



2024:DHC:8539



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 27th September, 2024*

+ CRL.M.C. 678/2019 & CRL.M.A. 2770/2019

CHANDER BOSE

.....Petitioner

Through: Mr. N.S. Dalal, Mr. Alok
Kumar, Ms. Nidhi Dalal,
Ms. Rachnana Dalal &
Mr. Kunal Narwal, Advs.

versus

MADHU BANSAL & ANR

.....Respondents

Through: Mr. Amit Rana & Mr.
Anil Kumar, Advs. for R2
Mr. Sunil Kumar Gautam,
APP for the State (R3)
SI Deepak Lathwal, PS-
DIU/DND**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present petition is filed against the order dated 05.12.2018 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**'), Rohini Courts in CR No. 57621/2016 titled *Madhu Bansal & Anr. vs. Chandra Bose & Ors.*

2. By impugned order, the learned ASJ set aside the order passed by the learned Metropolitan Magistrate ('**MM**') dated 23.09.2016 and directed the registration of FIR.

3. It is the case of the petitioner that FIR No. 442/2014 dated

Signature Not Verified 29.05.2014 was registered at Police Station Bawana, Delhi under

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Sections 406/420/120B of the Indian Penal Code, 1860 ('IPC') against the accused persons on a complaint given by the petitioner. FIR No. 442/2014 was registered on an allegation that the petitioner was induced by one Ram Kumar to purchase a plot measuring 705 square yards falling in Khasra No. 154/83 in extended Lal Dora at Pooth Khurd, Delhi for a sum of ₹78,25,000/-. It is alleged that Ram Kumar had introduced the petitioner with one Pawan Bansal (husband of Respondent No. 1) and Respondent Nos. 1-2. It is alleged that the petitioner made the entire payment of ₹78,25,000/- between 05.11.2011 – 05.03.2012 on different dates by way of cheque and cash.

4. It is alleged that the agreement was reduced in writing on 16.03.2012, and the original agreement was kept by Pawan Bansal, however, the notary attested copy of the said agreement was given to the petitioner. It is alleged that thereafter, 300 square yards of the said land was transferred in favour of one Smt. Chitrakala as per the choice of the petitioner. It is further alleged that the remaining portion of 405 square yard was transferred to Smt. Lajwanti under a criminal conspiracy by the accused persons. Respondent Nos. 1-2 were thereafter admitted on bail in FIR No. 442/2014 *vide* order dated 25.11.2014.

5. Subsequently, an application under Section 156(3) of the Code of Criminal Procedure, 1973 ('CrPC') was preferred by Respondent Nos. 1-2 seeking registration of FIR. It is alleged that Respondent No. 1 and other accused persons were the owner of the plot measuring 705 square yards in Khasra No. 154/83 situated in the extended Lal Dora of Village Pooth Khurd. It is

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alleged that they sold 300 square yards of land on 06.03.2012 to one Smt. Chitrakala by way of a registered sale deed. It is alleged that thereafter the remaining 405 square yards of land was sold to one Smt. Rajwati *vide* registered sale deed dated 14.03.2012. It is alleged that the petitioner had taken a loan for a sum of ₹10 lakhs from the husband of Respondent No. 1. It is alleged that thereafter the husband of Respondent No. 1 demanded the payment of the said loan from the petitioner and asked him to issue separate cheques in the names of Respondent Nos. 1-2 for a sum of ₹5 lakh each. Subsequently, as alleged, the cheques were duly encashed on 14.03.2012 and 16.03.2012. It is alleged that thereafter the husband of Respondent No. 1 came to learn that FIR No. 442/2014 was registered on a complaint given by the petitioner.

6. It is alleged that the petitioner in association with other persons and police officials got FIR No. 442/2014 registered against the husbands of Respondent Nos. 1-2. It is alleged that the petitioner had initially preferred an application under Section 156(3) of the CrPC. The same was dismissed and the revision petition preferred by the petitioner was also dismissed. It is the case of Respondent Nos. 1-2 that despite such dismissal, the petitioner in connivance with the police officials managed to get the registration of FIR by concealing the facts of the dismissal of complaint. It is further alleged by Respondent Nos. 1-2 that the petitioner along with other persons had forged and created two documents, that is, the declaration dated 16.03.2012 and receipt of ₹78,25,000/- of even date with the forged signatures of

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Respondent Nos. 1-2. It is alleged that no agreement of any sort or any receipt was ever executed between Respondent Nos. 1-2 and the petitioner. On the basis of the aforesaid, Respondent Nos. 1-2 sought registration of an FIR in their application preferred under Section 156(3) of the CrPC.

