

(2018) 09 DEL CK 0280

In the Delhi High Court

Case No : Criminal Miscellaneous Case No.2199 Of 2013

Ashok Kumar Sehghal & Anr

APPELLANT

Vs

State & Ors

RESPONDENT

Date of Decision : 24-09-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 341, 380, 454
Negotiable Instruments Act, 1881 — Section 138
Code of Criminal Procedure, 1973 — Section 482

Citation : (2018) 09 DEL CK 0280

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Judgement

SANJEEV SACHDEVA, J.

1. Petitioner seeks quashing of FIR No.107/2012 under Sections 454/380/341/120B/34 of the IPC, Police Station Maurya Enclave.Â

2. FIR was registered on the complaint of respondent No.2 who contended that he had purchased the second-floor rights from one Smt. Nirmal Saraf.

The petitioners were owners of the first floor of the said property. They had sold the second-floor rights to Smt. Nirmal Saraf who in turn sold it to the

complainant. It is contended that the complainant was in discussion with the petitioners for the purposes of developing his second floor. Despite having

agreed not to obstruct the complainant from raising the construction on the second floor, it is alleged that the petitioners did not permit him to raise

construction.Â

3. It is contended that the complainant was in possession of one room, kitchen and bathroom on the second floor. Since 2009, it is alleged that he used

to regularly visit the second floor of this property. On 27.03.2012 when he visited

the property he was shocked to notice that his lock on the second floor had been broken and physical possession had been taken by the petitioners and they had forcibly occupied the second floor, prevented him from going on the second floor, threatened him and directed him to leave. It is contended that in the said property, the complainant had kept some old household goods and one old air conditioner and it was suspected that the petitioners had even removed his goods. Subject FIR was registered on the complaint of respondent No.2.

4. Petitioner per contra contends that petitioner was in use and occupation of the said second floor, however, a Settlement Agreement was entered into between the parties on 29.04.2012 wherein it was inter-alia agreed as under: -

1. That the first party will hand over the key of second floor with physically vacant possession of the property bearing no. 110, Vaishali. Pitampura.

Delhi to the second party.

2. That the second party will withdraw her complaint/case after having receipt the key and possession of the aforesaid second floor of property bearing No.110, Vaishali, Pitampura, Delhi from the first party.

3. That it is further agreed between the parties that the second party will pay a sum of Rs. 5.00,000/- (Rupees Five Lacs only) to the first party only

after construction starts completion of three days work and thereafter a sum of Rs. 10,00,000/- (Rupees Ten Lacs only) would be paid as soon

as when linter of the aforesaid second floor is laid, completely. It is further agreed that the second party shall pay a sum of Rs. 15,00,000/- (Rupees

Fifteen Lacs only) to the first party one month before the marriage of second daughter of the first party or on completion of second floor, whichever

takes place earlier. It is further agreed that the balance amount of Rs. 45,00,000/- (Rupees Forty Five Lacs only) shall be paid by the second party to

the first party on completion of the third floor, however, if third floor is not constructed this amount of Rs. 45 Lacs shall not be paid. Even if second

floor is not constructed no amount would be payable to the first party.

4. That it is further agreed that alternatively if the entire building is re-constructed from the foundation, Rs. 10,00,000/- (Rupees Ten Lacs only) shall

be paid to the first party at the time of demolition of the property. Rs. 24.00,000/- (Rupees Twenty Four Lacs) would be adjusted against the cost of

construction of first floor of the first party, Rs. 10,09,000/- (Rupees Ten Lacs only) would be paid when the superstructure would be completed and

Rs. 16,00,000/- (Rupees Sixteen Lacs only) would be paid at the time of finishing the interiors. If the second party does not complete the construction

within 18 months from the date of demolition, he will pay monthly rent of the rented accommodation hired by the first party for living till the completion

of the building. It shall remain valid if construction is commenced within 2 years of date of agreement. The second party shall pay a sum of Rs.15

Lacs (Rupees Fifteen Lacs only) to the first party on the date of completion of construction, in case the marriage of the second daughter of the first

party does not take place till that date.

5. That it is further agreed that if the second party wishes to sell the second floor with or without construction with roof rights in that event he will first

offer to the first party and first party will pay the amount as per the market rate to the second party.

6. That the first party's wife shall withdraw her case which she has filed U/s 138 N.I. Act against the second party in the Court of Ms. Shefali

Barnala Tandon, M.M. Rohini Courts, Delhi titled as "Kavita Sehgal vs. Urvashi Khurana & Anr." Listed for 05.06.2012.

7. That the second party also undertakes to compound the case FIR No.107/2012 U/s 454/380/341/120-B/34 IPC against the first party/accused and

his wife and he shall also cooperate in quashing of the present case FIR before the Hon'ble High Court of Delhi, if need arises. In case no

construction takes place on the second floor, even then the first party shall be entitled to Rs.15 lacs one month before the marriage of the second

daughter of the first party.

8. That both the parties undertake to appear before the competent Court of law as and when called to give a requisite statement for compounding /

quashing / withdrawal of the proceedings of the cases mentioned above.

