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

\+ W.P.(CRL) 3253/2024

GAURAV GOYAL .....Petitioner

Through: Ms. Neelakshi Bhadauria, Mr. Sarthak Karol, Mr. Abhishek K. Singh, Advs.

versus

STATE OF NCT, DELHI & ORS. .....Respondents

Through: Mr. Rahul Tyagi, ASC with Ms. Priya Rai, Mr. Sangeet Sibou, Mr. Amit Rohila, Mr. Aniket Kumar Singh, Advs. with SI Mahesh Kumar, PS Kalkaji

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

O R D E R

% **16.12.2024**

1. This is a petition filed under Article 226 of the Constitution of India read with section 528 of BNSS seeking quashing of FIR No. 458/2024, dated 25.09.2024, registered at PS Kalkaji, South East under Section 420 IPC, 1860 and all consequential proceedings emanating therefrom, if any.

2. In addition, the petitioner also seeks quashing of the notice dated 25.09.2024 issued by the Special Executive Magistrate, South East District under Sections 126 and 130 of BNSS.

3. Ms Bhaduria, learned counsel for the petitioner states that in the present case, the petitioner, respondent No. 3 and respondent no. 4 had entered into an Agreement to Sell, dated 28.12.2018 with respect to property bearing No. 1675/4 and 1675/4A (165 sq. yards), Gali No. 2, Govindpuri Extension, Kalkaji (“property”). The total sale consideration of the property was fixed at Rs. 3,01,12,500/- and the Sale Deed was to be executed on or before 31.05.2019.

4. It is stated that on 28.12.2018 itself, out of the total amount to be paid, respondent No. 4 issued a cheque of Rs 9 lakhs in favour of the petitioner as earnest money and the remaining amount was payable on or before the expiry of the date of execution of the Sale Deed i.e. 31.05.2019.

5. Thereafter, the petitioner terminated the Agreement to sell dated 28.12.2018 *vide* e-mail dated 23.02.2023 on account of respondent nos. 3 and 4 failing to make the remaining payments as per the terms of the Agreement to Sell. Further, the petitioner also returned the earnest money of Rs. 9 lakhs in the bank account of respondent No. 4 by way of an NEFT. The proof of payment is also on record.

6. Subsequently, the petitioner sold the property.

7. On 19.06.2024, the petitioner received a notice from the concerned Investigating officer (IO) with respect to a Complaint/Case No. 1000-GC/R-SHO/Kalkaji dated 15/06/2024, registered against the petitioner, based on the complaint of respondent nos. 3 and 4. *Vide* notice dated 19.06.2024, the petitioner was directed to join and cooperate with the investigation.

8. Further, the petitioner duly joined the investigation and submitted all relevant documents to the IO.

9. After investigation, the closure report came to be filed by IO, with respect to the aforesaid complaint case whereby respondent nos. 1 and 2 came to a conclusion that no cognizable offence is made out.

10. Thereafter, on the same grounds, the present FIR came to be registered.

11. I have heard learned counsel for the parties.

12. A perusal of the FIR shows that the respondent Nos. 3 and 4 have alleged that the petitioner has concealed the fact that the property was not

free from any pending litigation and therefore, the petitioner could not have executed the Agreement to sell dated 28.12.2018. In addition, the property was also sold at a much lower amount. It was also alleged that the petitioner has also indulged in stamp duty evasion, income tax evasion, evasion of registration of charges as well as the offences of money laundering.

13. When the matter came up for hearing on 18.10.2024, this Court issued notice and directed that no coercive action shall be taken against the petitioner.

14. As on 18.10.2024, respondent no. 4 i.e. Mr. Sandeep Vaswani was not a party to the petition and was subsequently added. As per the service report, respondent No. 3 has been served and despite service there is nobody appearing for respondent No. 3.

15. A perusal of the FIR does not indicate any cognizable offence except the fact that the petitioner has concealed the fact that the property was not free from any pending litigation and the same was not disclosed to respondent Nos. 3 and 4.

16. In this regard, my attention has been drawn to para 8 of the Agreement to Sell dated 28.12.2018. Para 8 reads as under:

> "*8. That it is hereby made absolutely clear that the SECOND PARTY is fully aware and acknowledges that the SAID PROPERTY is under litigation and the suit is pending before ADJ (SAKET) bearing case No. 53/2017 That it is agreed by the FIRST PARTY that if the SAID PROPERTY ever taken away or goes out from the possession of the SECOND PARTY on account of the said litigation then the FIRST PARTY will be liable and responsible make good the loss suffered by the SECOND PARTY and will return the full consideration amount as mentioned above to the SECOND PARTY.*"

17. A perusal of the aforesaid quoted text indicates that the fact that the

property is a part of a pending litigation was duly disclosed to respondent nos. 3 and 4.

18. For the said reasons, I am of the view that the FIR No. 458/2024 does not disclose a cognizable offence and is only being used as an arm twisting tactic. At best, the disputes if any, are of civil nature.

19. Admittedly the Agreement to Sell dated 28.12.2018 executed between the petitioner and respondent Nos. 3 and 4 has already been terminated and the amount of Rs 9 lakhs, received as advance has also been refunded.

20. It is also pertinent to note that no suit for specific performance has been filed by either respondent Nos. 3 and/or 4.

21. In this regard, the Hon'ble Supreme Court in ***State of Haryana and Others vs State of Bhajan Lal and Others*** 1992 (Supp) (1) SCC 335 *inter alia* held as under:

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
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> ....

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code."

22. Hence, in view of the law laid by the Hon'ble Supreme Court in ***State of Haryana and Others vs State of Bhajan Lal and Others*** 1992 (Supp) (1) SCC 335, the FIR No. 458/2024, dated 25.09.2024, registered at PS Kalkaji, South East under Section 420 IPC, 1860 and all consequential proceedings emanating therefrom, if any are hereby quashed.

23. As regards, the order dated 25.09.2024, issued by the Special Executive Magistrate, South East District under Sections 126 and 130 of BNSS. I am of the view that the learned Special Executive Magistrate while issuing the kalandra against the petitioner has proceeded merely on the complaint of respondent nos. 3 and 4, without making any verification.

24. To my mind, the respondent nos. 3 and 4, are indulging in criminal activities only to arm twist and harass the petitioner and the kalandra is perhaps an outcome of the same.

25. For the said reasons and for the reasons recorded above, the kalandra is also quashed.

26. The petition along with pending applications, if any, is disposed of.

JASMEET SINGH, J

DECEMBER 16, 2024/DM