

Narayan Singh Vs. Sanjeev Kumar and ors.

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Court : Delhi

Decided On : Feb-22-2013

Judge : G.P. Mittal

Appellant : Narayan Singh

Respondent : Sanjeev Kumar and ors.

Advocate for Def. : Mr. Prem Kumar, Mr. Rajiv Sharma, Mr. Rakesh Kumar, Mr. Rishabh Gulati

Advocate for Pet/Ap. : Mr. Pramod Kumar Sharma

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

22. d February, 2013 + CRL. M.C.2486/2012 NARAYAN SINGH Through:
Petitioner Mr. Pramod Kumar Sharma, Advocate. versus SANJEEV KUMAR &
ORS. Through: Respondents Mr. Prem Kumar with Mr. Rajiv Sharma, Mr.
Rakesh Kumar & Mr. Rishabh Gulati, Advocates. CORAM: HON'BLE MR.
JUSTICE G.P.MITTAL JUDGMENT G. P. MITTAL, J.

(ORAL) 1. The Petitioner invokes inherent powers of this Court under Section 482 of the Code of Criminal Procedure(the code) for setting aside of the order dated 15.05.2012 passed by the learned Metropolitan Magistrate(M.M.) whereby an Application dated 02.03.2012 for dismissal of the complaint case under Section 138 of the Negotiable Instruments Act, 1881(the Act) was dismissed.

2. Before advertng to the question in controversy between the parties, let me narrate in brief the facts of the case. As per the case of Respondent No.2, Petitioner Narayan Singh entered into a Bayana agreement dated 07.09.2010 with Mahabir Singh and Partap Singh for the sale of 1/8th share in an agriculture land measuring 87 Bighas and 07 Biswas situated in the revenue estate of village Jat Khore, Delhi-110039 for a sale consideration of `1,27,16,666/-. A sum of `12,27,666/-was received by the Petitioner(accused before the Trial Court) as earnest money and the balance amount of `1,14,89,000/- was to be paid to the accused at the time of registration of the sale deed. According to the case set up in the complaint, Mahabir Singh and Ranbir Singh with the implied approval of the Petitioner entered into an agreement dated 02.02.2011 to sell the land sought to be purchased from the Petitioner to Virender Kumar, his wife Sunita, Ms. Poonam and Ms. Anuradha. It is further case of the Respondent No.2 that in terms of the agreement dated 07.09.2010, the purchaser, that is, Mahabir Singh and Partap Singh(since deceased) through his son Ranbir Singh was entitled to get sale deed executed either in their names or in the names of their nominees. In the complaint, it was alleged that on 03.03.2011, the Petitioner informed Mahabir Singh and Ranbir Singh, who were the original complainants No.1 and 3, that the sale transaction in respect of the land in question be completed in favour of their nominees Virender Kumar and others with whom they have entered into an agreement to sell dated 02.02.2011. Petitioner Narayan Singh agreed to the proposal and the time for execution was extended upto 14.03.2011. The Petitioner further requested the vendees(Mahabir Singh and Ranbir Singh) that a sum of `60 lakhs may be paid to him (the Petitioner) which would be adjusted in the total amount payable to him. It is the case of Respondent No.2 that on 07.03.2011, the Petitioner received further payment of `47,75,000/- by way of three cheques for the amount of `1,00,000/-, `1,75,000/- and `45 lakhs. Out of this, a cheque of `45 lakhs was issued by the Respondent No.1 who is son of one of the original purchasers Mahabir Singh. It is averred in the complaint that on 14.03.2011, the Petitioner executed sale deed of the said land in question in favour of Virender Kumar and others and received eight postdated cheques all dated 28.04.2011. On 30.04.2011, the Petitioner presented the aforesaid eight postdated cheques and got credited the entire amount in his account.

3. According to the averments made in the complaint, on 30.04.2011 the Petitioner with Ranbir Singh and Mahabir Singh (complainants No.1 and 3 in the initial complaint) went to the Delhi State Cooperative Bank, Bawana branch and after proper accounting, he (the Petitioner) issued a postdated cheque No.021321 dated 06.05.2011 for `60,00,714/- in favour of the Respondent No.1. The cheque on presentation, however, was dishonoured with the remarks stop payment.

