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

\+ **<u>CRL.M.C. 483/2019</u>**

PUNEET SEHGAL .....Petitioner

Through: Mr. Ajay Paul, Adv.

versus

PARMINDER SINGH & ORS .....Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

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

% **27.09.2024**

1. The present petition is filed challenging the judgment dated 12.10.2018 (hereafter '**impugned judgment**'), passed by the learned Additional Sessions Judge ('**ASJ**'), West District, Delhi, in Criminal Revision No. 56035/2016, whereby the revision petition filed by the petitioner against the order dated 04.01.2013, passed by the learned Trial Court, in CC No. 72/3, was dismissed.

2. The learned Trial Court, by order dated 04.01.2013, dismissed the complaint filed by the petitioner and held that no sufficient ground exists to proceed against the respondents for offence under Section 420 of the Indian Penal Code, 1860 ('**IPC**').

3. The brief facts of the case are as follows:

3.1. The petitioner alleges that in the month of March, 2011, the respondents approached him and offered him 20% share in their partnership firm, namely, M/s. Silver Grand Services (hereafter '**the firm**'). The respondents claimed that they have acquired the property No. A-1, Plot No. 54, Rama Road, New Delhi (hereafter '**the property**') on lease for a period of 9 years for the purpose of running a Banquet Hall and the same is their principal place of business. The petitioner agreed to acquire 20% share in the Firm and paid a sum of ₹30 lakhs by way of cheque dated 29.07.2011.

3.2. It is alleged that respondents concealed the ongoing litigation with the landlord in regard to the property. The petitioner started participating in the business of the partnership and also got around 100 marriages and other functions booked for the Banquet Hall and was shocked to know about the ongoing litigation. It is alleged that the petitioner was assured by the respondents that the dispute will be resolved at their own end and the petitioner will not incur any loss. The Hon'ble High Court, however, in ongoing litigation restrained the Firm from hosting parties beyond 20.12.2011 even though the respondents had given an undertaking to pay the arrears of rent to the landlord of the property.

3.3. It is alleged that the respondents, in order to pay the arrears of rent, took a loan of ₹4 lakhs from the petitioner in the first week of December, 2011.

3.4. The accused persons avoided the petitioner and did not heed to his demands for refund of money. The complaint was thereafter filed by the petitioner against the respondents under Section 420 of the IPC.

3.5. The complaint was dismissed by the learned Trial Court on 04.01.2013 after observing that the ingredients of the offence punishable under Section 420 of the IPC were not made out against the accused persons. The dismissal was upheld by the learned ASJ by the impugned judgment. The same led to filing of the present petition.

4. The learned counsel for the petitioner submits that the

respondents had concealed the ongoing litigation of the Firm with the landlord.

5. He submits that the respondents had thus committed the offence under Section 420 of the IPC since they fraudulently and dishonestly induced the petitioner to part with the property thereby causing wrongful loss to the petitioner.

6. The learned Trial Court, by order dated 04.01.2013, held that the claim of the petitioner attracts civil liability of the respondents and the civil right of the petitioner to terminate the partnership. It was further held that the stay was granted by the Hon'ble High Court on hosting the functions beyond 20.12.2011 and, therefore, there was no impediment in conducting the business before 20.12.2011, during the subsisting partnership agreement. It was held that there is no bar in the law that a new partner cannot be introduced if a litigation is going on in regard to a property possessed by the partnership. It was also noted that the petitioner was an active partner of the Firm and was looking after the business and was having the knowledge of the state of affairs of the partnership. Since the payment of the rent is an important matter of accounts of the partnership, the allegation that the petitioner was not aware of the litigation is peculiar. It was observed that the petitioner had also not claimed that he had terminated the partnership. It was held that the petitioner cannot redress his grievance of having incurred pecuniary losses by filing a criminal complaint.

7. The learned ASJ upheld the order dated 04.01.2013, passed by the learned Trial Court by the impugned order.

8. The allegation against the respondents is that they fraudulently induced the petitioner to acquire a share in the firm and invest certain amount and to become a partner in the Firm.

There is no doubt that dishonestly inducing a person to deliver a property is an offence punishable under Section 420 of the IPC, however, in the present case, it is an admitted case that the petitioner entered into a Partnership Deed to carry out the business of Banquet Hall at the property.

9. From a bare perusal of the Partnership Deed dated 01.08.2011, it is apparent that the petitioner agreed to acquiring 20% shares in the partnership and was made responsible for liabilities of his shares arising after 01.08.2011. The partnership was also at will and could be determined at the instance of any of the partners by giving a 45 days notice. It was also mentioned that all disputes, doubts and differences between the partners shall be decided in accordance with the provisions of Arbitration and Conciliation Act, 1996. Nothing has been mentioned in the Deed about the acquisition of the property by the Firm. The Deed only mentions that partnership will carry out the business from the property. Though it is a possible that the petitioner parted with the money on being assured that the partnership was in possession of the property and there was no dispute with the landlord, however, the same is not apparent from the perusal of the Partnership Deed.

10. As rightly noted by the learned Trial Court and the learned ASJ, the cause of filing of suit by the landlord before the High Court is not clear. The petitioner was admittedly looking after the business from September, 2011 and therefore, he cannot claim that he was not aware that the rent was or was not paid to the landlord.

11. Nothing has been brought on record to show the income received by the partners upto passing of the order by the Hon'ble High Court. It is not the claim of the petitioner that the property

was not allowed to be used immediately on entering into a partnership.

12. As correctly noted by the Courts below, the petitioner seems to be aggrieved that the partnership did not last long and he could not earn much money out of his investment. It was also noted by the learned ASJ that the petitioner had demanded the entire money paid by him and when the same was not returned, the complaint was filed.

13. The complaint, as rightly noted, seems to have been filed for the purpose of recovering the losses suffered by the petitioner. When the petitioner was undisputedly admitted into the partnership and was made part of the business activity, it cannot be said that the respondents from the very beginning had the intention to cause wrongful loss to the petitioner.

14. It is also relevant to note that the complaint was filed way back in the year 2011. The dispute raised, in the opinion of this Court, even otherwise, at this stage, is stale and ought not to be revived while exercising power under Section 482 of the Code of Criminal Procedure, 1973 ('**CrPC**').

15. Another aspect which cannot be lost sight of is that the petitioner has invoked the jurisdiction of this Court under Section 482 of the CrPC and has challenged the concurrent finding of two Courts below. It is settled law that the power under Section 482 of the CrPC is to be exercised cautiously and sparingly, especially when Sessions Judge has already exercised revisional power under Section 397 of the CrPC.

16. The Hon'ble Apex Court, in the case of ***Krishnan v. Krishnaveni* : (1997) 4 SCC 241**, had observed as under:

> "***8.*** *The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous*

supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. ***In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order.***"

(emphasis supplied)

17. From the facts as noted above, I am of the opinion that no irregularity has been committed by the Courts below in dismissing the complaint filed by the petitioner.

18. In view of the aforesaid discussion, this Court finds no reason to entertain the present petition and interfere with the impugned judgment.

19. The petition is therefore dismissed.

AMIT MAHAJAN, J

SEPTEMBER 27, 2024
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