(2011) 07 DEL CK 0269

In the Delhi High Court

Case No : Criminal M.C. 511 of 2011 and Criminal M.A. No. 1946 of 2011

Rohtas Mal Gupta APPELLANT

Vs

State and Another RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:
Penal Code, 1860 (IPC) — Section 120B, 406, 409, 420

Citation : (2011) 07 DEL CK 0269

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Prashant Mendiratta, Rahul Mittal and Varun Tyagi, for the Appellant; M.P. Singh, APP, Kumar Kundan and Digvijay Rai, Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—The Petitioner herein made complaint, on which an FIR No. 28/2010 dated 19.2.2010 registered u/s 406/409/420/120-B IPC with PS Economic Offences Wing, Crime Branch, New Delhi against Respondent No. 2 and Directors of M/s Vigneshwara Developers Pvt. Ltd for cheating, forgery and criminal breach of trust. Subsequently, the bank accounts of M/s Vigneshwara Developers Pvt. Ltd. bearing A/c No. 90631010001161 with the Syndicate Bank, Vayu Bhawan, Air Force Headquarters, New Delhi and A/c No. 039905000577 with the ICICI Bank Ltd., Vipul Orchid Plaza, Suncity Sector 54, Gurgaon were frozen in order to safeguard the interests of the Petitioner and other complainants.

2. Respondent No. 2 herein moved an application seeking de-freezing of the aforesaid two bank accounts wherein the Respondent No. 2 had stated that the said bank accounts be defreezed subject to the depositing of a sum of Rs. 1.16 crores in the court concerned (which sum was alleged by the Respondent No. 2 to be the only sum received from the complainants concerned which was obviously patently false).

3. Subsequently on completion of pre-summoning evidence in another complaint case against Respondent No. 2 by IMS Mercantile Pvt. Ltd. and upon the orders of summoning being issued against Respondent No. 2, the Respondent No. 2 entered into settlement talks with the Petitioner on assurances that Respondent No. 2 was eager to settle the matter with all the complainants. Accordingly, the Petitioner and Respondent No. 2 entered into the settlement.

4. The matter was taken up by the ACMM on 28.06.2010. Status report was filed by ACP Mr. T.R. Mongia. Written submission thereto were also filed by Sh. Phoolka, Sr. Advocate in his application for de-freezing the bank accounts. As per the status report, another complaint of similar nature from one Mr. Surender Kumar involving Rs. 21 lacs has been received in Crime Branch, EOW. In the application filed by the applicant, it was mentioned that around 550 applications were received by the company. The investments were made by different persons on a project proposed to be developed by accused at Manesar, Gurgaon. The report of the authorities reflects that they did not have the permission to publish an advertisement or to receive booking for the property.

5. The learned ACMM has passed the order on 28.06.2010 by saying that it would be proper that the total amount in the transaction be verified so that no public person(s) is/are later on left without any remedy. Rest of the amount may be defreezed . Further the Investigation Officer was directed to ascertain the total amount deposited by 550 applicants involved in the transaction related to allotment of IT Units at Manesar, Gurgaon by the accused persons so that the remaining amount may be released and the matter was posted for 03.07.2010.

6. I note that the copy of this order was supplied to learned Counsel for both the parties. Thereafter, the matter was again taken up on 14.01.2011 by the successor ACMM at Saket. On hearing the arguments on application for direction to allow debits/withdrawals from bank account of applicant, it was submitted that the I.O had freezed the debit/withdrawal entries in the two accounts, namely, Syndicate Bank and ICICI Bank Ltd. (A/c Nos. as mentioned above). It was further submitted before the learned ACMM that on account of latest development, parties have entered into agreement and cheques were issued from the above mentioned accounts, and due to that reason, the accounts be defreezed

7. This application was strongly opposed by the Petitioner on the ground that the High Court had already directed that the money to the applicants/complainants/ alleged allottees was to be paid from different accounts. It was further submitted that no proper compromise is acted upon by the accused persons, so no good ground for de-freezing these accounts.

8. The learned ACMM while considering the arguments of the parties observed that, the major stress of the argument made on behalf of accused person/ applicant was that one Mr. Ajay Aggarwal wants to kill the compromise affected with allottees. For this, he has shown an agreement dated 17.12.2010 entered

between M/s Vigneshwara Developers Pvt. Ltd. and Mr. Rohtas Mal Gupta, Petitioner herein. As per this agreement, the alleged cheques of these banks were given which were freezed with the court. It was agreed that by joint applications and pray the account be opened. However, this was not done and the instant petition was filed by the Petitioner herein.

9. As argued before the learned ACMM that due to freezing of this account, the applicant was not able to honour the cheques and this incapacity of applicant will be used as a weapon by opposite parties in this Court. The learned ACMM further observed that as far as this Court is concerned and applying the Maxim that "act of court should not harm any person", he directed that any cheque (on account of compromise between M/s Vigneshwara Developers and said person) issued to those who have allotted/applied for space for project "Darsens and Kission Valley, Technology Park Manesar, Gurgaon Haryana with M/s Vigneshwara Developers" shall be honoured from the said two bank accounts mentioned above.

10. Learned Counsel for the Petitioner has pointed out that one ACMM has passed the order dated 28.06.2010 and subsequently, passed by the successor ACMM on 14.01.2011. He has argued that under the provisions of Code of Criminal Procedure , there is no power to the Magistrate/ACMM to pass such an order.

11. On the other hand, it is submitted by learned Counsel for the Respondents that out of total 550 applicants only 11 applicants filed the complaint case. One has already withdrawn the case and another complaint case was quashed by this Court dated 21.12.2010 in Crl.M.C. No. 3946/2010. He further submits that the Respondent has already issued the cheque to the Petitioner but the Petitioner has not deposited the same in his account, therefore, the money is not credited into this account.

12. I note that the order dated 28.06.2010 was halfway considered and the Investigating Officer was directed to ascertain the total amount deposited by the 550 applicants involved in the transaction relating to allotment of IT Units at Manesar, Gurgaon by the accused persons so that the remaining amount may be released. Therefore, the matter was again posted for further orders. The impugned order dated 14.01.2011 is in furtherance of the order dated 28.06.2010 and on joint applications and on the basis of settlement arrived at between the parties.

13. However, it is pertinent to mention that the order of the learned ACMM does not harm any of the complainants including the Petitioner herein, as also affect the investigation which is going on. If the Petitioner does not want to encash the cheque issued, it is his wish and one cannot compel him to encash the same and the investigation under the present case shall proceed.

14. In my opinion, the learned ACMM has rightly allowed the honouring of debts/ withdrawals from the two above mentioned bank accounts of Respondent No. 2 in this case. I find no infirmity in the impugned order passed by the learned

ACMM dated 14.01.2011, therefore, I am not inclined to interfere with the order.

15. In view of the above, the petition stands dismissed along with pending Crl.M.A. No. 1946/2011.

