SUPREME COURT OF INDIA

Anand Kumar Mohatta

Vs.

State (Govt. of NCT of Delhi) Department of Home

Crl.A.No.1395 of 2018

(S.A.Bobde and L.Nageswara Rao,JJ.,)

15.12.2018

JUDGMENT

S.A.Bobde,J.,

SLP(Crl.)No. 3730 of 20161

1. Leave granted.

2. This Criminal Appeal is filed by Appellants challenging the final judgment and order dated 02.02.2016 of the High Court of Delhi. The High Court vide the above dated final judgment and order dismissed the petition filed by the Appellants under Section 482 of Criminal Procedure Code and refused to quash FIR No.0139/2014 dated 20.08.2014 and the charge sheet dated 03.08.2018. 20.08.2014. During the pendency of the appeal in this Court, Respondent No.1 filed charge sheet dated 03.08.2018 in the Court of Metropolitan Magistrate, Patiala House Court, Delhi against the Appellants herein. Thus, by way of amendment to the main prayer in the appeal, Appellants have also prayed for quashing of charge sheet dated 03.08.2018. Appellants seek quashing of the FIR dated Facts

3. This appeal is by an accused against whom a FIR was lodged on 20.08.2014, in respect of disputes arising out of the agreement dated 03.06.1993 entered into between the Appellant No.1 i.e. Mr. Anand Kumar Mohatta and the complainant i.e. Ansal Properties & Infrastructure Ltd. The FIR was lodged about 21 years after the agreement. Initially, the FIR was also lodged against the wife of the Appellant No.1 i.e. Mrs. Shobha Anand Mohatta, but no offence has been made out against her after investigation.

4. The agreement entered into by the two parties is with regard to the development of the property owned by the Appellants. This property is situated at 20, Feroz Shah Road, New Delhi, which falls under Lutyens Zone. The property was initially owned by the Appellant No.1 and later on ownership of the property was transferred to Appellant No.2 i.e. wife of Appellant No.1. Desirous of developing the property, the Appellant No.1 entered into a development agreement dated 03.06.1993 with Respondent No.2 M/s Ansal Properties &

Infrastructure Ltd. The parties agreed to develop the said property by constructing a high-rise building comprising of flats. Respondent No.2 paid a sum of Rs. One crore as contemplated by clause 38 of the agreement. The agreement could not be fulfilled as the new building regulations which were introduced prohibited the construction of high-rise building in the Lutyens Bungalow Zone, where the property is situated. (See *New Delhi Municipal Council v. Tanvi Trading and Credit Private Limited)*[1].

5. Thereafter, on 14.03.2011, the Appellant No.1 wrote a letter stating that he does not wish to develop the property. The Appellants did not take any further action neither did they return the amount advanced by the Respondent No.2.

6. Apparently, since the Appellant had declined all alternate offers made by the complainant but ostensibly on the ground that this security amount of Rs. One crore had not been refunded, Respondent No.2 on 19.11.2011 filed a Criminal Complaint before the SHO, Police Station Barakhamba Road, New Delhi complaining of offences under Section 406 and 420 followed by a complaint dated 10.09.2012 with the Additional Commissioner of Police. On refusal of police authorities to register FIR against the Appellants, the Respondent-complainant invoked powers of the Court under Section 156 (3) of the Cr. P.C on 03.11.2012. Thereafter, on 11.11.2013 Respondent No. 2 withdrew the complaint filed under Section 156 (3). The FIR with which we are concerned was lodged on 20.08.2014 against the Appellants for offence under Section 406 of IPC on a fresh complaint filed by the Respondent No.2.

7. Following which, the Appellants approached the High Court under Section 482 of the Cr. P.C seeking to quash FIR dated 20.08.2014. According to the Appellants, the FIR was completely untenable in the facts and circumstances of the case. Mainly, the amount of Rs. One crore was rightfully retained by them and there was no question of such retention constituting a criminal breach of trust. Moreover, assuming that the Respondent No. 2 had a grievance only about the retention of money, the redressal ought to have been sought before a Civil Court. Therefore, the lodging of the FIR was mala fide in nature and done with the intention to pressurize the Appellants to agree to certain new terms and conditions of the agreement to which the Appellants did not want to proceed with.

8. It is the case of the complainant-Respondent No.2 that the Appellant No.1 is guilty of the offence under Section 406 since he had clandestinely and surreptitiously transferred the subject property in the name of his wife i.e. Appellant No.2. This was done to defeat the agreement dated 03.06.1993. It is also said that the Appellants are guilty of abusing the process of Court by undervaluing the property in a collusive suit before the Bombay High Court and thus wrongly transferred the property.

