C.S. Aggarwal Vs. State

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SooperKanoon Citation : sooperkanoon.com/922408

Court : Delhi

Decided On : Nov-11-2011

Judge : Mukta Gupta, J.

Acts : Code of Criminal Procedure (CrPC) - Section 156 (3); Transfer of Property Act, 1882 - Sections 58, 59; Indian Penal Code (IPC) - Sections 421, 422, 415, 420, 120B, 406, 409

Appeal No. : WP (CRL.) 1301 of 2011

Appellant : C.S. Aggarwal

Respondent : State.

Judgement :

1. By this petition, the Petitioner had sought immediate release of the Petitioner and quashing of the orders dated 15th September, 2011 and 17th September, 2011 granting/extending the police custody of the Petitioner, appointment of new investigating officer and directions to ensure fair and unbiased investigation.

2. Initially the matter was referred to the Hon'ble Division Bench in view of the contention of learned counsel for the Petitioner that the Petitioner was under illegal detention and he was entitled to a writ of habeas corpus. After hearing learned counsel for the parties at length, the Hon'ble Division Bench came to the conclusion that the relief sought by the Petitioner was essentially of seeking bail and other reliefs as enumerated in the other prayers of the amended writ petition.

Therefore, by order dated 18th October, 2011, the matter was referred back to this Court. In the present writ petition the Petitioner confines his prayer to the grant of bail only.

3. Learned counsel for the Petitioner contends that the present FIR was registered pursuant to the directions of learned ACMM on an application under Section 156 (3) Cr.P.C. on a complaint of one Shri Sameer Kohli, Director of M/s Kohli, One Housing & Development Private Limited. The allegations relate to extending of a loan of Rs.12 crores to the Petitioner's company by the complainant's company. According to the Petitioner, the allegations in the FIR even if taken on the face value make out a purely civil dispute and do not disclose commission of any criminal offence. It is for this reason that vide order dated 6th March, 2010, the learned ACMM while directing registration of FIR, directed the Investigating Officer not to be influenced by the order of registration of FIR and should not proceed to arrest the accused in haste, without being satisfied of the grounds of arrest. According to the Petitioner, the complainant has already lodged another FIR bearing No.264/2009 under Sections 420/406/120B at PS EOW on 23 rd December, 2009 regarding the same dispute. The main dispute between the parties related to a project of SEZ area in Gurgaon and the present dispute is also a part of the said larger dispute between the parties for which the FIR has already been registered. Learned counsel for the Petitioner further contends that in lieu of the loan of Rs.12 crores, the petitioner had deposited the title deed, which admittedly as per the complainant were in his possession and no mortgage deed was created. The loan of Rs.12 crores was to be repaid till 31st May, 2008. Besides depositing the title deed of property bearing No.F 1/7 Hauz Khas Enclave, New Delhi, the Petitioner even gave a cheque of Rs.12 crores which fact has been admitted by the complainant in the civil proceedings between the parties and has been deliberately concealed in the present FIR. This cheque of Rs.12 crores is still in possession of the complainant. The bona fide of the Petitioner are further established by the fact that the complainant gave a further loan of Rs.1.5 crores on 4th August, 2008 and as per the loan agreement, the date of repayment of additional loan was not stated. The giving of the additional loan despite non-payment of earlier loan without any security shows that there was some oral understanding between the parties. The complainant knew it fully well that it had

returned back the title deed to the Petitioner, which are admittedly in the possession of the Petitioner, however, he deliberately lodged a police complaint regarding missing of the title deeds on 25th November, 2009 and took out a public notice on 30th November, 2009. Despite loss of documents reported to police station Vasant Kunj, no intimation was sent to the Petitioner, who was the actual owner of the documents, that the documents were lost. The return of the title deeds to the Petitioner, which have been given by the Petitioner to the investigating agency further shows that there was oral arrangements between the parties besides the written agreements.

