



2024:DHC:5834



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

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Reserved on: 30th July, 2024
Pronounced on: 5th August, 2024

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CRL.M.C. 5825/2024, CRL.M.A. 22257/2024 (stay)

MR. RAKESH Y. S.
S/o Late Y.R. Shantha Veerappa
Aged about 41 years
R/o at N-377, Second Phase,
Judicial Layout, Thalaghattapura,
Bengaluru-560062

.....Petitioner

Through: Mr. D.P. Chaturvedi, Advocate.

versus

1. GOVT. OF NCT OF DELHI

Department of Home

Through its Secretary

Secretariat of Delhi

Sachivalaya Road, IG Indoor Stadium

ITO, Vikram Nagar, New Delhi-110002Proforma Respondent

2. Mr. Muthunayagom Gaundama Vasan

S/o Late Shri Muthunayagom

Aged about 74 years

R/o N-24 Panchasheel Park,

New Delhi, Delhi 110017

....Contesting Respondent

Through: Mr. Hemant Mehla, APP for the
State.

Mr. Rajeev Lochan Mahunta, Mr.
Kaushal Chandra Jha and Ms. Naina
Chauhan, Advocates for R2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T



NEENA BANSAL KRISHNA, J.

CRL.M.A22258/2024 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.M.C. 5825/2024

3. The Petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, has been filed on behalf of the petitioner, for quashing of the Criminal Complaint bearing No. CC 6905/2023 under Section 138 of the Negotiable Instruments Act (*hereinafter referred to as 'NI Act'*), pending adjudication before the learned Metropolitan Magistrate-01 (South), NI Act, Saket, New Delhi, against the petitioner/accused.

4. *Briefly stated, the facts* are that the respondent No. 2/complainant has filed a Criminal Complaint under Section 138 of the NI Act, against the petitioner/accused. The allegations in the complaint are emanating from an Agreement to Sell dated 23.11.2018, executed between the complainant and one Smt. M.K. Sindhu @ Sindhu Srinivas w/o Araya Srinivas r/o No. 14/4, Judicial Layout, Adjacent Bettegowda Layout, Talaghattapura, kanakapura, Main Road, Bengaluru-560109. Smt. M.K. Sindhu had approached the complainant and conveyed her interest to purchase the agricultural land bearing New Survey No. 108/1 admeasuring 5 acres situated at Bada Manavarthe Kaval Village, Kengeri Hobli, Bengaluru, South Taluk, Bengaluru, of which complainant was an absolute owner and in possession thereof. The total sale consideration agreed was Rs.7.75 Crores.



5. On the date of the Agreement, Smt. Sindhu paid a sum of Rs.3 Crores to the complainant and the remaining sale consideration of Rs.4.75 Crores, was agreed to be paid within a period of six months from the date of execution of the Agreement to Sell. However, due to shortage of financial resources, Smt. Sindhu was unable to arrange the balance sale consideration.

6. Accordingly, she requested for an extension of time either to arrange funds, or in alternative, to arrange suitable buyers so as to avoid forfeiture of the earnest money to the tune of Rs.25,00,000/-. The complainant appreciating the financial hardship of Smt. Sindhu, granted further extension of time.

7. The complainant further stated that in the year 2022, Smt. Sindhu, arranged two buyers, namely, one Mr. Ramalingu (Buyer No. 1) and the petitioner Mr. Rakesh Y.S. (Buyer No. 2), through one Mr. K Nanda Kumar, who expressed their interest to purchase the land for a sale consideration of Rs.7.75 Crores. Mr. Ramalingu agreed to purchase eastern portion of the land admeasuring 2 acres and the petitioner/accused agreed to purchase the western portion of the agricultural land admeasuring 3 acres. The petitioner and Mr. Ramalingu paid Rs.6 Crores to the complainant as advance and Mr. Ramalingu undertook to pay the remaining amount of Rs.1.75 Crores, to the complainant within a period of 12 months.

8. Accordingly, petitioner/accused handed over cheques in question bearing Nos. 020490, 020491 and 020492, all dated 12.05.2023, in the sum of Rs.75,00,000/-, Rs.50,00,000/- and Rs. 50,00,000/- respectively, totalling to Rs.1.75 Crores, to the complainant. It was further agreed that the petitioner, and his associate, Mr. Ramalingu, would obtain the RTC/Mutation Registration Extracts, Phodi, 11-E Sketch, Change of Land,



Conversion Certificate etc., at their own cost and expense from the concerned Departments, for registration of agricultural lands in their favour.

