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

\+ **CRL.M.C. 1931/2020 & CRL.M.A. 13790/2020, CRL.M.A. 13791/2020**

MANOJ JAIN .....Petitioner

Through: Mr. Praveen Chaturvedi, Ms. Jyoti Chaturvedi, Mr. Tarun Kumar and Mr. Kaushik Mukherjee, Advs.

versus

STATE (GOVT. OF NCT OF DELHI) .....Respondent

Through: Ms. Kiran Bairwa, APP for the State with SI Om Prakash, PS M.S. Park and SI Yogesh Kumar, PS Defence Colony.

Mr. Chirag Khurana, Adv. for R-2 / complainant.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **14.07.2025**

1. The present petition is filed challenging the order dated 04.09.2020 (hereafter '**impugned order**'), passed by the learned Additional Sessions Judge ('**ASJ**'), Shahdara District, Karkardooma Courts, Delhi, in Criminal Revision No. 76/2019.

2. By the impugned order, the learned ASJ partly allowed the revision petition filed by Respondent No.2 against order dated 25.09.2019, in the case arising out of FIR No. 48/2018 ('**FIR**'), registered at Police Station Mansarovar Park, whereby the protest petition filed by Respondent No.2 against placing of the petitioner and another accused–Neelam in column 12 of the charge sheet was dismissed. The learned ASJ observed that

sufficient evidence is available on record to summon the petitioner for the offence under Sections 420/120B of the Indian Penal Code, 1860 ('**IPC**').

3. The brief facts of the case are as follows:

3.1 On 19.02.2018, FIR was registered on a complaint made by Respondent No.2/ complainant company alleging that accused Deepak Aggarwal had approached Mr. Mukesh Bhargava (the Chairman of the complainant company) through the petitioner, who was a common acquaintance. It is alleged that the petitioner had introduced the accused Deepal as a timber merchant who wanted to sell his timber property. It was represented that the accused was the rightful owner of the subject property, whereafter, the complainant company bought the subject property for a sum of ₹1.1 crore on 05.07.2016 by way of a registered sale deed. It is alleged that pursuant to the sale, the accused Deepak entered into a rent agreement dated 11.07.2016, whereby he took the subject property on rent for a sum of ₹2.2 lakhs per month, and he requested for time to pay the rent due to his financial constraints. The accused Deepak also gave cheques for rent for some months. It is alleged that the complainant company later found out that the accused Deepak and his wife–Neelam had mortgaged the subject property with DMI Housing Finance Pvt. Ltd. and DMI Finance Pvt. Ltd. in the year 2015. It was found that certain loan agreements and ancillary agreements had been executed against the subject property on 22.01.2015 by way of which the accused Deepak and his wife had availed a loan of ₹237.42 lakhs and ₹25 lakhs respectively. It is further alleged that DMI Financial had taken possession of the subject property. It is the case of the complainant company that it has suffered a loss of 1.44 crores on account of the fraud by the accused persons, wherein the non-handing over of possession, non-payment of rent and absconding of the accused Deepak shows the intent to cheat the complainant from the very inception.

3.2 After investigation, the accused Deepak was charge sheeted for the offence under Section 420 of the IPC and the petitioner was kept in column no. 12 along with the wife of the accused Deepak. Pursuant to the same, Protest petition was filed by the complainant company for summoning of the accused persons kept in column no. 12. It was pleaded that the petitioner had introduced the accused Deepak to the complainant and his role is clearly described in the statement of the complainant and other witnesses. It was also pleaded that the petitioner has other criminal involvements of similar nature which shows his propensity to commit such crimes.

3.3 By order dated 25.09.2019, the learned Trial Court dismissed the protest petition filed by the complainant. In relation to the petitioner, it was noted that the mere fact that the petitioner had introduced the accused Deepak to the complainant does not *prima facie* show any *mala fide* intention on his part. It was further noted that there is nothing on record to show that the petitioner had any knowledge with respect to the subject property being mortgaged. It was also noted that merely because the petitioner was involved in other cases, the same was insufficient to show his complicity with the accused Deepak as well.

3.4 By the impugned order, the learned ASJ observed that it appears that the statements of the witnesses recorded under Section 161 of the Code of Criminal Procedure, 1973 ('**CrPC**') had not been brought to the notice of the learned Trial Court at the time of arguments on the protest petition. It was held that there was sufficient material to summon the petitioner for the offence under Section 420 of the IPC. The learned ASJ took into consideration the statements of Mr. Mukesh Bhargava as well as the statement of Mr. Ashok Anand, who was an employee of DMI Housing Finance and had stated that the petitioner had accompanied the accused Deepak at DMI office.

