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

Judgment reserved on: 28.08.2019
%   **Judgment delivered on: 08.11.2019**

\+   W.P.(CRL) 1330/2009 & CRL.M.A.4228/2017 and CRL.M.A. 33381/2019

NALINI SHARMA ..... Petitioner

Through: Mr. Prakash Gautam and Mr. Sandeep Kumar, Advocates.

versus

HONBLE LT. GOVERNOR & ORS. ..... Respondents

Through: Mr. G. M. Farooqui, APP for the State with Inspector Anil Jindal and SI Neeraj Kumar from PS-EOW.

Mr. Dhanesh Relan, Standing Counsel for DDA with Ms. Komal Sorout and Ms. Gauri Chaturvedi, Advocates for DDA.

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

JUDGMENT

BRIJESH SETHI, J.

1. The instant petition has been filed by the petitioner Nalini Sharma under Section 482 CrPC for quashing of the **FIR No.**

247/1988 dated 22.11.1988, under Section **420/468/471/120-B IPC** registered at P.S. Kotla Mubarakpur, New Delhi and charge-sheet filed there under against her.

2. Concisely, the relevant facts of the present case are that President of India (Lessor) through New Friends Cooperative House Building Society Ltd. (Lessee)(herein after referred to as 'Society') had executed Perpetual sub-lease dated 05.09.1980 in favour of Col. K.D.Gupta in respect of plot bearing no. A-133, New Friends Colony, New Delhi (hereinafter referred to as 'suit property').

3. Col. K.D.Gupta, the original allottee of the suit property vide request letter dated 14.12.1984 made the petitioner Nalini Sharma as his nominee and accordingly plot no. A-133 was mutated in the name of petitioner by the DDA and Society also accepted the request of transferring the rights of the suit property in the name of petitioner herein.

4. It is the case of the petitioner that in the month of March, 1985, she had entered into an agreement to sell the suit property in favour of one Mrs. Prabha Pawa. On account of some dispute,

Mrs. Prabha Pawa had filed a suit bearing no. 862/89 seeking relief of specific performance and injunction against the threat of DDA to resume the plot as well as relief against the cancellation of the plot in favour of the petitioner. During the pendency of the said suit, Mrs. Prabha Pawa had settled the matter with DDA and deposited restoration charges, charges towards earned income, damages, ground rent etc. Consequently, DDA had also executed a conveyance deed on free hold basis in favour of Mrs. Prabha Pawa. As per the prosecution case, it was noticed that the mutation/transfer of various plots in various cooperative Group Housing Societies including the above said Society, were done by DDA on the basis of Will/nominations etc. As there were complaints, therefore, an FIR No. 247/88 was registered against the office bearers of the Society. During the course of investigation, the name of other plot holders, including the petitioner was also added. The FIR was based on the complaint lodged by DDA.

5. It is contended by learned counsel for the petitioner that in view of the admitted payment of the compounding fees as well as

the unearned increase along with interest and all the charges in respect of conversion of suit property (which also stands now transferred absolutely by way of conveyance deed in favour of Smt. Prabha Pawa as an absolute owner), there is no warrant for further continuation of the said proceedings qua the petitioner.

6. It is lastly argued that in various other matters relating to the same criminal case bearing FIR No. 247/1988 dated 22.11.1988, the Hon'ble Court has quashed the FIR and, therefore, on the ground of parity, the proceedings against the petitioner be also quashed in the interest of justice.

7. Learned counsel for the petitioner in support of its case has relied upon the following case law:-

> **Smt Anita Maria Dias & Anr Vs. The State Crl. A. No.199 of 2018 decided on 19.01.2018 by the Hon'ble Supreme Court.**

8. I have gone through the above judgment passed by the Hon'ble Supreme Court. This was a case of cheating and other related offences where settlement was arrived at between two private parties where there was no loss to the public exchequer and no forgery or cheating was committed with any public

authority. Hence, the facts of the above judgment are distinguishable from the facts of the present case and the same is, therefore, not helpful to the petitioner.

9. *Per contra*, it is contended by Ld. APP for the State as well as by Ld. Counsel for DDA that it is a clear-cut case of cheating, forgery and wrong representation of Will on the part of the petitioner. It is further submitted that it is the Will on the basis of which petitioner claimed herself to be nominee of the suit property which later on, after thorough scrutiny of documents, found to be a case of transfer of property and not a case of devolution of property after the death of the testator in order to avoid the levy of unearned increase, since in case of devaluation of property, the transferee has not to pay the unearned increase. The Perpetual lease deed contemplates that in the event of sale, the lesser shall be entitled to claim and recover 50% of the unearned increase in the value of the residential plot.