7. The learned MM *vide* order dated 23.09.2016 dismissed the application preferred by Respondent Nos. 1-2 seeking registration of FIR against the petitioner. The learned MM noted that the truthfulness of the complaint of the petitioner and the documents, that is, the declaration and receipt were already under investigation in FIR No. 442/2014. It was noted that another FIR on the basis of similar allegations is unwarranted.

8. By impugned order, the learned ASJ set aside the order dated 23.09.2016 passed by the learned MM, and directed the registration of FIR. Subsequently, FIR No. 43/2019 dated 06.02.2019 for offences under Sections 420/468/471/120B of the IPC was registered at Police Station Bawana on a complaint given by Respondent No. 1. Being aggrieved by the said order, the petitioner has filed the present petition.

9. It is the petitioner's case that since FIR 442/2014 was already registered, and investigation was being carried out in respect of similar allegations, a second FIR could not have been registered. The learned counsel for the petitioner relies on the judgment passed by the Hon'ble Apex Court in the case of ***T T Antony vs. State of Kerela and Others : (2001) 6 SCC 181*** to argue that since an FIR was already registered and the same was also pending investigation, a second FIR in regard to the same

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incident could not have been registered.

10. The short point for consideration thus is whether the learned ASJ erred in directing the registration of FIR when an FIR with regard to the same incident being FIR No. 442/2014 was already registered and pending investigation.

11. The law in regard to the registration of a second FIR in the nature of counter claim is no longer *res integra*. The Hon'ble Apex Court in the case of ***Upkar Singh vs. Ved Prakash and Ors*** : (2004) 13 SCC 292 clarified the position with regard to the filing of a counter claim with regard to the same incident as under:

“17. It is clear from the words emphasised hereinabove in the above quotation, this Court in the case of T.T. Antony v. State of Kerala [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] has not excluded the registration of a complaint in the nature of a counter-case from the purview of the Code. In our opinion, this Court in that case only held that any further complaint by the same complainant or others against the same accused, subsequent to the registration of a case, is prohibited under the Code because an investigation in this regard would have already started and further complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence will be prohibited under Section 162 of the Code. This prohibition noticed by this Court, in our opinion, does not apply to counter-complaint by the accused in the first complaint or on his behalf alleging a different version of the said incident.

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23. Be that as it may, if the law laid down by this Court in T.T. Antony case [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical



example given hereinbelow i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to book. This cannot be the purport of the Code.

24. We have already noticed that in T.T. Antony case [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] this Court did not consider the legal right of an aggrieved person to file counterclaim, on the contrary from the observations found in the said judgment it clearly indicates that filing a counter-complaint is permissible.”

12. In line with the dictum of the Hon’ble Apex Court in **Upkar Singh** (*supra*), a further complaint by the same complainant or others against the same accused, subsequent to the registration of an FIR was observed to be impermissible. It was noted that an investigation in relation to the original complaint would already have commenced, and a further complaint against the same accused would have amounted to an improvement on the facts mentioned in the original complaint. However, the registration of FIR, that is, a counter-complaint at the instance of the accused persons in the first FIR is not prohibited as long as the same discloses cause of action.

13. The learned ASJ noted that Respondent Nos. 1-2, in their complaint and the application under Section 156(3) of the CrPC, claim to be the victim of forgery and cheating allegedly committed by the petitioner. It was noted that the complaint made by Respondent Nos. 1-2 had independent and distinct cause of action and attracted separate offence. It was noted that further



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the alleged forgery and cheating which cannot be done by Respondent Nos. 1-2. The learned ASJ rightly observed that it cannot be said that Respondent Nos. 1-2 were well equipped to establish whether the declaration and receipt dated 16.03.2012 were forged and fabricated. In that regard, the learned ASJ rightly directed the registration of FIR.

14. Contrary to the contention of the learned counsel for the petitioner, FIR No. 43/2019 was in the nature of a counter claim preferred by Respondent No. 1. In line with the dictum of the Hon'ble Apex Court in *Upkar Singh (supra)*, registration of FIR at the behest of Respondent No. 1, who is accused in FIR No. 442/2014, is not prohibited.

15. In view of the aforesaid, this Court does not find any reason to interfere with the impugned order and the same cannot be faulted with.

16. The present petition is accordingly dismissed.

AMIT MAHAJAN, J

SEPTEMBER 27, 2024

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