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

+ **W.P.(CRL) 2813/2017**

NEERAJ KUMAR

..... Petitioner

Through: Mr. Sudhir Nandrajog, Senior Advocate with Mr. Deepak Anand, Ms. Saadhna Gupta and Mr. Sujit K. Singh, Advocates.

versus

STATE & ANR

..... Respondents

Through: Ms. Richa Kapoor, ASC for State with Ms. Amita Sachdeva, Advocate. Mr. Anupam S. Sharrma, Advocate with Mr. Prakash Airan and Mr. Shivam Gupta, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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28.08.2018

This petition seeks quashing of FIR No. 253/2016, registered under section 420 of IPC at Police Station, Sector 23, Dwarka, South-West Delhi, on a complaint made by one Mr. Iqbal Singh, alleging fraudulent activities by the petitioner and other persons, mentioned in the said complaint.

The learned Senior Counsel for the petitioner submits that there is no criminality whatsoever, for a case to be maintained against the petitioner; that he is an innocent purchaser as he purchased the plot of agricultural land by way of an Agreement to Sell; this transfer document was registered before the Sub-Registrar concerned and the Sale Deed was subsequently

released by the order of this Court. The complainant had alleged that an *ex-parte* order had been passed by the learned Arbitrator on 21.06.2010, restraining Mahinder Singh from selling the property to a third party. But the property was sold by Mahinder Singh to one Birender Prasad on 06.07.2010.

The issue to be examined is whether Mahinder Singh has been intimated about the said *ex-parte* order, prior to the transfer of his interest in the suit property to Birender Prasad on 06.07.2010. In the cross-examination of Mr. Iqbal Singh, the witness had stated that Mahinder Singh had been informed by Jagdeep Singh, who was allegedly a witness to the Agreement between him and Mahinder Singh. The query put to him was as under:-

“Q69. Whether the Intimation of the stay granted by Shri S.P. Sharma, Arbitrator on 21.6.2010 was conveyed to Shri Mahinder Singh by you if so kindly tell the mode and manner thereof?”

Ans. Shri Jagdeep Singh who was a witness was informed of the stay and Shri Mahinder Singh was sent intimation by post but I do not remember whether by regd post or speed post,

Q70. Who posted the said letter?

Ans. At my asking my Advocate Shri Amit Mann posted the said letter.

Q71. I put it to you that the proof of posting of the stay order to Shri Mahinder Singh has not been placed on record by you. What do you have to say? Whether you can now place on record the proof of posting?

Ans. It is a matter of record”.

Evidently, there is nothing on the record to show that Mahinder Singh had been intimated of the *ex-parte* order restraining him. He, therefore, had transferred his interests in the said property to one Birender Prasad without due knowledge of any such restraint. It would therefore be presumed to be an innocent untainted transfer.

Furthermore, the complainant has deposed as under:-

“Q.99. Are you aware that Mr. Birender Prasad had also further sold the property?”

Ans. Mr. Birender Prasad sold the property to one Mr. Neeraj Kumar when he came to know about the stay order.

Q. 100 When you came to know about selling the property by Mr. Birender Prasad to Mr. Neeraj Kumar?

Ans. One and a half or two years of the property being sold by Mr. Mahendra Singh to Mr. Birender Prasad.

Q. 101 Do you know Mr. Neeraj Kumar?

Ans. No”.

According to the learned Senior Advocate for the petitioner the import of the aforesaid submissions that the complainant had told the petitioner personally about the sale of the property, earlier in time by Mahinder Singh, when the petitioner visited him at his office alongwith Birender Prasad, is erroneous and cannot be relied upon. If the complainant knew Neeraj Kumar-the petitioner, then why had he given the answer to query no. 101 in the negative?

The learned Senior Advocate further submits that there is an inexplicable delay of 6 years in filing of the complaint against the petitioner by Iqbal Singh. If the latter was truly deprived of his rights or if there was such evident criminality against the petitioner, then the case ought to have been filed immediately upon the complainant knowing that such a transfer was either being contemplated or had been sought to be effected by Mahinder Singh on 06.07.2010. The petitioner purchased the interest in the property by Agreement to Sell dated 23.11.2010. Therefore, the FIR, at least against the petitioner, be quashed.

Refuting the arguments on behalf of the petitioners, the learned

Additional Standing Counsel for the State submits that the case is still at the stage of investigation and the nature of transactions is that it is part of a series of such transactions, indulged in by property dealers and another person, who seek to defraud purchasers/investors. The complainant had purchased the interest in the land from Mahinder Singh by way of an Agreement to Sell dated 02.08.2004 and Mahinder Singh had been paid all the monies in that regard; Mahinder Singh could not, therefore, sell the said property to any person; that there would be a presumption of criminality against Mahinder Singh, insofar as he received the entire consideration amount for transfer of his rights to Iqbal Singh. It is further contended that if Birender Prasad had already sold his interests to the petitioner in November, 2010, then, there is no reason for him to have sought conversion of the lease-hold property into a free-hold property, by moving an application in March, 2011. It is the complainant's case that he had purchased the interest in the said property by way of an Agreement to Sell dated 02.08.2004 and that he had also executed a Supplementary Agreement to Sell dated 26.03.2007 with Mahinder Singh and paid all monies to him.

The learned Senior Advocate for the petitioner contends that initially the Registrar may have withheld the registered documents, but later it was released on a direction of this Court in WP No. 8913/2015. The question, therefore, to be examined would be, whether any criminality is attached to the petitioner apropos registration of the documents. He had been intimated about the prior transaction between Mahinder Singh and the complainant. The petitioner, having already paid the consideration amount, wanted to and did secure his rights in the property, by way of a registered document; this was the prudent action to take, but this by itself would not necessarily

import any criminality to his conduct.

In view of the above, no criminality is evident on the part of the petitioner. Therefore, the FIR against him cannot be maintained and is quashed.

The complainant rights to pursue his legal remedies apropos his civil rights will always remain unaffected by this order.

The petition is disposed-off accordingly.

NAJMI WAZIRI, J

AUGUST 28, 2018

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