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

+ **CRL.M.C. 9154/2024, CRL.M.A. 35071/2024**

KULBHUSHAN AGGARWAL

.....Petitioner

Through: Mr. Harsh Vardhan Sharma, Mr.
Neeraj Kumar, Mr. Saksham Gupta,
Mr. Kartik Garg, Advs.

versus

NIDHI GUPTA AND ANR.

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

22.11.2024

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CRL.M.A. 35072/2024

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

CRL.M.C. 9154/2024

3. This is a petition under section 528 of BNSS, 2023 (earlier section 482 of CrPC) seeking quashing of the proceedings in criminal complaint case being case No. 645/2021 titled "*Nidhi Gupta vs. Kulbhushan Aggarwal*" and summoning order dated 04.12.2013 passed by learned ACMM (Shahdara), Karkardooma Courts, Delhi.
4. It is stated by Mr. Sharma, learned counsel for the petitioner that in the present case, all the allegations are against the wife of the petitioner. It is the wife of the petitioner who received money, wife of the petitioner who issued the cheque and in fact civil suit for recovery has also been filed



against the wife of the petitioner. Further, the loan agreement has also been executed between the respondent and the wife of the petitioner. Hence, since there are no allegations against the petitioner, the complaint case needs to be quashed.

5. I am unable to agree. The operative portion of the complaint reads as under:

“3. That It is pertinent to mention here that further both accused no 1 & 2 met with the complainants and the accused no 1 induced the complainants to invest with his above-said part-time business but though he is in Govt. Job so showed his inability to receive amount in his account and requested the complainants to pay in cash only but just to win over the faith of the complainant, the accused no 1 & 2 also advised the complainants first to transfer the amount in the account of their daughter namely Kusha Aggarwal i.e. accused no 3 to built-up strong and healthy relations.

4. That thus, under influence of the accused no. 1 & 2, the complainant no 1 became ready to invest Rs. 10 Lac with the accused no 1 and as per his instructions transferred Rs 5,00,000/- on dt. 09.12.2016 & again Rs. 5,00,000/- on dt. 15.12.2016 in the account of accused no 3 from her account, i.e. PNB account no. 3980002100013971 and the accused no 1 returned the same to the complainant by transferring the amount in her said account on various dates lastly on 05.04.2018.

5. That it is pertinent to mention here that just to show the their goodness, bonafide & as per promise, the accused no. 1 started depositing some extra merger amount time to time in the account of the complainant no. 1 in lieu of 10 lac received by him in the account of accused no 3. Thus, the accused persons won over the faith of the complainant no 1 and hold her in their clutches.

6. That in the meanwhile, in the month of April 2018, the accused no further approached & met the complainants regarding his bonafide need & urgent requirement of money to survive & save his part-time business because he was in financial crises and requested



the complainants for further finance assistance/friendly loan of Rs. 80,00,000/- and also assured to repay the same very soon within a year.

7. That on first instance the complainants showed their inability but having faith on long terms rapport & on assurance given by the accused no 1 & 2 and also as they already won over the complainants by returning earlier money; the complainants assured to arrange money as much as they can do out of their personal savings, funds, de relatives.

8. That in this sequence, having seeing their reputation, status and after their regularly request for helping to getting out of the accused no 1 from loss in part-business, the complainant no 2 started helping the accused no 1 & 2 by giving money time to time and thus the accused no1 & 2 received Rs. 23,51,000/- cash in total from the complainant no2 time to time on various dated & occasions lastly on 17.09.2019 with a sum of amount of Rs 51,000/- cash. The accused no 1 didn't receive any of amount in account being working with Govt organization and to save him & his family from the eyes of Law ie. Income Tax Department or Enforcement Department.

9. That as to show their bonafide and to discharge their legal liabilities the accused no 1 & 2 also agreed to execute loan agreement accompanying with the accused no 2 postdated cheques in lieu of amount/financial help received by both of them from the complainant no 2 upto/till September 2019 and also assured to return the same within 10 months. It is pertinent to mention here the accused no I also showed stamp- papers bought by the them.

10. That apart from the above-mentioned loan amount, both the accused no 1 & 2 again asking for further amount for which the complainant no 1 told the accused no 1 that she would surely help the accused in their critical time and for this purpose she had already applied for Loan against property and very soon she would get the LAP amount and by which she would help the accused no.1 with more amount. Thus, the accused person agreed to execute loan agreement as well cheques together at the time of availing further



amount from the complainant no 1.”

6. A perusal of the above paras of the complaint shows that there are allegations against the petitioner. The fact that whether the above-raised allegations are true or untrue can only be ascertained in trial, once the parties lead their evidence and cannot be decided by this Court in a petition under section 528 of BNSS, 2023 for quashing, since the same involves disputed questions of fact.

7. For the said reasons, I am not inclined to quash proceedings in criminal complaint case being case No. 645/2021 titled “*Nidhi Gupta vs. Kulbhushan Aggarwal*” and summoning order dated 04.12.2013 passed by learned ACMM (Shahdara), Karkardooma Courts, Delhi.

8. In view of the above, the petition is dismissed.

9. However it is made clear that the observations made hereinabove are only for the purpose of deciding this petition and as and when the discharge application/petition is filed by the petitioner, the same shall be considered in accordance with law, being uninfluenced by any observations made hereinabove.

JASMEET SINGH, J

NOVEMBER 22, 2024/DM

Click here to check corrigendum, if any