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

% **Pronounced on: 31st May, 2022**

\+ **CRL.REV.P. 56/2021, CRL.M.As. 1798/2021 & 18389/2021**

SATISH MOHAN AGGARWAL ..... Petitioner
Through: Mr.Pankaj Gupta, Mr.Rahul Shukla and Mr.Akshit Sachdeva, Advs.

Versus

STATE & ORS. ..... Respondents
Through: Ms. Meenakshi Dahiya, APP for State with SI Ravinder Dagar
Mr.Rajiv Bajaj, Adv. for R-2 to R-5

\+ **CRL.M.C. 1933/2020, CRL.M.A. 13797/2020**

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CORAM:
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. The accused/Satish Mohan Aggarwal before the learned Trial Court, has filed Crl.M.C.1933/2020 under Section 482 of the Code of Criminal Procedure, 1973 (for short, "**Cr.P.C.**") seeking the quashing of FIR No.

41/2012, registered at Police Station Pahar Ganj, Delhi under Sections 420/467/34 of the Indian Penal Code, 1860 (for short, "**IPC**"). He has also filed Crl.Rev.P.56/2021 against the orders dated 12th November, 2020 of the learned Trial Court whereby charge against him has been framed for offence under Section 420 read with Section 34 IPC, though the charge-sheet filed against him was under Sections 420/467/34/120B IPC.

2. Since the decision in Crl.M.C.1933/2020, filed for quashing of the FIR in question, would directly affect the decision in Crl.Rev.P.56/2021, therefore, both the matters are disposed of by this common judgment.

3. The allegation in the FIR as made by the complainant/respondent No.2, namely, Sanjeev Kumar Arora, is to the effect that the accused persons, which included the petitioner herein, had, through six Sale-Deeds dated 14th May, 2007 and a Memorandum of Understanding dated 7th June, 2007 (for short, "**MOU**") sold the property bearing No.1595 to 1600, situated at Main Bazar, Pahar Ganj, New Delhi-110055, to the respondents No.2 to 5. However, the original documents relating to the property were not handed over to them, as the accused persons informed the respondents No.2 to 5 that the original papers were lying with the State Bank of Patiala, Parliament Street, New Delhi (hereinafter referred to as the 'Bank'). An assurance was given that the said documents would be obtained from the Bank and handed over to the purchasers/the respondents No.2 to 5 herein. According to the complainant/respondent No.2, the true facts had not been disclosed to the respondents No.2 to 5 since it subsequently came to their knowledge that on 31st October, 2011, the Debts Recovery Tribunal-I, Jhandewalan, New Delhi (for short, "**DRT-I**") had decreed a sum of

Rs.1.73 crores in favour of the Bank. According to the complainant/respondent No.2, cheating had occurred when the petitioner had claimed the property to be free from all encumbrances, whereas even at the time of execution of the Sale-Deeds, the property was under litigation. It is stated that when the respondents No.2 to 5 demanded the original documents from the accused persons, they threatened and intimidated them. Therefore, the complaint was filed alleging cheating and criminal conspiracy.

4. Subsequently, when the MOU was handed over by the petitioner to the police, the complainant/respondent No.2 stated that possibly the MOU dated 7th June, 2007 had been got signed by the respondent No.3/Rakesh Kumar Arora fraudulently in the midst of other papers. In other words, the MOU was got signed deceitfully by the petitioner/accused person from the respondent No.3/Rakesh Kumar Arora.

5. When the matter was considered by the learned Trial Court at the time of framing of charge, the FSL report had been placed before it, which gave a conclusive finding that the thumb impressions on the MOU were found to be identical as those on the Sale-Deeds. Therefore, the learned Trial Court discharged the accused persons, including the petitioner, of the offence under Section 467/34 IPC.

6. It is informed that the complainant/State has preferred a revision before the learned Sessions Court, which is still pending. Though an application was sought to be moved for calling that revision before this Court, since that revision petition is maintainable before the learned

Sessions Court and further, since the decision in Crl.M.C.1933/2020 would affect even that revision, it is considered unnecessary to call for that file.

