

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CRIMINAL PROCEDURE

CRL.M.C. No. 2488/2011

Judgment reserved on : 2nd August, 2011

Judgment delivered on: 1st September, 2011

AMAN ULLAH KHAN Petitioner
Through: Mr.Vikas Arora, Adv.

versus

STATE & ORS. Respondents
Through: Mr.M. N. Dudeja, APP along with
SI Ajeet Kumar, PS Hazrat Nizamuddin
Ms.Suman Kapoor, Ad. for the
complainant/R-2

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant petition the petitioner has sought to quash the complaint case bearing No.03/10 titled as “Mehtar Elahi & Ors. Vs. Aman Ullah Khan” and FIR No.112/2011, PS Hazrat Nizamuddin under Sections 406/420/468/471/506 Indian Penal Code, 1860.

2. The brief facts of the case is that respondent Nos. 2 to 6 filed

a complaint against the petitioner under Section 200 Cr.P.C. for the offence punishable under Sections 406/420/468/471/506 Indian Penal Code, 1860. Vide order dated 28.04.2011 Id. MM, South-East Delhi, after hearing the arguments at length on application under Section 156(3) Cr.P.C. and after considering the contents of the complaint and report of IO, was of the opinion that matter requires detailed field investigation and the same cannot be proved by incomplete evidence by complainant and SHO was directed to lodge an FIR as per the complaint of the complainant within 24 hours of receiving the order and file a report on 05.05.2011.

3. Pursuance to the above stated order, FIR No.112/2011, at PS Hazrat Nizamuddin under Sections 406/420/468 /471/506 Indian Penal Code, 1860 was registered on 01.05.2011.

4. Vide order dated 02.05.2011 of this Court, protection was granted to petitioner on arrest.

5. Ld. counsel for the petitioner submits that in the original complaint dated 17.05.2010, the only allegation against the petitioner was that pursuant to agreement dated 17.03.2008 the petitioner has not shown the original papers of property B-4, Nizamuddin (West), New Delhi and afterwards the complainant

came to know that the property has been mortgaged to a bank against overdraft facility which the petitioner had intentionally hidden from him. Otherwise also, the agreement dated 17.03.2008 itself mentions that the property is free from all encumbrances except Bank Over Draft facility which shall be cleared before the date of registration or final payment whichever is later.

6. Ld. counsel for the petitioner further submits that even during the police enquiry as mentioned in the Action taken report, the complainant Mehar Elahi has stated to the police that in second agreement it was made clear that on property B-4, Nizamuddin (West), New Delhi there is a bank over draft facility. It is further mentioned that Mehar Elahi could not make the final payment by the due date as the buyer of his property has not made payment to him in time and also that he could not get loan from the bank. It is further mentioned that “as per version of Mehar Elahi that as the original documents of the said property were in the bank so it was mutually decided that the original papers will be released only then the property can be registered in our names.” As such the allegation of misrepresentation or non-disclosure of complete facts or hiding facts from Mehar Elahi is absolutely false and baseless.

7. Thereafter, the complainant has filed another complaint with the police and complaint case before the court wherein he changed the allegations completely and has admitted that the bank overdraft facility is mentioned in the agreement dated 17.03.2008, however, the name of the bank and other details were not disclosed. This fact itself shows that the complainant is desperate to wreck vengeance upon the petitioner and is trying to make a criminal case out of a purely civil transaction and breach of agreement. The arbitration proceedings have already been initiated by the complainant and petition under Section 11 of Arbitration and Conciliation Act seeking appointment of an arbitrator is pending before this Court.

8. It is further submitted by ld. counsel for the petitioner that the breach of agreement is also due to complainant's own fault, as he had failed to make the payment within the time frame. This fact has also been noted by Hon'ble Mr. Justice Vipin Sanghi in his order dated 19.11.2010. In paras 16 to 20, it is clearly mentioned that it was the petitioner/complainant alone who was responsible for the breach of agreement. It has been further observed that the telegram dated 26.08.2008 sent by the petitioner herein clearly shows that respondent/Aman Ullah Khan (petitioner herein) was

insisting upon timely compliance of the agreement and was willing to complete the transaction.

