

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

CRL. REV. P. 265/2020 and CRL. M.A. 10737/2020 (stay)

Reserved on : 25.11.2020

Date of Decision : 01.12.2020

IN THE MATTER OF:

ANJU KHANNA

..... Petitioner

Through: Mr. Jasmeet Singh, Advocate

Versus

STATE OF NCT OF DELHI & ORS.

..... Respondents

Through: Dr. M. P. Singh, APP for State
Mr. Vijay Pal Dalmia, Advocate
for R2 & R3

CORAM:

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
(VIA VIDEO CONFERENCING)**

J U D G M E N T

MANOJ KUMAR OHRI, J.

1. The present petition has been filed under Section 397 Cr.P.C. by the complainant assailing the order dated 22.02.2020 passed by the learned ASJ, South East District, Saket Court, New Delhi in Cr.No.745/2019 which was filed on behalf of the respondents no. 2 & 3.
2. Initially, learned MM vide order dated 23.07.2019, had summoned the accused persons (respondents no. 2 & 3 herein) for the offence punishable under Sections 420/34 IPC. The summoning order was challenged by the accused persons by way of a criminal revision wherein, the learned ASJ by passing the impugned order set aside the

summoning order.

3. Mr. Jasmeet Singh, learned counsel for the petitioner/complainant submitted that the impugned order shows complete non-application of mind. He submits that in present case, the petitioner and the respondents no. 2 & 3 entered into an agreement to sell with respect to the third floor of the property bearing no. J-7/14B, Rajouri Garden, New Delhi 110027 for a consideration of Rs.80 lacs. The complainant paid a sum of Rs. 51 lacs to the respondents no. 2 & 3. Out of Rs.51 lacs, Rs. 10 lacs were paid by way of a cheque no. 357358 dated 05.04.2010 and the remaining amount of Rs. 41 lacs was paid in cash in three instalments of Rs.15 lacs on 08.05.2010, Rs.11 lacs on 29.05.2010 and Rs.15 lacs on 23.08.2010. So far as the two payments of Rs.15 lacs are concerned, the respondents no. 2 & 3 also issued receipt and promissory note against the same. However, the respondents no. 2 & 3 did not issue any receipt for the payment of Rs. 11 lacs.

4. Learned counsel for the petitioner further submits that the trial court failed to appreciate that the ingredients of the offence punishable under Section 420 IPC were clearly spelt out in the complaint. The order on summoning was set aside only on the ground that in the pre-summoning evidence, the petitioner failed to state that the accused had a dishonest intention from the beginning. He further contended that a combined reading of the complaint as well as the pre-summoning evidence would show that the necessary ingredients of the offence were already stated and were available on the record in the complaint. In support of his submission, learned counsel has placed reliance on the

decision in Rajesh Bajaj v. State NCT of Delhi & Ors. reported as **(1999) 3 SCC 259**.

5. Per Contra, learned counsel for the respondents no. 2 & 3 has supported the impugned order. It was submitted that the story as put forward in the complaint is completely unbelievable, as where an agreement to sell is executed, there is no need to execute a promissory note. It was also stated that the complainant has failed to explain the fact that when the property was registered in the name of the first accused (*Sudhir Kumar Chawla*), why cheque of Rs.10 lacs was issued in the name of the co-accused (*Sunita Chawla*, wife of *Sudhir Kumar Chawla*). It was also submitted that qua the dispute, the petitioner has also filed civil proceedings in the form of suit for specific performance and permanent injunction by way of CS(OS)No.575/2016 and further, in the aforesaid suit also, it has not been pleaded that the respondents no. 2 & 3 had any dishonest intention from the beginning. Lastly, it was submitted that while the alleged payments have been made in the year 2010, the present complaint came to be filed only in the year 2015 i.e., after a period of five years. In support of his submission, learned counsel has placed reliance on the decision in Sushil Sethi & Anr. v. State of Arunachal Pradesh & Ors. reported as **(2020) 3 SCC 240**.

6. I have heard learned counsels for the parties have also gone through the case records.

7. As per the facts borne out from the records, the complainant, a lady, is stated to be aged about 70 years. The respondents no. 2 and 3 are husband and wife. The parties were known to each other. As per the

complaint, in March, 2010, respondents no. 2 and 3 approached the petitioner and offered to sell the third floor of their house which was under construction on the plot bearing no. J-7/14B, Rajouri Garden, New Delhi. Initially, the said offer was declined however, subsequently, on repeated persuasion, the petitioner agreed to purchase the flat at a price of Rs.80 lacs by way of an oral agreement to sell. It has been stated that the initial amount of Rs.10 lacs was paid by cheque bearing no. 357358 in the name of *Sunita Chawla* as earnest money for which TDS certificates were also issued by the respondent no. 3. Later, on 08.05.2010, another payment of Rs.15 lacs was made in cash against which a receipt and promissory note was also executed by respondent no.2. On 29.05.2010, a sum of Rs.11 lacs was paid in cash however, admittedly, no receipt/promissory note was issued with respect to this payment. Lastly, on 23.08.2010, a sum of Rs.15 lacs was paid in cash against which a receipt and promissory note was executed by the respondent no.2.