3.5 Aggrieved by the same, the petitioner has preferred the present petition.

4. The learned counsel for the petitioner submits that the impugned order is bad in law and the learned ASJ has failed to consider that there is no allegation against the petitioner in relation to him being the beneficiary to the transaction, a witness to the Sale Deed or a mediator for the transaction.

5. He submits that the petitioner and Mr. Mukesh Bhargava have long standing business relations and the petitioner had also invested in another firm under the proprietorship of Mr. Mukesh Bhargava. He further submits that no role has been attributed on the petitioner in the FIR apart from introducing the complainant to the accused Deepak and the complainant only started pressing the case against the petitioner after the petitioner demanded refund of the amount loaned by him.

6. He submits that there is no material that crystallises the allegations of cheating or conspiracy against the petitioner. He further submits that it is improbable that Mr. Ashok recalls the face of the petitioner, who had allegedly accompanied the accused Deepak. He submits that it is rightly found in the investigation that there is no evidence to proceed against the petitioner.

7. *Per contra*, the learned counsel for Respondent No.2 submits that the protest petition was dismissed by the learned Trial Court after observing that there was no material to show

that the petitioner had any knowledge about the mortgaging of the subject property, however, the said observation is clearly belied by the statements of Mr. Ashok Anand, an employee of DMI House Finance, who has stated that the petitioner accompanied the accused Deepak to the office. He submits that the learned ASJ has also rightly noted that the statement of Mr. Mukesh Bhargava also depicts that the petitioner was instrumental in introducing the accused Deepak and he was also present at the time of registration.

8. He stresses that the veracity of the statements of the witnesses will be seen during the course of the trial and a mini trial cannot be conducted at this stage.

9. I have heard the counsel and perused the record.

10. At the outset, it is relevant to note that the petitioner has invoked the inherent jurisdiction of this Court. It is settled law that this Court ought to exercise its inherent jurisdiction sparingly, especially when the Sessions Court has already exercised revisional jurisdiction. However, the present case is not one where there are concurrent findings by the Sessions Court and Magistrate. In this case, the learned Trial Court dismissed the protest petition filed by the complainant company seeking issuance of summons to the petitioner and the wife of main accused Deepak, namely, Neelam. Subsequently, the learned ASJ found that sufficient material was on record for summoning the petitioner. The same warrants a scrupulous appraisal of the facts of the case to ascertain whether interference is required to secure the ends of justice.

11. Issuance of summons is a serious issue and the same cannot be issued in a routine manner. In the case of ***Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others*** :

(1998) 5 SCC 749, the Hon'ble Apex Court had observed as under:

> *"28. **Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course.** It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. **The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record** and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.*
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> *29. No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial...."*
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> (emphasis supplied)

12. Much emphasis has been laid by the learned counsel for Respondent No.2 upon the statements tendered by Mr. Mukesh Bhargava as well as Mr. Ashok Anand. The learned ASJ was also weighed by the aforesaid statements and observed that while it is difficult to find direct evidence against accused persons for the offence of conspiracy, however, the circumstances borne out from the statements of the witnesses indicate that the petitioner was part of the conspiracy to cheat Respondent No.2. The relevant portion of the impugned order is as under:

> *"11. Perusal of challan further reveals that on 07.12.2018, statement of Mukesh Bhargava was recorded under Section 161 Cr.P.C. In his statement, he has inter-alia stated that in*

January, 2016, Manoj Jain came to him and told that due to financial need, Deepak Aggarwal wished to sell his shop. Then, Manoj Jain showed the impugned property in the month of May-June, 2016. At that time, Deepak Aggarwal was present at the shop and he stated that he would hand over the shop to him. When he (Mukesh Bhargava) and Manoj Jain were returning in the car, he asked that he wished to see the property documents, then Manoj Jain stated that the title deeds had been kept in the locker of wife of the accused Deepak Aggarwal. Thereafter, he (Mukesh Bhargava) made payment of the consideration amount to Deepak Aggarwal. On the date of registration of the sale deed, Deepak Aggarwal and Manoj Jain brought certified copy of the registry instead of bringing original documents. They stated that Deepak Aggarwal could not find time to get the original documents from locker of his wife. Thereafter, he came to know that the impugned property had been mortgaged with DMI in the year 2015. He called Manoj Jain to him and asked to accompany him to visit DMI office. When he alongwith Manoj Jain visited DMI office and met with Legal Head, Ms. Priyanka Middha and Anand Prakash, they immediately recognized him and stated that he (Manoj Jain) earlier used to come with Deepak Aggarwal. On this, the face of Manoj Jain turned pale. In his statement itself, Mukesh Bhargava has alleged that Deepak Aggarwal, Neelam Aggarwal and Manoj Jain had conspired with intention to cheat him and sold him the impugned property, which had already been mortgaged.

