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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 5th February, 2019

+ CRL.M.C. 2382/2016

RAJESH CHAUDHARY

..... Petitioner

Through: Mr. Dhan Mohan, Mrs. Tanu B. Mishra, Ms. Harkamal Jeet Kaur and Ms. Ravi Mishra, Advocates

versus

**M/S LAKESHORE BUILDERS PVT. LTD.
& ORS**

..... Respondents

Through: Mr. Manish Raghav, Adv. for R-1
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CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner had instituted criminal complaint case (CC 08/1/11) in the court of the Chief Metropolitan Magistrate in February 2011 seeking criminal prosecution of the respondents on the accusations that they had committed offences punishable under Sections 341, 417, 418, 419, 420, 406, 120-B, 506, 34 of Indian Penal Code, 1860.

2. The Metropolitan Magistrate held pre-summoning inquiry under Sections 200-202 of the Code of Criminal Procedure, 1973 (Cr. PC).

The petitioner (as complainant) examined himself as the solitary witness (CW-1).

3. Upon consideration of the said evidence, the Metropolitan Magistrate, by her order dated 03.09.2014, found no grounds to proceed against the respondents and, thus, dismissed the complaint under Section 203 Cr. PC.

4. The said order was challenged by the petitioner in the court of the Sessions by Crl. Revision No.110/3/14. The petition was dismissed by the Additional Sessions Judge, by order dated 09.09.2015, observing that there was no error, illegality, impropriety or irregularity in the view taken by the Metropolitan Magistrate.

5. Feeling aggrieved against the said orders of the two courts below, the present petition was filed invoking the inherent power and jurisdiction of this court under Section 482 Cr. PC primarily with the submission that the view taken so as to dismiss his complaint at the threshold is perverse.

6. The respondents have resisted the petition by filing a counter. Both sides have been heard and the record has been perused.

7. This court finds no merit in the petition. The reasons may be elaborated hereinafter.

8. The prime allegations of the petitioner in the criminal complaint case have been that the dispute revolves around Flat no.343 in block No.GH-13, Paschim Vihar, Delhi. It is his case that the second and

third respondents had offered to sell the said flat to him representing that it stood in the name of the first respondent company, they having taken from him an amount of Rs.4 Lakhs through account payee cheque and draft. It is alleged by him that later it was revealed that the flat is held in the joint names of the second respondent and one Anil Uniyal, this revealing that the respondents did not have the exclusive right to sell the property. It is also his case that he was threatened when he demanded return of the money which was paid as “*booking amount*”.

9. The Metropolitan Magistrate examined the complaint in light of the evidence of the complainant, he having appeared as CW-1 in the preliminary inquiry. She found that the petitioner has not proved any agreement to sell, or any other document, indicating purported offer of the respondents to sell the property in question to him for consideration. The petitioner had sought to show the payments as aforesaid through a cheque dated 01.04.2010 bearing no.214751 in favour of the first respondent in the sum of Rs.3 Lakh and a pay order dated 23.02.2010 issued by Oriental Bank of Commerce, it bearing no.087858 in the sum of Rs.1 Lakh again in favour of the first respondent. The copy of the pay order was brought on record as Mark-A while the copy of the cheque was brought on record as Mark-B, there being no clear proof in such regard. The document mark-A clearly shows that the bank had issued it at the instance of Anupurna Constructions. Similarly, document mark-B clearly shows that it was

a cheque issued by the proprietor of a firm named Anupurna Constructions.

10. There is no averment in the complaint or any evidence adduced to show any connection between the petitioner on one hand and the said Anupurna Constructions on the other. Though the petitioner would also rely on copy of the document Mark-C purporting to be token money receipt, it is conceded at the hearing that it does not bear signatures of any person. In these circumstances, there is no cogent proof even of any money having been passed on by the petitioner to any of the respondents.

11. In the above facts and circumstances, the view taken by the courts below cannot be faulted.

12. The petition is dismissed.

R.K.GAUBA, J.

February 05, 2019

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