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

% *Order pronounced on 27.09.2022*

+ TR.P.(CRL.) 80/2019, CRL.M.A. 39800/2019 & 5932/2021

RAM CHANDER SONI

..... Petitioner

Through: Mr. Ajay Verma, Advocate.
versus

STATE & ANR.

..... Respondents

Through: Mr. Yudhvir Singh Chauhan, APP for
State.

CORAM:

HON'BLE MR. JUSTICE TALWANT SINGH

Talwant Singh, J.:

1. This is an application seeking transfer of criminal complaint No.181/11/15, PS Malviya Nagar, titled as '*Monica Narain Singhani v. Ashish Gupta and Ors.*' pending before learned Metropolitan Magistrate-02, South District at Saket Courts, Delhi to the Court of learned Metropolitan Magistrate, Central District, Tis Hazari Courts.

2. It has been submitted that on 04.12.2014, a frivolous complaint was lodged under Section 415/417/418/420/120B IPC by respondent no.2 at PS Malviya Nagar against the present petitioner and six other co-accused persons. No action was taken by the police.

2.1 Thereafter, respondent no.2 filed an application under Section 156(3) Cr.P.C. along with a complaint under Section 200 Cr.P.C. before the learned Chief Metropolitan Magistrate at Saket District Courts, New Delhi on 04.02.2015 under the same Sections. The said complaint was registered as C.C. No.181/11/15 on 09.02.2015 before the learned Metropolitan Magistrate-02, South District at Saket Courts, Delhi.



2.2 In the ATR requisitioned by the learned Trial Court, it has been stated by the IO that no cognizable offence appears to have been made out. The relief sought by the respondent no.2 in his application under Section 156(3) Cr.P.C. was declined by the learned Metropolitan Magistrate vide order dated 19.08.2015 and the matter was adjourned for pre-summoning CE of respondent no.2 and her witnesses.

2.3 On 17.12.2015, an FIR No.173/2015 was registered by one Surya Solanki at PS EOW, New Delhi, roping the petitioner and nine other co-accused persons under Section 409/420/120B IPC on some frivolous allegations. The facts alleged are identical to the allegations contained in C.C. No.181/11/15 filed by respondent no.2.

2.4 The pre-summoning evidence stood closed in C.C. No.181/11/15. Summons under Section 406/420/120B have been issued against the petitioner and other co-accused persons on 04.05.2016. The petitioner was admitted to Court bail on 20.12.2016.

2.5 In the case of FIR No.173/2015, the charge sheet dated 27.10.2017 stands filed before learned Trial Court at Tis Hazari Court.

2.6 Learned Metropolitan Magistrate took cognizance of offences as alleged in the said charge sheet in FIR No.173/2015 on 27.10.2017.

2.7 Respondent No.2 again filed a complaint identical to her earlier complaint No.181/11/15 against the petitioner at PS EOW, New Delhi, which was clubbed with FIR No.173/2015 along with other complaints against the petitioner and co-accused persons.

2.8 Respondent No.2 has been arrayed as witness at Serial No.60 in the main case being FIR No.173/2015.

2.9 On 25.03.2019, the petitioner sought stay of proceedings in C.C.



No.181/11/15 pending before learned Metropolitan Magistrate-02 Saket District Court on the ground that both these cases, i.e., C.C. No.181/11/15 and FIR No.173/2015 arose out of the same transaction, pertains to the same matter and between the same parties. This application was dismissed by learned Metropolitan Magistrate on 06.09.2019, so the present petition has been moved seeking the relief of transferring the said complaint bearing No.181/11/15 to the Court of learned CMM, Tis Hazari Courts.

3. Notice was issued.

4. Reply has been filed by the contesting respondent to the transfer petition, mentioning therein that the transfer petition is not maintainable; it has been moved solely with a view to harass and exert pressure on the respondent; all the complaints have to be tried separately; the other co-accused persons have not been made proforma party and their consent or no objection has not been placed on record; the allegations in the complaint are different from the allegations in the FIR; the nature of allegations are also different and number of accuseds are also different.

5. I have heard learned counsel for the parties and I have gone through the record. There is no dispute that the case FIR No.173/2015 and the complaint in question being complaint No.181/11/15 are not to be clubbed and they have to be tried separately.

6. In the FIR in question, the complainant Ms. Monika Narain Singhani has been shown as PW-60 and the complaint filed by her before EOW Cell is annexed in the list of documents at item No.110 in the charge sheet filed in case FIR No.173/2015. The builder as well as the project in question is the same. The directors or other persons representing the builder M/S AMR Infrastructure Ltd. are common to certain extent but there are few accused



persons, who are there only in the FIR and there are few accused persons, who are there only in the complaint in hand.

7. Broadly, the allegations in the complaint and the FIR are same, i.e., the accused company, its directors and authorised persons had cheated innocent investors and they had lured the innocent investors in investing their hard-earned money in the building project with assured return/delivery of the project on time but even after expiry of so many years, neither investor's money has been returned with interest nor the finished building units have been handed over to the investors.

8. In my view, the complaint bearing No.181/11/15 and FIR No.173/2015 have to be tried in the same Court with a view to ensure that on the basis of the same set of allegations and the evidence, two different Courts may not reach to two different conclusions which may not be in the interest of justice.

9. So, I deem it proper to order transfer of complaint bearing No.181/11/15 pending in the Court of learned Metropolitan Magistrate-02, Saket District Courts, South District, Delhi to the Court of learned CMM, Central District, Tis Hazari Courts where the trial of FIR No.173/2015 is pending.

10. It is made clear that this Court has only transferred the complaint case to the transferee Court but this Court has not ordered for clubbing the present complaint with the FIR. It is further made clear that the proceedings in the complaint and the FIR shall proceed separately. The only intention of transferring the complaint to the Court, where FIR is pending, is to avoid conflict of judgments to be delivered by two different Courts in similar set of facts.



11. The petition is accordingly disposed of.
12. Copy of the order be sent to the Court of learned Metropolitan Magistrate-02, Saket District Courts, South District, Delhi where complaint is pending and to the Court where trial of FIR No.173/2015 is pending at New Delhi Courts.

TALWANT SINGH, J

SEPTEMBER 27, 2022/pa

Click here to check corrigendum, if any