$~46

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 28th November, 2018

\+ CRL.M.C. 3823/2015 and Crl. M.A. 48282/2018

LAXMI KANT RAI .... Petitioner

Through: Mr. Sarvesh Singh and Ms. Kanika Madan, Advocates

versus

SHIV PRASAD RAI & ORS. ..... Respondents

Through: Mr. L.K. Verma, Ms. Bobby Verma and Mr. Ajay Verma, Advocates for R-3 & 4

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

ORDER (ORAL)

1. The petitioner had instituted a criminal complaint case (CC 18/1/14) in the court of the Metropolitan Magistrate alleging offence under Section 420 IPC having been committed by the first to fourth respondents. His application for direction to the police for investigation under Section 156(3) of the Code of Criminal Procedure, 1973 (Cr.P.C.) was dismissed by the Metropolitan Magistrate who, however, opted to take cognizance and hold pre-summoning inquiry.

2. In the pre-summoning inquiry, the petitioner examined himself, as CW-1, also examining one Brijesh Kumar as CW-2. The Metropolitan Magistrate dismissed the complaint by order dated 18.03.2015 for the reason that "*no cognizable offence*" seems to have

been made out, this in absence of proof about payment of Rs.21 Lakhs to the respondent.

3. The petitioner challenged the said order in the court of the Sessions by Criminal Revision Petition (no.27/2015) which upheld the view taken by the Magistrate and dismissed the petition by order dated 21.07.2015.

4. It is the said orders which were challenged by the petitioner through the petition at hand under Section 482 Cr. PC, his grievance being that his complaint has not been properly understood or appreciated, he having been cheated of the total sum of Rs.24,93,000/- by the respondent on the false pretext of selling the immovable property to him, without the intention of honoring the commitment, the intent to defraud being perceptible from the conduct of the respondents.

5. It does appear that the petitioner had proved, during the pre-summoning inquiry, payment of Rs.2,50,000/- by cheque no.434593. Though he claimed to have made the balance payment in various instalments, no formal evidence was led in such regard. It is the absence of proof of this that primarily led to the conclusion of the Metropolitan Magistrate that the case was unsubstantiated. But then, the observations of the Metropolitan Magistrate that no case for summoning was made out because the material on record would not show "*cognizable offence*" to be made out cannot be understood. Whether or not material makes out a cognizable offence is not the test

for the Metropolitan Magistrate to exercise his jurisdiction under Section 204 Cr. PC.

6. Be that as it may, during the course of hearing, it was submitted on behalf of the petitioner that, on account of deficient legal advice and assistance, the petitioner was not able to bring on record the requisite proof of payment of balance of the total amount of Rs.24,93,000/- which had been paid by him to the respondents, most of such payments being through banking channels, finance for part of such consideration paid having been arranged by sale of property described as House no.131, Block G, Aya Nagar Colony, New Delhi.

7. The petitioner has moved an application (Crl. M.A. 48282/2018) seeking opportunity to lead additional evidence. Having regard to the facts and circumstances of the case, this court deems it proper to give opportunity to the petitioner to bring additional evidence on record in the above nature, particularly when such payments are stated to have been made substantially through banking channels. The payments made through bank, if proved, may not require corroboration by formal acknowledgement in the nature of receipt.

8. In the above facts and circumstances, the proper course would be to remit the case to the Magistrate for further inquiry under Section 202 Cr. PC. Ordered accordingly.

9. For the above reasons, the petition is allowed. The impugned orders are set aside. The complaint case (no.CC 18/1/14) of the

petitioner is remitted to the court of the Metropolitan Magistrate for further inquiry under Section 202 Cr. PC, in the course of which, opportunity shall be granted to the petitioner (complainant of the case) to lead further evidence respecting remittances made to the respondents by bank channels and about sale proceeds of House No.131, Block no.G, Aya Nagar colony, New Delhi.

10. The complaint case shall be taken up by the Metropolitan Magistrate for such further inquiry on 15.01.2019.

11. The petition and the application filed therewith are disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 28, 2018
yg