9. It is further submitted that the complaint made to the police and the complaint case filed before the court do not disclose commission of any offence whatsoever. There are no allegation of forgery of any document as such no offence under Section 468/471 Indian Penal Code, 1860 is made out. Similarly the allegations regarding offence under Section 506 Indian Penal Code, 1860 are absolutely vague and bogus. On the contrary it was the complainant who had been threatening and defaming the petitioner and his family for which a FIR was registered on 08.08.2010 against the respondent/complainant Mehar Elahi and after investigation into that FIR, charge-sheet has also been filed and same is pending trial. Similarly, in the entire complaint there is no allegation of criminal breach of trust or cheating punishable under Section 406/420 Indian Penal Code, 1860.

10. Ld. counsel for the petitioner further submits that in the instant case the breach of agreement has been committed by the respondent/complainant himself by not adhering to the schedule of payment and not making the final payment by 31.08.2008 in terms

of agreement to sell dated 17.03.2008. Because of the failure of the complainant, the agreement dated 17.03.2008 stand terminated and the petitioner is entitled to forfeit the advance amount. Petitioner had already issued notice dated 01.09.2008 to the complainant in this regard. However, how much damages the petitioner has suffered due to the breach of agreement by the complainant is subject matter of adjudication in the arbitration proceedings in terms of para 21 of the order dated 19.11.2010 passed by Id. Single Judge of this Court.

11. Ld. counsel for the petitioner further submits that it is clear from the facts, that it was the respondent/complainant himself who could not fulfil his part of the bargain by making timely payment to the petitioner. It is to be noted that in the year 2008 there was slump in the market and property market has crashed as such the complainant did not do anything for a period of about 02 years, and when the property prices increased due to boom in the market, the complainant started threatening and pressurizing the petitioner to return double the amount of money or in the alternate sell the property at 2008 prices.

12. Admittedly, the property at present is in the name of

possession of the petitioner and there is injunction against the respondent/complainant, thereby restraining them from interfering in the possession or trespassing upon the property of the petitioner in any manner whatsoever. The agreement dated 17.03.2008, is a simple agreement, whereby, the petitioner was to sell the property to the respondent and handover the peaceful possession of the property at the time of receiving the full payment and registration of sale deed.

13. Ld. counsel for the petitioner further submits that while exercising its powers under Section 482 Cr.P.C. the Court has to see, whether, there is any misuse of process of law and that the present complaint does not disclose commission of any crime and at the best it is a civil dispute, for which arbitration proceedings are already initiated by the respondent himself.

14. Ld. counsel for the petitioner further submits that in these circumstances, the petition may be allowed and the complaint case titled as “Meher Elahi & Ors. Vs. Aman U. Khan” pending in the court of Id. MM, Saket, New Delhi and FIR No.112/2011 at PS Hazrat Nizamuddin may be quashed.

15. On the other hand ld. counsel for the respondent

No.2/complainant submits that the investigation of the aforesaid complaint is at initial stage, as the case itself was registered only on 01.05.2011, on the orders of the Id. Magistrate passed under section 156(3) Cr.P.C. and there is no occasion or ground for its quashing, as the allegations contained in the FIR clearly spell out commission of an offence of cheating to the tune of `3.35 crores, criminal breach of trust, forgery, use of forge documents and criminal intimidation etc., punishable under sections 420/406/468/471/506 Indian Penal Code, 1860.

16. Ld. counsel for the respondent No.2/complainant further submits that the present petition filed under Section 482 Cr.P.C. is not maintainable, in view of the law laid down by the Hon'ble Supreme Court, followed by our own High Court, wherein, it has been repeatedly held that the FIR has to be taken on its face value and then it is to be examined as to whether it spells out the commission of offences complained of and that there is no question of considering the merits of the allegations contained in the FIR at that stage or testing the veracity of the allegations contained in the said FIR.

