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

+ **W.P.(CRL) 981/2018**

NEERAJ SHARMA

..... Petitioner

Through

versus

**NATIONAL CAPITAL TERRITORY
OF DELHI**

..... Respondent

Through: Mr Sanjay Lao, ASC for State with SI
Pukhraj, PS Prashant Vihar.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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31.01.2020

1. The petitioner has filed the present petition praying for quashing of FIR No. 0036/2018, under Sections 420/34 of the Indian Penal Code, 1860 (IPC), registered with PS Prashant Vihar.
2. The relevant facts necessary to address the controversy are stated hereafter.
3. The petitioner's late mother, Smt. Sneh Late Sharma, was the owner of property measuring 80.78 metres, bearing no. E-144, Prashant Vihar, New Delhi-110052 (hereafter 'the property in question'). She, during her lifetime, had entered into an agreement with respondent no.2 on 01.08.2009 for construction of the property in question. A copy of the said Agreement has been placed on record.
4. In terms of the said agreement, respondent no. 2 was obliged to get

the maps/drawings approved from the Municipal Corporation of Delhi (MCD) at his own expenses and complete the construction from the foundation to the top floor as per the approved drawings, at his own cost. As per the clauses of the agreement, it was stipulated that the entire construction of the property in question would be completed in eight months, with effect from 01.08.2009. The period could be extended by the mutual consent of both the parties.

5. In terms of the said agreement dated 01.08.2009, the parties agreed that respondent no.2 would be paid 1.5% of the total cost of the project for completing the entire construction. In addition, the parties (petitioner's mother and respondent no.2) agreed that the construction cost will be added to the agreed cost of the plot and the entire amount would bear an interest at the rate of 15% and would be divided in the ratio of the investment made. The investment would be considered from the date of actual commencement of construction. The remaining profit would be shared equally between the two parties.

6. The petitioner states that respondent no.2 started the work from September, 2009 but did not complete it within eight months as stipulated in the contract and left it in an incomplete condition in March, 2010, that is, prior to the expiry of the eight months period. He states that his mother got the construction completed through another contractor and incurred heavy costs since the project got delayed by three years.

7. On 07.10.2013, respondent no. 2 issued a notice to the petitioner's mother and asked her for a payment of ₹1,45,00,000/- in lieu of the expenses incurred during construction, performance in terms of the agreement dated

01.08.2009 and damages. The petitioner's mother replied to the notice dated 07.10.2013 through her counsel.

8. Thereafter, the petitioner's mother sold the upper ground floor to one Smt. Neetu Rana and the first floor to her daughter Smt. Sonu Sethi against consideration. Sale deeds were executed and signed by the petitioner's mother. The petitioner states that neither the petitioner nor any other family member had any role to play with reference to the execution of the said sales deeds.

9. In 2016, respondent no.2 filed a civil suit before the District Judge, Rohini Courts for a sum of ₹1,50,00,000/- against the petitioner, which is pending before the Court of ADJ, Rohini Courts. The petitioner states that he has already moved an application under Order 7 Rule 11 under the Code of Civil Procedure, 1908 for the rejection of the plaint on the grounds that it was barred by limitation.

10. Thereafter, respondent no.2 filed a complaint dated 16.10.2017 with PS Prashant Vihar with reference to the property. Respondent no.2 also moved an application under Section 156(3) of the CrPC for the registration of his complaint dated 16.10.2017. Thereafter, FIR No. 0036/2018 dated 14.01.2018, under Sections 420/34 of the IPC with PS Prashant Vihar, was registered. In the said FIR, it was alleged that the petitioner, along with five other persons, had colluded and in furtherance of common conspiracy, illegally executed sales deed of the floors of the property in the question.

11. The petitioner contends that the said FIR ought to be quashed since the said FIR has been lodged against the petitioner and other persons, who have no connection with the subject matter of the property in question. Smt.

Sneh Lata Sharma was the sole and the absolute owner of the subject matter of property on the basis of the agreement dated 01.08.2009. The petitioner also states that he has not received any sale consideration amount in 2014 and nor was he a vendor/executant to the sales deeds, which was executed by his mother during her life time. The petitioner was neither a signatory to the sale deeds nor was the owner of the property for which the construction was to be completed by respondent no.2.

