

(2018) 10 DEL CK 0530

In the Delhi High Court

Case No : Criminal Miscellaneous Case No.1327 Of 2015

Jai Singh

APPELLANT

Vs

State & Ors

RESPONDENT

Date of Decision : 30-10-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 420

Citation : (2018) 10 DEL CK 0530

Hon'ble Judges : R.K.Gauba, J

Bench : Single Bench

Advocate : Abhimanyu Gupta, S. Vinayak, K.S. Ahuja, L.K. Verma, Bobby Verma, Ajay Verma

Final Decision : Dismissed

Judgement

1. The petitioner had addressed a complaint on 21.07.2000 to the station house officer of police station Mehrauli making allegations, inter alia, against

the private party respondents claiming that he had been cheated. The police not having acted upon the said complaint, he filed the criminal complaint

(CC No. 47/1/2003) before the court of Metropolitan Magistrate, it resulting in preliminary inquiry on the basis of which, the said respondents stood

summoned. On the basis of pre-charge evidence that was adduced, the Metropolitan Magistrate considered the case for further proceedings. By

order dated 06.06.2014, the Metropolitan Magistrate concluded that no case of any charge for offence under Section 420 of Indian Penal Code, 1860

(IPC), as was being pressed, had been made out and thus, directed the private party respondents to be discharged. The petitioner challenged the said

order in the Court of Sessions (by CrI. Rev. 28/2014) which was dismissed by the said court by its order dated 12.01.2015, the view taken by the

Metropolitan Magistrate having been endorsed and affirmed.

2. Aggrieved by the above said two consecutive orders of the two courts below, the present petition has been filed invoking the inherent power and

jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) praying for directions to be given for the private party

respondents to be put on trial on the charge of the offence under Section 420 IPC. The petition has been resisted by the said respondents, the State

taking a neutral stand primarily on the fact that it is a matter arising out of a private complaint.

3. The background facts have been noted by the revisional court in the impugned order in the following manner:-

1.1 The above mentioned land was agreed to be sold to the complainant by accused persons and receipts annexure C-1 were executed. In the

said receipts it was mentioned that land in question had already been acquired by the government but said acquisition has been quashed by the court.

As per complainant, the land was purchased on the agreement that seller would pay back the compensation amount received by them. Accused

persons and their co-sellers did not execute the documents in favour of the complainant. Therefore, complainant filed a suit for specific performance

of agreement to sell of the said land bearing suit no. 3234/90 before Honâble High Court of Delhi. A joint application for compromise was filed by

complainant and accused persons and other co-sellers before Honâble High Court u/o 23 of Code of Civil Procedure, (in short âCPCâ). The

statements of plaintiff and defendants were recorded and a compromise decree was passed in IA no. 4513/93. Accordingly, as per compromise

between the parties, decree dated 14.07.93 was passed by the Honâble High Court in terms of said compromise. As per this compromise accused

persons and other co sellers agreed to execute the required documents in favour of the complainant and to apply for no objection certificate from the

different government agencies.

1.2 As per complainant, due to mis representation of accused persons that the order of land acquisition has been quashed by the court, he was induced

to pay amount of Rs. 56 lacs to accused persons and other seller and therefore, offence of cheating was committed by the accused persons.â

4. The Metropolitan Magistrate, in her order dated 06.06.2014, had inter alia,

noted that the complainant during his cross-examination had admitted that he had been aware that the accused persons had already received compensation awarded by the Government for the entire land in question i.e. 20.5 acres having been acquired. The said court rejected the contention of the petitioner (the complainant) that he had learnt only in June 2000 about the acquisition of the land in question by DDA whereafter he had filed the present complaint.

5. Taking note, inter alia, of these facts, as indeed the litigation in the civil suit leading to the execution proceedings no. 289/2001 which have been taken out before this Court, the revisional court rejected the case of the complainant by following observations:-

10. Para 1 of the complaint filed before Ld. Trial Court reflects the knowledge of complainant about the acquisition of land by the government.

Case of complainant is that he was told by accused persons that the order of acquisition of land has been quashed by the courts. In his statement,

CW1 Jai Singh admitted that he was dealing in construction work as a government contractor. He also stated that he dealt in property business and used to rely on the broker. In his cross-examination he clearly admitted that he was aware that the land in question was acquired by the government.

11. The main argument of Id. Counsel for complainant is that in receipts it was clearly mentioned that the order of acquisition was set aside by the courts and therefore, he acted on the mis representation of the accused persons. In his cross examination, he clearly admitted that he was aware about the acquisition of land. Surprisingly, no order of any court has been pointed to show that acquisition of land was ever quashed by any court.

Moreover, joint application for compromise filed before Honâble High Court in the civil suit does not mention anything about the acquisition of land or quashing order. It is clear from order dated 04.01.2002 passed by Honâble High Court of Delhi in Ex.P.no. 289/2001 titled as Jai Singh vs.

Raghubir Singh that as per the report of Local Commissioner, the land in question was acquired by the government of NCT of Delhi and vest in Delhi

Development Authority, therefore, Honâble High Court dismissed the execution petition filed by the present petitioner for execution of compromise

decree. If all above mentioned documents and statement of CW1 Jai Singh is read together, it is clearly established that even at the time of initial

transaction complainant was aware about the acquisition of land. It appears from the material on record that at the time of filing joint application for

compromise before Honâ??ble High Court in civil suit, both the parties in collusion with each other remained silent about the acquisition of land by

the government and obtained the compromise decree.

12. In view of above mentioned observations, I have no doubt that complainant was well aware about the acquisition of land but still he entered in a

deal to purchase land from the accused persons which was not owned by them at the time of transaction. In these circumstances, complainant cannot

take benefit of his own wrong. His plea of mis representation or inducement appears to be false and after thought. Accordingly, I do not find any

illegality or irregularity or error in the impugned order by Ld. MMâ??.

6. There is no escape from the admission appearing in the cross-examination of the petitioner about he being aware of the acquisition of the lands in

question. His case primarily rests on the allegations that at the time of the deal being settled, and he being induced to pay money, a false representation

had been made to the effect that the land acquisition proceedings had been quashed by this Court. It has come on record that the petitioner has been a

dealer in real estate. He would, thus, not be ignorant or gullible as a lay person might be. His admissions do show that he was aware that

compensation had already been paid in lieu of the acquisition of the lands. If it were so, there is no reason why he would remain under the wrong

impression that there had been no acquisition or that the party which was offering to sell the lands had a good title. Being in the real estate business,

basic prudence would have persuaded him to find facts and make inquiries if the land acquisitions proceedings had been set aside by any court.

7. In the above facts and circumstances, the view taken by the two courts below cannot be faulted. There is no error or infirmity in the impugned

orders. The petition is dismissed.