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

% Date of Decision: 30.07.2024

\+ **CRL.M.C. 3443/2024 & CRL. M.A.13232/2024**

SUNIL KUMAR GANDHI .....Petitioner

Through: Mr. Sanjay Jain, Senior Advocate with Mr. Rahul Dubey and Mr. Nishank Tripathi, Advocates.

versus

STATE (NCT OF DELHI) & ANR .....Respondents

Through: Mr. Laksh Khanna, APP for State with SI Gaurav PS EOW.
Ms. Richa Kapoor, Mr. Kunal Anand, Mr. Jai Batra and Ms. Udipti Chopra, Advocates for respondent No.2/BOB.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present petition, the petitioner seeks quashing of the FIRNo.83/2010, the chargesheet dated 21.10.2016 implicating the petitioner under Sections 109/120B IPC registered at PS Economic Offences Wing, Mandir Marg,New Delhi as well as the proceeding emanating therefrom.

2. To put briefly, the facts of the case are that one Mahesh Dutt Sharma (the Borrower) approached respondent No. 2, i.e. Bank of India to avail some credit facilities for his proprietorship business in the name and style of *Parks Trends Overseas.*Ms. Isha Sharma/wife of respondent No. 2 and one Shri Sunil Kumar Jain impersonating himself to be Prem Kumar Jain were introduced to the bank as guarantors. Prem Kumar Jain offered to mortgage

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his immovable property being land admeasuring 1 Bighas 4 Biswas in Khasra No. 201 in extended Lal Dora of Village, Shahbad Doultpur, Delhi (hereafter, 'the said property') and deposited the original title dated 19.12.1984 with the bank. Respondent No. 2 Bank approached its empanelled lawyer Sunil Kumar Gandhi (the present petitioner) to prepare the Search Report qua the said property by inspecting the records. The petitioner accordingly submitted the Search Report concerning documents of the said property which was registered in the office of Sub Registrar as document No. 12794 in additional book No. 1, volume No. 4350 at page 112 to 117,with certain conditions and caveats. Alongwith the present petitioner, the bank also approached one of its empanelled valuers namely S.K. Ahuja & Associates for valuation of the said property, who inspected and valued the said property at Rs. 42,25,000/- on which the bank granted Packing Credit Limit (PCL) totalling to Rs. 20,00,000/- to M.D. Sharma. Later, the borrower failed to repay the outstanding amount and respondent No. 2 initiated DRT proceeding for recovery of the outstanding amount. In August 2003, a police complaint was filed against MD Sharma and his guarantors at PS Nangloi. The said complaint was later transferred to Anti-Fraud and Cheating Section, EoW, Crime Branch, Delhi. After nearly seven years, in May 2010, EOW registered an FIR, meanwhile the guarantor Sunil Kumar Jain who impersonated himself to be Prem Kumar Jain passed away and M.D. Sharma was taken into custody. Subsequently, the chargesheet came to be filed in the year 2016 and the present petitioner was named as an accused implicated for offences under Section 109 and 120B of IPC. As from the chargesheet, no role is discernible against the petitioner, hence, the present

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petition for quashing the FIR and chargesheet came to be filed by the petitioner.

3. Learned counsel for the petitioner submits that in the present case, the chargesheet under Sections 420, 467, 468, 471,109 and 120B of IPC, 1860 against one Shri M.D. Sharma, aged about 83 years and under Sections 109 and 120B, IPC, 1860 against the petitioner, aged about 65 years, came to filed despite the fact that the petitioner was neither named in the complaint filed by the complainant bank nor in the FIR bearing No. 83/2010. The petitioner submits that respondent No. 2 vide letters dated 07.12.2009 and 19.02.2010, even notified EOW that the bank was not interested in pursuing the complaint and that the matter has been settled having received the outstanding amount from the accused MD Sharma. He further submits that theonly allegationagainst the petitioner is that theSearchReport prepared by the petitioner for the said property, being document No. 12794, pertained to a different property and that the petitioner never verified the truthfulness of the sale deed in question. However, it is the case of the petitioner that he was only provided with the photocopies of the sale deed of the said property and with that he had visited only Sub-Registrar's office and not where the revenue records are kept. It is submitted that it was not within his assigned scope of work to visit the revenue office to verify the same.

It is further stressed that the Search Report submitted by the petitioner also emphasizes the conditions and caveats that must be met for the equitable mortgage to be established in the favour of the bank. From one such caveats in the Search Report, it is evident that the petitioner advised the bank to request the originals of the sale deed before providing the credit facilities.

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It is further submitted that the Search Report prepared by the petitioner is not the sole criteria with which the banks determine whether the credit loan should be provided or not, in fact, the contents of the Search Report only confirm the factum of the property being registered with the Sub-Registrar, and the said aspect was duly covered by the petitioner in the Search Report. Additionally, it is submitted that the charge-sheet does not show any element of motive/ intention/*mens rea* to attract the offence of conspiracy under Section 120B IPC. Learned counsel for the petitioner seeks for quashing of the proceedings by placing reliance on a decision of the Hon'ble Supreme Court of India in the case of State of Haryana v. Bhajan Lal[1].