17. Ld. counsel for the respondent No.2/complainant further

submits that it is a settled law that the Court in exercise of its powers under Section 482 Cr.P.C. cannot interfere with the investigation at an initial stage, particularly, when prima facie case is made out to do so. As long as the investigation is being made independently and the charge sheet has not been filed before the Court, it is not open to the High court to interfere with the investigation.

18. Ld. counsel for the respondent No.2/complainant has relied upon case of '***State of West Bengal and Ors. Vs. Swapan Kumar Guha and Ors.***' AIR 1992 Supreme Court pg.949, wherein it was held that as under:-

"If an offence is disclosed, the High Court under Art.226 of the Constitution will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence, no investigation should normally be permitted. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the Court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of

the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the Court normally does not interfere with the investigation of a case where an offence has been disclosed.”

19. Ld. counsel for the respondent No.2/complainant has further relied upon case of ***‘J.P. Sharma Vs. Vinod Kumar Jain & Ors.’*** (1986) 3 SCC Pg.67, wherein it was held that as under:-

“The High Court erred in quashing the criminal proceedings under Section 482 Cr.P.C. on an erroneous basis when on prima facie being satisfied the Metropolitan Magistrate had taken cognizance of the alleged offences. The question at this stage, is, not whether there was any truth in the allegations made but the question is whether on the basis of the allegations, a cognizable offence or offences had been alleged to have been committed. The facts subsequently found out to prove the truth or otherwise on the allegation is not a ground on the basis of which the complaint can be quashed. Taking all the allegations in the complaint to be true, without adding or subtracting anything, at this stage, it can be said that a prima facie case for trial had been made out. That is the limit of the power to be exercised by the High Court under Section 482 Cr.P.C. The High Court in the instant case has exceeded that

jurisdiction.”

20. Ld. counsel for the respondent No.2/complainant has further relied upon case of **‘T.Vengama Naidu Vs. T. Dora Swamy Naidu & Ors.’** 2007 (3) SCR 348, wherein it was held that as under:-

“It is settled law that an FIR and the consequent investigation cannot be quashed unless there is no offence spelt out from the same. The law in this respect is settled that the said FIR has to be taken on its face value and then it is to be examined as to whether it spells out the offences complained of. There was no question of considering the merits of the allegations contained in the FIR at that stage or testing the veracity of allegations. In this case, admittedly, the investigation was in progress. The police had also not reported back to the Magistrate the result of their investigation. Under such circumstances, the FIR could have been quashed only and only if there appeared to be no offence spelt out therein. A glance at the FIR suggests that there were serious allegations against both the accused, respondents 1 and 2 herein inasmuch as it was specifically alleged that in spite of the revocation of the General Power of Attorney and in spite of a specific notice to that effect by the complainant to the first respondent, the first respondent went on dishonestly to execute the sale deed in favour of his own daughter on the basis of the

said revoked General Power of Attorney. It is alleged against the first respondent that he had no right over the property and yet he had executed a document in favour of the second respondent without any authority with an intention to cause loss to the complainant and to cheat him. It was alleged against the second respondent that she was well aware that the first respondent was not competent to sell the property so as to defraud and cheat the complainant and, therefore, she also was liable to be punished under Sections 464, 423, 420 read with Section 34 IPC. It was not for the learned Judge at the stage of investigation to examine the nature of the transaction and further to examine as to whether any offence was actually committed by the accused persons or not. At that stage the only inquiry which could have been made was as to whether the complaint or the FIR did contain allegations of any offence. Whether those offences were made out, even prima facie, could not have been examined at that stage as the investigation was pending then. We, therefore, do not agree with the learned Single Judge that the FIR was liable to be quashed. We also do not agree with the learned Judge that there are no ingredients of the offences complained of in the FIR and this was a civil dispute. However, we do not wish to go deeper into that question. Our prima facie examination satisfies us that there were ingredients of offences complained of and,

therefore, at that stage the High Court could not have quashed the FIR as well as the investigation.”

