



2024:DHC:1207



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

Date of decision: 16.02.2024

+ **CRL.M.C. 5884/2022 & CRL.M.A. 23086/2022**

VIJENDRA NATH GUPTA

..... Petitioner

Through: Mr.Harsh Khanna, Mr.Vivek
Jain, Mr.Sandeep Khanna,
Ms.Aastha Tiwari, Ms.Tulsi
Mukhi, Mr.Raj Kumar Goel,
Advs.

versus

THE STATE (GOVT OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Shoaib Haider, APP with
ASI Mukesh Kumar.
Mr.Anurag Jain, Adv.for R-2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') seeking quashing of the judgment and order dated 28.09.2022 (hereinafter referred to as the 'Impugned Order'), passed by the learned Special Judge,(NDPS)-02/Additional Sessions Judge (Central-District), Tis Hazari Courts, Delhi (hereinafter referred to as the 'Revision Court') in Criminal Revision No.246/2022, titled as *Vijender Nath Gupta v. State & Anr.*, whereby the Revision Petition filed by the petitioner herein under Section 397 of the Cr.P.C. was dismissed.



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2. The said Revision Petition was filed by the petitioner challenging the order dated 02.04.2022 passed by the learned Metropolitan Magistrate-05 (NI Act), Central District, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Metropolitan Magistrate') in the Complaint Case No.533060/2016 filed by the respondent herein under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'NI Act'), titled as ***S. Raghbir Singh v. Vijendra Nath Gupta***.

3. The above order has been passed by the learned Metropolitan Magistrate holding that the application filed by the petitioner herein under Section 340 Cr.P.C. shall be considered alongwith the final arguments in the complaint filed by the respondent herein and the decision on the same shall be rendered alongwith or after the judgment in the said complaint case.

4. The facts in brief giving rise to the present petition are that the respondent has filed the above complaint, stating that he had extended a friendly loan of a sum of Rs.1 crore to the petitioner, who in discharge of the same has issued a cheque for a sum of Rs.1 crore. The cheque on presentation had been returned unpaid.

5. During the course of cross-examination of the respondent, he was asked about the source of the funds for the loan. He deposed that there was an Agreement to Sell dated 29.08.2012 (Ex.CW1-D/3) executed between himself and a buyer namely Mr.Sanjeev Chauhan. He stated that the buyer namely Mr.Sanjeev Chauhan had given the said money as advance money against the sale of the property to the respondent.

6. The petitioner, claiming that the said Agreement to Sell



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produced by the respondent is a forged and fabricated document, filed an application under Section 340 Cr.P.C. before the learned Metropolitan Magistrate. It was the case of the petitioner that the said Agreement to Sell has been prepared on a stamp paper which was sold almost a year after the date of the Agreement. The learned counsel for the petitioner submits that evidence in support of this plea has also been led before the learned Metropolitan Magistrate.

7. The petitioner then insisted that his application under Section 340 Cr.P.C. be considered and decided before the final adjudication of the complaint filed by the respondent. The said prayer, however, was rejected by the learned Metropolitan Magistrate vide order dated 02.04.2022, holding that it would be more appropriate to hear the application of the petitioner alongside final argument so that the Court would be in a better position to adjudge if a *prima facie* case is made out against the non-applicant / complainant and to adjudge the effect of the alleged forged and fabricated document upon the administration of justice. The learned Trial Court observed as under:

“.....Thus, this court holds that the arguments on the application as well as preliminary inquiry, if any, under Section 340 CrPC be conducted along with final arguments and decision on the same will be rendered along with or after the judgment.....”

8. Aggrieved of the above, the petitioner challenged the same by way of a petition under Section 397 Cr.P.C., which has been dismissed by the Impugned Order.

9. The learned counsel for the petitioner, placing reliance on the



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judgment of the Supreme Court in ***Iqbal Singh Marwah v. Meenakshi Marwah***, (2005) 4 SCC 370, submits that a delay in consideration of the application filed by the petitioner would cause prejudice to the petitioner.

10. I am unable to agree with the said submission.

11. In ***Iqbal Singh Marwah*** (supra), the Constitutional Bench of the Supreme Court has reiterated that normally the application under Section 340 Cr.P.C. is decided at the stage when the proceedings are concluded and the final judgment is rendered. In fact, the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b) Cr.P.C. It shall direct filing of such complaint where the court finds the effect or impact of such commission of offence upon the administration of justice. It would not be in every case that the court would come to a conclusion that it is expedient and in the interest of justice that such an inquiry should be made. If the concerned court is of the view that the tainted material/evidence is inconsequential and would not have any bearing on the issues at hand, the court may deem it expedient not to proceed further under Section 340 and Section 195 Cr.P.C. and may pass appropriate orders for admonishment or imposing some form of penalty or fine on the guilty party, depending upon the facts of the case. I may quote from the judgement, as under:

“23. In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the section is conditioned by the words “court is of opinion that it is expedient in the interests of



justice”. This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded.

24. There is another consideration which has to be kept in mind. Sub-section (1) of Section 340 CrPC contemplates holding of a preliminary enquiry. Normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the court and this is done at the stage when the proceeding is concluded and the final judgment is rendered.....”

(Emphasis supplied)



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12. In the present case, the issue whether the agreement produced by the respondent is forged and fabricated, and it had an effect on the administration of justice, should necessarily be decided by the learned Metropolitan Magistrate alongwith final adjudication of the complaint case filed by the respondent. In case the said document is found to be forged or fabricated and as affecting the administration of justice, appropriate proceedings shall be taken by the learned Metropolitan Magistrate.

13. With the above clarification, the present petition is disposed of.

14. Pending application is also disposed of being rendered infructuous.

15. *Dasti*

NAVIN CHAWLA, J

FEBRUARY 16, 2024/Arya/ss

[Click here to check corrigendum, if any](#)