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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 21st January, 2019

+ CRL.M.C. 4805/2016 and Crl. M.A. 19982/2016

AMIT AGGARWAL

..... Petitioner

Through: Mr. S.S. Wani and Ms. Sindhu S.,
Advocates

versus

STATE (NCT OF DELHI) & ORS

..... Respondents

Through: Mr. Kewal Singh Ahuja, APP for
State with SI Anil Rathod

Mr. Jajaj Agarwal and Mr. Atul Agarwal,
Advocates for R-2 & 3 with R-2 in person

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. Allegations were made about complicity on the part of the petitioner in certain acts of commission and omission allegedly constituting offences punishable under Sections 420 and 406 of Indian Penal Code, 1860 in the averments set out in the complaint presented on 16.01.2013, to the Station House Officer of police station Greater Kailash-I, it having been translated into first information report (FIR) no.13/2013, the second respondent being the first informant.

2. The police carried out investigation and submitted report (charge-sheet) dated 19.03.2013 under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC) seeking trial of the petitioner on

the accusations for the aforementioned offences. The Metropolitan Magistrate having taken cognizance on the said charge-sheet, the petitioner having been summoned as accused, the case presently pending trial on charges already framed, the allegations in the FIR lodged by the second respondent (first informant) primarily concerned the wrongful loss caused to his father-in-law i.e. the third respondent (hereinafter referred to as the “victim”). The petitioner had entered into a Memorandum of Settlement–Cum-Compromise (hereinafter referred to as the “settlement”) on 28.03.2013, with the first informant and the said victim. It appears that the petitioner had been arrested prior to the said date and was statedly on interim bail at that point of time and while the parties were still in the process of negotiation, the first informant had appeared before the Metropolitan Magistrate on 14.03.2013 and made a submission in the context of then pending application under Section 437 Cr.PC, that he had no objection to the interim bail being granted in view of the submissions that the petitioner indicated his inclination to enter into the settlement with him. On 26.03.2013, on the basis of a tentative compromise having been reached, the court of Sessions granted interim bail to the petitioner, taking on record the submissions of the first informant as well.

3. In the wake of the settlement dated 28.03.2013, the petitioner claims to have readied an application addressed to the Metropolitan Magistrate with the prayer for the proceedings to be dropped and the matter to be disposed of as compounded on its basis. It appears that

the first informant as well as the victim had handed over to the petitioner, affidavits signed at appropriate places by them to be submitted in support of the said application, the said application and the said documents being placed on record of this petition as Annexure 'I'. The copy of the proceedings recorded against the said backdrop, particularly the proceedings with effect from 21.04.2014, would indicate that the complainant side had some reservations. The parties were referred to mediation, on their request, the response of the complainant side that it was expecting some more settlement amount due to him having been duly noted in the proceedings of 04.09.2014. Eventually, it is conceded, the mediation efforts did not bear fruit, it being pointed out that it was brought to the notice of the Metropolitan Magistrate and duly recorded in the proceedings on 13.02.2015 that one of the interested parties (Mr. Rajan Grover) was not appearing before the mediation centre.

4. The mediation process thus having failed, the petitioner approached this court by the petition at hand invoking the inherent power and jurisdiction of this court under Section 482 Cr. PC, to seek quashing of the criminal case on the ground that its continuation is an abuse of the process of law since, according to him, he had taken all the necessary steps as he was obliged to do in terms of the settlement dated 28.03.2013, the first informant and the victim having unreasonably backed out and not being supportive, this against the letter and spirit of the compromise that had been worked out. It is primarily his submission that under the settlement dated 28.03.2013,

his obligation is only to the effect of transferring certain right in the property described as free hold built up property bearing no.G-9/16, situate in the residential colony known as DLF Qutub Enclave Complex (DLF City) Phase-1, in the revenue estate of Village Sikanderpur Ghosi, Tehsil and District Gurgaon (Haryana) (hereinafter referred to as the “DLF property”) and that towards discharge of his responsibility in that regard, he had already executed and got registered sale deed dated 28.03.2013.

