

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 22.02.2021

Date of decision: 19.11.2022

+ CRL.M.C. No. 215/2021, CRL.M.A. Nos. 1111/2021 & 1112/2021

RAM NIWAS LATHER

..... Petitioner

Through: Mr. Yogesh Goel, Mr. Vijender Singh Ahlawat and Mr. Ayush Srivastava, Advocates.

Versus

STATE (GOVERNMENT OF NCT OF DELHI) & ANR.

..... Respondents

Through: Mr. Ashok Kumar Garg, APP for State with SI Kamal Kohli Mr. Rajesh Baweja, Advocate for Complainant.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J

1. The petitioner, vide the present petition seeks the setting aside of the order dated 16.10.2020 of the Court of the learned CMM, District-North, Rohini Courts, New Delhi whereby proclamation under Section 82 of the Cr.P.C. was issued against the petitioner apart from NBWs in relation to FIR No.59/2019, PS EOW under Sections 406/420/120B of the Indian Penal Code,

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1860 dated 04.04.2019 apart from seeking a stay of the proceedings before the learned CMM, District-North, Rohini Courts, Delhi.

2. The petitioner has submitted that even before the registration of the FIR which was registered on 04.04.2019 on the allegations that a company known as M/s Prabhu Shanti Real Estate Private Limited had launched a residential project in the name of P.D.M. Hi Tech Homes consisting of more than 435 flats in more than six (6) Towers on the land measuring 8.976 Acres in Sector 3-A Bahadurgarh and the respondent No. 2/ complainant named Smt. Suman Solanki, deposited a sum of Rs. 59,93,189/- with the company for purchase of a flat and it had been promised in the year 2012 to provide a flat within 2 ½ years and alleged that an Apartment's Buyer Agreement was executed, but the company had neither provided the flat to the complainant, nor returned the money and that the Directors of that company were alleged to have siphoned away the amount paid by various allottees and were alleged to have cheated home buyers by not delivering flats within the stipulated period.

3. The petitioner, as per the status report dated 01.02.2021 of the ACP, EOW, New Delhi was one of the directors of M/s Prabhu Shanti Real Estate Private Limited. The petitioner has further submitted that he had joined the enquiry proceedings before the registration of the FIR on 30.03.2019 and 01.04.2019 and that he had also joined the investigation of the case on 20.08.2019, 09.10.2019 and 05.12.2019 and thereafter on

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22.08.2019 and 11.10.2019 even offered to join the investigation vide letter dated 25.08.2020 and had been consistently co-operating with the Investigating Officer during the investigation of the case.

4. The petitioner however submits that vide order dated 24.02.2020, the Court of the learned CMM, North-District, Rohini Courts, New Delhi issued NBWs against the petitioner, Bijender Singh Lather, Joginder Singh Lather and Sajjan Singh and thereafter, a proclamation was issued in the newspaper directing the petitioner and his co-accused to appear before the Court of the learned CMM, North-District, Rohini Courts, New Delhi on or before the date 18.12.2020. The petitioner has further submitted that the arrest of the petitioner was stayed by this Court vide order dated 04.12.2020 and the case was fixed for hearing for the date 22.01.2021 and that the petitioner joined the investigation on 15.12.2020 and 17.12.2020 and physically appeared on 16.12.2020 and 18.12.2020 before the learned, CMM, North-District, Rohini Courts, New Delhi. The petitioner has further submitted that despite the petitioner having submitted himself to the jurisdiction of the Court, the Court of the learned CMM, North-District, Rohini Courts, New Delhi continuing with the proceedings and had adjourned the case for the date 03.02.2021 vide order dated 15.01.2021.

5. During the course of the proceedings on 25.01.2021, it was submitted on behalf of the petitioner that he had already appeared before the Trial Court and had joined the investigation.

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6. The status report of the State dated 01.02.2021 of the ACP, EOW corroborates the submission of the petitioner that pursuant to interim protection having been granted to the petitioner with directions to him to join the investigation before the Investigating Officer on 15.12.2020, 17.12.2020 and 20.01.2021, the petitioner herein had joined the investigation.

7. The present petition filed by the petitioner is dated 19.01.2021, though the submission through the status report is to the effect that sustained interrogation of the petitioner is required, the same is in relation to the aspect of consideration of pleas for grant of bail or otherwise, the purpose of proceedings under Section 82 of the Cr.P.C., 1973 is to compel a person to put in appearance before the Court concerned apart from the said aspect, it cannot be overlooked that offence punishable under Section 406/420/120B of the Indian Penal Code, 1860, do not fall within the ambit of Section 82(4) of the Cr.P.C., 1973.

8. In view thereof, the proceedings under Section 82 of the Cr.P.C., 1973 initiated against the petitioner vide proceedings dated 16.10.2020 are set aside.

9. The petition and all the accompanying applications are disposed of accordingly.

ANU MALHOTRA, J.

NOVEMBER 19th, 2022/nc

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