signed, had she not been deceived by the false assurances of the petitioner. The petitioner and his brother Praveen Agarwal conspired right from the beginning with the motive to cheat and fraudulently and dishonestly obtained ₹2.80 crores on the pretense of sale of the ground floor. The fraudulent intention of the petitioner is manifestly evident, right from the beginning, when he took initial payment as far back as January, 2010.

7. Learned counsel for the petitioner contends that the case of the petitioner is contrary to the documents executed by the petitioner. Though the complainant states that an Agreement to Sell was executed but none has been produced. Rather, a lease deed dated 29th July, 2013 was executed between the petitioner and complainant in respect of the demised premises i.e. ground floor of the property No.X-19, situated at Hauz Khas Enclave, New Delhi. The lease deed was duly registered. The lease deed noted that the demised premises noted above was leased out for a monthly rent of ₹25,000/- exclusively of electricity and water charges and the rent was to be increased by 10% after every three months and was to be paid in advance on or before 7th day of each English calendar month. The lease deed also noted that the lessee has deposited a sum of ₹2,80,00,000/- as an interest free refundable security deposit with the lessor the receipt of which is acknowledged by the lessor vide a separate receipt.

8. In an application filed by the complainant under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short the SARFAESI Act) the petitioner admitted that the complainant was a tenant in respect of the demised promises vide the registered lease deed dated 30th July, 2013 for a period of nine years and has also made interest from refundable security deposit of ₹2.80 crores with the petitioner. It is further stated that at the time of entering into the lease agreement the complainant was told by the petitioner that he had taken loans from various parties for construction of the building and the said loan had to be re-paid. Thus on the insistence of the petitioner an interest free security deposit of ₹2.80 crores was made by the complainant which was to be refunded at the time when the complainant vacated the demised premises. Learned counsel for the petitioner submits that thus even if in the year 2009 the property was mortgaged as guarantee with the State Bank of India, the said fact being within the knowledge of the complainant and did not effect her rights as a lessee, the above noted FIR and the proceedings pursuant thereto are required to be quashed. The Debt Recovery Tribunal vide its order dated 6th February, 2017 noted that the deed of guarantee dated 19th April, 2013 did not bear the signatures of the petitioner. Though his name was mentioned and the bank did not produce any document evidencing creation of mortgage in the consortium lending purchasing the property in question though the same was mentioned in the agreement and thus the same would not be binding on the petitioner.

9. Further, after the petitioner entered into an agreement with M/s.Loharu Properties Pvt. Ltd. for the sale of the property No.X-19, Hauz Khas Enclave, he duly informed the complainant vide his letter dated 7th

March, 2017 and that the security deposit amount was transferred to the said purchaser and that the purchaser shall abide by the terms of said lease deed for unexpired period of lease.

10. Learned counsel for the petitioner thus contends that even on the face of the allegations made in the FIR and the charge sheet no case for cheating is made out against the petitioner. Documents in favour of the petitioner are impeccable in nature and thus could be looked into at this stage by this Court while exercising its jurisdiction under Articles 226 and 227 of the Constitution of India read with Section 482 Cr.P.C. to quash the FIR and the proceedings pursuant thereto. The dispute is purely civil in nature and a suit for specific performance is already pending. Reliance is placed on the decisions reported as 1992 (1) Supp. SCC 336 *State of Haryana vs. Bhajan Lal*; 2005 (1) SCC 122 *Zhandu Pharmaceuticals vs. Mohd. Sharful*; 2007 (14) SCC *All Cargo Movers vs. Dhanesh Bardarman Jabin*; 2007 (12) SCC 1 *Inder Mohan Goswami vs. State of Uttaranchal*, 2013 (3) SCC *Rajiv Thaper & Ors. vs. Madan Lal Kapoor*; 2008 (12) SCC 1 *Rukmani Narvekar vs. Vijaya Satardekar*; 2006 (6) SCC 736 *Indian Oil Corporation vs. NEPC India Ltd.*; 2013 (6) SCC 740 *Chandran Ratnaswami vs. K.C. Alanisami* and 2000 (2) SCC 643 *G. Sagar Suri vs. State of U.P.*