9. The High Court, however, disposed of the Appellants' petition filed under Section 482 on the ground that the petition has been filed pre-maturely as the case is still at the stage of investigation. The High Court directed the investigation to proceed and further directed the Appellants to join the investigation. Appellants thereafter preferred the present appeal by way of Special Leave Petition in this Court. In the present appeal, this Court on the prima

facie view of the matter protected the Appellants from arrest and directed that the investigation be continued. Accordingly, the Respondent No.1 carried out investigation and has filed a report under Section 173 of the Cr. P.C in the Court of Metropolitan Magistrate, Patiala House Court, Delhi. Since, the police have now submitted a charge sheet, Appellants have additionally filed amendment application seeking to incorporate prayer for quashing of charge sheet in addition to prayer for quashing of the FIR. Contentions

10. Shri Mahesh Jethmalani, Senior Counsel appearing for the Appellants submitted that the transactions in the present case which are set to constitute the offence under Section 406 cannot under any circumstances be said to constitute an offence under that section. Assuming that the Respondent No.2 have a grievance about the alleged wrongful retention of the amount of Rs. One crore, the dispute could at best be a civil dispute.

11. The learned counsel further submitted that the amount of Rs. One crore advanced to the Appellants was liable to be refunded under Clause 30 (b) which is as follows: -

> "Developer handing over possession of the areas of the Owner's share to the Owner in the said Group Housing Complex".

Since this contingency did not arise the amount has not been refunded. In addition, the counsel submitted that the Appellants retained the amount because the developer i.e. Respondent No.2 is in part possession of some of the subject property and has also not complied with the obligation of having a tenant vacated from the property.

12. Shri Sanjiv Sen, learned Senior Counsel for the Respondent No.2 submitted that the petition for quashing of FIR was untenable since the proceedings have gone past the stage of FIR and have resulted in a charge sheet.

13. Shri Sanjiv Sen, vehemently submitted that the charge under Section 406 against the Appellant No.1 arises from the fact that the Appellant No.1 has fraudulently transferred the property which is the subject matter of the development agreement dated 03.06.1993 to his wife i.e Appellant No.2.

14. Shri Ajit Kumar Sinha, Learned Senior Counsel, appearing for the Respondent No.1 i.e. State government of NCT, places reliance on the charge sheet to submit that the Appellants have committed an offence punishable under Section 406 by not returning the amount of Rs. One Crore advanced by the Respondent No.2.

Conclusion

15. First, we would like to deal with the submission of the learned Senior Counsel for the Respondent No.2 that once the charge sheet is filed, petition for quashing of FIR is untenable. We do not see any merit in this submission, keeping in mind the position of this Court in *Joseph Salvaraj A. v. State of Gujarat*[1]. In the case of Joseph Salvaraj A. (supra), this Court while deciding the question whether the High Court could entertain the 482

petition for quashing of FIR, when the charge sheet was filed by the police during the pendency of the 482 petition, observed: -

> "16. Thus, from the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge-sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge- sheet, documents, etc. or not."

16. Even otherwise it must be remembered that the provision invoked by the accused before the High Court is Section 482 Cr. P.C and that this Court is hearing an appeal from an order under Section 482 of Cr.P.C. Section 482 of Cr.P.C reads as follows: -

> "482. Saving of inherent power of the High Court.- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

17. There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High court can exercise jurisdiction under Section 482 of Cr.P.C even when the discharge application is pending with the trial court . Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court.

18. The second submission of learned counsel for the Respondent No.2 is that the Appellant No.1 has fraudulently transferred the property which is the subject matter of the agreement dated 03.06.1993 to his wife and has thereby committed criminal breach of trust. This charge is wholly untenable and rather extraordinary since the alleged fraudulent transfer of property by the Appellant No.1 to his wife, assuming it to be illegal, by no stretch of imagination can constitute the offence of a criminal breach of trust, since the property was not entrusted by the Respondent No.2 to the Appellants. The property belonged to Appellant No.1 and there was therefore no question of Appellants having been entrusted with their own property, and that too by the complainant, who had merely entered into a development agreement in respect of the property.

19. Lastly, we find that the FIR and the charge sheet essentially charged the petitioner for an offence under Section 406 of the Cr.P.C. for retaining the amount of Rs. One crore which was advanced to him by the Respondents at the time of entering into the development agreement. Whether an offence under Section 406 made out

20. It is necessary to refer to Sections 405 and 406 of the IPC in order to ascertain, whether in the facts and circumstances of the present case, an offence under Section 406 is made out against the Appellants.

