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

\+ **<u>CRL.M.C. 900/2024</u>**

BAL KISHAN AND ORS. ..... Petitioners
Through: Mr. P.K. Bhardwaj, Adv. (through VC)

versus

SHYAM LAL AND ANR. ..... Respondent
Through: Mr. Utkarsh, APP for the State

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

<u>O R D E R</u>

% **05.02.2024**

<u>CRL.M.A. 3605/2024</u> *<u>(exemption from filing the true typed copies of the dim / illegible annexures)</u>*

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

<u>CRL.M.C. 900/2024 & CRL.M.A. 3604/2024</u>

3. The present petition is filed under section 482 of Code of Criminal Procedure seeking setting aside of Complaint Case No. 1791/2019 under Sections 420/467/468/120-B/34 of the Indian Penal Code, 1860, titled as '*Shyam Lal v. Balkishan & ors*' pending before learned Metropolitan Magistrate – 01 South West District, Dwarka Courts, Delhi. The process in the complaint has been issued on 24.11.2022.

4. The present complaint case was filed by the Respondent No.1 alleging that fraud and cheating is committed by the present petitioner who is one of the sons of the Complainant. It is alleged that the property bearing No. D-304, built on land measuring 60 sq. Yards, i.e., 50.166 sq. metres out of *Khasra* No.94/21/1 and 94/22/1, situated in area of village Palam, Delhi state, colony

known as Sadh Nagar, Palam Colony, New Delhi - 110045 (herein after referred to as '**the property**'), was purchased from the proceeds of the ancestral property of the complainant.

5. It is alleged that in the month of April 2016, the petitioner taking advantage of the old age of the complaiant, told that the electricity bill of the property was in the name of the erstwhile owner and in order to get the name changed in the electricity connection obtained signatures of the complainant on some blank papers.

6. It is also alleged that the complainant was taken by the petitioner to the Sub-registrar office under false pretexts of getting the name changed in electricity connection. The complainant's thumb impressions were also taken and it was only later that the complainant came to know that a gift deed has fraudulently been executed in favour of the petitioner in respect of the property.

7. The learned Counsel for the petitioner submits the complainant has already instituted a civil suit bearing no. 291/2019, with respect to the property seeking cancellation of the alleged Gift deed which is pending before the learned Additional District Judge, Dwarka.

8. He submits that the complainant had also preferred an application under Section 156(3) of CrPC and the same was dismissed citing the reasons that the dispute between the parties was civil in nature and that the gift deed was registered on 29.04.2016 and yet the complainant waited till 15.01.2019 in order to lodge the said complaint.

9. He submits that after the dismissal of the complainant's application under section 156(3) CrPC, now the present complaint case is filed. He submits that the facts and documents

in support of the civil suit and that in support of the present complaint are identical, and the complainant is trying to run two parallel proceedings in order to harass the present petitioners.

10. It is not denied that the process under Section 204 of the CrPC in the complaint filed by the respondent has already been issued. The Court while issuing the process is only to see whether there are grounds for proceeding in the matter. The accused does not have any right to take part in the proceedings at this stage, as held by the Supreme Court in **Chander Deo Singh v. Prakash Chander Bose, *AIR 1963 SC 1430* and Dr. S.S. Khanna vs Chief Secretary, Patna, *AIR 1983 SC 595***. However, at the stage of framing of notice under Section 251 Cr.P.C., the Court has to satisfy after considering the material on record and hearing the accused that the offence has been committed which can be legally tried.

11. The view was taken by the Hon'ble Supreme Court in ***Mohinder Singh v. Gulwant Singh*: (1992) 2 SCC 213;** in the following words:

> *"The scope of enquiry under Section 202 is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should issue or not under Section 204 of the Code or whether the complaint should be dismissed by resorting to Section 203 of the Code on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. But the enquiry at that stage does not partake the character of a full dress trial which can only take place after process is issued under Section 204 of the Code calling upon the proposed accused to answer the*

accusation made against him for adjudging the guilt or otherwise of the said accused person. Further, the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated 14 under Section 202 of the Code. To say in other words, during the course of the enquiry under Section 202 of the Code, the enquiry officer has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry."

(emphasis supplied)

12. The Hon'ble Supreme Court in ***Bhushan Kumar* v. *State (NCT of Delhi)***, **(2012) 5 SCC 424**, while addressing similar issues, referred to its decision in ***Chief Enforcement Officer v. Videocon International Ltd.***, **(2008) 2 SCC 492**, and construed provisions of Sections 190 and 204 of Cr.PC. concerning "cognizanze" and "issuance of process" and observed thus:-

> *"13. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This sections mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a pre-requisite for deciding the validity of the summons issued."*

(emphasis supplied)

13. The Hon'ble Supreme Court has affirmed in ***State of Gujarat v. Afroz Mohammed Hasanfatta***: **(2019) 20 SCC**

539 the view taken by the learned Single Judge Bench of Allahabad High Court ***Raj Kumar Agarwal v. State of U.P.*****, 1999 SCC OnLine All 1394**

