

(2019) 11 DEL CK 0180

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 3861 Of 2010

Mohd Yunus

APPELLANT

Vs

State & Anr

RESPONDENT

Date of Decision : 08-11-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Indian Penal Code, 1860 — Section 120B, 420, 467, 468, 471

Citation : (2019) 10 AD(Delhi) 699

Hon'ble Judges : Brijesh Sethi, J

Bench : Single Bench

Advocate : Mohd. Saleem, Anjle Gupta, Asim Naeem, G. M. Farooqui, Dhanesh Relan, Komal Sorout, Gauri Chaturvedi

Final Decision : Dismissed

Judgement

Brijesh Sethi, J

1. The instant petition has been filed by the petitioner Mohd. Yunus under Section 482 CrPC for quashing of the FIR No. 247/1988 dated 22.11.1988, under Section 420/468/471/120-B IPC registered at P.S. Kotla Mubarakpur, New Delhi and charge-sheet filed there under against him.

2. Concisely, the relevant facts of the present case are that President of India (Lessor) through New Friends Cooperative House Building Society Ltd. (Lessee) (herein after referred to as 'Society') had executed Perpetual Sub-lease dated 16.02.1973 in favour of Mr. M.L.Tandon in respect of plot bearing no. C-566, New Friends Colony, New Delhi(hereinafter referred to as 'suit property').

3. Sh M.L.Tandon had entered into an agreement for transfer of the suit property and also executed a registered Will on 28.03.1977 in favour of the petitioner Mohd Yunus. Sh. M.L.Tandon had expired on 03.01.1980 on the basis of Will dated 28.03.1977 and in terms of order dated 14.01.1982, passed by the DDA, the property was mutated in the name of petitioner Mohd Yunus on the basis of

the registered Will and an endorsement to this effect was also made on the perpetual sub-lease deed. Later on, Sh. S.R.Bhutani, his wife and two sons entered into an agreement with petitioner Mohd. Yunus for purchase of the suit property on 27.06.1992 and petitioner executed a registered General Power of Attorney in favour of Sh. Raj Kumar Bhutani and Agreement to Sell in favour of Sh. Shri Ram, Veena and Master Ankit through his father and guardian Sh. Raj Kumar. Subsequently, purchaser applied for conversion from lease hold to free hold with respect the suit property. During the process of conversion of suit property from lease hold to free hold by the DDA, it was found that earlier the mutation was obtained on the basis of concealment of material facts and false affidavit was given by the petitioner. Hence, FIR was lodged and it was decided to charge 50% unearned increase from the purchaser.

4. It is argued by learned counsel for the petitioner Mohd. Yunus that various plots were got transferred in favour of various beneficiaries without verifying the exact relationship and other documents and the mutation was cancelled in the present case on the ground that "the mutation was done in favour of outsider on the basis of nomination in registered will after the death of sub-lessee. Unattested certified copy of the death certificate has been placed on record". It is further submitted that the mutation was done in favour of the petitioner on the basis of registered Will executed by Mr. M.L.Tandon, original sub-lessee in terms of the order dt. 14.01.1982 passed by DDA and at that time there was no condition that the mutation could take place only inter-se family members and not to third persons. The order in this regard was passed by the DDA on 18.01.1999 much later, when the mutation has been carried in favour of Mohd. Yunus. It is not the case of the prosecution that petitioner prepared or produced any bogus Will before the DDA for transfer of lease deed.

5. It is lastly argued that in various other matters relating to the same criminal case bearing FIR No. 247/1988 dated 22.11.1988, the Hon'ble Court has quashed the FIR and, therefore, on the ground of parity, the proceedings of the present FIR against petitioner be also quashed in the interest of justice.

6. Learned counsel for the petitioner has relied upon the following case law:-

- 1) S.R.Bhutani & Ors. Vs. DDA 2003(68) DRJ 380,
- 2) J.K.Bhartiya & Ors. Vs. UOI & Anr., ILR(2005) II DELHI 1123;
- 3) H.R.Vaish Vs. UOI and Ors. CW 1847/2000 decided on 07.08.2002.

7. Ld. Counsel for the petitioner has relied upon S.R.Bhutani & Ors.(Supra). In the said case, the Hon'ble High Court of Delhi had directed the DDA to execute conveyance deed on free hold basis in favour of the petitioners on the ground that unearned increase has been paid. This case is distinguishable on the ground that it was a Civil Writ petition which related to the execution of the conveyance deed and did not deal in respect of cheating or forgery, alleged to have been committed by the petitioner.

8. I have also gone through the judgment of J.K.Bhartiya & Ors.(Supra). It was a Civil Writ petition in which conversion was allowed in favour of the transferee subject to payment of unearned increase. It is distinguishable for the reason that Hon'ble Supreme Court has categorically stated in Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors. Vs. State of Gujarat & Anr., 2017 SCC Online SC 1189 that an offence which is not private in nature and affects the society at large cannot be quashed. So far as case of H.R.Vaish Vs. UOI(Supra) is concerned, the same is clearly distinguishable on the basis of facts and circumstances stated therein. It was a Civil writ petition which was not at all on the point of quashing of FIR.

