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

% Reserved on : 7th December, 2022

Pronounced on: 22nd December, 2022

\+ **CRL.M.C. 5291/2018**

PEEYUSH AGGARWAL ..... Petitioner

Through: Mr. Sachin Chopra, Mr. Karan Babuta & Mr. Rahul Sharma, Advocates

versus

STATE & ORS. ..... Respondents

Through: Mr. Ritesh Kumar, APP for the State with Insp. Sanveer Singh PS Ashok Vihar

Mr. Kuber Kapoor, Adv. for R-3

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

1. This petition has been filed for quashing of FIR No. 194/2018 dated 3rd July, 2018 registered under Sections 420/467/468/471/34/ 120B IPC on the ground that the petitioner himself is a victim of a fraud which had been played relating to a property sale. The basic facts are that one Mrs. Yogita Baxla, respondent No.2, herein approached the petitioner in the month of October, 2010 for selling an industrial plot No. B-65/2, Wazirpur Industrial Area, New Delhi - 110052 admeasuring 2067.033 sq.yds. representing herself as absolute owner of the property on the basis of a Will dated 8th November, 2005 executed by her grandmother Late Smt. Raj Rani Chhabra/ Chawla.

The respondent No.2 provided all relevant legal documents including relinquishment deeds of other legal heirs. Pursuant to a number of meetings between petitioner and respondent No.2 in 2010 and 2011, the sale price of the property was agreed at Rs.7.31 crores. Consequently for the purchase of the property payments of Rs.15 lakhs was made on 20th November, 2010 by petitioner's cheque and then cash amounts of Rs. 1,10,000/-. An MOU was executed on 26th March, 2011 and pursuant to that about Rs.10,15,000/- was further paid to respondent No.2. Thus, by June, 2011 a cumulative sum of Rs.26,60,000/- had been paid by the petitioner as advance money towards purchase of the property.

2. Thereafter despite meetings, respondent No.2 would not execute the sale deed and soon became unreachable when the petitioner realised that he had been cheated. Later he learnt that respondent No.2 had got FIR No. 88/2011 registered under Sections 420/467/468/471/120B IPC with Economic Offences Wing (EOW) against Mr. Raj Kumar Harjai, respondent No.3 herein claiming that the property in question had been grabbed by them.

3. An application filed by Mr. Raj Kumar Harjai, respondent No.3 under Section 156 (3) of Cr.P.C. the Ld. CMM ordered registration of an FIR against 10 accused persons, including the petitioner who has been arrayed as accused No.9 and as such, FIR No.194/2018 came to be registered at P.S. Ashok Vihar. The allegation was respondent No.2 in connivance with the petitioner and others forged the documents to create third party rights in the property in question. Considering that petitioner himself has been out of pocket to the tune of Rs.26.6 lakhs and was himself victim of cheating and fraud, she has sought quashing

of this FIR.

4. Learned counsel for the petitioner has contended that the charge sheet in FIR No.88/2011 itself concludes that the petitioner is a victim. A perusal of charge sheet dated 31st January, 2018 would show that it has been stated that "*Mr. Peeyush Aggarwal made complaint against her in EOW which has been taken on record*" and "*on perusal of various agreements and documents and bank statements it has been established that Yogita Baxla cheated all the three persons*" and "*Ms. Yogita Baxla was never in position to transfer the rights in favour of any individual person. She misrepresented various persons and took money from them. In this manner she cheated all of them...*".

5. *Secondly*, the counsel for petitioner has contended that there was no role of the petitioner in the aforesaid FIR No.194/2018 which was filed by Mr. Raj Kumar Harjai. A bare reading of the FIR would show that as regards the petitioner, he has only stated that "*on 26th March, 2011 Yogita Baxla had once again sold the property to another person namely Peeyush Aggarwal*" though later in the FIR it has been merely stated as a blanket statement that Yogita Baxla, Mahipal Singh, Rajesh Luthra and Peeyush Aggarwal were in connivance with each other and prepared the documents in order to create 3rd party rights over the said property.

6. It is evident from perusal of record that the petitioner on being cheated of Rs.26.6 lakhs filed a complaint at PS Barakhamba Road on 30th March, 2012 which was considered in the charge sheet of 31st January, 2018. It was therefore a complaint of a *bona fide* purchaser

who had lost his money in what was ultimately discovered as a fraudulent transaction.

7. The petitioner has not claimed any rights on the basis of MOU dated 26th March, 2011; no specific performance has been sought; or possession has been sought; nor any refunds have been sought, as evident from the submissions of the petitioner. Clearly, the petitioner after due diligence and assurances of Yogita Baxla entered into the MOU. The allegation made in FIR No.194/2018 that the petitioner connived with two other purchasers for seeking the same property, as is rightly contended by the petitioner, is baseless since the petitioner was a victim of a fraud perpetrated by Yogita Baxla. There is no allegation that the MOU in itself is a forged document. The fact that the document has been executed genuinely, however, the basis of the transaction has been found to be fraudulent are separate issues altogether.

8. Reference has been made to the decision of the Hon'ble Supreme Court in ***Mohd. Ibrahim & Ors. v. State of Bihar*** (2009) 8 SCC 547 where it has been stated as under :

> "**8.***This Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes…*

(emphasis added)

Also, the Hon'ble Supreme Court clarified in para 16 of the said decision that:

> **"16.***There is a <u>fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf</u>. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.*
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> **17.***When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.*
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> …
>
> (emphasis added)

9. As regards the offence under Section 420 IPC, the Hon'ble Supreme Court in ***Mohd. Ibrahim*** (*supra*) states that:

> **"19.***To constitute an offence under Section 420, <u>there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived</u>*

(i) to deliver any property to any person, or
(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).
23. …*If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint.*"

(emphasis added)

10. Therefore, as per the FIR in question, even as per uncontroverted allegations, no offence of forgery can be made out. Similarly, offence under Section 420 IPC cannot be made out since as a consequence of cheating the accused should have dishonestly induced the person deceived to deliver property to the person or alter or destroy in part a valuable security. In this case there has been no inducement by the petitioner to the complainant for which offence under section 420 IPC can be made out.

11. In view of the above facts and circumstances, it is the considered view of this Court that the offences, as alleged in the FIR, are not made out and in fact the petitioner himself had been a victim of the fraud perpetuated upon him. In this view of the matter FIR No.194/2018, PS Ashok Vihar and consequent proceedings emanating therefrom are hereby quashed, qua the petitioner.

12. Pending applications if any are also disposed of.

13. Order be uploaded on the website of this Court.

ANISH DAYAL, J

2022/DHC/005751

DECEMBER 22, 2022/*sm*