10. I have considered the rival submissions and gone through the record.

11. Perusal of the record reveals that consequent to suit no. 862/1989 titled as **Mrs. Prabha Pahwa vs. Mrs. Nalini Sharma & Anr, DDA** had executed and registered the lease deed in favour of Mrs. Prabha Pahwa in respect of the aforesaid plot. Perusal of record further reveals that one of the condition on which sub-lease executed in respect of the suit property was to prohibit the lessee from transferring the sub-lease hold rights in favour of any person except with the consent of the lessor in writing which would be granted only subject to payment of 50% of the unearned increase and it has come on record that an amount of Rs. 4,49,555/- towards arrear of unearned increase was deposited by the petitioner with the DDA. In view of the above, it is vehemently argued by learned counsel for the petitioner that since the DDA has already been compensated by way of payment of Rs. 4,49,555/- towards arrear of unearned increase and conveyance deed has already been executed in favour of Mrs. Prabha Pahwa, there remains nothing to proceed with the proceedings of the present FIR as no action is pending on the part of the DDA and the matter has attained its finality.

12. Having perused the entire material available on record, I am not in agreement with this contention of learned counsel for the petitioner. The FIR in the present case was lodged for the offences of cheating, forgery, wrong representation of Will and for criminal conspiracy resulting in wrongful loss to the DDA and wrongful gain to the petitioner and solely for non deposit of 50% of unearned increase. On the basis of material available on record, at this stage, prima facie, it appears that petitioner has committed the offences of cheating and forgery by presenting Will and nomination which was actuated on a sale transaction and is not a case of devolution of property. Scrutiny of documents reveals that the nominee of the suit property was not the blood relative of the original allottee which is in contravention of terms and conditions of the sub-lease deed. It is the case of the prosecution that as per law devolution is allowed to legal heirs in blood relation and none else. The factum of offences of cheating and forgery committed by the petitioner in collaboration with DDA officials and staff members of Society is clearly mentioned in the charge-sheet filed in this case and the relevant portion of the same is as follows:-

" In second case plot no. A-133, was sub-leased in favour of Sh. K.D.Gupta on 19th April, 1984. He informed DDA that he could not construct building on the plot as he had been posted to a field area and that his family consisting of wife and two daughters and one son(with no other member, presumably male member). However, on 17th December, 1984 he stated that he is a widower and issueless and as such intends to transfer the plot in favour of Smt. Nalini, his nominee. On the basis of these documents, mutation was allowed in favour of petitioner Nalini Sharma on 31.12.1984. **In this case, the transfer has been obtained by filing false affidavits of being widower and issueless whereas in April 1984, Sh. K.D.Gupta, accused Sl. No. 3 has accepted that he is having 2 daughters and one son.** During investigation, it has been established that Smt Nalini Sharma accused Sl.no. 4 along with her husband Sh. Suresh Sharma with the intention to purchase a plot in N.F.C. H.Building Society contacted Gulshan Nayyar, property Dealer. The property dealer and society's office bearer accused M.L.Jaggi and K.L.Mehta fallen into a criminal conspiracy with the seller K.D.Gupta, purchaser Smt Nalini Sharma and her husband. DDA officials induced the purchaser to purchase the plot no. A-133, and assured her that mutation would be got done in her name from DDA. As per investigation i.e. statements, CFSL report and documents collected so far, it is crystal clear that a forged/bogus letter dt.

> 14.12.1984was presented to DDA on behalf of the seller along with the forged nomination, application, photocopy(attested true copy) and indemnity bond and affidavit bearing bogus signatures of Sh. K.D.Gupta. Mutation was intentionally carried out in favour of Nalini Sharma for a consideration of Rs. 2,50,000/- which was out of blood relation transfer which could take place only after payment of 50% unearned increase to the lesser."

