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

+ **CRL.M.C. 6577/2024 & CRL. MAs 25137-38/2024**

RAKESH CHAND GUPTA

.....Petitioner

Through: Mr. Kartikeya Rastogi, Mr. Shiiv Kapoor,
Advocates.

versus

STATE (NCT OF DELHI) & ANR

.....Respondents

Through: Mr. Nawal Kishore Jha, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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23.08.2024

1. By way of present petition, the petitioner seeks setting aside of the order dated 21.05.2024 passed by the learned Sessions Judge, South District, Saket Courts, New Delhi in Revision Petition No.489/2023 vide which the learned Sessions Judge had upheld the order dated 17.11.2023 passed by the Judicial Magistrate First Class, whereby only part cognizance of the complaint was undertaken,
2. Pertinently, the petitioner and the respondent No.2, being brothers, are at lis in a partition suit bearing CS (OS) No.124/2017 pending adjudication before this Court.
3. It is observed that on 03.05.2019, a status quo order was passed with respect to the title and possession of the properties, of which partition was sought.
4. Learned counsel for the petitioner claims that the respondent No.2 violated the said order by entering into an agreement to sell with a third party with respect to property bearing number G-474, RIIC Industria Area, Bhiwadi, Rajasthan. It is further the case of the petitioner that thereafter, the respondent no.2 has sold the said property vide a registered sale deed dated 11.08.2021,



therefore, violating the said status quo order of this Court. Furthermore, learned counsel for the petitioner has submitted that the ingredients of Sections 418/423 IPC are also made out against the respondent No. 2.

5. Concededly, the petitioner has also approached this Court by way of a contempt petition and the same is admittedly pending. The petitioner, thereafter, has also approached the Judicial Magistrate by way of an application under Section 156 (3) Cr.P.C, alleging offences under Sections 405/406/415/420/424/499/500/503/504/506 IPC.

6. Learned Judicial Magistrate, while taking note of the aforesaid facts, observed that the case involves disobedience of the directions of the Court, for which appropriate proceedings had already been initiated by the petitioner and thus, declined to take cognizance of the offence of cheating. However, at the same time, taking note of the fact that the respondent No.2 had made publication on Whatsapp Customer Group as well as in the locality regarding the lodging of the FIR against the complainant/petitioner, cognizance under Sections 499/500 IPC was taken.

7. The Revisional Court, while canvassing the entire facts and the aforementioned order, also concurred with the opinion of the Learned Judicial Magistrate

8. During the course of the hearing, learned counsel for the petitioner has failed to point out as to how the ingredients of cheating are made out. In Hridaya Ranajan Prasad Verma & Ors. v. State of Bihar & Anr., (2000) 4 SCC 168, the Supreme Court outlined the distinction between the breach of contract and offence of cheating as follows :-

15..... 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.....



In Sarabjit Kaur v. The State of Punjab & Ors. reported as **(2023) 5 SCC 360**, the Supreme Court had emphasized that a breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up 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 of pressurize parties to settle civil disputes.

While the act of respondent No.2 of entering into an agreement to sell is a violation of the order of the Court, the same alone is not sufficient to establish a case under cheating and criminal breach of trust. In addition with respect to the breach of the *status quo* order, contempt proceedings are admittedly pending before this Court, thus the petitioner has already availed appropriate remedy.

9. For all of the aforementioned reasons, I find no ground to interfere with the impugned order and the petition is accordingly dismissed, along with pending applications.

10. No costs.

MANOJ KUMAR OHRI, J

AUGUST 23, 2024/rd