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S.P. GUPTA

v.

ASHUTOSH GUPTA

(Special Leave Petition (Crl.) No. 1953 of 2008)

MAY 13, 2010

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[ALTAMAS KABIR AND ANIL R. DAVE, JJ.]

Code of Criminal Procedure, 1973:

C *s.482 – Quashing of complaint – Complaint filed under s.420 r.w. s.120-B IPC – Assertions made in the complaint regarding misrepresentation made by petitioner as regards the property in dispute – Summons issued against petitioner – Petition for quashing the complaint – High Court dismissing* D *the same – Justification of – Held: Justified as prima facie case was made out in the complaint for trial of petitioner – The complaint gave rise to triable issues which could only be determined by leading evidence at the trial – Penal Code, 1860 – ss.415, 120-B.*

A complaint was filed against the petitioner and the other co-accused by the father of respondent under Section 420 r.w. Section 120B IPC. The trial court issued summons on the petitioner, and the accused no.1 and 4. The revisionary court refused to interfere with the order F **of trial court. Petitioner moved application under Section 482 Cr.P.C. before the High Court for quashing of the complaint. High Court dismissed the said application holding that a *prima facie* case was made out in the complaint against the petitioner for the alleged offences.** G **The High Court noted that the petitioner was integral to all the transactions that took place between the complainant and the accused No.1 as he was the constituted attorney of the said accused and therefore whether he acted with dishonest intentions or whether**

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he himself gave assurance as to the title of the accused no.1 at the time of execution of the agreement for sale were matters that raised triable issues and could only be determined by leading evidence at the trial. Aggrieved petitioner filed the special leave petition.

Dismissing the special leave petition, the Court

HELD: A *prima facie* case was made out in the complaint to go to trial. There was a positive assertion in the complaint that an assurance was given by the petitioner to the complainant that the property in question was free from all encumbrances and that the accused No.1 was the sole owner of the property. It was mentioned in the complaint that had such a representation been not made relating to the status of ownership of the property in question, the complainant would have not entered into the transaction at all. Whether or not the petitioner was truly mistaken with regard to the information given by him is a question of utmost importance in answering a charge of the nature indicated in the complaint. Merely because the petitioner had received part payment of the consideration amount and had made over the same to the accused no.1 and merely because possession of the land was handed over by him to the complainant, cannot form the basis of a presumption that he had no knowledge that there was a dispute regarding the ownership of the property, as to whether the same belongs to a HUF or not. Illustration (g) of Section 415 IPC clearly indicates that if at the very initiation of the negotiations, it is evident that there was no intention to cheat, the dispute would be of a civil nature. But such a conclusion would depend on the evidence to be led at the time of trial. In the instant case, the complaint does not make out a *prima facie* case to go to trial. The petitioner may have discharged his functions as a constituted attorney for the accused No.1 by acting as a liaison between the accused No.1 and the father of

A **the respondent, but that would not in itself indicate that he did not have any knowledge of the status of ownership of the land forming the subject matter of the transaction. Hence the order of High Court is not interfered with. [Para 13] [44-D-H; 45-A-E]**

B *Nageshwar Prasad Singh v. Narayan Singh* **(1998) 5 SCC 694, referred to.**

Case Law Reference:

C **(1998) 5 SCC 694 referred to Para 8**

CRIMINAL APPELLATE JURISDICTION : SLP (Criminal) No. 1953 of 2008.

From the Judgment & Order dated 19.02.2008 of the High
D Court of Delhi at New Delhi in CRLMC No. 847 of 2005.

Aman Lekhi, Meenakshi Lekhi, Sachin Jain, Vishal and Sunil Kumar Verma for the Petitioner.

Ashok Gurnani, S.K. Chaturvedi and K.V. Mohan for the
E Respndent.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. In this Special Leave Petition, the Petitioner, S.P. Gupta, has challenged the order dated
F 19th February, 2008, passed by the learned Single Judge of the Delhi High Court in Crl.M.C. No.847 of 2005, dismissing the Petitioner's application under Section 482 Cr.P.C. for quashing of the Criminal Complaint No.932 of 1992, instituted against the Petitioner and the other co-accused by
G the Complainant (father of the Respondent) under Section 420 read with Section 120-B of the Indian Penal Code.

2. By an order dated 7th April, 1992, the learned Metropolitan Magistrate, New Delhi, issued summons to the
H Petitioner, Accused No.1 Smt. Motian Devi Lamba and

Accused No.4 Shri G.R. Singhal under Section 420 read with Section 34 IPC. The Revision Petition filed against the said order issuing summons having been dismissed by the Additional Sessions Judge, New Delhi, on 8th February, 2005, the Petitioner moved the Application under Section 482 Cr.P.C. before the High Court.