12. Further, statement of Ashok Anand, employee of legal department of DMI was also recorded on 14.12.2018. He has also stated on the similar lines as stated by Mukesh Bhargava that he (Ashok Anand) identified Manoj Jain, who used to accompany Deepak Aggarwal and Neelam Aggarwal at DMI office. He has further stated that Manoj Jain knew that property was mortgaged with DMI.

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14. It is clear from the abovesaid legal position that for the offence of conspiracy, it is very difficult to find direct evidence against the accused persons and usually, it can be inferred from the circumstances only. The statement of Mukesh Bhargava, Director of the complainant company, recorded on 07.12.2018, clearly depicts that Manoj Jain had been instrumental in introducing Deepak Aggarwal to Mukesh Bhargava for sale of the impugned property to the complainant company. He had also represented Deepak Aggarwal by saying that the property documents were kept in the locker of wife of Deepak Aggarwal. He was also present at the time of registration of the sale deed. If he had no concern with Deepak Aggarwal after having introduced him to Mukesh Bhargava, then why he had been visiting DMI office accompanying Deepak Aggarwal. All these *circumstances, prima facie, lead to infer that Deepak Aggarwal and Manoj Jain had conspired to cheat Mukesh Bhargava and pursuant to the said conspiracy, the sale deed was executed on 05.07.2016 in favour of the complainant company. This Court has restrained itself from detailed analysis of the facts and circumstances as it may prejudice the case of accused persons during trial."*

13. The chargesheet clearly indicates that the petitioner was not charge sheeted as no evidence came forth which evidenced that the petitioner had knowledge of the subject property being mortgaged. It is mentioned in the chargesheet that while Mr. Ashok Anand had stated that the petitioner had accompanied the accused Deepak at the DMI office, however, no date or time of the same was mentioned. As mentioned in the charge sheet, the learned ASJ has failed to appreciate that the accused Deepak had only approached the office of Mr. Ashok Anand *after* he defaulted in payments of instalments, that is, after July-August-2016. It is also mentioned in the chargesheet that by that time, the accused Deepak had already transferred the subject property to the complainant. Although it is argued that the veracity of the statements can only be tested in trial, however, even if the statement of the said witness is taken at the highest, the same does not reflect that the petitioner had knowledge of the mortgaging of the property prior to the parties executing the sale deed in relation to the same. The said witness is merely an employee who came into contact with the accused Deepak after registration of the sale deed and his deposition for the purpose of proving that the petitioner had prior knowledge of the subject property being mortgaged or for proving the alleged conspiracy between the parties will be irrelevant. In the absence of any corroborative evidence, mere speculation on part of the said witness is not sufficient to set criminal law in motion against

Respondent No.2.

14. As also noted in the chargesheet, no documents executed at the DMI office bore the signature of the petitioner and there was no material to show that he had brokered the transaction either. The petitioner did not sign as a witness to the sale deed either.

15. It is only Mr. Mukesh Bhargava who claimed in his statement that the petitioner had brokered the transaction. It is only in his statement under Section 161 of the CrPC that the said witness stated that the petitioner was part of the conspiracy and his face had turned "pale" when the DMI officers recognised him. The said witness has further supplemented his earlier stance by stating that the petitioner was involved in the transaction and even present at the time of execution of the sale deed. Undisputably, the FIR was registered in February, 2018, way after the petitioner had visited the DMI office with Mr. Mukesh Bhargava. Even so, it is pertinent to note that no such allegation was made in the FIR against the petitioner. Moreover, in the FIR, the complainant has specifically mentioned that the complaint is against the accused Deepak and his wife, who have connived to cheat the complainant.

16. Even otherwise, it is relevant to note that for summons to be issued against the petitioner, the Court was required to see whether a *prima facie* case was made out against the petitioner and if the material on record establishes sufficient grounds to proceed against him. Concededly, the petitioner is not the owner of the subject property. As discussed above, at this stage, there is no cogent material to show that the petitioner was aware of the subject property being mortgaged or which shows his involvement in the sale transaction apart from introducing the

accused Deepak to Mr. Mukesh either. It is also relevant to note that the petitioner does not appear to be the beneficiary to the offence. The bald allegations against the petitioner, at this stage, are not corroborated by any independent material and the same are insufficient for summoning the petitioner for the offences under Sections 420/120B of the IPC.

17. In view of the aforesaid discussion, in the opinion of this Court, the learned ASJ erred in observing that sufficient evidence is available for on record to summon the petitioner for the offences under Sections 420/120B of the IPC. The impugned order is set aside to the extent of the observations made in reference to the petitioner.

18. The present petition is allowed in the aforesaid terms. Pending applications also stand disposed of.

AMIT MAHAJAN, J

JULY 14, 2025