



\$~23

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 2615/2023 & CRL. M.A.9866/2023
RAJVEER SHARMAPetitioner
Through: Mr. Neeraj Bhardwaj, Advocate.

versus

STATE OF GNCT OF DELHI & ANRRespondents
Through: Mr. Aashneet Singh, APP for State
with SI Sanjeet Rana PS S.J. Enclave,
New Delhi.
Mr. Apoorv Malik, Advocate for
respondent No.2.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **02.08.2024**

1. By way of present petition, the petitioner seeks quashing of the FIR No.97/2022 registered under Section 420 IPC at PS Safdarjung Enclave, South West, Delhi.
2. Learned counsel for the petitioner contends that the present FIR pertains to a sale transaction entered into between the parties and for which an agreement to sell, dated 28.07.2016, was executed between the petitioner and the complainant. He submits that a reading of the FIR does not make out any case against the petitioner who has been falsely implicated and in this regard, he has placed reliance on the order dated 24.02.2024 passed by learned ADJ-03, South East District, Saket Courts, New Delhi in CS DJ No.191/2022. While referring to the said order, it is also contended that the Civil Court has returned a finding that the entries, *prima facie*, do not make out a case of a concluded agreement between the parties and in fact, the



signature against the unmarked 4th entry is also opined to be not matching with the signatures against the first three entries, which pertain to the petitioner.

3. Lastly, it is contended on behalf of the petitioner that the allegations qua other offences are improbable on their face value and that the instant FIR has been lodged only in retaliation to the petitioner's complaint against the husband of the complainant for abusing his position in CPWD.

4. The petition is resisted by learned APP for the State as well as learned counsel for the complainant. Learned APP for the State submits that at present, the charge-sheet already stands filed only under Sections 420/174A IPC, however, the investigation qua other offence is still pending as the petitioner has never joined investigation. He further states that the petitioner, even today, is neither available for investigation nor before the Trial Court. Attention of the Court is also invited to the order dated 28.03.2024, whereby in an application seeking recall of proceedings initiated under Section 82 Cr.PC and the declaration of the petitioner as a proclaimed offender, the learned Judicial Magistrate directed recall of the said proceedings, subject to the petitioner joining investigation within two weeks. It is furthermore stated that even an undertaking on behalf of the petitioner had been recorded, however, the petitioner still failed to join investigation. Moreover, it is stated that the petitioner is an accused in three other FIRs being FIR Nos. 306/2022 PS Kalkaji, 70/2023 PS Kalkaji and 44/2018 PS C.R. Park.

5. I have heard the learned counsel for the parties and gone through the record.

6. The petitioner has placed reliance on an order dated 24.02.2024 to contend that once a finding has been returned by a Civil Court, criminal



prosecution could not be allowed to be conducted. A perusal of the said order would indicate that the complainant had preferred a summary suit for recovery of sum of Rs.54,40,500/- along with ancillary reliefs. The said suit was filed under Order 37, CPC.

7. The order relied upon by the petitioner came to be passed on a leave to defend application filed by him. The observations of the learned ADJ while passing the order were only *prima facie* in nature and not at the conclusion of the trial. A reading of the said order would further show that it has been noted in the order itself that the issues raised would warrant trial. At this stage, it cannot be said that the findings relied upon by the petitioner are conclusive in any manner.

8. It is a settled position in law to generally grant leave to defend under Order 37 upon a triable issue being raised and that the said grant of leave to defend, by no stretch of imagination, can be equated with conclusive acceptance of the defence of the defendant [refer, B. L. Kashyap and Sons Limited v. JMS Steels and Power Corporation and Anr., reported as (2022) 3 SCC 294].

9. In view of the aforesaid discussion and considering the import in the above cited judgment of B.L. Kashyap, and the fact that the abovementioned order was passed only on a leave to defend application, the contentions raised by the petitioner and his reliance on the grant of leave to defend, is entirely misplaced, I find no ground to entertain the present petition and the same is accordingly dismissed along with pending application.

MANOJ KUMAR OHRI, J

AUGUST 2, 2024/rd