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

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Reserved on: 27.01.2023

Pronounced on: 02.02.2023

+ **CRL.M.C. 5793/2019 & CRL.M.A 40288/2019**

SH. R. VIJAY KUMAR

...Petitioner

Through: **Mr. Gaurav Malhotra,**
Advocate

versus

STATE & ANR.

...Respondents

Through: **Mr. Yudhvir Singh Chauhan,**
APP for State with SI
Abhishek and SI Lav Kant.

Mr. Sunny Kumar, Mr.
Yashvir Yadav and Mr.
Venkateshwara Rao Anumolu,
Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C.") has been filed by the petitioner seeking quashing of FIR bearing no. 371/2019 registered at Police Station (PS) Pandav Nagar, Delhi for the offences punishable under Sections 420/406/34 of the Indian Penal Code, 1860 (hereinafter "IPC").

2. The case of the petitioner is that the respondent no. 2 along with his wife approached the petitioner in Guntur, Andhra Pradesh, who

was carrying real estate venture at Guntur District, for booking plot measuring 150 Sq. yards for his wife by way of accepting the terms and conditions attached to it. Thereafter, the respondent no. 2 again booked a plot with the company of the petitioner in Guntur, Andhra Pradesh of a plot size measuring 200 Sq. yards also filled an application form accepting the terms and conditions attached to it. The payment for the said plots was made accordingly and the details relating to same were mentioned in the passbook. However, the payment was not made as per the schedule and the terms and conditions agreed upon due to which dispute arose between the petitioner and respondent no. 2. Complaint was filed by respondent no.2 based on which abovementioned FIR was registered against petitioner at PS Pandav Nagar, Delhi for the offences punishable under Sections 420/406/34 of IPC.

3. Learned counsel for petitioners states that respondent no. 2, in the year 2017, had taken another plot in name of his uncle and the formalities regarding registration etc. had been executed in his favour as per wishes of respondent no. 2. When petitioner had demanded development charges etc. from respondent no. 2 for the purpose of transferring the same in his name, respondent no. 2 lodged the present FIR which is false and baseless. It is also stated by learned counsel for petitioner that a police official had visited the hometown of petitioner at Guntur, Andhra Pradesh and had threatened to arrest him in case the amount due towards respondent no. 2 was not returned or refunded with interest.

4. Learned counsel for petitioner further states that since the police is biased towards the petitioner and the dispute is purely civil in nature, the contents of the FIR itself does not disclose any criminal offence, the FIR be quashed. It is also stated by learned counsel that as per the agreement of sale made between the petitioner and respondent no. 2, the petitioner is still willing to fulfil his part of contract by providing the plot as was agreed upon between the parties.

5. The learned counsel for respondent no. 2, on the other hand, stated that the petition is running a real estate venture at Guntur, Andhra Pradesh who had promised him in July, 2014 that he was purchasing 50 acres of land in Delhi at Najafgarh and was going to divide the said land into plots measuring 1500 Sq. yards. It is alleged by respondent no. 2 that the petitioner had requested him to purchase the land at the rate of 5,500/- Rupees per Sq. yard and had further told him that he could make payment on monthly instalments. Respondent no. 2 was also promised by petitioner that on completion of entire payment, the plot will be transferred and registration of the same will be done in the favour of respondent no.2. It is argued by counsel for respondent no. 2 that allured by the petitioner's offer, payments were made in the name of wife of respondent no. 2 from 03.08.2014 till 06.09.2017 and an amount of Rs. 16 lakhs was paid. Also, passbooks were issued by the petitioner in the name of respondent no. 2 and in the name of wife of respondent no. 2. A total sum of Rs. 22 lakhs from respondent no. 2 and his wife had been obtained. It is also stated that in the passbook, in the terms and conditions, it was mentioned that plots will be surrounding Guntur, Andhra Pradesh. Respondent no. 2

had questioned him that he had promised to be given plots in Delhi, however, the passbook shows plots in Guntur, Andhra Pradesh, to which the petitioner had informed him that after finalization of land in Delhi, it was still under process and fresh passbooks will be given for allotment of land in Delhi.

6. Learned counsel for respondent no.2 further states that respondent no. 2 was making payment to petitioner in good faith and he had presumed that the plot will be given in Delhi. In August, 2019, he was informed that a land could not be purchased in Delhi in Najafgarh Road and that some land was available in Guntur District, Andhra Pradesh which can be taken by respondent no. 2 and his wife on payment of rest of the amount. On being informed the same, respondent no. 2 had requested the petitioner to refund the entire amount. However, he was threatened and petitioner had refused to return any amount. It is therefore, stated that the petitioner is guilty of cheating and misappropriation of amount paid by respondent no. 2 and his wife. Thus, there is no ground to quash the FIR.

7. This Court has heard the arguments on behalf of both the parties and gone through the case file.

8. The law regarding quashing of the FIR has been laid down by Hon'ble Apex Court in the case of *State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335* wherein broad guidelines for quashing of a criminal complaint are stated. The guidelines reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary

power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under

which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

9. Further in the case of *Binod Kumar v. State of Bihar*, (2014) 10 SCC 663 the Hon’ble Supreme Court while summarizing the principles of quashing complaints and criminal proceedings, has laid down the following factors:

“.. (i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

(ii) For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(iii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iv) The power to quash shall not, however, be used to stifle or scuttle a power legitimate prosecution. This should be used sparingly and with abundant caution.

(v) The is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(vi) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not...”

10. After hearing arguments and going through the case file, this Court is of the opinion that in the present case the allegations against the petitioner primarily are that though petitioner had promised a land in Najafgarh, Delhi, instead of providing the same in Delhi, they were in fact providing a land in a village in Guntur, Andhra Pradesh. The payment of the money made by the respondent no. 2 and his wife to the petitioner is not disputed. Also, charge-sheet has not been filed and further investigation is to be conducted by investigating agency as the case is still at a preliminary stage.

11. Applying the principles enumerated above in the several judgements of Hon’ble the Supreme Court with regard to quashing of

FIR, it is clear that an FIR/complaint can be quashed only in the cases which are covered by principles laid down in abovementioned decisions. Applying the same principles to the present case, the allegations levelled by the respondent no. 2 that he had been cheated on account of promise to provide a land in Delhi and not in Guntur, Andhra Pradesh and the payment was made under the impression and on the promise that the land will be purchased and provided in Delhi itself, are yet to be investigated as the case is at its initial stage and the facts as disclosed in the FIR need to be investigated further which will need assistance and investigation by the police. Extraordinary power of the High Court under Section 482 of the Cr.P.C. cannot be used to curtail the investigation at its initial stage when even the charge-sheet has not been filed.

12. In view thereof, this Court does not find it a fit case to quash the abovementioned FIR. It is yet not known as to whether a closure report will be filed or a charge-sheet will be filed by the police or as to whether cognizance of the same will be taken by the Magistrate or not. The present petitioner will have ample opportunity to address the arguments on charge before the learned Magistrate in case charge-sheet is filed.

13. Considering the overall facts and circumstance of the case, this Court is of the opinion that no ground for quashing of the FIR is made out and therefore, petition stands rejected.

SWARANA KANTA SHARMA, J

FEBRUARY 2, 2023/zp