8. Initially, the complainant had filed a complaint on 04.03.2013 with the ACP, Lajpat Nagar which was followed by another complaint dated 12.03.2015 addressed to the DCP, South East District, however when the same were not answered, the petitioner approached the Court of learned CMM in the year 2015.

9. The summoning order was issued against respondent nos. 2 & 3 which was set aside by the learned ASJ on the ground that the pre-summoning evidence of the witnesses does not show that both the accused persons had any dishonest intention from the beginning, the

necessary ingredient to constitute the offence punishable under Section 420 IPC. In this regard, I deem it appropriate to reproduce the relevant paras of complaint filed before the learned CMM:-

“5. That from the above it is clear that the accused persons had a dishonest intention from day one and they never intended to sell the 3rd Floor to the complainant. The Accused persons inspite of taking Rs 51,00,000/- have, neither cared to transfer the flat to the Complainant nor returned her hard earned money, which Complainant paid as part of the consideration for the 3rd Floor flat. Complainant alongwith her husband started pressing them to transfer the flat in Complainant's name but all in vain. Had the complainant know the real intentions of the accused persons, the complainant and her husband would have never parted with their hard earned money.”

10. To prove her complaint, the complainant examined herself as CW1 along with four other witnesses. Mr. *Pankaj Kumar Jaiswal*, a handwriting expert was examined as CW2. He exhibited his report wherein he had opined that the promissory notes and receipts were signed by one and the same person. Mr. *Anil Dhawan* was examined as CW3. He stated that he was the nephew of the petitioner and had visited her house on 07.05.2010 and was also present on 08.05.2010 when respondent no.2 visited the petitioner's house and exchange of Rs.15 lacs in cash had taken place in his presence. He also signed the promissory note and the receipt as a witness. Mr. *Dipak Khanna*, the husband of the petitioner, was examined as CW4. He supported the complaint in entirety. Mr. *Chandan Lal Verma* was examined as CW5. He stated that after hearing the CD recording of the conversation (stated to be of the respondent no.2), he prepared the transcript wherein receipt of Rs. 51

lacs was admitted.

11. Coming to the issue in question, the Supreme Court in Rajesh Bajaj v. State NCT of Delhi & Ors. (Supra), it was held as follows:-

“9. It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence. In State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] this Court laid down the premise on which the FIR can be quashed in rare cases. The following observations made in the aforesaid decisions are a sound reminder:

“103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

10. It may be that the facts narrated in the present complaint

would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions. One of the illustrations set out under Section 415 of the Penal Code, 1860 [Illustration f] is worthy of notice now:

“(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.”

11. The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that the respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that the respondent after receiving the goods had sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.

12. The High Court seems to have adopted a strictly hypertechnical approach and sieved the complaint through a colander of finest gauzes for testing the ingredients under Section 415 IPC. Such an endeavour may be justified during trial, but certainly not during the stage of investigation. At any rate, it is too premature a stage for the High Court to step in and stall the investigation by declaring that it is a commercial transaction simpliciter wherein no semblance of criminal offence is involved.”

12. It is no longer res integra that civil proceedings can go side by side the criminal proceedings. [Refer: K. Jagadish v. Udaya Kumar G.S.

& Ors. reported as **AIR 2020 SC 936]**

13. So far as reliance by learned counsel for the respondents on the decision in Sushil Sethi (Supra) is concerned, the same is not applicable in the facts of the present case. It is pertinent to note that the captioned case relates to a State case wherein, in the complaint/FIR, neither any specific allegations in terms of Section 420 IPC were made nor the company was made an accused.

14. From a combined reading of the complaint as well as the pre-summoning evidence, it is evident that the necessary averments in terms of offence punishable under Section 420 IPC are available on the record in as much as the petitioner clearly and categorically stated in the complaint that the respondents no. 2 & 3 had a dishonest intention from day one and never intended to sell the 3rd floor of the property in question inspite of payment of Rs.51 lacs by the petitioner.

15. Learned counsel for the respondents has contended that the petitioner had failed to explain as to why she made payment in the name of respondent no.3 when the property is in the name of respondent no.2. In this regard, it is seen that both respondents no. 2 & 3 have executed the documents. While the TDS certificates (for two different years) with respect to cheques were issued by respondent no.3, the receipts and promissory notes were signed by respondent no.2. The receipts and promissory notes clearly state that the same were received “as part consideration for 3rd floor, J-7/14B, Rajouri Garden, New Delhi”. The petitioner has examined the handwriting expert to prove the aforesaid receipts and the promissory notes. Furthermore, Mr. *Dipak Khanna*

(CW-4) had witnessed the transactions and supported the averments in the complaint. Mr. *Anil Dhawan* (CW-3) also supported the averments with respect to transaction of Rs. 15 lacs conducted on 08.05.2010.

16. Keeping in view the facts and circumstances of the case, the present petition is allowed. The impugned order passed by learned ASJ is set aside. The matter is directed to be listed before the concerned Trial Court on 11.12.2020.

17. The petition is disposed of in the above terms along with the pending application.

18. A copy of this judgment be communicated electronically to the concerned trial court.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 01, 2020
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