

\$~20

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 08th August, 2018

+ CRL.M.C. 5191/2015

YASHPAL SACHDEVA & ANR

..... Petitioners

Through: Mr. Arjun Malik, Advocate

versus

SUNIL RELI & ANR

..... Respondents

Through: Mr. K.K. Pahuja, Adv. for R-1
Ms. Meenakshi Dahiya, APP for R-2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On the criminal complaint (no.12/1) of 2012 presented as an application under Section 156(3) of the Code of Criminal Procedure, 1973 (Cr.PC), the Metropolitan Magistrate, while declining a direction to the police to investigate by order dated 16.07.2012, opted to hold pre-summoning inquiry presumably under Sections 200 / 202 Cr. PC and called upon the first respondent (complainant) to adduce evidence. The complainant examined three witnesses at that stage, they including his wife Sunita Relli (CW-1), his mother Shanti Devi (CW-2) and the complainant himself (CW-3). Thereafter, the Magistrate proceeded to consider the said material and, by order dated 03.02.2015, opined that the essential ingredients of offence under Section 420 of the Indian Penal Code, 1860 had been revealed, the testimony of the said witnesses at the stage of pre-summoning inquiry

showing *prima facie* complicity of the two petitioners, this leading to they being summoned to face prosecution for the offence under Section 420 IPC.

2. The aforesaid order was challenged by the petition at hand invoking the provision contained in Section 482 Cr.PC with prime contention that the controversy here presents a civil dispute, there being no criminality involved and, thus, the proceedings in the criminal case pending before the Metropolitan Magistrate are in the nature of abuse of the process of court.

3. The submissions of both sides have been heard and the record has been perused.

4. The complainant claims to be in the business of dealing in real estate (property dealer) in the course of which one Nand Gopal Gandham, owner of property no.C-51, Malviya Nagar, New Delhi had approached him for arranging a reputed builder for raising construction over the said plot of land. The complainant had introduced the second petitioner herein, proprietor of M/s. Techno Care with office at M-79A, Malviya Nagar, New Delhi for such purposes, settling his commission at Rs.10 Lakh to be paid by the second petitioner besides Rs.20 Lakhs to be paid by the said Nand Gopal Gandham. It is stated that the first petitioner was one of the tenants in the property of the said Nand Gopal Gandham and further that he (first petitioner) with the second petitioner had approached the complainant asking for some finance to be raised for payment to be made to Nand Gopal Gandham. This statedly led to a deal where half

of the portion of the shop of the first petitioner was to be sold to the complainant and the payment of commission payable by the second petitioner was to be adjusted, the balance payment of Rs.10 Lakh to be payable in cash. It has been the case of the complainant that the second petitioner had collected the amount of Rs.10 Lakh from his residence, later it having been revealed that a sale deed has been executed in respect of the shop in favour of the first petitioner.

5. The above facts, taken on their face value, make out at best a civil dispute wherein inspite of assurance being held out, the property in question was not sold in favour of the complainant even though a substantial amount of money had been taken from him. These facts, if substantiated, may give rise to cause of action for specific performance of the agreement to sell to be prayed for in a civil court. But, there is no element of criminality brought out on which a charge under Section 420 IPC could be laid or a complaint to that effect be maintained in the criminal court.

6. For the above reasons, the proceedings in the court of the Metropolitan Magistrate are found to be abuse of process of court. The petition is allowed. The impugned order is set aside. The proceedings in the aforesaid criminal case against the petitioners are hereby quashed.

R.K.GAUBA, J.

AUGUST 08, 2018

yg