4. Learned APP for the State, on the other hand, opposed the said petition.

As claimed, the land was sold to the guarantor, Prem Kumar Jain, by one Bhagmal Bhala. He submits that the report from the office of Sub-registrar-II was obtained with regard to the mortgaged property in question however, it has been revealed that neither the name of Prem Kumar Jain nor the name of Bhagmal Bagha was mentioned in the records. It is further submitted that from the report and as per the investigation, it is inferred that the petitioner never verified the truthfulness of the sale deed in question from the office of Sub-Registrar-II and thus report submitted by him is misleading and wrong. It is stated that in the present case the petitioner is facing trial and cognizance has been taken against the petitioner.

5. I have heard learned counsels for the parties and perused the material placed on record.

[1] 1992 Supp (1) SCC 335

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6. In the present case, firstly a perusal of the letter dated 07.12.2009 would show that respondent No. 2, the bank, was not itself interested in pursuing the complaint given to the police,as they had settled the matter with the borrower, one MD Sharma and there was no outstanding liability remaining against the accused. The relevant extract of the letter is as follows:

> *"2. In this connection we advise that the Bank had entered into compromise settlement with Shri M.D. Sharma on 18.04.2006. Subsequently, the terms of compromise were not complied and, therefore, compromise was revoked. However, Mr. M.D. Sharma approached DRT and as per DRT order he has paid our Bank's full dues of Rs. 14,50,000/- alongwith overdue period interest of Rs. 4,10,205/- as per Hon'ble DRT's orders dated 04.06.2009.*
>
> *3. Mr. M.D. Sharma has thus paid entire dues of the Bank and account stands closed at our end. We have thus withdrawn our DRT proceedings."*

7. The issue arising in the present petition is that after seven years of the complaint an FIR came to be registered, subsequently, in the chargesheet the petitioner was made an accused and was charged under Section 109 and 120B IPC. As per the allegations, the petitioner is said to have been prepared the Search Report on the basis of a sale deed which led the bank to issue a loan to the borrower, one M.D. Sharma. The sale deed was later, found to be forged. It is submitted on behalf of the petitioner that it is the practise followed by respondent No.2 Bank, wherein the bank engages its panel lawyers to conduct search in the office of concerned Sub-Registrar and submit a Search Report. In the present case also, the petitioner was engaged to prepare a Search Report in respect to the said property and was provided

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photocopies of the said documents, on the basis of which the petitioner provided the said Search Report after examining the Sub-Registrar records. It is further clear from the report of the petitioner that he had visited only the officer of the Sub-Registrar, and not any office where revenue records were kept and the Search Report was also formulated on the basis of those records only.Further, a reading of the said report would indicate that the conditions and caveats mentioned by the petitioner were subject to the respondent bank granting loan to accused. The petition duly pointed out in caveat no. 3 and 4 of the said report that the borrower be directed to submit the originals of the revenue documents, Khasra Khatauni and Girdawari. Not only this, vide caveat no. 5, the Petitioner recommended the Respondent No. 2 Bank to create charge in respect of the ‘said property’ recorded in the revenue records.

8. Further, a perusal of records would show that only reason for registration of FIR was an endorsement given by the Sub-Registrar. Pertinently, the Search Report forwarded by the petitioner was in context of document number 12794.As discernible from the records, a query raised by the I.O. was with respect to the document number 12994. The reply from Sub-Registrar’s office was also with respect to the latter document number i.e., 12994. Neither the query nor the reply by the Sub-Registrar’s office pertains to the property in question. Also, considering the fact that the guarantor on whose conduct the complaint was filed, has already died and that even the bank has received the said dues from the borrower and the respondent bank has closed the case as well as account against him. Even looking at the entire facts of the case, the court is of the opinion that no case is made out against the petitioner.

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9. In K. Ramakrishna v. State of Bihar, reported as **(2000) 8 SCC 547** the Supreme Court while assessing the extent of inherent powers of the High Court under Section 482 of Cr.P.C. held:

> *"3. The inherent powers of the High Court under Section 482 of the Code of Criminal Procedure can be exercised to quash proceedings, in appropriate cases either to prevent the abuse of process of any court or otherwise to secure the ends of justice. Ordinarily the criminal proceedings which are instituted against the accused must be tried and taken to logical conclusions under the Code of Criminal Procedure and the High Court should be reluctant to interfere with the proceedings at an interlocutory stage. However, there may be cases where the inherent jurisdiction to quash proceedings can and should be exercised. Where there is a legal bar against the institution or continuance of the criminal proceedings in respect of the alleged offence, the High Court should not be reluctant to exercise the inherent jurisdiction. Similarly where the allegations in the FIR or the complaint, even if they are taken at their face value do not constitute the offence alleged, or without appreciating the evidence but only merely by looking at the complaint or the FIR or the accompanying documents, the offence alleged is not disclosed, the person proceeded against in such a frivolous criminal litigation has to be saved."*

10. In the light of the above discussion, the petition is hereby allowed. Consequently, the aforesaid FIR and the consequent proceedings arising therefrom are hereby quashed.

11. With the above directions, the petition alongwith pending application is disposed of.

MANOJ KUMAR OHRI
(JUDGE)

JULY 30, 2024/*ga*

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