9. It was also agreed that to facilitate procurement of these documents, complainant would put his signatures on all the papers, documents or records, as may be required and thereafter, the petitioner and Mr. Ramalingu would get the *absolute Sale Deed*, executed in their favour, within 30 days from the date of receiving such documents and payment of the balance sale consideration, to the complainant. The complainant also stated that the accused/petitioner neither provided any information about the steps taken by him in regard to the aforesaid, nor paid the balance sale consideration of Rs.1.75 Crores, to the complainant.

10. Furthermore, he alleged that after several attempts of persuasion and follow-ups, the petitioner gave the cheques in question to the complainant with the assurance that on or after the due date mentioned on the cheques, the cheques on presentation, shall be honoured. Believing the assurances extended by the petitioner and the buyer No. 1, the possession of the said lands along with the original documents dated 08.07.2005, were handed over by the complainant to the petitioner and his accomplice.

11. The cheques on presentation on 12.05.2023 to Federal Bank, Hauz Khas Branch, Delhi, were returned unpaid with the remark '*Funds Insufficient*', vide Return Memos dated 12.05.2023.

12. A *Legal Notice* dated 10.06.2023, was served upon the plaintiff, to which the petitioner gave a Reply dated 26.06.2023 wherein he asserted that these cheques given to the complainant, were infact, *security cheques* and also indicated about the alleged Sale Deed dated 12.05.2022, for a sale consideration of Rs.3.60 Crores being executed.



13. The cognizance on the complaint under Section 138 of N.I Act filed by the respondent, was taken by the learned trial court/M.M. by its Order dated 06.09.2023 and the petitioner/accused was summoned.

14. The petitioner on being served with the summons, appeared before the trial court on 21.11.2023. *Notice under Section 251 of the Code of Criminal Procedure (hereinafter referred as 'Cr.PC, 1973')* was framed on 21.11.2023 wherein the petitioner pleaded not guilty and claimed trial.

15. The Petitioner has contended that the complainant has been partly cross-examined by the petitioner on 07.02.2024 wherein he has reaffirmed that he had executed only one document on 12.05.2022, despite the fact that he had also executed a Sale Deed dated 12.05.2022 in favour of the petitioner No. 1, for sale consideration of Rs.3.60 Crores. In the Sale Deed, it was clearly mentioned that nothing further is due from the petitioner to the complainant. So being the case, the petitioner desired to confront the complainant with the Sale Deed in original and since the original Sale Deed was not available, the matter had been adjourned to 23.03.2024, for further cross-examination. Thereafter, the matter has been listed on various dates for further cross-examination of the complainant but for the various reasons, the cross-examination has not taken place and the matter now stands adjourned to 19.09.2024, for further cross-examination.

16. The *petitioner has contended* that even if the allegations levelled against him in the complaint, are taken to be true, then also there is no *prima facie* case made out against him for the offence punishable under Section 138 of the N.I. Act. As per the terms agreed between him and the complainant, the petitioner had agreed to purchase 3 Acres of land, on payment of total sale consideration of Rs.3.60 Crores and the petitioner had



issued the *cheques in question* for about 50% of the agreed consideration as security so as to show his willingness to purchase the land from the complainant. The cheques were issued merely as a security for the agreed amount to be returned once the Sale Deed was executed. Smt. Sindhu, who had initially entered into Agreement to Sell with the complainant, stood as a confirming party.

17. In addition to this, it is also submitted that there are grave ambiguities in the averments made in the plaint, Agreement to Sell and the Registered Sale Deed dated 12.05.2022. As per the complaint, Mr. Ramalingu had agreed to purchase 5 Acres of land for the total sale consideration of Rs.7.75 Crores, out of which the petitioner and his accomplice, have already paid Rs.6 Crores, to the complainant. For the balance amount of Rs.1.75 Crores, three cheques in question had been issued by the petitioner. It is alleged that it has not been specified in the complaint that the petitioner and Mr. Ramalingu, had agreed to purchase 3 Acres and 2 Acres respectively. It also does not mention about the execution of the Sale Deed in favour of the petitioner. The Notice as well as the Agreement to Sell noted about the execution of the Sale Deed, by the complainant in favour of the petitioner. Further, the Agreement to Sell does not mention about the realisation of alleged balance sale consideration of Rs.1.75 Crores.

18. It is, therefore, claimed that both Agreement to Sell as well as the complaint, are absolutely silent about the quantum of consideration, on which the petitioner had agreed to purchase the parcel of 3 Acres of land.

19. It is asserted that even if all the averments made against the petitioner, though not admitted, are accepted that there was an amount due to be paid to the complainant by him, in the facts and circumstances of the present



case, there is no liability on the part of the petitioner in view of *Paragraph 3* of the Sale Deed, which records that the complainant/vender and confirming party, *are acquitted and discharge of their liabilities to make any further payment.*

20. The petitioner has further stated that it was only a dispute of Civil nature for which the institution of criminal proceedings, were not warranted and it has been done with the sole intent to harass him and to derive illegal enrichment from him.