5. Reliance is placed by the petitioner, *inter alia*, on two decisions of the Supreme Court i.e. *Ruchi Agarwal vs. Amit Kumar Agrawal and Ors.*, (2005) 3 SCC 299, *Mohd. Shamim & Others Vs. Nahid Begum (Smt.) and Another.*, (2005) 3 SCC 302 and two decisions of learned single Judges of this court i.e. *Anshu Soni & Ors. Vs. State & Anr.*, *Crl. M.C. 3654/2012*, decided on 30.11.2012 and *Seemant Sinha & Ors. Vs. State & Anr.*, *WP (Crl.) 1450/2014*, decided on 03.02.2015.

6. The petition is resisted both by the first respondent / State as also collectively by the second and third respondents (i.e. the first informant and the victim) making their submissions, *inter alia*, by reply filed jointly. Besides other contentions, the State also points out that the charge-sheet which was presented upon conclusion of the investigation shows similar offences having been committed by the petitioner in respect of the subject property qua at least two other persons, in addition to the third respondent, there being no clarity in the pleadings in the petition or by any documents filed therewith with regard to the stand of the petitioner in such respect.

7. The case of the prosecution against the petitioner in the charge-sheet dated 19.03.2013, concisely put, is that the victim (Dr. D.C. Gupta), a senior citizen wanted to acquire a residential flat in the area of Greater Kailash-I where his son-in-law, the first informant was also living, the house of the latter being S-419, Greater Kailash, Part-I. They had come in contact with the petitioner who was earning his livelihood as a builder / owner. It appears that the petitioner had acquired title in property described as R-296-D, Greater Kailash-1, Delhi-110 048 from its erstwhile owners, Ms. Girija Singh and Mr. Pradeep Kumar, legal heirs of the original allottee Major Brijesh Gupta, by a sale deed dated 02.05.2011. The petitioner statedly had thereafter entered into a collaboration agreement with one Avinash Kumar Sethia on 17.06.2011. Eventually, the petitioner acquired right, title and interest in the first floor of newly constructed / developed property bearing no.R-296-D, Greater Kailash-I, New Delhi (hereinafter referred to as “the subject property”). The first informant and his father in law (victim) were offered sale of the first floor of the subject property against total consideration settled at Rs.3.51 Crores. There is evidence to *prima facie* show that on 22.06.2012, an agreement to sell and purchase was executed between the petitioner and the victim in the presence of the first informant and, over the period, besides the earnest money of Rs.7 Lakhs, the petitioner received from the victim, an amount of Rs. 2 Crores, the balance being payable at the time of execution of the sale deed. Some documents acknowledging the receipt of the said payment were also issued by the petitioner.

8. The petitioner allegedly did not come forward to execute the formal sale deed and this led to some concerns in the mind of the complainant. It is stated that eventually it was revealed that the petitioner had cheated the victim by withholding the crucial fact that prior to entering into the said agreements, he had mortgaged the property with a bank, he having also entered into similar agreements to sell with third parties. The investigation has brought out evidence showing that on 31.05.2012, the petitioner had taken a loan of Rs.2.04 Crores from ECL Finance Ltd (a financial company), mortgaging the subject property in the process handing over all the title deeds in original to the said financial company. Further, the petitioner had also entered into a similar agreement with one Gautam Sabharwal receiving from him a total consideration of Rs.2.05 Crores on 21.08.2012. Again, on 19.06.2011, the petitioner had received an amount of Rs.51 Lakhs from one Nitin Tandon by executing certain documents purporting to sell the subject property to him.

9. The counsel for the petitioner was at pains to argue that he has already settled the dispute by entering into formal settlement agreements with Gautam Sabharwal and Nitin Tandon, the financial company having also given him NOC (No Objection Certificate). But, he fairly conceded that till date no application for compounding of the offences against the said three others has been moved before the trial court nor any prayer has been made on such basis in the present proceedings.