7. It is submitted by Mr.Pankaj Gupta, learned counsel for petitioner, that no case under Section 420 or 467 IPC or Section 120B IPC was made out, as the MOU had clearly listed out the fact that there was litigation pending before the DRT and other litigation pending in respect of possession to be received from tenants and others, and that symbolic possession of some part of the property had been handed over, an assurance was also incorporated in the MOU that the petitioner would *"take all possible legal steps by minimising legal proceedings for purchaser party"*. It was submitted that a Civil Suit had also been filed by the respondents No.2 to 5, being CS DJ/2564/2017, while the petitioner had also filed a Civil Suit, being CS DJ/618108/2016 against the respondents No.2 to 5. The disputes between the parties were purely civil in nature. It was submitted that the sale transaction was a contingent contract and if there was any breach, it had to be addressed in the civil court.

8. The learned counsel submitted that the occupants and tenants vacated the portions in their possession by first week of August, 2007 and these portions were simultaneously handed over to the respondents No.2 to 5. Genuine efforts were made by the petitioner to settle the matter with the Bank. Additionally, an amount of Rs.5 lakhs was also paid to the Bank on 27th October, 2009, but due to ulterior motives of Bank officials, the matter got stuck. Furthermore, the respondents No.2 to 5 did not pay the balance consideration of Rs.62.50 lakhs, out of the agreed consideration of

Rs.2,62,50,000/-. It was submitted that when the respondents No.2 to 5 had kept the balance sale consideration of Rs.62.50 lakhs with them, it clearly reflected the knowledge of the respondents No.2 to 5 of the pending case before the DRT-I. It was only after the DRT-I decreed the case of the Bank for a sum of Rs.37,38,700/- along with *pendente lite* and future interest at 14%, with quarterly rests, that the respondents No.2 to 5 got the present FIR registered. An appeal had also been preferred before the Debts Recovery Appellate Tribunal on 30th December, 2011, being Appeal No.488/2013. The learned counsel submitted that in fact in the written statement filed in the civil suit to the plaint of the petitioner, the respondents No.2 to 5 herein, have admitted the execution of the MOU, retention of Rs.62.50 lakhs (which was equivalent to the Bank's claim as in June, 2007) and payment of Rs.42 lakhs at the time of grant of bail to the accused.

9. Learned counsel for petitioner submitted that the offence of forgery of the MOU has been demolished by the FSL report. With regard to the offence of cheating, clearly none was made out as the complainant/FIR does not disclose that the accused had mal-intent from the very beginning and had wrongly induced the respondents No.2 to 5 to part with their money. The possession of the property has also remained with the respondents No.2 to 5 from August, 2007. With regard to the original papers, it was truthfully disclosed that it was with the Bank. The MOU records that the DRT proceedings are also pending. Thus, in the absence of intent to cheat from the very beginning, there was no conspiracy or shared criminal intent to cheat the respondents No.2 to 5. Therefore, it was

submitted that the FIR was liable to be quashed. Every fact was known to the respondents No.2 to 5. Their conflicting statements made to the police under Section 161 Cr.P.C. would establish the falsity of their claims that they did not know about the mortgage. Why else would an exact sum be withheld by them? While the DRT judgment was challenged upto the Supreme Court, and despite a stay, the respondents No.2 to 5 went and made payments to the Bank directly, rendering the proceedings before the Supreme Court infructuous. Now, the respondents No.2 to 5 were seeking to recover all this money from the petitioner and the FIR was a means to twist the arms of the accused persons.