21. Reliance has been placed on the case of *Paramjeet Batra vs. State of Uttaranchal*, ((2013) 11 SCC 674), wherein the Apex Court has observed that the High Court must see that the dispute is essentially of a civil nature cloaked as criminal offence and in such cases, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of law. Likewise, reliance has been placed on the case of *State of Haryana vs. Bhajan Lal*, (1992 Supp.(1) SCC 335), wherein it was also observed that if the complaint taken in entirety, does not disclose any *prima facie* case or make out any offence and hence No criminal proceedings can be initiated.

22. In addition to this, further reliance is placed on *Pepsi Foods Ltd. Vs. Special Judicial Magistrate & Ors.*, (1998) 5 SCC 749, wherein it has been held that summoning of an accused in a criminal case, is a serious matter and criminal law cannot be said into motion as of matter of course. It is thus submitted that CCNI Act No. 6905/2023 pending trial before the Court of learned Metropolitan Magistrate-01 (South), N.I. Act, be quashed.

23. ***No formal Reply*** has been filed in the said Petition on behalf of the respondent No. 2. though, in detailed arguments, it has been pointed out that there was only one document i.e. Agreement to Sell that was executed on



12.05.2022, between the petitioner and the complainant. The backdrop in which this Agreement to Sell came to be executed, is not in dispute. The complainant had entered into an Agreement to Sell with one Ms. Sindhu, for sale of the entire 5 Acres of land, for a sale consideration of Rs.7.75 Crores but when she was unable to meet her obligations of paying the entire sale consideration. She sought time from the complainant for six months either to pay the balance sale consideration or to arrange for other prospective buyers.

24. Admittedly, the petitioner, Mr. Rakesh Y.S. and Mr. Ramalingu (buyer No.1) were arranged through one Mr. Nanda by Ms. Sindhu, who entered into the Agreement to Sell for purchase of the 5 Acres of land for the agreed sale consideration of Rs.7.75 Crores, pursuant to Agreement to Sell dated 12.05.2022. Learned counsel for the petitioner has vehemently contended that only one document i.e. the Agreement to Sell was executed on 12.05.2022 and ***no Sale Deed whatsoever got executed.***

25. It is further contended that the alleged Agreement to Sell relied upon and filed on record by the petitioner, is not the same which has been filed by the complainant, before the learned Trial Court. The details about the alleged Sale Deeds in the Agreement to Sell, have been filled in subsequently. There were blanks in regard to the details of the alleged Sale Deeds at the time when the signatures were taken of the complainant.

26. It is further contended that there is an inherent contradiction in the submissions of the petitioner for when the Agreement to Sell was admittedly executed on 12.05.2022, there was no question of execution of the Sale Deed on the same day. It clearly reflects that the Sale Deed has been manipulated subsequently. Though, there is a mention of a Sale Deed in the Reply, but it is ambiguous and there is no clarity of the Sale Deed having



been executed on 12.05.2022. In fact, if there was a Sale Deed executed as mentioned in Agreement to Sell, then there would not have been further stipulation of execution of an absolute Sale Deed on payment of the balance sale consideration of Rs.1.75 Crores, in the Agreement to Sell.

27. Admittedly, the petitioner has given the said cheques of Rs.1.75 Crores, which is the balance, which remained of the sale consideration, after admitted payment of Rs.6 Crores. The petitioner now is taking up a plea of this being towards the security amount, the question of which does not arise because it is infact, the difference in sale consideration and there was no question of giving security cheques in advance. Pertinently, the date of 22.05.2023 had been filled in by the petitioner himself since he had undertaken to pay the balance amount after 12 months. The defence which is now being taken up by the petitioner, is a concocted story simply to wriggle out of his liability under the cheques.

28. Learned counsel for the complainant/respondent No. 2 has further averred to the defence of the petitioner disclosed in the Notice under Section 251 CrPC. when he pleaded not guilty. He has never disclosed about the execution of alleged Sale Deed.

29. In his defence disclosed, he has not asserted anything about the execution of the Sale Deed or the alleged cheques being given as the security cheques. It is further submitted that the alleged Registered Sale Deed is a document which has been produced by the petitioner, in his defence.

30. There are no grounds for quashing of the FIR and the present Petition is liable to be dismissed.

31. Submissions heard.



32. It is admitted that the entire deal was for purchase of 5 Acres of land for a total sale consideration of Rs.7.75 Crores from the petitioner, which initially was agreed to be purchased by one Ms. Sindhu, who subsequently, introduced the petitioner and buyer No. 1, Mr. Ramalingu, who agreed to substitute Ms Sindhu and instead purchased the entire piece of land.