21. Ld. counsel for the respondent No.2/complainant has further relied upon case of **‘Surender Arora Vs. State (Delhi Admn.)’** 1996(1) C.C.Cases 416 (HC), wherein it was held that as under:-

“To the same effect are the observations of the Supreme Court in the case of State of Tamil Nadu V. Thirukkural Perumal, J.T.1995(3)S.C.166, where it was observed that the Court cannot be justified in embarking upon an enquiry as to the genuineness of the allegations made in the Fir or complaint on the basis of evidence collected during investigation only while dealing with petitioner under Section 482. High Court cannot evaluate such evidence which is yet to be produced before the Trial Court. Quashing of the FIR by the High Court in such circumstances was deprecated by the Supreme Court. Similarly in the case of M/s Jayant Vitamins Ltd. V. Chaitanya kumar & Anr. J.T.1992(4)S.C.487 it was observed that the investigation is the statutory function of police, superintendence of which vests with the State Government. The High Court, therefore, is not justified without compelling and justifiable reasons to interfere with the same. Supreme Court as early as in 1963 in the case of State of West Bengal v. S.N.Basak

A.I.R. 1963 S.C.447 held that investigation into cognizable offence cannot be interfered with when no charge has been laid. To the same effect are the observations of the Supreme Court in the case of Man Singh V. Delhi Admn. 1974 S.C. 1146. The question was posed whether the inherent jurisdiction to quash the proceedings could be exercised at the stage of investigation by police. The answer was in the negative.

12. Similarly, this Court in the case of Washeshar Nath Chadha V. State RDJ 1992(23) Short Notes page 39 decided on 10th March,1992, held that High Court cannot interfere in exercise of its inherent power under Section 482, Criminal Procedure Code . in the collection of evidence and arrest even by illegal means.

13. Relying on the observations of the Apex Court, the only conclusion which can be arrived at is that this Court in exercise of its inherent power under Section 482 Cr.P.C. cannot interfere with the investigation at an initial stage particularly when prima facie no case is made out to do so. So long as the investigation is being made indecently and the matter is not before the Court, it is not open to this Court to interfere with the investigation.”

22. Ld. counsel for the respondent No.2/complainant has further

argued that mere reading of the complaint and the material which has already come on record during investigation of the case, it is not a fit case, where, investigation of the case could be quashed. The police is yet to decide as to whether the accused/petitioner is liable to be prosecuted or not, and in case the accused/petitioner is finally charged and if he is aggrieved, he can always approach the trial court and the higher courts for his discharge or for any other remedy, which is available to him, in law.

23. Ld. counsel for the respondent No.2/complainant has further submitted that the present complaint is a case of cheating and criminal breach of trust involving cheating of a sum of `3.35 crores of complainants, which admittedly was taken by the accused/petitioner and till date not returned to the aggrieved complainant/respondent No.2. It is also clear from the record that despite orders of this Court dated 19.11.2010, directing the accused to deposit in court a sum of `3.35 crores within three months from the date of the order i.e. by 18.02.2011, the said order has not been complied with and it is for this reason that this Court vide order dated 14.02.2011 granted injunction stay in favour of the respondent and against the petitioner/accused, directing him not to create any third party interest in the property in question, which

he had agreed to sell to the complainant for a total sum of `5.05 crores.

24. Ld. counsel for the respondent No.2/complainant has further submitted that in the month of January, 2007, the accused/petitioner approached the complainant and offered to sell his property, bearing No.B-4, Nizamuddin West, New Delhi (which he intended to develop, after clearing the bank loan and demolishing the existing structure) for total sale consideration of `1.44 crores. After having allured the respondent/complainant, the petitioner/accused had extracted a sum of `30 lakhs from the complainant and promised to give possession of the first floor of the said property on or before 31.03.2008. Since the accused did not have the intention to clear the bank loan on the said property nor had any intention to demolish the existing structure, where, he was living with his family. More so, he again approached the complainant in the month of March, 2008 itself, expressing his inability to raise construction, as promised and offered to sale his entire house for total sale consideration of ` 5.05 crores, after adjusting a sum of ` 30 lakhs already paid and further a sum of ` 30 lakhs as compensation for not having given the possession of the first floor of the said house.