4. It is further contended that the loan agreement was between the two companies and not two individuals and thus, the Petitioner cannot be held liable in the absence of the company being an accused. Reference is made to Section 58 and 59 of the Transfer of Property Act, 1882 (in short 'the TP Act) to contend that in case of mortgage by deposit of title deed, the registration of the instrument is essential. Further no mortgage could take place even in terms of Section 58(b), (c), (d) and (f) of the TP Act. There was no undertaking by the Petitioner in the loan agreement that property was free from encumbrances. The principal document on which loan of Rs.12 crores was given to the Petitioner was the promissory note, that is, the cheque which the complainant did not deliberately get encashed. It is not even the case of the complainant that the Petitioner refused to sign the mortgage deed. As per Clause 5 of the agreement, the complainant had to pay the Petitioner Rs.185 crores out of which Rs.43 crores have been received. Further the notice of repayment of amount of Rs.12 crores was dated 23rd December, 2009 when the other FIR was registered. Even in the notice of repayment, there is no mention of mortgage deed and about having received a cheque of Rs.12 crores, the principal sum. The only case made out against the Petitioner is that on a notice being issued a reply was sent that the loan agreements stand cancelled. This allegation was not part of the FIR and has only cropped up subsequently and on the strength of this cancellation agreement, the Petitioner is being implicated. It is alleged that even taking the complainant's case, at best offence under Section 421/422 IPC can be said to be made out, which are bailable offences. Reliance is placed on B. Suresh Yadav Vs. Sharifa Bee and Another, (2007) 13 SCC 107.

5. Learned Additional Standing Counsel on the other hand contends that as per allegations in the FIR, offence under Section 415 IPC punishable under Section 420 IPC is clearly made out. Prior to the Petitioner entering into the loan agreement, the agreement to sell of the property in question that is F-1/7 Hauz Khas Enclave, New Delhi had already been entered into with Smt. Sheila Malkani vide agreements to sell dated 17th January, 2008 and 23rd February, 2008. Despite this, in the loan agreement dated 25 th February, 2008 it was mentioned that the property was free from encumbrances. Despite the offence under Section 420 IPC being made out, the prosecution did not go ahead with the arrest. However, on verification of the cancellation agreement, which disclosed that the offence of forgery was made out, the Investigating Officer sought approval for arrest. Clauses 3.1 and 3.2 of the loan agreement state not only of deposit of title deeds but also of execution of a memorandum. Clauses 2 and 4 of the memorandum clearly create a charge on the property and it is stated that the property was free from encumbrances. Despite having deposited the title deeds with the complainant, the Petitioner went ahead with the sale and executed the sale deed with Smt. Sheila Malkani on 13th August, 2008. Further during investigation, the Petitioner relied upon cancellation agreement dated 27th June, 2008 stating that the loan agreement stood cancelled. This cancellation agreement was found to be a forged document. Further in case the loan amount had been adjusted as far as back in June, 2008, the Petitioner would not have given a confirmation that balance of Rs.13.5 crores was due on 1st April, 2009. Even the balance sheet of the Petitioner's company acknowledged this outstanding due. The allegations in the FIR and FSL report negate the contention that it is a civil transaction. Besides the present case, the Petitioner is involved in other cases as well.

6. Learned counsel for the complainant has further stated that from the allegations as set out, provisions of Section 420 IPC are clearly attracted. Besides during investigation the Petitioner gave cancellation agreement to the investigating agency that the loan agreement has been cancelled which has been found to be forged and fabricated and thus provisions of Section 467 IPC are clearly attracted. It is contended that the two FIRs lodged by the complainant are totally independent and pertain to separate transactions relating to different companies of

the Petitioner. Reliance is also placed on Mahesh Kumar Bhawsinghka v. State of Delhi, 2000 (1) ACR 48 (SC), Lalit Kumar Bhanot v. CBI, Bail Application No.682/2011 decided by this Court on 5th July, 2011, Vijay Khanna v. State of NCT of Delhi, 2003 (2) JCC 1025, Ajay Verma v. State, 2009 (2) JCC 876, Dr. Ketan Desai v. State, Bail Application No.839/2010 decided by this Court on 4 th June, 2010, Basant N. Singhvi v. State, Bail Application No.1158/2008 decided by this Court on 25 th February, 2009, Sanjay Kant v. State, 2003 I AD (Delhi) 405, Mukesh Singh v. State, 2003 I AD (Cr.) DHC 200 and Saood Ahmed Siddiqui v. State, 2003 II AD (Cr.) DHC 440.