12. The petitioner also contends that the present dispute is civil in nature and respondent no.2 has already filed a civil suit in 2016. Further, the notice for recovery of claims was sent by respondent no.2 in 07.10.2013, after respondent no.2 had discontinued construction in March, 2010. The petitioner contends that respondent no.2 was not entitled to claim any amount after having discontinued construction and not taking action for a period of three years and three months.

13. The petitioner also contends that the five persons as mentioned in the FIR have no connection with the offences as alleged in the FIR by the petitioner. Respondent no.2 had named Madhu Sharma as Accused person no.2 and the petitioner states that such person is not connected with the petitioner nor the property in question. Accused no.3 is Monica Sharma and she is the sister of the petitioner, who also has no connection with the property. Accused no.4, is Smt. Neetu Rana, who had purchased the upper ground floor of the property in question from the petitioner's mother in the year, 2014 against a consideration amount and on the basis of a registered sales deed executed by the petitioner's mother in the favour of Smt Neetu Rana. Accused no. 5 is Paras Arora, who was a witness to the sales deed

executed by Smt. Sneh Lata Sharma in favour of Smt. Neetu Rana in 2014. Inasmuch, respondent no.2 has wrongly alleged that the five persons has committed offences under Sections 420/34 of the IPC since they had no connection with one another and had not received sales proceeds with reference to the property in question.

14. Respondent no.2 states that he was living in a flat adjoining the property in question and he had agreed to re-construct the property in question. He alleged that this was at the instance of the entire family of the petitioner including him. He claims that in terms of the agreement, he constructed four floors and a car parking at a cost of approximately ₹50,00,000/-. He alleges that thereafter, the persons accused became dishonest and hatched a controversy to transfer the property in question to other persons. The upper ground floor of the building was transferred to Neetu without his consent or permission. One of the other floors was sold to the petitioner's sister. Respondent no.2 alleged that when he visited the property in question, he found the petitioner and his family were already present there. According to respondent no.2, the petitioner and his family had cheated him by selling the property in question without his consent. He states that on the construction of the property in question, he became a part owner of the same and, therefore, no part of the property in question would be sold.

15. It is apparent from the above that the dispute, essentially, relates to the commercial transaction entered into between the petitioner's late mother and respondent no.2. According to the petitioner, respondent no.2 had not completed the construction and had not fulfilled his obligation in terms of

the agreement dated 01.08.2009.

16. The status report filed indicates that the petitioner accepted that respondent no.2 had expended about ₹30,00,000/- in construction. Thus, although there is little doubt that respondent no.2 would have invested in construction of the property in question, there is little dispute as to whether he had performed his obligations under the agreement dated 01.08.2009. The contention that respondent no.2 was part owner of the property in question is also a contentious issue, as it does not appear that the petitioner's mother had executed any transfer deed in favour of respondent no.2.

17. Plainly, the dispute whether there has been any breach of contract or whether respondent no.2 had performed his obligations, cannot be subject matter of a criminal trial. Such disputes are, essentially, civil disputes.

18. It would not be apposite to colour the said disputes as a criminal offence. Respondent no.2 alleges that the clause in the sale deed executed by the petitioner's late mother to the effect that the property in question was "free from all sorts of encumbrances such as liens, charges, claims, liabilities, acquisitions, injunctions or attachments from any court of law, gifts, mortgages, demands, notices, notifications, legal disputes, differences, decree and flaws etc." and that the vendor was fully entitled to dispose of the property in question, is fallacious. Plainly, this is a contentious issue whether the respondent had any lien charge or claim on the property in question or whether the agreement dated 01.08.2009 affected the right of the petitioner's mother to sell the property in question. Clearly, it would not be apposite to make such issues subject matter of criminal trial.

19. The learned counsel appearing for the respondent had also submitted

that the application for anticipatory bail moved by the petitioner had been rejected. However, the same has not precluded this Court from considering the present petition on merits.

20. Given the nature of disputes and considering that respondent no.2 had already instituted an action to adjudicate his claims, this Court considers it apposite to quash the FIR in question.

21. Accordingly, the FIR in question (FIR No. 0036/2018, under Sections 420/34 of the Indian Penal Code, 1860 (IPC), registered with PS Vasant Vihar) and all proceedings emanating therefrom, are quashed.

22. The present petition is, accordingly, disposed of in the aforesaid terms.

VIBHU BAKHRU, J

JANUARY 31, 2020
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