11. Learned Additional Standing Counsel for the State, on the other hand, contends that to fortify the case of the complainant, during the course of investigation, relevant payments of ₹2.80 crores made by the complainant to the petitioner were verified from the concerned banks. Statements of Samar Narayen and Neeraj Kodesia were recorded who supported the version of the complainant and stated that an Agreement to Sell of the property dated 13th January, 2010 was signed between the complainant and the petitioner

and the same was retained by the petitioner. During the course of investigation the petitioner admitted having received ₹2.80 crores however, he could not satisfactorily explain the receiving of an interest free refundable security deposit and its link with the initial payment of ₹21 lakh which was received in the year 2010 when no building existed. Immediately after the issue of mortgage was decided by the Debt Recovery Tribunal on 6th February, 2017 the petitioner transferred the property to the company of his brother the co-accused. The petitioner is also involved in two other previous offences.

12. Learned counsel for the complainant/respondent No.2 contends that the version of the petitioner itself shows the clever manner in which the complainant was trapped. It is unimaginable that someone would give an interest free loan of ₹2.80 crores, as a lessee in the premises, admittedly at a time when no construction had been carried out in the premises. Version of the petitioner is so improbable, itself fortifying that the Lease Deed was a sham transaction. Amount of ₹2.80 crores paid by the complainant to the petitioner has been verified from the banks. After cheating the complainant and when the petitioner got clearance from the Debt Recovery Tribunal, he immediately sold the property to the company owned by his brother adjusting the amount of ₹2.80 crores paid by the complainant.

13. The above noted FIR has been registered for offence punishable under Section 420/34 IPC. Section 415 IPC defines cheating as under:

> *415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he*

would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

14. Case of the complainant is that she had entered into an Agreement to Sell however, copy of the Agreement to Sell was never supplied to the complainant. Admittedly when initial payments were made no ground floor of the property had been constructed and thus there was no question of the respondent No.2 giving money for entering into the proposed Lease Deed. From the accounts it is clear that the first installment of ₹21 lakhs through cheque was paid on 13th January, 2010. As per the petitioner no relation existed between the parties and the ITR of the petitioner shows that the same was provided as a loan. The construction of the property commenced after two years and after March, 2013 further payment of ₹2.59 crores was made through cheques which payments has also been verified. Petitioner does not dispute pendency of the proceedings before the DRT. Thus the complainant being tricked into the Lease Deed so as to come out of the dispute before the Debt Recovery Tribunal is not improbable. The terms of an interest free refundable security deposit of ₹2.80 crores for a premises for a monthly rent of ₹25,000/- with increase in 10% after every three months are highly unreasonable.

15. Case of the petitioner is that in view of this impeccable document of the complainant in the form of Lease deed and not Agreement to Sell being in possession of the complainant, her version cannot be accepted and the FIR is required to be quashed. Section 420 IPC punishes an offence whereby person by deceiving any person fraudulently or dishonestly induces

a person, so deceived to part with any property. Case of the complainant is that she was deceived into parting with the money, that is, on inducement and false representation that the ground floor of the property was being sold to her, hence the ingredients of Section 415 IPC punishable under Section 420 IPC being fulfilled no case of quashing of FIR and the proceedings pursuant thereto is made out merely on the ground that a registered Lease Deed was executed and that the complainant cannot orally lead any evidence beyond the document in writing. Case of the petitioner that the registered Lease Deed executed between the petitioner and the complainant is an impeccable document showing admission of the complaint, cannot be a ground to summarily quash the complaint of the complainant in view of the fact that the case of the complainant is that she has been made to execute the said document on a false pretext. Further on the facts noted above it cannot be held that the dispute is purely civil in nature and the FIR and the proceedings thereto are required to be quashed.

16. Thus this Court finds no ground to quash the FIR and the proceedings pursuant thereto in question.

17. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

DECEMBER 04, 2018
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