



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

%

Date of Decision: 27.03.2024

+

CRL.M.C. 7043/2023 & CRL.M.As. 26289-90/2023

M/S T.G. BUILDWELL PVT. LTD. AND ORS.

..... Petitioners

Through: Mr. Nityanand Singh and Ms. Aachal Sah, Advocates.

versus

M/S AGARWAL AGENCIES PVT. LTD

..... Respondent

Through: Mr. Anand Prakash Dubey, Mr. Rishabh Bhati, Advocate with Director of respondent company.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present petition has been instituted under Section 482 Cr.P.C. seeking quashing of Complaint Case No. 636170/2016 tilted “M/s Agarwal Agencies Pvt. Ltd. vs M/s T.G. Buildwell Pvt. Ltd.” The respondent, who was the complainant before the Trial Court, has preferred the present complaint alleging that it had booked a flat in the year 2007/08 in a project being developed by petitioner No.1. In furtherance of the same, the respondent paid a sum of Rs.16 lacs out of the total sale consideration of Rs.62 lacs. The subject complaint is premised on the ground that despite receiving the part sale consideration, construction was not completed and the possession of the flat was not handed over in due time. Consequently, respondent sought refund of the amount paid alongwith interest. The



complaint was contested by the petitioners on the ground that the delay in construction was attributable to the respondent as well as the other home buyers, who defaulted in payment of installments. It was further stated that the time for completing the project had not yet lapsed.

A perusal of the material placed on record would show that the petitioner had booked 3 BHK Flat vide Apartment Buyer Agreement dated 10.03.2008. The timeline for construction of project was 30 months from the date of commencement of construction work. Subsequently, when the construction did not progress at the appropriate pace, the complainant approached Haryana Real Estate Regularity Authority, Panchkula, Haryana vide Complaint No. 51/2019. The said complaint came to be disposed of vide order dated 13.02.2019, whereby the entire amount was directed to be refunded to the respondent with interest at the rate prescribed under Rule 15 of HRERA Rules. Another complaint bearing No. 3043/2019 came to be filed before Haryana Real Estate Regularity Authority, Panchkula, Haryana by the respondent seeking compensation for the same transaction. Vide order dated 31.03.2021, an amount of Rs.9,85,785/- was directed to be paid to the respondent. The said order came to be challenged before the Appellate Tribunal, which challenge came to be dismissed vide order dated 15.12.2022. Admittedly, in the execution proceedings filed by the respondent, entire amount of Rs.50,89,058.65/- has been received by it. The respondent despite having received the aforesaid amount against the sum of Rs.16 lacs paid by it, intends to proceed with the present complaint, a copy of which has also been placed on record.

2. Learned counsel for the petitioners contends that though the complaint has been filed under Section 420/403/405/409/467/468/506 read



with Section 120B IPC, however, petitioners have been summoned only under Section 420 read with Section 120B IPC. Learned counsel further contends that the respondent has instituted the complaint with *mala fide* intentions, inasmuch as not only has it received an amount more than three times of its investment, but the complaint is also bereft of material particulars and as such the summoning order lacks application of mind by the Trial Court.

3. Learned counsel for the respondent, on the other hand, contends that detailed appreciation of material placed on record cannot be taken at this stage since the same would require trial, which is beyond the scope of proceedings under Section 482 Cr.P.C.

4. I have heard the learned counsel for the parties and have also gone through the material placed on record.

5. Concededly, there is no dispute that the respondent has received Rs.50,89,058.65/- as against the amount of Rs.16 lacs invested by it. A perusal of the complaint, filed under Section 200 Cr.P.C., would show that the same was filed by the respondent being aggrieved by the factum that no construction has been carried out by the petitioners, despite receiving investment for the same. The order summoning the petitioners under Section 420 read with Section 120B IPC has been challenged by the petitioners in the present proceedings. The scope of appeal under Section 482 Cr.P.C. has been well defined by a catena of decisions. It is not the correctness of the allegations in the complaint which are to be seen at this stage, rather it has to be seen whether the ingredients of alleged offence are made out from the averments in the complaint or not. A complaint which does not show the necessary ingredients of the offence for which the accused is sought to be



summoned would result in abuse of process of Court and unnecessary harassment of the petitioner in facing the trial. With this limited scope in mind, the Court proceeds to analyze and evaluate the complaint.