4. A demand notice under Section 138 of the Act was issued to the Petitioner on behalf of the complainant to the payee of the cheque as also by Mahabir Singh and Ranbir Singh. The Petitioner failed to pay the amount within the stipulated period in pursuance of the demand notice leading to the filing of the instant complaint case under Section 138 of the Act. Admittedly, there were three complainants in the complaint case, including Sanjeev Kumar who was the payee of the cheque drawn by the Petitioner. A perusal of the Trial Court record reveals that on 14.09.2011 at the request of the counsel for the complainants, the names of the complainants No.1 and 3 Mahabir Singh and Ranbir Singh were ordered to be deleted and the amended memo of parties was filed. Thereafter, pre-summoning evidence was recorded and the Petitioner was summoned on the ground that there was sufficient material to proceed against him.

5. The Petitioners grievance is that it was not permissible to amend a complaint and, therefore, the order dated 14.09.2011 passed by the learned M.M. dropping the complainants No.1 and 3 from the array of parties was illegal. Thus, the Application dated 02.03.2012 preferred by him for dismissal of the complaint on the ground that the amendment is not permissible ought to have allowed and consequently the complaint case ought to have been dismissed.

6. In support of his contention, the learned counsel for the Petitioner places reliance on two reports of the Bombay High Court, that is, Behram S. Doctor v. State of Maharashtra, 2003 (4) Bom. L.R.621 and Neeraj Cement Structurals Pvt. Ltd. v. Bombay J.C.B. Earth Movers & Anr., 2008(2) Bom. C.R.

618. 7. On the other hand, the learned counsel for the Respondents referring to Haridas Naik & Ors. v. Hanchinamane Gadriyappa & Ors., 2010 CrI.L.J.

3634 urges that it is permissible for the Court to grant an opportunity to the complainants to decide as to out of several complainants who would continue to prosecute the complaint. The learned counsel for the Respondents also presses into service a judgment of the Punjab and Haryana High Court in Santokh Singh & Anr. v. Surpal Singh & Ors., 1996(1) Crimes 53 where it was laid down that the complaint can be permitted to continue by one of the complainants and the complainant can choose as to who would continue with the complaint.

8. I have given my thoughtful consideration to the respective contentions raised on behalf of the parties.

9. In Behram S. Doctor relied on by the Petitioner, the complainant wanted to substitute one of the accused by another accused which is not the case here. Similarly in Neeraj Cement, the complainant wanted to change material averments in the complaint, which is also not the case here.

10. What has happened in the instant case is that all the three Respondents were party to the transaction whereas a cheque for `60,00,714/- was issued by the Petitioner in favour of the Respondent No.1 which was dishonoured. It was in that view, that even before recording of the presuming evidence, the complainants through their counsel wanted to delete the name of two of the complainants and stated that the Respondent No.1 shall alone be the complainant. The course adopted by the Respondent No.1 and permitted by the learned M.M. was neither illegal nor irregular. The same was in consonance with the judgments in Haridas Naik and Santokh Singh.

11. Moreover, it is well settled that inherent powers under Section 482 of the Code though very wide have to be invoked sparingly and with circumspection only (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of the Court and (iii) otherwise to secure the ends of justice. In Satish Mehra v. State(NCT of Delhi) & Anr., (Criminal Appeal No.1834/2012) decided on 22.11.2012, the Supreme Court held that inherent powers of the High Court to quash an FIR or a criminal complaint can be invoked where the allegations made in the complaint even if admitted do not disclose any offence. The relevant part of the report in Satish Mehra is extracted hereunder:

15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extraordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfy the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed.

12. The Petitioner has not been able to make out that there is any misuse of the process of the Court or that otherwise it is expedient to exercise the powers under Section 482 of the Code.

13. The Petition, therefore, has to fail; the same is accordingly dismissed.

14. Pending applications also stand disposed of. (G.P. MITTAL) JUDGE
FEBRUARY 22 2013 pst

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