Section 405 and 406 of the IPC reads as follows: -

> "405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".
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> [Explanation [1]—A person, being an employer [of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.] [Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]
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> 406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

21. The essence of the offence lies in the use of the property entrusted to a person by that person, in violation of any direction of law or any legal contract which he has made during the discharge of such trust. In the present case, the amount of Rs. One crore was paid by the complainant-Respondent to the Appellants as an interest free deposit on the signing of the agreement. It was liable to be refunded to the complainant simultaneously on handing over of possession of the area of the owner's share to the owner in the group housing complex vide Clause 30 (b) of the agreement dated 03.06.1993.

22. Two things are significant in the transaction between the parties. Firstly, that the occasion for returning the amount i.e. the developer handing over the possession of the area

of the owner's share to the owner in the group housing complex, has not occurred. According to the Appellants, the contract stands frustrated because no group housing can be legally built on 20 Feroz Shah Road, New Delhi since it falls in the Lutyens Bungalow Zone. Appellant No.1 has therefore, terminated the contract. Further, the amount has been retained by him as a security because not only is there any handing over of constructed portion, the complainant has also got into part possession of the property and has not handed it back. Also, the complainant has failed to get the property vacated from the tenant's possession.

23. We, thus find that it is not possible to hold that the amount of Rs. One crore which was paid along with the development agreement as a deposit can be said to have been entrustment of property which has been dishonestly converted to his own use or disposed of in violation of any direction of law or contract by the Appellant. The Appellants have not used the amount nor misappropriated it contrary to any direction of law or contract which prescribes how the amount has to be dealt with. Going by the agreement dated 03.06.1993, the amount has to be returned upon the handing over of the constructed area of the owner which admittedly has not been done. Most significantly the Respondent No.2 has not demanded the return of the amount at any point of time. In fact, it is the specific contention of the Respondent No.2 that he has not demanded the amount because the agreement is still in subsistence. We do not see how it can be contended by any stretch of imagination that the Appellants have misappropriated the amount or dishonestly used the amount contrary to any law or contract. In any case, we find that the dispute has the contours of a dispute of civil nature and does not constitute a criminal offence.

24. Having given our anxious consideration, we are of the view that assuming that there is a security deposit of Rs. One Crore and that he has misappropriated the dispute between the two parties can only be a civil dispute.

25. In *Indian Oil Corporation v. NEPC India Ltd. and others*[1], this Court observed as follows: -

> "13 Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged "

The Court noticed a growing trend in business circles to convert purely civil dispute into criminal cases. We find it strange that the complainant has not made any attempt for the recovery of the money of Rs. One Crore except by filing this criminal complaint. This action appears to be mala fide and unsustainable.

26. In *State of Haryana and Ors. v Bhajan Lal and Ors*[2]. , this Court has set out the categories of cases in which the inherent power under Section 482 of Cr.P.C. can be exercised. Para 102 of the judgment reads as follows: -

> "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. 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.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently

(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."

27. We are of the opinion that the present case falls under the 1st, 3rd and 5th category set out in the para 102 of the judgment in the case of Bhajan Lal (supra). In such a situation, the High Court erred in dismissing the petition of the Appellants filed under Section 482 of

Cr.P.C. This was a fit case for the High Court to exercise its inherent power under Section 482 of Cr.P.C. to quash the FIR.

28. It is necessary here to remember the words of this Court in *State of Karnataka v. L. Muniswamy and others*[2] which read as follows: -

> "7. In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice "

28. We find that the prosecution is mala fide, untenable and solely intended to harass the Appellants. We are forfeited in view of the Respondent not having made any attempt to recover the deposit of Rs. One Crore through a civil action.

29. We have, therefore, no hesitation in quashing the FIR and the charge sheet filed against the Appellants. Hence, the FIR No.0139/2014 dated 20.08.2014 and charge sheet dated 03.08.2018 are hereby quashed.

30. For the aforesaid reasons, we hereby set aside the impugned judgment and order dated 02.02.2016 of High Court of Delhi. Accordingly, appeal is allowed along with the application filed by the Appellants seeking amendment of main prayer.

Judgment Referred.

[1]*(2008) 8 SCC 0765*
[2]*(2011) 7 SCC 0059*
[3]*(2006) 6 SCC 0736*
[4]*(1993) 3 SCC 0151*
[5]*(1977) 2 SCC 0699*