10. Mr.Rajiv Bajaj, learned counsel for the respondents No.2 to 5, submitted that under Section 482 Cr.P.C., the court can interfere only if there was miscarriage of justice. The defence of the accused was an irrelevant consideration. It was further submitted that the intent of cheating from the first day was made out as was evident from the submissions made by the witnesses to the police that though the first promise was that the original documents would be handed over immediately after execution of the Sale-Deeds, it was after the parties reached their residence that the accused informed that the original documents are with the Bank. Thereafter, repeatedly when the respondents No. 2 to 5 sought for the original documents, the accused were evasive and finally, they threatened harm to the respondents No.2 to 5, if they insisted on the original documents. The decree of the DRT-I came as a shock to them. However, now the respondents No.2 to 5 have redeemed the mortgage, and were entitled to recover it from the petitioner. Cheating was made out as despite

the lack of any authority to sell the property till the redemption, the petitioner and co-accused had done so, making the respondents No.2 to 5 part with their money.

11. I have heard the submissions of the learned counsel for the parties as also the learned APP for the State, and I have perused the cited judgments and the material on record. Before considering the aspect of commission of offence under Section 420 read with Section 34 IPC, the question of commission of offence under Section 467 read with Section 34 IPC may be considered. The claim of the complainant/respondent No.2 is that existence of the MOU was not known to the respondents No.2 to 5, till it was produced by the petitioner during the hearing of his bail application and that of his sister, and the statement recorded under Section 161 Cr.P.C. in this regard, much later in the year 2016, placed on the record as Annexure-I (Colly.) [at page 105 in Crl.Rev.P.56/2021] and as Annexure-H (Colly.) [at page No.74 in Crl.M.C.1933/2020], that the MOU was got signed by fraud by placing the same in the bunch of other papers viz. Sale-Deeds, inspires no confidence, as a perusal of the contents of the MOU establishes that the same had been prepared to assure the respondents No.2 to 5 that they would be handed over the possession of the entire property after the tenants and occupants, with whom there was litigation, vacate the property and the original deeds would also be handed over to them, and that every effort would be made to do so, at the earliest.

12. The entire tenor of the document is so much protective of the interest of the respondents No.2 to 5 that it appears as if the same had been prepared at their instance, to cover up for any eventuality of the petitioner

reneging on his assurances. The FSL report, as referred to in the order of the learned Trial Court dated 12th November, 2020, shows that even the thumb impressions on the MOU are identical to the thumb impressions in the Sale-Deeds. It is not possible to believe that a document had been shuffled between Sale-Deeds to obtain the thumb impressions on a document that records not just the pendency of the litigation, but also the efforts that the petitioner would be making to handover the vacant possession at the earliest. Thus, there is no apparent forgery committed by the petitioner.

13. The execution of the MOU does not appear to be doubtful, as the original sale transaction was agreed to be completed by 31st May, 2007, which was extended upto 31st August, 2007 by an agreement for extension of time, which was entered into by all co-owners and the purchasers i.e., the petitioner and the complainant/respondent No.2 on behalf of other family members.

14. A very important fact has also to be noted in this context. Admittedly, Rs.62.50 lakhs was withheld by the respondents No.2 to 5. This was the amount, apparently, claimed by the Bank as on June, 2007. While the retention of this amount has been admitted, since the time of the execution of the Sale-Deeds, the respondents No.2 to 5 have not been forthcoming with an explanation for doing so. It is, therefore, crystal clear that the respondents No.2 to 5 were fully aware of the recovery proceedings initiated by the Bank and had sought the protection of their interest by execution of the MOU and retention of the very specific amount of Rs.62.50 lakhs, till the original Sale-Deeds were handed over to them.

15. In view of all these circumstances, clearly there can be no cheating alleged against the petitioner. No other fact has been urged to contend that the accused/petitioner had mal-intent from the very beginning. Other facts urged by the petitioner, namely, that the decree of the DRT-I was challenged upto the Supreme Court, and that there was a stay granted, despite which the respondents No.2 to 5 proceeded to settle the matter with the Bank, are not disputed. In fact, it has been admitted on behalf of the respondents No.2 to 5 that they had to pay all the dues to the Bank and redeem the mortgage. It is a matter of record that a sum of Rs.42 lakhs was also paid by the petitioner to the respondents No.2 to 5 at the time of grant of bail to the petitioner and his sister. If the respondents No.2 to 5 feel entitled to the amount they had paid to the Bank, it is a suit for recovery that would lie. In fact, they have actually filed such a suit, being CS DJ/2564/2017.