10. The memorandum of settlement dated 28.03.2013 was executed by the petitioner on one hand (described as the first party / debtor) and by first informant and the victim (Mr. R.D. Jhari and Dr. D.C. Gupta) on the other, they having been described as the second party / creditors. In terms of the said settlement, the petitioner had undertaken, the complainant side being agreeable in such regard, to transfer “12.25% undivided share” in the DLF property in the name of Dr. Tushar Jhari, son of the first informant, by execution of a sale deed as full and final settlement of all claims, dues, demands and other financial claims against the first party. But then, the settlement agreement also contained another obligation on the part of the petitioner, it being indicated in fifth clause which, as per the copy submitted with the paper book, would read thus :-

“5. That the First Party had entered into agreement(s) and had paid certain amounts to / through Shri Rajan Grover S/o. _____ R/o. _____, regarding purchase of property No.A-16/3, DLF City Phase-I, Gurgaon (Haryana) and G-2/2, DLF City Phase-II, Gurgaon (Haryana). All amounts recoverable under the said Agreements shall belong to the SECOND PARTY Proportionately alongwith other creditors of the First Party, without any right therein by the First Party.” (quoted verbatim from copy submitted)

11. The petitioner has placed on record copy of the sale deed dated 28.03.2013 which was executed on the same date as of the memorandum of settlement by the petitioner transferring his right, title and interest in the DLF property in favour of the five persons, the fourth (of them) being Dr. Tushar Jhari, presumably pursuant to the

obligation that he had undertaken in terms of the settlement dated 28.03.2013 in the context of the FIR to which the present proceedings relate. Noticeably, the sale deed dated 28.03.2013 vis-a-vis the DLF property would reflect that the total sale consideration of the said transaction was Rs.4.21 Crores, the interest transferred in favour of the nominee of the victim being to the extent of 12.25% undivided share. The sale consideration of which the complainant side had acknowledged refund by transfer of the said share in the DLF property is clearly a fraction of the amount of total wrongful loss suffered by the first informant on one hand and the total wrongful gain of the petitioner in the transactions which are subject matter of the criminal charge against him. The fact that transfer of such limited share in the DLF property would not be complete and full satisfaction of the claim of the victim (and the first informant) was well known to the petitioner is implicit in the further stipulation as contained in the fifth clause of the settlement agreement quoted above.

12. There is nothing in the pleadings, nor in the documents filed therewith, nor in the memorandum of settlement on which the petitioner harps, to clarify as to what was the nature of transaction between the petitioner on one hand and the person named Rajan Grover mentioned in the fifth clause quoted above. It was sought to be clarified at the hearing that the petitioner had entered into an agreement with the said Rajan Grover to purchase certain interest in two other properties of DLF, the agreement to purchase having fizzled out, Rajan Grover consequently owing some money to the petitioner.

There is, however, no clarity as to the extent of money owed by Rajan Grover or for that matter as to when its refund to the petitioner had become due. There is no clarity nor any documents seem to have been shared with the complainant side to equip them to enforce the liability of Rajan Grover towards the petitioner in terms of the stipulation in the fifth clause as quoted above.

13. It does appear, from what has been noted above, that when the Metropolitan Magistrate had referred the parties to the process of mediation, endeavour was made to rope in Rajan Grover as a party. But, it is also clear from the said proceedings that Rajan Grover did not feel obliged to join any such parleys and, on this account, the mediation did not bear fruit. The fact remains that Rajan Grover was not a party to the settlement dated 28.03.2013 and the compromise brokered by the petitioner with the complainant side cannot bind Rajan Grover to play ball with the petitioner for bringing an end to the criminal case against him.

14. To put it simply, the memorandum of settlement dated 28.03.2013 had too many loose ends and the compromise is clearly unworkable. It cannot satisfy the complainant side in as much as they had paid a total amount of Rs.2 Crores to the petitioner and it is no surprise that they are disinclined to co-operate with him in treating the matter compromised only upon receipt of a fraction of such amount by transfer of a limited undivided share of the property in the DLF property.

15. In the above facts and circumstances, the case law relied upon by the petitioner cannot come to his aid or assistance. The facts are entirely distinguishable. The petition cannot be allowed as the petitioner cannot unilaterally compel the second and third respondents to agree to the quashing of the criminal proceedings for the simple reason that he has not himself discharged his obligation towards them in full.

16. The petition and the application filed therewith are dismissed.

17. Before parting, this court must remind the Metropolitan Magistrate that the case concerns cheating or criminal breach of trust involving not only the second and third respondents but also certain others and unless due care has already been taken in framing of a proper formal charge in this light, the necessary amends will be made by keeping in view the case in entirety.

R.K.GAUBA, J.

JANUARY 21, 2019

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