

(2020) 02 DEL CK 0093

In the Delhi High Court

Case No : Criminal Writ Petition No. 405 Of 2018, Criminal Miscellaneous Application No. 31738, 31739, 31740 Of 2019

Manish Wesley

APPELLANT

Vs

State Of Nct Delhi & Anr

RESPONDENT

Date of Decision : 04-02-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 420, 468, 471

Citation : (2020) 02 DEL CK 0093

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Nitish Masey, Manoj Saxena, Bishikh Mohanty, Nandita Rao

Judgement

Vibhu Bakhru, J

1. The petitioner has filed the present petition, inter alia, praying that FIR No. 332/2013, under Sections 420/34 of the IPC registered with Police

Station Mehrauli, and all consequential proceedings emanating therefrom be quashed.

2. The said petition was filed on 25.01.2018. Although, almost five years have elapsed since lodging of the FIR, the respondent had not filed a charge sheet till the filing of the present petition.

3. The FIR in question, FIR no. 332/2013, was registered on 25.05.2013 at the instance of one Syed Mohammad Abuzar (the complainant). He had

alleged that one Manish Singh (referring to the petitioner by an incorrect name) had introduced him to one Chanderharsh Singh, resident of 667, First

Floor, Ward No.5, Mehrauli, New Delhi. He alleged that the petitioner had informed him that Chanderharsh Singh owned a flat bearing No. 11/9

Kishangarh, Mehrauli, New Delhi admeasuring 200 sq. metres and was desirous

of selling the same. The complainant stated that he trusted Chanderharsh Singh and the petitioner and therefore gave them Rs. 2 lakhs (Rs. 25,000/- in cash and Rs. 1,75,000/- by cheque) on 17.11.2012 for purchasing the said flat. The total consideration was agreed at Rs. 14,75,000/-.

4. At the relevant time, the flat was under construction and the complainant claimed that he was assured that the possession of the same would be delivered to him on 31.12.2012. The balance amount of Rs. 12,75,000/- was to be payable at the time of taking over the possession of the flat.

5. The complainant alleged that the petitioner and Chanderharsh Singh had neither delivered the possession of the flat nor returned the sum of Rs. 2,00,000/- paid by him. He stated that after some pressure was put on accused Chanderharsh Singh, he issued a cheque bearing no. 786256 dated 31.01.2013 drawn on Punjab National Bank, however, the said cheque was dishonoured on presentation. He stated that thereafter Chanderharsh Singh issued another cheque No. 786260 drawn on Punjab National Bank, Kalka Das Marg, Mehrauli, New Delhi on 04.02.2013, but the said cheque was also not honoured as instructions for stopping payment had been issued. The complainant stated that, thereafter, he again contacted Chanderharsh Singh through certain intermediaries and although he agreed to repay the money, he failed and neglected to do so.

6. A copy of the Agreement to Sell, as provided by the complainant, has been produced on record and the same indicates that the entire amount of Rs. 2 lakhs claimed to have been paid by the complainant has been paid to Chanderharsh Singh. The recitals of the said agreement record that Chanderharsh Singh is the absolute owner and in possession of the property described as "first floor, one bed room, one drawing cum dining, one toilet cum bathroom and common two wheeler parking on ground floor measuring 450 sq ft. in Property bearing 11/9, Kishangarh, Mehrauli, New Delhi - 110030". The said agreement also records the payment of Rs. 2 lakhs (Rs. 25,000/- in cash; Rs. 1,25,000/- and Rs. 50,000/- by cheques) by the complainant and its receipt by Chanderharsh Singh.

7. The said agreement is also signed by Chanderharsh Singh and not by any witnesses. It is important to note that the petitioner is not a party to the said agreement and has also not witnessed the same.

8. It is the petitioner's case that he was merely acting as a broker and had

not represented that Chanderharsh Singh was a lawful owner of the property in question.

9. The learned counsel for the petitioner filed the present petition contending that there is no incriminating material against the petitioner and despite inordinate delay of five years, the charge sheet had not been filed.

10. After the present petition was filed, the respondent filed the charge sheet which is placed on record. Apart from alleging the commission of offence under Sections 420/34 of the IPC, the charge sheet also mentions commission of an offence under Sections 468 and 471 of the IPC. Clearly, there is no allegation in the said charge sheet which would justify reference to an offence under the said provisions.

11. This Court has also carefully examined the charge sheet. There are certain obvious errors (including incorrectly recording the consideration

amount settled between the parties as Rs. 14 lakhs) in the charge sheet. It also does not disclose any material to substantiate charges levelled against

the petitioner. The entire charge sheet rests on a statement of the complainant that he had seen an advertisement on an internet site for sale of the flat

in question and the phone number of the petitioner was mentioned therein. He further alleged that the petitioner had taken the complainant to

Chanderharsh Singh in Mehrauli. And`, thereafter, both of them along with the maternal uncle of the petitioner, had visited the flat in question. There is

no other material to suggest that the petitioner had made any representation whether in writing or otherwise, to the effect that Chanderharsh Singh

was the lawful owner of the property in question. On the contrary, the narration of the facts does indicate that petitioner was merely acting as a

broker between the complainant and Chanderharsh Singh. It is also apparent from the statement made by the complainant that Chanderharsh Singh

had agreed to refund the amount of Rs. 2 lakhs taken by him, that the entire consideration paid by the complainant was received by Chanderharsh

Singh and not the petitioner.

12. In order to level an allegation of conspiracy it is essential for the respondent to produce at least some material to indicate that there was a meeting

of minds between the petitioner and Chanderharsh Singh for cheating the complainant. It is a common understanding that the brokers merely introduce

parties (the vendors and the vendee) and are not required to conduct any due

diligence unless specifically required. Thus, unless there is some material to indicate that the petitioner had not acted in the usual course of trade, it would not be justified to level any charges of conspiracy to cheat, against

him. In the present case, this Court finds that the charge sheet is bereft of any such material, which would lend any credence to such allegations.

13. Further, the IO was not able to obtain screenshots of the internet site allegedly viewed by the complainant.

14. Keeping in view of the entire facts and circumstances of this case, this Court is of the view that the charge sheet filed against the petitioner is

unsustainable. The narration of facts; the Agreement to sell; and the concerned position that the entire consideration was paid and acknowledged by

Chanderharsh Singh indicate that there is no prima facie case against the petitioner.

15. This Court is conscious of the fact that the petitioner has an alternate remedy and the matter can be urged before the Trial Court. However, in the

peculiar facts and circumstances of the case â?"including the fact that the petitioner had filed a writ petition prior to filing of the charge sheet and the

inordinate delay in filing the charge sheet â?" this Court considers that the ends of justice would be met if the FIR qua the petitioner and all

proceedings emanating therefrom are quashed without relegating the petitioner to avail his remedies before the trial court. It is so directed.

16. It is clarified that the FIR has been quashed only to the limited extent of allegations against the petitioner and not against the co-accused

(Chanderharsh Singh). The respondents are not precluded from proceeding against Chanderharsh Singh uninfluenced by this order.

17. All pending applications are also disposed of.

18. Order dasti under the signature of Court Master.