9. Per contra, it is contended by Ld. APP for the State as well as by Ld. Counsel for DDA that it is a clear-cut case of cheating, forgery and wrong representation of Will on the part of the petitioner. It is further submitted that it is the Will on the basis of which petitioner claimed himself to be nominee of the suit property which later on, after thorough scrutiny of documents, found a case of transfer of property and not a case of devolution of property after the death of the testator in order to avoid the levy of unearned increase since in case of devaluation of property, the transferee has not to pay the unearned increase. The Perpetual lease deed contemplates that in the event of sale, the lesser shall be entitled to claim and recover 50% of the unearned increase in the value of the residential plot.

10. I have considered the rival submissions and gone through the record.

11. Perusal of the record reveals that vide order dated 29.01.2003, High Court in case titled as 'Sh. S.R.Bhutani & Anrs. vs. DDA and Ors.' CrI. W.P. No. 634/2001, Delhi Development Authority (Respondent no.1) had directed the DDA to execute the conveyance deed in respect of suit property on a free-hold basis in favour of petitioners no. 1 to 3 i.e. Sh. S.R.Bhutani, Smt Veena Bhutani, Master Ankit and Sh. Raj Kumar Bhutani (subsequent purchaser of suit property) and in compliance of the above directions, the conveyance deed was also executed on 15.07.2004. Perusal of record further reveals that one of the condition on which sub-lease was executed in respect of the suit property was to prohibit the lessee from transferring the sub-lease hold rights in favour of any person except with the consent of the lessor in writing which would be granted only subject to payment of 50% of the unearned increase and it has come on record that an amount of Rs. 4,49,555/- towards arrear of unearned increase has been deposited by the petitioner with the DDA. In view of the above, it is vehemently argued by learned counsel for the petitioner that since the DDA has already been compensated by way of payment of Rs. 4,49,555/- towards arrear of unearned increase and conveyance deed has already been executed in favour of Sh. S.R.Bhutani, Smt Veena Bhutani and Master Ankit Bhutani(through her mother and natural guardian Smt Veena Bhutani), there remains nothing to proceed with the proceedings of the present FIR as no action is pending on the part of the DDA and the matter has attained its finality.

12. Having perused the entire material available on record, I am not in agreement with this contention of learned counsel for the petitioner. The FIR in the present case was lodged for the offences of cheating, forgery, wrong representation of Will and for criminal conspiracy resulting in wrongful loss to the DDA and wrongful gain to the petitioner and solely for non deposit of 50% of unearned increase. On the basis of material available on record, at this stage, prima facie, it appears that petitioner has committed the offences of cheating and forgery by presenting Will and nomination which was actuated on a sale transaction and is not a case of devolution of property. Scrutiny of documents reveals that the nominee of the suit property was not the blood relative of the original allottee which is in contravention of terms and conditions of the sub-lease deed. It is the case of the prosecution that as per law devolution is only allowed to legal heirs in blood relation and none else. The factum of offences of cheating and forgery committed by the petitioner in collaboration with DDA officials and staff members of Society is clearly mentioned in the charge-sheet filed in this case and the relevant facts of the same are as follows:-

"In the instant case, it is established on the basis of documents and statements etc. that plot no. C-566 N.F.Colony was illegally sold by Sh M.L.Tandon, sub-lessee in favour of Mohd Yunus on 28.03.1977 for Rs. 1,50,000/- whereas it was shown a Will case. The payment was also made on 28.03.1977 vide bank drafts. The purchaser Mohd Yunus with the connivance of Sh. M.L.Jaggi and K.K.Mehta, prepared a bogus will and produced the same in DDA for transfer the plot in his name. DDA officials J.R.Sharma(dead), accepted the incomplete documents without any verification and the mutation took place violating the clauses of perpetual sub-leased deed. It was a clear cut case of sale by M.L.Tandon in favour of Mohd. Yunus with the connivance of M.L.Jaggi and K.K.Mehta, Secretary and Asstt. Secretary of the Society and DDA officials Sh. J.R.Sharma, Assistant(dead). DDA was deprived of 50% unearned increase amount. Thus, the seller, purchaser, society officials and DDA officials, after having fallen into a criminal conspiracy mutated the said plot illegally. The DDA officials subsequently detected that a loss of Rs 3,16,995/- unearned increase amount was caused to DDA by said accused persons with the connivance of each other and DDA was cheated of this amount.

