

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

+ **W.P. (Crl.) 2426/2019**

% ***Judgment reserved on : 21st January, 2020***
Date of pronouncement: 29th January, 2020

BHARAT GOYAL Petitioner
Through: Mr. Ajit Kumar and Ms. Nikita
Sharma, Advocates.

versus

STATE AND ANR. Respondents
Through: Ms. Nandita Rao, ASC for the
State with SI S.K. Jha, PS Sarai Rohilla.
Mr. Dhruv Singh, Advocate for complainant.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J

W.P. (Crl.) 2426/2019 and Crl. M.A. No. 34702/2019 (for stay)

1. By way of the present petition filed under Section 482 Cr.P.C., petitioner is seeking quashing of FIR No. 22/2019 under Sections 420/406/468/471/506/34 IPC registered at Police Station Sarai Rohilla.

2. Brief facts of the case are that on 19.01.2019, on the complaint of respondent no. 2 the FIR in question was registered pursuant to the order passed by learned Metropolitan Magistrate on the application of respondent no. 2 under Section 156(3) Cr.P.C. In the complaint filed by respondent no. 2 it is alleged that in the year 2013 Rajesh Goyal,

father of the petitioner induced him to purchase the upper ground floor of property bearing No. B-1498/1, Shastri Nagar, Delhi, claiming himself to be the owner of the same. He further stated that Rajesh Goyal represented him that the said property is free from all sorts of encumbrances, disputes, litigation, lien, mortgage, etc. Believing the version of the father of the petitioner, petitioner agreed to purchase the aforesaid property and the deal was finalized for a sum of Rs.61,00,000/-, out of which he paid a sum of Rs.5,00,000/- as bayana and in this regard father of the petitioner executed a bayana receipt dated 10.07.2013. The complainant further stated that it was agreed between the parties that the remaining amount of Rs.56,00,000/- will be paid at the time of the execution of the documents by the father of the petitioner which were to be executed on or before 17.06.2014. The complainant further stated that thereafter he paid another sum of Rs.25,00,000/- to the father of the petitioner and he was handed over the possession of the aforesaid property to him. He further stated that thereafter when he asked the father of the petitioner to execute the documents and accept the balance amount, he lingered on the matter on one pretext or the other, and when he made enquiries he came to know that the father of the petitioner was not the owner of the said property on the date of the execution of the bayana receipt, and he also came to know that civil litigation qua the property was pending and the property was booked by MCD for demolition due to unauthorized construction. The complainant further stated that when he demanded back his money, the petitioner and his father Rajesh Goyal threatened him.

3. I have heard learned counsel for the petitioner and learned ASC for the State, and have also perused the status report filed on behalf of the State.

4. It is submitted by learned counsel for the petitioner that petitioner has been falsely implicated because his father has entered into some agreements to sell with the complainant and in order to pressurize his father to arrive at a compromise the petitioner has also been named. He further submits that in the initial complaint which was filed by respondent no. 2, there are no allegations against the petitioner and on the basis of this complaint no FIR was registered, so respondent no. 2 filed a complaint before the learned Metropolitan Magistrate and it was then that for the first time complainant named the petitioner in the said complaint. He further submits that there are no allegations against the petitioner in the complaint filed by respondent no. 2 before the learned Metropolitan Magistrate. He further submits that no document has been signed or executed by the petitioner and even otherwise there are no allegations that at the time of execution of any of the documents the petitioner was present along with his father.

5. On the other hand, it is submitted by learned counsel for the complainant that the allegations are grave and serious in nature and the petitioner had accompanied his father to the house of respondent no. 2 on 01.08.2017 along with some police officials and threatened him to vacate the premises.

6. I have perused the status report filed by the State. In the said status report it has been mentioned to be as correct that the petitioner

was not named in the initial complaint made by the complainant to the local police and in the said complaint the allegations were only against the father of the petitioner, however, it is submitted in the status report that for the first time the name of the petitioner came in the complaint filed by respondent no. 2 before the Magistrate, on the basis of which the present FIR was registered.

7. I have perused the documents filed by the petitioner on record. Bayana receipt dated 17.06.2013 does not bear the signatures of the petitioner. A perusal of the same also shows that the same has only been executed by the father of the petitioner. The receipt is of even date for Rs.5,00,000/- which does not bear the signature of the petitioner. There is another document with regard to the payment of Rs.25,00,000/- which is dated 04.07.2013. This document also does not bear the signature of the petitioner. It would be worthwhile to mention here that petitioner has not executed or witnessed any of these documents with regard to the property transaction. It is also admitted by the State that no document has been executed by the petitioner and even in the first complaint filed by the respondent no. 2 with the local police there were no allegations against the petitioner. Had it been so, I see no reason why respondent no. 2/complainant would not name the petitioner at the very first instance. It is not even the case of respondent no. 2 that the petitioner was present along with his father at any point of time when these documents were executed. The only allegation against the petitioner in the complaint filed by respondent no. 2 before the Magistrate is that he had threatened respondent no. 2 to vacate the premises, which by any stretch of imagination is not

covered under Section 506 IPC. The record reveals that as far as the allegations of cheating are concerned same are against the father of the petitioner.

8. The Hon'ble Supreme Court in the case of *Parbatbhai Aahir & Ors. Vs. State of Gujarat & Anr. (Criminal Appeal No. 1723 of 2017*, after discussing various precedents on the subject summarized, the following broad principles in relation to Section 482 for quashing FIR:-

“(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognizes and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to

secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim has settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise

between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanor. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

9. Therefore, in view of the facts and circumstances and looking into the allegations against the petitioner, his case is squarely covered by the parameters as laid down by the Hon’ble Supreme Court for the quashing of FIR. No useful purpose will be served by keeping the case pending against the petitioner and it will be nothing but abuse of the process of law and undue harassment to him.

10. Accordingly, FIR No. 22/2019 under Sections 420/406/468/471/506/34 IPC registered at Police Station Sarai Rohilla, qua the petitioner is hereby quashed.

11. The petition is disposed of accordingly.

RAJNISH BHATNAGAR, J

JANUARY 29, 2020/AK.