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

***Date of Order: March 15, 2019***

\+        **CRL.M.C. 1718/2017 & CRL.M.A.7009/2017**

MEERA GOYAL .....Petitioner

Through: Mr. Sudhir Nandrajog, Senior Advocate with Mr.Vijay Aggarwal & Mr. Rohit P.Ranjan, Advocates

Versus

STATE, NCT OF DELHI & ORS. .....Respondents

Through: Ms. Neelam Sharma, Additional Public Prosecutor for respondent No.1-State

Mr. Mohit Mathur, Senior Advocate with Mr. Shailender Babbar & Ms. Manisha Parwan, Advocates for respondents No.2 & 3

\+        **CRL.M.C. 3142/2017 & CRL.M.As. 14920/2017; 14921/2017; 14923/2017; 14924/2017; 14925/2017 & 14926/2017**

PRITI SARAF & ANR. .....Petitioners

Through: Mr. Mohit Mathur, Senior Advocate with Mr. Shailender Babbar & Ms. Manisha Parwan, Advocates

Versus

STATE & ANR. .....Respondents

Through: Ms. Neelam Sharma, Additional Public Prosecutor for respondent No.1-State with Inspector Umesh Sharma

Mr. Sudhir Nandrajog, Senior Advocate with Mr.Vijay Aggarwal & Mr. Rohit P.Ranjan, Advocates for respondent No.2

**CORAM:**
**HON'BLE MR. JUSTICE SUNIL GAUR**

## ORDER

The above captioned first petition is directed against trial court's order of 15th November, 2016 vide which cognizance for the offence of cheating has been taken against petitioner- *Meera Goel*, whereas in the above captioned second petition, complainant-*Priti Saraf* is aggrieved by Revisional Court's order of 26th April, 2017, vide which trial court's order of 15th November, 2016 qua *Ashok Kumar* has been set aside.

Since both these petitions spring out of trial court's order of 15th November, 2016, therefore, with the consent of learned counsel for the parties, these petitions have been heard together and are being decided by this common order.

The facts giving rise to these petitions are that complainant-*Priti Saraf* had agreed to purchase 1205 sq. yards of land out of property No. 37, Friends Colony (East), New Delhi from petitioner- *Meera Goyal* for total consideration of Rupees Sixty Three Crores Twenty Eight Lacs Fifty Thousand Seven Hundred and Fifty (₹63,28,50,750/-), out of which respondent –*Ashok Kumar*, being Property Dealer, had received commission of Rupees Fifty Lacs (₹50,00,000/-) and petitioner- *Meera Goyal* had received the earnest money of Rupees Twelve Crores Fifty Lacs (₹12,50,00,000/-) which stands forfeited by her, as complainant-

*Priti Saraf* had failed to perform her part of Agreement to Sell. According to petitioner- *Meera Goyal,* notice of 30th January, 2013 terminating Agreement to Sell of 24th December, 2011 was served upon complainant-*Priti Saraf,* which was never challenged by her and instead of availing civil remedies, complainant-*Priti Saraf* has invoked criminal proceedings.

According to learned Senior Counsel for petitioner- *Meera Goyal,* she had obtained sanctioned plan from the competent authority and had obtained clearance from the bank and she had performed her part of Agreement, and therefore, she was justified in forfeiting the earnest money, for which no criminal prosecution can be launched. Learned senior counsel for petitioner- *Meera Goyal* pointed out that apart from the earnest money, she had received part of sale consideration of ₹5.40 crores, which after termination of Agreement to Sell of 24th December, 2011 was returned to complainant-*Priti Saraf* and in terms of Article-5 of Agreement to Sell, petitioner- *Meera Goyal* was justified in forfeiting the earnest money. It was pointed out complainant had failed to provide the drawings within the timeline provided in Agreement to Sell and later on, it was provided and thereafter land of complainant was demarcated by erecting pillars, as it was known to both the sides that subject property could not be sub-divided.