5. As per the settlement, petitioner was to hand over the keys of the second floor with peaceful vacant possession to the respondents. Respondent had

agreed to pay a sum of Rs.75 lakhs to the petitioners and consented to compound/quash the subject FIR. It is further contended by the petitioners that

when the anticipatory bail application was filed by petitioner No.2, respondent No.2 had appeared before the Trial Court and on 09.07.2012, had

categorically accepted the Settlement Deed dated 24.09.2012 and had also stated that he had instructed his counsel to move a joint petition for

quashing of the subject FIR.Â

6. It would be expedient to extract the statement given by respondent No.2 before the Sessions Court in the Bail application filed by the petitioner

No.2. The statement reads as under:- â??Statement of Sh. Raj Kumar Khurana S/o Sh. O. P. Khurana, age 46 years, R/o KU-21, Pitampura, Delhi-

34.

On S. A.

I am the complainant in the present case. I have compromised / settled all my disputes with the applicant / accused Kavita Sehgal, copy of which

compromise deed is Ex.C1 bearing my signatures at point A and also bearing the signatures of Kavita Sehgal at point B. Pursuant to the settlement, I

have already received the possession of the Second Floor of property bearing No. 110, Vaishali, Pitampura, Delhi-34 on 01.05.2012. I have instructed

my counsel to move a joint petition along with the applicant / accused in the Hon'ble High Court for quashing of the present FIR. I have no objection to

the grant of bail to the applicant / accused Kavita Sehgal.â??

7. It is in these circumstances that petitioners seek quashing of the subject FIR contending that there was a Settlement Agreement between the

parties and petitioner has performed his part of the obligations under the agreement to hand over the peaceful physical vacant possession of the

second floor to the respondents Nos.2 & 3. It is submitted that petitioner was to receive the agreed amount on construction of the second floor and

third floor in stages of the subject property.Â

8. Admittedly, both the second and third floors of the property have now been constructed. The objection of the respondents to the present petition is

that no construction was allowed by the petitioners until 02.05.2013 even on the second floor of the property and further possession was not delivered

by the petitioners but was taken though police.Â

9. The stand of the petitioners is that they never objected to raising of the construction but the construction was not permitted by the Municipal

Corporation for want of sanction plan. Once the plans were sanctioned, constructions were raised and today admittedly, both the second and third

floors have been completed.Â

10. It is the case of the petitioners that not only are the petitioners entitled to quashing of the subject FIR but are also entitled to the balance amounts

as was agreed to in the Settlement Agreement. It is contended that since the FIR had already been registered, the possession was handed over to

respondent Nos.2 & 3 through police.

11. The question that arises for consideration is as to whether there was a settlement between the parties and once having agreed to quashing of the

subject FIR, can the respondents be permitted to resile from the settlement specially when the petitioners have acted upon the same, to their

detriment. With regard to the entitlement of the petitioners to the balance amount as per the agreement is concerned, the same does not arise for

consideration in the present petition.

12. Settlement Agreement dated 29.04.2012 is not in dispute. As per the Settlement Agreement, petitioners were to hand over the keys of the second

floor with physical vacant possession of the property to the respondents and also to withdraw the complaint filed by the petitioners against the

respondents under Section 138 of the Negotiable Instruments Act. Rest of the obligations as per the Settlement Agreement were of respondent Nos.2

& 3.Â

13. It is an admitted position that possession of the second floor was handed over to respondent Nos.2 & 3, though through police. Further it is not in

dispute that petitioner No.2, in terms of the Settlement Agreement, also filed an application seeking to withdraw the complaint filed by her under

Section 138 of the Negotiable Instruments Act against respondent Nos.2 & 3. Construction of both the second and third floor is complete. Petitioners

have performed their part of the obligation, however, respondent Nos.2 & 3 are attempting to wriggle out of their obligation under the said Settlement

Agreement, which cannot be permitted.Â

14. Respondent Nos.2 & 3, once having agreed to compounding of the offences and quashing of the subject FIR and thereafter having taken

advantage of the performance of the obligations by the petitioners, cannot be now permitted to wriggle out of their obligation to perform their part of

the agreement. The conduct of the respondents clearly shows that having availed of the benefit of the settlement, they wish to keep the criminal

proceedings alive so as to harass the petitioners. It may also be noticed that on a statement given by the respondents that they had settled with the petitioners and had consented to the quashing of the subject FIR, the Trial Court was persuaded to grant bail to the petitioner No.2 acting upon the statement of respondent No.2.

15. Thus, I am of the view that continuation of the criminal proceedings would be an abuse of the process of law. Accordingly, in exercise of powers under Section 482 Cr.P.C. and in view of the settlement, despite the same being opposed by respondent Nos.2 & 3, FIR No.107/2012 under Sections 454/380/341/120B/34 of the IPC, Police Station Maurya Enclave and all its consequent proceedings are liable to be quashed.

16. Accordingly,Â FIRÂ No.107/2012Â underÂ Sections 454/380/341/120B/34 of the IPC, Police Station Maurya Enclave and the consequent proceedings emanating there from are quashed. Petitioners shall also be entitled to costs, from respondent Nos. 2 & 3, quantified at Rs. 25,000/-.

17. Order Dasti under signatures of Court Master. Â