7. I have heard learned counsel for the parties. Briefly the allegations as set out in the complaint of Shri Sameer Kohli of M/s Kohli One Housing & Development Pvt. Ltd. are that the Petitioner and his wife Kavita Agarwal on behalf of the company M/s Rockman Breweries (TNK) Ltd. approached the complainant and asked for a loan of Rs.12 crores for the business requirement. In lieu of the said loan, the alleged persons also mortgaged the property bearing No.F-1/7, Hauz Khas Enclave, New Delhi measuring 430.68 sq.yds. A loan agreement dated 25th February, 2008 was entered into between the parties. In August, 2008 an additional loan of Rs.1.5 crores was also given at the request of the Petitioner. Later on it was found by the complainant that the Petitioner in connivance with other accused persons sold the above mortgaged property to one Sheila Malkani and had also received advance payment of Rs.50 lac and Rs.1 crore on 17th January, 2008 and 23rd February, 2008 from her even before the signing of loan agreement with the complainant. Pursuant to the order passed by the learned ACMM, a criminal case vide FIR No.40/2010 under Section 406/420/120B IPC was got registered on 10th March, 2010 at PS EOW and investigation was taken up. During investigation, it was revealed that a loan was taken by Rockman Breweries Tnk Ltd. and an agreement dated 25th February, 2008 was executed between Kohli One Housing and Development Pvt. Ltd. and Rockman Breweries Tnk Ltd. The property bearing No. F-1/7, Hauz Khas Enclave, New Delhi was kept under charge against the loan. During investigation replies from City Bank along with statement of account maintained by M/s Kohli One Housing and Development Pvt. Ltd. and account maintained by M/s Rockman Breweries TNK Ltd. were received. From the statement of accounts it was proved that the amount in

question has been credited into the account of M/s Rockman Breweries TNK Ltd. from the account of the complainant company M/s Kohli One Housing and Development Pvt. Ltd. Reply from Registrar of Company regarding charge created on property No.F- 1/7, Hauz Khas Enclave, New Delhi in favour of Kohli, One Housing & Development Pvt. Ltd. by the company M/s Rockman Breweries Ltd. has also been received.

8. Reliance of the Complainant on Ketan Desai (supra) is wholly misconceived. In the said case, this Court declined to grant bail to the Petitioner therein as people were not coming forward to complain against him because of his influence. So much so the CBI had to place on website asking for complaint from the people with assurance to keep their identity in secrecy and to provide adequate protection. In Lalit Bhanot (supra)the bail was sought not on merits but on the ground that there was violation of the statutory provision of Section 167 (2) Cr.P.C. Each case has to be decided on facts applicable to it. In the present case besides the Petitioner having furnished a mortgage with deposit of title deeds of the property, the Petitioner had also given a cheque of Rs.12 crores to the complainant which it did not prefer to encash. It is the contention of the complainant himself that the said cheque of Rs.12 crores as security against the loan was never presented because of the fact that the complainant was already engaged with an investment of Rs.42.50 crores with the Petitioner in SEZ projects and, therefore, it did not want to spoil the terms with him specially when the accused kept assuring that he will give the money back in due course and requested not to present the said cheque. It may be noted from the averments of the complainant himself that besides a written agreement, there were oral understandings between the parties and despite the Petitioner not having repaid the loan in the requisite time, the complainant continued his business transactions with the Petitioner. Not only the complainant get encashed the cheque of Rs.12 crores with him but he also extended a further loan of Rs.1.5 crores to the Petitioner on the 4 th August, 2008, after the due date of repayment of loan of Rs.12 crores.

9. A perusal of Section 421 and 422 IPC shows that they are the species of the general provision of cheating defined under Section 415 IPC. At this stage while

dealing with the bail application, it would not be appropriate for this Court to consider the issue whether Section 420, 421 and 422 IPC are mutually exclusive or not, except stating that as per Section 420 IPC whoever cheats and thereby dishonestly induces the person to deliver any property to any person is liable for being punished under the Section. Needless to state that the Petitioner will be at liberty to raise all these pleas at the appropriate stage.

10. Learned Additional Standing Counsel for the State has contended that the Petitioner is involved in other offences as well. It may be noted that the other FIR being FIR No.264/2009 under Sections 409/420/120B IPC was also registered on the complaint of the complainant herein, wherein while the Petitioner was granted interim protection by this Court, the investigating officer arrested the Petitioner in the present case. Further FIR No.264/2009 relates to the larger issue between the parties relating to the SEZ area. The third FIR registered against the Petitioner is on the complaint of one D.K. Jain, who is the co-accused of the Petitioner in FIR No.264/2009. Further a cross case is also registered on the complaint of the Petitioner against co- accused D.K. Jain.

11. The investigation is complete and as per the prosecution, the charge sheet is likely to be filed on or before 14 th November, 2011. The entire evidence is documentary in nature. In the facts and circumstances, I deem it fit to grant bail to the Petitioner. It is, therefore, directed that the Petitioner be released on bail on his furnishing a personal bond in the sum of Rs. 1 lakh with two sureties of the like amount to the satisfaction of learned Trial Court/CMM. It is further directed that Petitioner will not leave the country without the prior permission of learned Trial Court.

Petition is disposed of accordingly. Order dasti.