
(2018) 05 DEL CK 0080

In the Delhi High Court

Case No : CRL.M.C. 4682 OF 2014 & CrI. M.A. 15933 OF 2014

NAVEEN MALHOTRA

APPELLANT

Vs

STATE & ANR

RESPONDENT

Date of Decision : 09-05-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3)
Indian Penal Code, 1860 — Section 20, 34

Citation : (2018) 05 DEL CK 0080

Hon'ble Judges : SANJEEV SACHDEVA

Bench : Single Bench

Advocate : Vivek Sood, O.P. Gulapani, Prachi Gupta, Mukesh Kumar, SI Sunil Dagar, Vikas Walia

Final Decision : Dismissed

Judgement

1.The petitioner impugns order dated 30.09.2014 whereby the Revisional Court has dismissed the revision petition of the petitioner impugning order

dated 12.08.2014 whereby a direction was issued by the Trial Court under Section 156 (3) of the Cr. P.C. to register an FIR and investigate the

matter thereafter.

2. The complainant-R-2 had filed a complaint with the police contending that the petitioner with the intention of cheating and committing a fraud on the

complainant had approached the complainant for the purposes of availing a loan in the sum of Rs. 5.50 crores without having the intention to repay the

same. It is contended that a fraudulent representation was made with regard to financial soundness of the accused company as well as its Director

and accordingly complainant was induced in advancing a business loan of Rs. 5.50 crores.

3. It is contended that it was represented that the accused was sole and exclusive owner of the said property free from all encumbrances.

Accordingly, the loan was sanctioned and disbursed after creating a mortgage in favour of the complainant. Subsequently the complainant got to know

that the entire property had already been mortgaged with an NBFC. Not only was the property mortgaged with a non-banking financial corporation,

the petitioner had even registered sale deeds of separate floors in favour of third parties.Â

4. It is alleged in the complaint that the said business loan of Rs. 5.50 crores was disbursed after execution of the separate loan agreements. The

original sale deed in respect of the first floor of the said property was deposited with the complainant. Since the police did not act upon the complaint

of the complainant, a complaint under Section 156(3) of the Cr. P.C. was filed before the Trial Court.

5. The petitioner, being aggrieved by the order of the Trial Court directing registration of the FIR, impugned the same before the Revisional Court. The

Revisional Court by the impugned order dated 30.09.2014 rejected the revision petition.

6. Learned Senior Counsel for the petitioner contends that the Trial Court while passing the impugned order directing registration of an FIR did not

apply its mind and had passed a mechanical order. Further it is contended that since earlier FIRs being FIR No. 48, 49 and 50 of 2013 under Sections

420/34 of the IPC Police Station Defence Colony, New Delhi had been registered with regard to the same property, there is an overlap of the alleged

transaction in the said FIRs. Therefore, direction could not be issued for registration of the subject FIR on the same cause of action.

7. I am unable to accept either of the contentions of the learned counsel for the petitioner.

8. By the impugned order dated 12.08.2014, the Trial Court held as under:-

â??5. Heard. Record perused. Copies of the loan documents executed by accused no.2 on behalf of accused no. 1 have been placed on record. The

schedule annexed to deed of mortgage executed on 29.09.2010 of the said agreement shows that first floor of property bearing No. A-331, Defence

Colony had been hypothecated in favour of the complainant. The complainant has also placed on record a copy of sale deed dated 12.09.2010

whereby the second floor of said property has been sold by accused no. 2 in favour of accused no. 1.

6. Even though the said sale deed pertains to the second floor of the said property, however, the complainant has also placed on record copy of FIR

No. 48/13, 49/13, 50/13 whereby it has been alleged that the 1st floor, ground floor and 2nd floor property of the said property was in fact sold by the

accused persons to other complainants namely Raj Gaurav Wadhwa, Ltd. Gen. Rajinder Kumar Mehta, Jagdeep Singh respectively. In FIR No. 48/13

it is alleged that the first floor of the said property was sold to complainant Raj Gaurav, despite the fact that the Debt Recovery Tribunal had passed a

restraint order qua the said property. As per the allegations in the said FIR the said property already stood mortgaged with Punjab & Sind Bank and

despite that the first floor of the said property had been sold to complainant Raj Gaurav.

7. Thus, from the perusal of the said FIR and the loan documents placed on record by the complainant, it appears that prima facie cognizance offence

is made out against the accused persons. As already stated, separate FIRs have already been registered in respect of the said property, however the

same does not bar the registration of another FIR in case of a fresh/different cause of action as in the present matter. Moreover, even though the

documents are stated to have been executed in Kailash Colony, Nehru Place, however, since the property is situated in Defence Colony, therefore,

FIR can be registered with PS Defence Colony.

8. In view of the aforesaid reasons, the application u/s 156(3) Cr. P.C. is hereby allowed. SHO is directed to register an FIR in the present matter

under relevant provisions of law and to send the copy of the same to this court on the next date of hearing.â??

9. Perusal of the order dated 12.08.2014 shows that the Trial Court has duly applied its mind to the records of the case and after due application of

mind has directed the registration of the FIR. Further, it may be noticed that the Revisional Court has noticed that the accused had built the subject

property consisting of a basement, first floor, second floor and third floor with a loan taken from M/s Religare Finevest Ltd. after mortgaging the entire

property.

10. Subject property was sold floor-wise to four different persons without

disclosing the factum of the property having been mortgaged. Three of the buyers of various floor, learning about the encumbrances on property lodged FIRs with the Police Station Defence Colony for the offence of cheating.

11. The Revisional Court has noticed that during investigation of the subject FIRs it was disclosed by the accused that not only the accused had

executed sale deeds to four different persons he had also executed three sale deeds in favour of his own company of which he is a Managing Director

and these sale deeds were used by him for availing loan from various banks and for getting the existing limits enhanced. The complainant in the

present case is party to the subsequent transaction that had taken place after the sale deeds were registered in favour of the complainant in the above

referred FIRs.

12. The contention of the learned Senior Counsel for the petitioner is that since there is already an FIR registered, no subsequent FIR could be

registered for the same offence. The FIR referred to above being FIR No. 48, 49 and 50 of 2013 under Sections 420/34 of the IPC Police Station

Defence Colony, New Delhi pertain to the alleged offence of cheating having been committed by the petitioner for selling a property which already

stood mortgaged.

13. Subject complaint and FIR allege that the petitioner, after executing the said three sale deeds, further executed sale deeds in favour of his own

company and used those subsequent sale deeds in the name of his company, for obtaining finance from the complainant. The subject alleged offence

qua respondent no. 2 is subsequent in point of time and completely independent of the transaction that was entered into between the petitioner and the

complainants in the FIRs referred to above. Those FIRs and the subject FIR are on a distinct and different cause of action.

14. In view of the above, I find no error in the view taken by the Trial Court as well as Revisional Court in directing registration of the FIRs.Â

15. Learned Addl. PP for the State further submits that the investigation is nearly complete and charge sheet is likely to be filed shortly.

16. In view of the above, I find no merit in the petition. The petition is accordingly dismissed.