13. In the case in hand, petitioner has committed offences of cheating and forgery on the basis of false documents and suit property was mutated as a devolution case on the basis of Will executed by Sh. M.L.Tandon in his favour. It is the case of the prosecution that the instant case is not of mutation out of blood relation but it is a clear cut case of sale by sub-lessee in favour of Mohd Yunus and it was shown on the basis of Will in order to deprive DDA of 50% unearned increase with the assistance and active role of conspirators i.e. accused Ram Saran, S.K.Ratra of DDA and M.L.Jaggi and K.K.Mehra of society. It is clear that prima facie the offences committed by the petitioner are the offences against the society at large and therefore, he cannot be exonerated from the criminal liability on the ground that he has paid the amount of unearned increase

later on. Reliance in this regard is placed on Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors. Vs. State of Gujarat & Anr., 2017 SCC Online SC 1189, wherein the Hon'ble Supreme Court has held as under:-

"15..the case involved an allegation of forgery; hence the court was not dealing with a simple case where the accused had borrowed money from a bank, to divert it elsewhere. The court held that the manner in which Letters of Credit were issued and funds were siphoned off had a foundation in criminal law: availing of money from a nationalized bank in the manner, as alleged by the investigating agency, vividly expositis fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the chargesheet cannot be put in the compartment of an individual or personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that whenever there is manipulation and cleverly conceived contrivance to avail of these kind of benefits it cannot be regarded as a case having overwhelmingly and predominatingly of civil character. The ultimate victim is the collective. It creates a hazard in the financial interest of the society. The gravity of the offence creates a dent in the economic spine of the nation. The judgment of the High Court quashing the criminal proceedings was hence set aside by this Court.

The same principle was followed in Central Bureau of Investigation v Maninder Singh by a bench of two learned Judges of this Court. In that case, the High Court had, in the exercise of its inherent power under Section 482 quashed proceedings under Sections 420, 467, 468 and 471 read with Section 120-B of the Penal Code. While allowing the appeal filed by the Central Bureau of Investigation Mr Justice Dipak Misra (as the learned Chief Justice then was) observed that the case involved allegations of forgery of documents to embezzle the funds of the bank. In such a situation, the fact that the dispute had been settled with the bank would not justify a recourse to the power under Section 482:

In economic offences Court must not only keep in view that money has been paid to the bank which has been defrauded but also the society at large. It is not a case of simple assault or a theft of a trivial amount; but the offence with which we are concerned is well planned and was committed with a deliberate design with an eye of personal profit regardless of consequence to the society at large. To quash the proceeding merely on the ground that the accused has settled the amount with the bank would be a misplaced sympathy. If the prosecution against the economic offenders are not allowed to continue, the entire community is aggrieved.

A grave criminal offence or serious economic offence or for that matter the offence that has the potentiality to create a dent in the financial health of the institutions, is not to be quashed on the ground that there is delay in trial or the principle that when the matter has been settled it should be quashed to avoid the load on the system."

14. Perusal of the record clearly reveals that offence committed by petitioner is not an offence against one man but against DDA, a public Authority. The act of the petitioner, in fact, is an intentional act designed to deprive the DDA of its legitimate dues by committing forgery and cheating. This Court is of the view that when such offences are committed, these not only cause loss to the public exchequer but also to the taxpayers and society at large who have a right to access to various welfare schemes of the government. The offences alleged against the accused are serious in nature and committed with a deliberate design and planning with a view to earn personal gain regardless of wrongful loss to the public exchequer which concerns public at large. This court is, therefore, of the considered view that even if unearned increase has been paid to DDA later on and conveyance deed has been executed qua the suit property in favour of Sh. S.R.Bhutani, Smt Veena Bhutani and Master Ankit Bhutani(through her mother and natural guardian Smt Veena Bhutani), petitioner cannot be exonerated of the offences committed in a planned manner by manipulating the documents with the intention of cheating the DDA and causing loss to the Public exchequer and to quash such kind of proceedings would certainly be a case of misplaced sympathy.

15. Ld. Counsel for the petitioner has argued that earlier also the FIR was quashed qua some of the accused persons by the Hon'ble High Court of Delhi on the ground that unearned increase was paid by the subsequent purchaser.

16. Ld. APP for the State and Ld. Counsel for DDA have, however, argued that the FIR cannot be quashed if the offence affects the economy of the nation or results in causing loss to the public exchequer, in view of the latest law laid down by the Hon'ble Supreme Court in Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors. Vs. State of Gujarat & Anr.,2017 SCC Online SC 1189.

17. This court is of the opinion that offences alleged to have been committed by petitioner is not an individual or personal wrong. It is a wrong which affects the society and is committed with an eye on personal profit regardless of consequences to the society. In view of the detailed reasoning given above, this court is of the opinion that FIR cannot be quashed for the reason that the petitioner has cheated the DDA and caused loss to the public exchequer by not paying unearned increase deliberately and in view of the Judgment of Hon'ble Supreme Court in Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors. (Supra), the offences which affects the economy of the nation and are against the society, cannot be quashed.

18. In view of the above discussion, I find no merit in the petition filed by the petitioner and the same is accordingly dismissed.