> ***"8.***
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> *xxx xxx xxx xxx*
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> *As such there are three stages of a case. The first is under Section 204 Cr. P.C. at the time of issue of process, the second is under Section 239 Cr. P.C. before framing of the charge and the third is after recording the entire evidence of the prosecution and the defence. The question is whether the Magistrate is required to scrutinise the evidence at all the three stages and record reasons of his satisfaction. If this view is taken, it will make speedy disposal a dream. In my opinion the consideration of merits and evidence at all the three stages is different. At the stage of issue of process under Section 204 Cr. P.C. detailed enquiry regarding the merit and demerit of the cases is not required. The fact that after investigation of the case, the police has submitted the charge sheet, may be considered as sufficient ground for proceeding at the stage of issue of process under Section 204 Cr. P.C. however subject to the condition that at this stage the Magistrate should examine whether the complaint is barred under any law, for example, it is barred for want of proper sanction for prosecution or is barred by limitation etc. At the stage of Section 204 Cr. P.C. if the complaint is not found barred under any law, the evidence is not required to be considered nor the reasons are required to be recorded. At the stage of charge under Section 239 or 240 Cr. P.C. the evidence may be considered very briefly, though at that stage also, the Magistrate is not required to meticulously examine and to evaluate the evidence and to record detailed reasons.*
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> *9. A bare reading of Sections 203 and 204 Cr. P.C. shows that Section 203 Cr. P.C. requires that reasons should be recorded for the dismissal of the complaint. Contrary to it, there is no such requirement under Section 204 Cr. P.C. Therefore, the order for issue of process in this case without recording reasons, does not suffer from any illegality."*

(emphasis supplied)

14. Explaining the position of law, the Supreme Court in its decision reported as *State of Gujarat* v. *Afroz Mohammed Hasanfatta*, 2019 SCC OnLine SC 132, has delineated the fine distinction respecting the summoning order in a case arising out of police report in contrast to a case arising out of criminal complaint and has explained the ruling in ***Mehmood Ul Rehman*** : **(2015) 12 SCC 420**. The following observations of the court in the said case (*Afroz Mohamed Hasanfatta)* are, in fact, complete answer to the contentions urged to the contrary by the petitioners:—

> *"22. In summoning the accused, it is not necessary for the Magistrate to examine the merits and demerits of the case and whether the materials collected is adequate for supporting the conviction. The court is not required to evaluate the evidence and its merits. The standard to be adopted for summoning the accused under Section 204 Cr.P.C. is not the same at the time of framing the charge. For issuance of summons under Section 204 Cr. P.C., the expression used is "there is sufficient ground for proceeding….."; whereas for framing the charges, the expression used in Sections 240 and 246 IPC is "there is ground for presuming that the accused has committed an offence…..". At the stage of taking cognizance of the offence based upon a police report and for issuance of summons under Section 204 Cr. P.C., detailed enquiry regarding the merits and demerits of the case is not required. The fact that after investigation of the case, the police has filed charge sheet along with the materials thereon may be considered as sufficient ground for proceeding for issuance of summons under Section 204Cr. P.C"*
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> (emphasis supplied)

15. Specific allegations have been made in the present case that the petitioner took advantage of the old age of the complainant, obtained signatures on blank papers after deceiving

the complainant that the same is required for getting the name changed in their electricity connection. It is further alleged that the complainant was taken to the Sub-Registrar Office under false pretext and his thumb impression was taken and a Gift Deed was executed fraudulently. Specific allegations have been made, which disclose commission of cognizable offence.

16. Even though, there is a presumption that a registered document is validly executed. A registered document, therefore, *prima facie* would be valid in law (re: ***Prem Singh v. Birbal*** **:(2006) 5 SCC 353**). The presumption, however, is rebuttable. The complainant has made specific allegations that the petitioner has taken advantage of the old age of the complainant and deceived him into signing the alleged gift deed.

17. The learned Trial Court has issued the process in the complaint after taking the pre-summoning evidence. The complainant has supported the complaint by filing an affidavit, which at the stage of issuance of process, is sufficient.

18. The other main argument advanced on behalf of the petitioner is that the complainant has already initiated a suit for cancellation of the alleged forged Gift Deed and the documents in support of the civil suit are the same as filed in support of the complaint filed before the learned Magistrate. It is contended that there cannot be parallel proceedings in regard to the same allegations.

19. It is settled law that a set of facts will lead to cause of action that may entitle an aggrieved party to initiate, not only civil suit but also file a complaint alleging an offence. It is settled law that the civil proceedings as also criminal proceedings, arising out of the same set of facts, can proceed simultaneously.

Cognizance in a criminal proceeding can be taken by the criminal court upon arriving at the satisfaction that there exists a prima facie case. [***Ref.* : (2009) 5 SCC 528]**

20. It is not disputed that the civil suit has been filed by the respondents seeking cancellation of the alleged forged gift deed. The said gift deed is a registered document and the declaration for cancellation of any such document can only be sought by filing appropriate civil suit. At the same time, if the allegations point towards commission of an offence, initiation of criminal proceedings cannot be interdicted.

21. In view of the above, I find no merit in the present petition and the same is, accordingly, dismissed.

AMIT MAHAJAN, J

FEBRUARY 5, 2024
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