33. While the petitioner agreed to purchase 3 Acres, the buyer No. 1 agreed to pay for the remaining 2 Acres, for the total sale consideration of Rs.7.75 Crores. Even as per the Agreement to Sell/Sale Deed of the Petitioner, Rs.6 Crores got paid while for the balance of Rs.1.75 Crores, a cheque, which was post dated by 12 months, was issued. However, now a claim is being made by the petitioner that these were given towards the security cheque.

34. The defence of the petitioner disclosed in the Notice under S.251 N.I. Act read as under:

“The cheques in question bears my signatures. The cheques were filled by me. I also received the legal notice. The response dated 26.06.2023 Ex.CW1/7 was issued on my behalf.

The cheques were given as security to complainant’s son in law. I do not know his name. The complainant or the middle man did not show me the property papers. I have paid the entire consideration amount to the complainant. They have not furnished the sale deed which records payment made by me. The complainant did not turn up for signing the property papers despite my repeated calls.”

35. It is difficult to comprehend why a security cheque would be given for the balance sale consideration. Pertinently, these cheques were post-dated and if according to the petitioner, entire sale consideration should be paid



and Sale Deed executed, there was no reason why he did not serve any Notice or stop the payment of these three cheques.

36. The petitioner in support of his contentions has placed on record an Agreement to Sell, which has the details of the Sale Deeds and also has placed on record a Sale Deed dated 12.05.2022. The perusal of these documents would show that while an Agreement to Sell was admittedly executed on 12.05.2022, there are inherent contradictions in the assertions made by the petitioner about the Sale Deed having been already executed; if the Sale Deed was already executed, there was no question of there being an Agreement to Sell. Rather from the perusal of these documents, aside from there being inherent contradictions in the various clauses, it is the defence of the petitioner that he has paid the entire sale consideration that these cheques were issued as the security cheques and that a Sale Deed had been duly executed in his favour on payment of the sale consideration.

37. The respondent has denied the execution of Sale Deed and has claimed it to be a fabricated document produced by the Petitioner in his defence, which needs to be proved by him by way of evidence. In fact, the cross examination of the respondent got deferred for production of the Original sale Deed. It cannot be said that a complaint under Section 138 of the N.I. Act, filed by the respondent No. 2, does not *prima facie* disclose the commission of an offence or that it is liable to be quashed. Pertinently, the Apex Court in the case of M.M.T.C Ltd. vs. Medchl Chemicals & Pharma (P) Ltd. (2001 AIR SCW 4793) has held that the burden of proving that there is no existing debt or liability on the respondents and merely on the basis of averments in the petition, the Court cannot conclude that there was no existing debt or liability in that regard.



38. In the case of Rangappa vs. Sri Mohan (2010 AIR SCW 2946), it had been observed that the presumption mandated by Section 139 does indeed include the existence of a legally enforceable debt or liability. However, it is in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of legally and enforceable debt or liability, is contested.

39. Similarly, in Rajeshbhai Muljibhai Patel vs. State of Gujarat (AIR ONLINE 2020 SC 815), while considering the powers of the High Court under Section 482 to quash the criminal complaint under Section 138 of the N.I. Act on legal issues like limitation etc., it was observed that the complaint ought not to be quashed merely on the ground that there are *inter se* disputes between the appellant and the respondent.

40. In the recent Judgment of Rathish Babu Unnikrishnan vs. State (Govt. of NCT of Delhi) and Another, (2022 SCC OnLine SC 513), it was observed that the consequences of scuttling the criminal process at a pre-trial stage is grave and irreparable. If allowed, the accused may be given an un-merited advantage in the criminal process. When the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant, as the accused would have due opportunity to adduce defence evidence during the trial to rebut the legal presumption.

41. Similar observations have been made in Payal Malhotra vs. Sulekh Chand, (2023 SCC OnLine Del 7597) and K.P. Ramachandran Nair vs. State of Kerala, (2022 SCC OnLine Ker 5819), to which a reference has been made on behalf of the respondent No. 2/complainant.

42. It thus, emerges from the rival contentions of the parties that *firstly*, the petitioner has admitted the issue of cheques by him and date of



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22.05.2023 has also been put by him giving rise to the presumption in favour of the respondent. *Secondly*, the petitioner had neither challenged the Order of summoning or framing of Notice. *Thirdly*, it is at the stage of cross-examination of the complainant when the petitioner intends to confront with the alleged Sale Deed which is denied by the respondent, which is being produced by him and he needs to prove his defence.

43. There is absolutely no merit in the present Petition claiming that no prima facie case is disclosed by the petitioner in his complaint under S.138 N.I. Act, which is hereby dismissed and the application also stands disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 05, 2024
RS