16. It has been repeatedly held by the Supreme Court, including in ***Paramjeet Batra v. State of Uttarakhand and Ors.***, (2013) 11 SCC 673, that while exercising its jurisdiction under Section 482 Cr.P.C., the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of a criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is being given a cloak of a criminal offence. In

such a situation, if a civil remedy is available and is, in fact, adopted, as has happened in the case at hand, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court.

17. Even in ***Anand Kumar Mohatta and Anr. v. State (NCT of Delhi), Department of Home and Anr.***, (2019) 11 SCC 706, the Supreme Court noticed in anguish the growing trend in business circles to convert purely civil disputes into criminal cases. In ***Krishna Lal Chawla and Ors. v. State of U.P. and Anr.***, (2021) 5 SCC 435, the Supreme Court underlined the obligation on the judiciary to nip the frivolous litigation in the bud, whether civil or criminal. It observed as below:-

> *"26. It is a settled canon of law that this Court has inherent powers to prevent the abuse of its own processes, that this Court shall not suffer a litigant utilising the institution of justice for unjust means. Thus, it would be only proper for this Court to deny any relief to a litigant who attempts to pollute the stream of justice by coming to it with his unclean hands. Similarly, a litigant pursuing frivolous and vexatious proceedings cannot claim unlimited right upon court time and public money to achieve his ends."*

18. The Supreme Court also underlined how the criminal procedure was being used to harass adversaries and frivolous litigation had become the order of the day. It further underlined how a falsely accused person would suffer not only monetary damages, but also in his reputation as he would be stigmatized in the society.

19. One may refer to the decision of the Supreme Court in ***State of Haryana v. Bhajan Lal***, 1992 Supp (1) SCC 335, where the categories of cases in which inherent powers under Section 482 Cr.P.C. could be exercised, has been listed, though not in an exhaustive manner, nevertheless, providing sufficient guidance to the High Courts while exercising these inherent powers. Para 102 of ***Bhajan Lal (supra)*** is reproduced for ready reference:-

> *"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.*
>
> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *(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.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

20. The present case would be covered under clauses (1), (3) and (7).

21. The admitted facts in the present case are such that would show that the respondents No.2 to 5 while being fully aware of the mortgage with the Bank, and the possession not completely with the petitioner and his siblings, chose to proceed further in the matter and purchased the property in question, withholding a sum of Rs.62.50 lakhs, clearly to cover up an eventuality if they were to pay the amount due to the Bank. Since June, 2007 and August, 2007, they have remained in possession of very valuable property, viz. No.1595 to 1600, situated at Main Bazar, Pahar Ganj, New Delhi-110055, yet they seem to claim that they were induced to part with money by some misrepresentation. This is difficult to believe. The FIR is completely motivated with oblique motives. In fact, subsequently, the respondents No.2 to 5 have also filed a civil suit for recovery, being CS DJ/2564/2017. The liability to pay off the Bank would no doubt be decided as per law by the learned Civil Court. But, this FIR cannot stand.

22. In the light of the foregoing discussion, the petition [Crl.M.C.1933/2020] is allowed and FIR No. 41/2012, registered at Police Station Pahar Ganj, Delhi under Sections 420/467/34 IPC and all the proceedings emanating therefrom, including the revision petition pending before the learned District and Session Judge, Central District, Tis Hazari Courts, Delhi, being CRL.REV.279/2020 titled ***Sanjeev Kumar v. State***, stand quashed.

23. In the light of this view taken, no separate orders are called for in Crl.Rev.P.56/2021.

24. Both these petitions are accordingly disposed of, along with the pending applications.

25. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

MAY 31, 2022
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