Impugned orders are assailed by learned senior counsel for petitioner- *Meera Goyal* on the ground that merely because money received by her was not returned to complainant-*Priti Saraf*, would not justify her prosecution for the offence of cheating. It is pointed out that complainant after encashing the refunded cheque of ₹5.40 crore (which was part of sale consideration) had replied to legal notice sent by petitioner-*Meera Goyal* while asserting that Agreement to Sell in question was still valid and subsisting but complainant failed to come forward with balance sale consideration. Reliance is placed upon decisions in *Indian Oil Corporation Vs. Neph India Ltd.* 2006 (6) SCC 736; *Chandran Ratnaswami vs. K.C. Alanisami* 2013 (6) SCC 740; *State of Maharashtra Vs. Sayed Mohammed Masood & anr.* 2009 (4) J.C.C. 3025; *Vir Prakash Sharma Vs. Anil Kumar Agarwal & Anr.* (2007) 7 SCC 373; *Uma Shanker Gopalika Vs. State of Bihar & Anr.* 2005 (10) SCC 336; *G. Sagar Suri Vs. State of U.P.* (2000) 2 SCC 636; *Murari Lal Gupta Vs. Gopi Singh* (2005) 13 SCC 609 and *Ramdev Food Product Private Limited Vs. State of Gujrat* (2015) 6 SCC 439 to submit that every breach of contract does not constitute offence of cheating and since there was no intention of cheating from its inception, therefore, petitioner- *Meera Goyal* cannot be prosecuted for the offence of cheating, as no offence of cheating is made out and that the dispute between the parties gives rise to civil liability and no criminal offence is made out.

It is also pointed out by learned senior counsel for petitioner-*Meera Goyal* that the parties have invoked arbitration clause in the Agreement to Sell and arbitration is pending and since the ingredients of offence alleged are lacking, therefore, criminal proceedings against petitioner ought to be brought to an end.

So far as dropping of criminal proceedings against respondent-*Ashok Kumar* is concerned, learned counsel for complainant-*Priti Saraf* submitted that merely because accused-*Ashok Kumar* had refunded amount of ₹50,00,000/- to complainant-*Priti Saraf* , would not justify dropping of criminal proceedings against *Ashok Kumar*, because *prima facie* case of cheating is made out against him. Reliance is placed upon Supreme Court's decision in *Maria Margarida Sequeria Fernandes Vs. Erasmo Jack de Sequeria* (2012) 5 SCC 370; *Dalip Singh Vs. State of U.P.*(2010) 2 SCC 114 to submit that *Meera Goyal* and *Ashok Kumar* have no right to approach this Court at this initial stage, as cognizance against them, has been taken after due application of mind. It is pointed out by learned counsel for complainant-*Priti Saraf* that property in question was divided into four parts and the complainant-*Priti Saraf* was allured to pay almost twice of market rate with the intention of cheating and to play fraud upon her. It is vehemently submitted that petitioner-*Meera Goyal* had entered into Agreement to Sell with the intention of cheating and thus, *prima facie* case for cheating against petitioner- *Meera Goyal* and *Ashok Kumar* is made out. Learned counsel for complainant-*Priti Saraf* supported the impugned order and submitted that the criminal and civil proceedings can go on simultaneously and since *prima facie* case of cheating is made out against *Meera Goyal* and *Ashok Kumar*, therefore, *Meera Goyal's* petition deserves dismissal.

Learned senior counsel appearing for *Priti Saraf* and *Rohit Saraf* [in Crl.M.C. 1718/2017] submitted that *Meera Goyal* had procured money from them with *mala fide* intention to clear her bank due and with ulterior motive had issued the termination Notice of 30th January, 2013 alongwith letter of 28th December, 2012 and cheque of ₹5.40 Crores and since the validity of the said cheque was to expire soon, therefore, it was presented for encashment. It was pointed out that *Meera Goyal* had settled dues of the bank and had got *'No Objection Certificate'* and had obtained sanction of building plan with ill intent to reconstruct the subject property.

It was further submitted that no sub-division of subject property was permissible but *Meera Goyal* had falsely represented that the property in question was sub-divided. It was further pointed out by learned senior counsel for *Priti Saraf* and *Rohit Saraf* that *Meera Goyal* was required to get the demarcation of the subject property done by erecting pillars but it could not be done due to existing structure in the subject property. It was submitted that the lease of subject property to third party i.e. M/S M.G.Goel Gases Pvt. Ltd. was upto the year 2015 and this fact was deliberately withheld by *Meera Goyal* and on earlier occasion also, she had forfeited the earnest money from Shinestar Buildcon Private Limited in the year 2007 and as to whether the earlier forfeited money was to be treated as her income or not, is subjudice in income tax proceedings. It was next submitted by learned senior counsel appearing for *Priti Saraf* and *Rohit Saraf* that *Meera Goyal* has failed to explain as to what necessitated her to prepare pay order/ draft of Rupees Thirty Crores (₹30,00,00,000/-) favouring *Priti Saraf* and *Rohit Saraf* and it was only with *mala fide* intent that she had failed to tender it to them. Lastly, it is submitted that ingredients of offence alleged *prima facie* exist and so, criminal proceedings ought not be interdicted. To submit so, reliance is placed upon Supreme Court's decisions in *State of*