25. Ld. counsel for the respondent No.2/complainant has further submitted that in this way, the petitioner/accused allured the complainant to further part with a sum of ` 2.75 crores by 23.08.2008, making the total amount paid as ` 3.35crores (which comes to 66% of the total sale consideration of ` 5.05 crores) and suddenly with intention to cheat and misappropriate the complainant's hard earned money, i.e., ` 3.35 crores, forfeited and pocketed the entire amount, which the complainant had paid to the petitioner/accused during the period January 2007 to 23rd August 2008.

26. Ld. counsel for the respondent No.2/complainant has further submits that later on the accused agreed to settle the matter with the complainant and also gave in writing a note dated 21.06.2010 to the effect that he was prepared to settle the dispute with the complainant in respect the plot in question but again backed out from his promise and started filing frivolous suit and complaint against the complainant, in order to terrorize him from taking legal action against him in the court of law.

27. Ld. counsel for the respondent No.2/complainant has further submits that even in this Court in an application filed under Section

9 of the Arbitration Act, the accused agreed to return the said sum of ` 3.35 crores, which he had taken from the complainant by allurement and cheating but again backed out and did not even honour the order of this Hon'ble Court dated 19.11.2010. The respondent was compelled to approach the police for registration of the case, leading to the filing of an application under Section 156(3) Cr.P.C., on which the Id. Magistrate, vide order dated 28.04.2011 ordered registration of the case against the accused and in pursuance to the said order, formal FIR No.112/2011 dated 01.05.2011 was registered against the accused/petitioner.

28. Ld. counsel for the respondent No.2/complainant has further submits that being aggrieved by the order of the Id. Magistrate dated 28.04.2011, the petitioner filed a petition before this Court for quashing of the said order of investigation, however, the said petition being Crl.M.C.1370/2011 was dismissed, vide order dated 21.07.2011. Thereafter, the complainant filed the present petition for quashing of the FIR with the sole object that the said FIR be not investigated and charge sheet be not filed against him in court.

29. After hearing both the Id. counsel for the parties it is clear that the petitioner/accused has deceived the complainant to part

with a sum of `3.35crores on pretext of selling the house in question to the complainant/respondent No.2.

30. It is further clear from the FIR that the petitioner/ accused fraudulently and dishonestly induced the complainant to first deliver him a sum of ` 30 lakhs and further to deliver him ` 2.75 crores more (total 3.35 crores) with malafide intention to retain and convert the same for his own use, being well aware of the fact that neither he is going to develop the property in question nor he is going to clear the bank loan; or he had any intention to part with his aforesaid property to the complainant and in case the complainant had known that the accused had no intention to develop the said property and part with possession of the same to the complainant.

31. In my opinion, it is clear that it amounts to cheating and criminal breach of trust, admittedly, from the very fact that the petitioner/accused is living in the same house and has not even removed a brick from the said house and that he has not cleared the bank loan etc.

32. Keeping the above discussion into view and after hearing learned counsel for the parties, I am of the view that the petitioner

is a person, who is not a person of credibility, who not only cheated the respondent No.2 but even flouted the order of this Court by not depositing the amount as was directed by Hon'ble Mr. Justice Vipin Sanghi.

33. I find no merit in the case. Accordingly, CRL. M.C. No.2488/2011 deserves to be dismissed with costs.

34. Accordingly, CRL. M.C. No.2488/2011 is dismissed. I impose costs of ` 1 lakh to be deposited in favour of the Prime Minister's Relief Fund within 4 weeks from today. The proof of the same shall be placed on record.

Sd/-

SURESH KAIT, J