6. As noted above, the respondent has alleged that though Rs.16 lacs was received against sale consideration of Rs.62 lacs, no construction was carried out by the petitioners. The entire complaint is silent as to whether there was any dishonest intention from the inception i.e. when the agreement was entered into between the parties. Dishonest intention is a pre-condition for making out a prima facie case under Section 420 IPC. In Hridaya Ranjan Prasad Verma & Ors. v. State of Bihar & Anr.¹, the Supreme Court outlined the distinction between breach of contract and the offence of cheating in the following terms:-

“xxx

15... that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.

xxx”

¹ (2000) 4 SCC 168



7. In G. Sagar Suri & Anr. v. State of UP & Ors.², the Supreme Court, while dealing with a case involving Section 420 IPC, emphasized that the issuing of process against accused is a serious matter and further discussed certain principles laid down by its previous decisions for exercising the power under Section 482 Cr.P.C. The relevant extract reads as under:-

“xxx

8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code, jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.

xxx”

8. Later in Indian Oil Corpn. v. NEPC India Ltd. & Ors.³, the Supreme Court while dealing with the issue of criminal proceedings being undertaken in purely civil disputes, observed:-

“xxx

13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family

² (2000) 2 SCC 636

³ (2006) 6 SCC 736



disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of U.P., the Court observed:

“It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law.

xxx”

9. The same issue arose before the Supreme Court in Mitesh Kumar J. Sha v. State of Karnataka & Ors.⁴, wherein following issues were framed for consideration:-

“xxx

24. Having perused the relevant facts and contentions made by the Appellants and Respondents herein in our considered

⁴ (2022) 14 SCC 572



opinion, the following three key issues require determination in the instant case:

- Whether the necessary ingredients of offences punishable under Sections 406, 419 and 420 are prima facie made out?*
- Whether sale of excess flats, even if made, amounts to a mere breach of contract or constitutes an offence of cheating?*
- Whether the dispute is one of entirely civil nature and therefore liable to be quashed?*
- Whether the necessary ingredients of offences punishable under Sections 406, 419 and 420 are prima facie made out?*

xxx”

10. In Mitesh Kumar J. Sha (Supra), the facts of the case were that it was alleged that the respondent No.2 therein had executed a Joint Development Agreement with appellant's company for construction of certain residential apartments. Subsequent agreement detailing the respective shares in the undivided area and super built-up area were also entered into. It was alleged that appellant's company had executed sale deed for 13 flats, which was beyond its share in terms of the agreement entered into between the parties. While the applicant was entitled to sell 9 flats, it had executed sale deed for 13 flats. In the said case, the Court held that ingredients of dishonest or fraudulent intent under Section 420 IPC were not made out. The dispute being purely civil in nature, the FIR was quashed.

11. Most recently, in Sarabjit Kaur v. State of Punjab & Anr.⁵, the Supreme Court has again emphasized that a breach of contract does not give rise to criminal prosecution for cheating, unless fraudulent or dishonest intention can be shown to have existed right at the beginning of the transaction. Mere allegation of failure to keep the promise will not be



enough to initiate criminal proceedings. It was further observed that criminal proceedings are not meant to be used for settling scores or to pressurize parties to settle civil disputes. In the said case, observing that the FIR came to be registered three years after the last date fixed for execution of the sale deed, the proceedings were quashed terming the same as an abuse of process of the Court.

12. To a similar extent are the observations of the Supreme Court in Usha Chakraborty & Anr. v. State of West Bengal & Anr.⁶ and Naresh Kumar & Anr. v. State of Karnataka & Anr.⁷

13. In the present case, a reading of the complaint would show that it has not been alleged that there was any dishonest intention at the inception i.e. at time of execution of the agreement, which induced the petitioner to part with his money. The case involves mere breach of contract and further the petitioner has also been compensated with more than three times of the amount invested by it. Looking into the facts of the case and in the light of precedents discussed above, this Court is of the considered opinion that dispute forming the basis of the subject complaint is purely civil in nature, and resultantly, the said complaint deserves to be quashed. Accordingly, the petition is allowed and the criminal complaint filed against the petitioners is quashed. As a necessary sequitur, the summoning order is also set aside.

14. Petition is disposed of in the above terms alongwith miscellaneous applications.

MANOJ KUMAR OHRI

⁵ (2023) 5 SCC 360

⁶ 2023 SCC OnLine SC 90

⁷ 2024 SCC OnLine SC 268



2024 : DHC : 2603



(JUDGE)

MARCH 27, 2024/ga

Signature Not Verified

Digitally Signed
By:NIJAMUDDIN ANSARI
Signing Date:02/04/2024
16:45:31

CRL.M.C.7043/2023

Page 9 of 9