*Orissa Vs. Saroj Kumar Sahoo* (2005) 13 SCC 540; *Hamida Vs. Rashid* (2008) 1 SCC 474; *R. Kalyani Vs. Janak C. Mehta & Ors.* (2009) 1 SCC 516 and *Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors. Vs. State of Gujarat* (2017) 9 SCC 641. Thus, dismissal of the petition filed by *Meera Goyal* is sought while submitting that she should not be permitted undue enrichment, in view of Supreme Court's decision in *Enviro-Legal Action Vs. Union of India & Ors.* (2011) 8 SCC 161.

Upon hearing and on perusal of impugned orders, material on record and the decisions cited, I find that earnest money was received by petitioner-*Meera Goyal* in terms of Agreement to Sell in question and there is no basis to conclude that the earnest money received by her was used in clearing her bank dues of Rupees Eighteen Crores (₹18,00,00,000/-). Notice to perform Agreement to Sell and subsequent Termination Notice of 30th January, 2013, was duly served by petitioner-*Meera Goyal* on 30th January, 2013 upon complainant-*Priti Saraf*. It is so evident from complainant's reply of 26th February, 2013 which was sent to petitioner's Notice terminating Agreement to Sell of 24th December, 2011. Pertinently, as per complainant's reply, deadline of 24th March, 2012 stood novated. Petitioner- *Meera Goyal*, had obtained sanctioned plan for the property in question from the competent authority and had also cleared her bank dues and, so it cannot be said that any kind of cheating is attributable to petitioner- *Meera Goyal* and respondent-*Ashok Kumar*, who was a broker.

Supreme Court in *Indian Oil (supra)* has taken notice of the growing tendency in business circle to convert purely civil disputes into criminal cases. It *prima facie* appears that the instant case is of simple breach of contract, which gives rise to purely civil dispute and would not attract penal provision of Section 420 IPC. Relevantly, Action Taken Report on record reveals that disputes between the parties is of civil nature. The courts below have gravely erred in ignoring the Action Taken Report. It is quite apparent that an essentially civil dispute is sought to be converted into criminal offence, which cannot be permitted. It is well settled that every breach of contract would not give rise to offence of cheating and only in those cases, breach of contract would amount to cheating, where any deception is played at the very inception.

Judicial notice can be taken note of the settled legal position that criminal proceedings are not to be initiated casually and before issuing the process, criminal court has to exercise great deal of caution, which has not been adhered to, by the courts below in this case. Considering that arbitration proceedings in respect of Agreement to Sell in question are still pending, this Court would refrains from commenting upon the merits of dispute between the parties but would certainly like to clarify in unequivocal terms that the element of cheating alleged is lacking in the instant case. This Court is therefore of the considered opinion that criminal proceedings against *Meera Goyal* and *Ashok Kumar* ought to be dropped, as ingredients of offence of cheating are lacking in the instant case. It *prima facie* appears that Complainant- *Priti Saraf's* failure to perform Agreement to Sell cannot be justified because lease of subject property ended before initiation of criminal proceedings. Upon testing the instant case on the parameters reiterated by Supreme Court in *Parbatbhai*

*Aahir (Supra)*, I find that it is a futile attempt to inject criminality into a purely civil dispute, resulting in sheer abuse of process of the court, which is impermissible. Consequentially, criminal proceedings qua *Meera Goyal* are hereby quashed, as dispute between the parties is predominantly civil and criminal flavor is conspicuously missing.

In the light of aforesaid, impugned orders of 24th April, 2017 and 15th November, 2016 qua petitioner –*Meera Goyal* are hereby quashed and the Revisional Court's order 24th April, 2017 against *Ashok Kumar* is hereby affirmed, as no dishonest intention can possibly be attributed to respondent *Ashok Kumar*.

Both these petitions and applications are accordingly disposed of, while refraining to comment upon the merits of this case, lest it may prejudice the parties in arbitration proceedings. By way of abundant caution, it is made clear that any observation made in this order shall not be construed to be expression on merits, in the arbitration proceedings.

**(SUNIL GAUR)**
**JUDGE**

**MARCH 15, 2019**
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