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

\+ W.P.(CRL) 3004/2017 and CRL. M.A. 17568/2017

SEEMA S MALHOTRA

..... Petitioner

Through: Mr Viplav Sharma and Mr Shailendra Singh, Advs

versus

STATE GOVT OF NCT OF DELHI & ANR

..... Respondents

Through: Mr Sanjay Lao, ASC for State with SI Rajesh Dhaka
Mr Satya Prakash Yadav and
Mr Rajesh Kalia, Advs for R-2

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

O R D E R

% 12.01.2018

Petitioner is seeking quashing of the present FIR No. 455/2017 registered under Section 420 IPC PS Vikas Puri. Submission is that the FIR has been got registered at the behest of Respondent No. 2; it is liable to be quashed for the reason that the ingredients of the FIR clearly disclose that it is a civil dispute inter se the parties and respondent No. 2 having an alternate remedy before the civil court can well file a suit for specific performance / any other remedy that she chooses. By getting this FIR registered, respondent No. 2 is trying to pressurize the petitioner to meet an obligation for which she herself is at fault. Learned counsel for the petitioner support his submission and has placed reliance upon the judgments of the Bench of the Apex Court reported as **(2005) 13 SCC 699, Murari Lal Gupta vs Gopi Singh** and **(2009) 8 SCC 787, State of Maharashtra vs Sayed Mohammed Masood and Anr.** to substantiate his submission that ingredients of Section 420 IPC are not made out; it is a fit case where the proceedings should be quashed.

Respondent No. 1 has filed a status report and the same has been perused. Respondent No. 2 is also served. Arguments are heard on behalf of respondent No. 2 as well. Record discloses that the petitioner and respondent No. 2 had entered into Agreement to Sell and Purchase the third floor (with roof rights) of a free hold property No. B-60, Shankar Garden, Vikas Puri, New Delhi for which a Bayana Agreement had been entered into inter se the parties. The date of this agreement is 02.12.2016. In terms of this agreement a sum of Rs 23 lakhs had been paid by respondent No. 2 to the petitioner and the balance sum of Rs 1,03,50,000/- had to be paid on or before 28.02.2017. The aforenoted Bayana agreement notes that in two other dates i.e., on 23.02.2017 and 28.02.2017 further part payments were made by respondent No. 2 to the petitioner. The fact that a total sum of Rs. 35 lakhs has been paid by respondent No. 2 to the petitioner is not in dispute. All these sums of money was paid by negotiable instruments.

Learned counsel for the complainant points out that the balance amount had to be paid by respondent No. 2 on her obtaining loan from the bank. These amounts of money had been paid by respondent No. 2 to the petitioner being her retiremental benefits. It was well within the knowledge of the petitioner that respondent No. 2 had to obtain a loan for making the balance payment. The petitioner, however, failed to give the original documents of title to respondent No. 2 in the absence of which respondent No. 2 could not obtain a loan. The bank report of the State Bank of India wherein the proposal for home loan by respondent No. 2 having been declined by the bank for the reason that the sale deed of the aforenoted plot was not available with the respondent No. 2. Admittedly, the mother title deed of the aforenoted property had not been handed over by the petitioner to respondent No. 2. He admits this fact even in court today. His submission is that it was well within the domain of respondent No. 2 to apply for a certified copy of the sale deed. What had been handed over by the petitioner to respondent No. 2 was a photocopy of the sale deed dated 29.08.2011 entered into by one Mr Anirudh Kumar Bagga in favour of the petitioner. This document was presented by respondent No 2 to the bank; this being only a photocopy and the mother title deed also not being available with the respondent No. 2, it was not sufficient document / documents for the bank to process the loan in favour of respondent No. 2. Submission of the learned counsel for respondent No. 2 is that the intent on the part of the petitioner was dishonest right from the inception as at the time of Bayana agreement it was promised and undertaken by the petitioner that original documents would be handed over by the petitioner to respondent No. 2 but the same have not been handed over to respondent No. 2.

The fact that respondent No. 2 had paid this Bayana amount from her retiremenbtal benefits is a position admitted by the petitioner. It is further pointed out that the petitioner was well aware of the fact that the balance amount of the deal was to be paid by respondent No. 2 to the petitioner only after obtaining the loan; even this particular submission of respondent No. 2 has not been denied by the petitioner.

Thus the submission of the learned counsel for respondent No. 2 that from the very inception there was a dishonest intention on the part of the petitioner is a submission which does carry force. The status report of respondent No. 1 has also been perused. Respondent No. 1 points out that pursuant to the FIR the statement of two property brokers namely Mr Sanjeev Sharma and Mr M.K. Singha has been recorded. Both of them had stated that a sum of Rs. 11,50,000/- has paid by respondent No. 2 to petitioner. It was the earnest money; the complainant in their presence had requested the petitioner to give the original documents to the petitioner in order that she can obtain a loan from the bank but in spite of this the petitioner (Seema Malhotra) did not do so; neither did she hand over the original documents to respondent No. 2 nor did she show the original documents to the bank. The fact that these original documents had not been shown by the petitioner to the bank official is also not disputed. Thus the fact that the complainant / respondent No. 2 could not avail of the benefit of the loan is a position which stands fortified. In the course of the investigation notice under Section 91 Cr.P.C was also issued to the State Bank of India, Cannaught Place branch. The reply received by them was to the effect that the loan was declined to respondent No. 2 / complainant for the reason that she did not supply the original mother title deed of the property in question; the ownership document of the property not being available with the respondent No. 2, the bank loan could not be processed.

Section 420 IPC entails the ingredients of dishonest intention; this dishonest intent must be at the time of the inception of the deal. Thus at the time when the deal was entered into inter se the parties. This ingredient is prima facie made out as the position being admitted that the balance consideration was to be paid by respondent No. 2 to the petitioner only after obtaining the loan and in the absence of original document not having been furnished by the petitioner to respondent No. 2, it was clear case that respondent No. 2 could not have availed the benefit of loan; timely payment has not been made by respondent No. 2 to petitioner; the petitioner by way of his dishonest intent wanted to forfeit the money of respondent No. 2.

At this stage, a proposal has been moved to the parties that if the petitioner is willing to pay back the money (retiremental benefit of respondent No. 2) to respondent No. 2 the matter could be settled. The petitioner is however not willing. His submission is that this is not a fit case to invoke criminal trial and the matter can only be settled during civil trial. This court notes this adamant attitude of the petitioner.

The judgments relied upon by the learned counsel for the petitioner noted in Murari Lal Gupta and State of Maharashtra (supra) are distinct on their own facts. This is not merely a simple breach of contract where a civil dispute alone would lie. Prima facie the ingredients of a dishonest intent are made out qua the role of the petitioner. Investigation is at its nascent stage. The statement of two property brokers and the report of the bank (pursuant to the notice under Section 91 of the Cr.P.C) is a relevant piece of evidence. No ground is made out for quashing of the FIR.

Petition dismissed.

INDERMEET KAUR, J

JANUARY 12, 2018

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