13. In the case in hand, petitioner has committed offences of cheating and forgery on the basis of false documents and suit property was mutated as a devolution case on the basis of Will executed by Sh. K.D. Gupta in her favour. It is the case of the prosecution that the instant case is not of mutation out of blood relation and it is a clear cut case of sale by sub-lessee in favour of Nalini Sharma but it was shown on the basis of Will in order to deprive DDA of 50% unearned increase with the assistance and active role of conspirators i.e. accused G.P.Biswal and Hari Singh of DDA and M.L.Jaggi and K.L.Mehra of society. It is clear that prima facie offences committed by the petitioner are the offences against the society at large and therefore, she cannot be exonerated from the criminal liability on the ground that she has paid the

amount of unearned increase later on. Reliance in this regard is placed upon ***Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors. Vs. State of Gujarat & Anr., 2017 SCC Online SC 1189***, wherein the Hon'ble Supreme Court has held as under:-

> "15..the case involved an allegation of forgery; hence the court was not dealing with a simple case where the accused had borrowed money from a bank, to divert it elsewhere. The court held that the manner in which Letters of Credit were issued and funds were siphoned off had a foundation in criminal law: availing of money from a nationalized bank in the manner, as alleged by the investigating agency, vividly exposits fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the chargesheet cannot be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kind of benefits it cannot be regarded as a case having overwhelmingly and predominatingly of civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates

a dent in the economic spine of the nation. The judgment of the High Court quashing the criminal proceedings was hence set aside by this Court.

The same principle was followed in Central Bureau of Investigation v Maninder Singh by a bench of two learned Judges of this Court. In that case, the High Court had, in the exercise of its inherent power under Section 482 quashed proceedings under Sections 420, 467, 468 and 471 read with Section 120-B of the Penal Code. While allowing the appeal filed by the Central Bureau of Investigation Mr Justice Dipak Misra (as the learned Chief Justice then was) observed that the case involved allegations of forgery of documents to embezzle the funds of the bank. In such a situation, the fact that the dispute had been settled with the bank would not justify a recourse to the power under Section 482:

In economic offences Court must not only keep in view that money has been paid to the bank which has been defrauded but also the society at large. It is not a case of simple assault or a theft of a trivial amount; but the offence with which we are concerned is well planned and was committed with a deliberate design with an eye of personal profit regardless of consequence to the society at large. To quash the proceeding merely on the ground that the accused has settled the amount with the bank would be a misplaced sympathy. If the prosecution against the economic offenders are not allowed to continue, the entire community is aggrieved.

A grave criminal offence or serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial health of the institutions, is not to be quashed on the ground that there is delay in trial or the principle that when the matter has been settled it should be quashed to avoid the load on the system."

14. Perusal of the record clearly reveals that offence committed by petitioner is not an offence against one man but against DDA, a public Authority. The act of the petitioner, in fact, is an intentional act designed to deprive the DDA of its legitimate dues by committing forgery and cheating. This Court is of the view that when such offences are committed, these not only cause loss to the public exchequer but also to the taxpayers and society at large who have a right to access to various welfare schemes of the government. The offences alleged against the accused are serious in nature and

committed with a deliberate design and planning with a view to earn personal gain regardless of wrongful loss to the public exchequer which concerns public at large. This court is, therefore, of the considered view that even if unearned increase has been paid to DDA later on and conveyance deed has been executed qua the suit property in favour of Ms. Prabha Pawa, the petitioner cannot be exonerated of the offences committed in a planned manner by manipulating the documents with the intention of cheating the DDA and causing loss to the Public exchequer and to quash such kind of proceedings would certainly be a case of misplaced sympathy.

15. Ld. Counsel for the petitioner has argued that earlier also the FIR was quashed qua some of the accused persons by the Hon'ble High Court of Delhi on the ground that unearned increase was paid by the subsequent purchaser.

16. Ld. APP for the State and Ld. Counsel for DDA have, however, argued that the FIR cannot be quashed if the offence affects the economy of the nation or results in causing loss to the public exchequer, in view of the latest law laid down by the Hon'ble Supreme Court in ***Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai***

Karmur & Ors. Vs. State of Gujarat & Anr.,2017 SCC Online SC 1189.

17. This court is of the opinion that offences alleged to have been committed by petitioner is not an individual or personal wrong. It is a wrong which affects the society and is committed with an eye on personal profit regardless of consequences to the society. In view of the detailed reasoning given above, this court is of the opinion that FIR cannot be quashed for the reason that the petitioner has cheated the DDA and caused loss to the public exchequer by not paying unearned increase deliberately and in view of the Judgment of Hon'ble Supreme Court in ***Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors.(Supra)***, the offences which affects the economy of the nation and are against the society, cannot be quashed.

18. In view of the above discussion, I find no merit in the petition filed by the petitioner and the petition, along with all the pending applications are accordingly dismissed.

BRIJESH SETHI, J

NOVEMBER 8, 2019
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