3. Having regard to the allegations in the complaint, the learned Single Judge of the High Court dismissed the said application upon holding that upon reading the complaint, it was not possible to conclude that not even a prima facie case had been made out against the Petitioner for the offence under Section 420 read with Section 34 IPC. The High Court took note of the fact that having regard to the role attributed to each of the accused which had been noticed by the learned Magistrate, summons had been issued to only three of them and that as far as the Petitioner was concerned, the narration in the complaint showed that he was integral to all the transactions that had taken place between the complainant and the Accused No.1 as he was the constituted attorney of the said accused. The learned Single Judge also observed that whether the Petitioner had acted with dishonest intentions or as to whether he was unaware of the dishonest intentions of the Accused No.1 or that he himself held out no assurance as to the title of the Accused No.1 at the time the agreement for sale was executed or whether he acted beyond the scope of his authority under the power of attorney, were matters that raised triable issues and could only be determined by leading evidence at the trial.

4. Mr. Aman Lekhi, learned Senior Advocate appearing in support of the Special Leave Petition, urged that all the three Courts below had completely misconstrued the material available for the purpose of taking cognizance on the complaint filed by Chat Ram Gupta, the father of the Respondent Ashutosh Gupta. Mr. Lekhi urged that as the holder of the Power of Attorney for the Accused No.1, the Petitioner had merely

A carried out the instructions given to him from time to time by the Accused No.1 which he was required to follow in keeping with the powers vested in him under the Power of Attorney. Mr. Lekhi urged that the Petitioner was merely an agent appointed to carry out certain directions and that he had no personal B knowledge of the status of the properties involved in the transaction.

5. Mr. Lekhi submitted that if the Petitioner had no dishonest intention to defraud or cheat the father of the Respondent, he would not have handed over possession of the C property in question to the father of the Respondent. In fact, the Petitioner received the consideration amount on behalf of Accused No.1 and made over the same to her while making over possession of the land to the complainant.

D 6. Mr. Lekhi submitted that the Petitioner was unaware of the manner in which the property had been acquired by the Accused No.1 or that the same belonged to a Hindu Undivided Family (HUF) and had no dishonest intention to either defraud or cheat the father of the Respondent and accordingly, at best E a suit of a civil nature could have been filed on account of the transaction and the issuance of summons on the complaint filed by the complainant (father of the Respondent) was not justified in the facts of the case.

7. Mr. Lekhi submitted that the facts, as disclosed, do not F bring the actions of the Petitioner within the ambit of the expression "misrepresentation" as defined in Section 18 of the Indian Contract Act, 1872, since neither did he has any intention to deceive the father of the Respondent, nor did he gain any advantage in acting as the agent of the Accused No.1 for the G sole purpose of receiving the consideration money and making over possession of the land to the father of the Respondent, it could not be said that he had committed any offence, as alleged, and the summons issued on the said complaint under Section 482 read with Section 34 IPC were liable to be H quashed.

8. In support of his submissions, Mr. Lekhi referred to a Three-Judge Bench decision of this Court in *Nageshwar Prasad Singh vs. Narayan Singh* [(1998) 5 SCC 694], in which a similar question fell for consideration and relying on Illustration (g) of Section 415 of the Indian Penal Code, it was held that an agreement for sale of land and the earnest money paid to the owner as part consideration and possession of the land having been transferred to the purchasers/complainants and the subsequent unwillingness of the owner to complete the same, gave rise to a liability of a civil nature and the criminal complaint was, therefore, not competent.

9. Mr. Lekhi submitted that in the facts of the present case, which are almost identical to the facts of the aforesaid case, the summons issued to the Petitioner was liable to be quashed.

10. Opposing Mr. Lekhi's submissions, Mr. Ashok Gurnani, Advocate for the Respondent, contended that as had been indicated by the High Court, the question as to whether the Petitioner had any dishonest and/or fraudulent intention or whether he had deliberately misrepresented the facts relating to the status of ownership of the land would become clear once evidence had been led in regard to the circumstances in which he had represented to the father of the Respondent that the land was free from all encumbrances and that the Accused No.1 was the sole owner of the property. Mr. Gurnani submitted that had the Petitioner not made such a representation to the father of the Respondent, he may not have proceeded with the transaction. It was urged that it was too early for an assumption to be drawn that the Petitioner had no dishonest intention in representing to the father of the Respondent that the property was free from all encumbrances and that the Accused No.1 was the sole owner of the property.

11. Referring to the submissions made by Mr. Lekhi on Section 18 of the Indian Contract Act, 1872, Mr. Gurnani urged that Sub-Section (1) of Section 18 was quite clear as to what constituted misrepresentation.

A 12. As far as the decision in *Nageshwar Prasad Singh's* case (supra) was concerned, Mr. Gurnani submitted that the facts of the said case and the present case, though similar, could be distinguished having particular regard to Illustration (g) of Section 415 IPC. It was submitted that if no dishonest B intention could be shown at the very initial stage when the agreement was arrived at, the Court would be justified in holding that there was no misrepresentation and the dispute involving the refusal of one party to complete the transaction would be a dispute of a civil nature, which was not so in the C instant case. Mr. Gurnani urged that the order of the High Court or that of the other fora below did not warrant any interference and the Special Leave Petition was liable to be dismissed.

13. Having carefully considered the submissions made on behalf of the respective parties and the complaint filed by the D father of the Respondent, we are inclined to agree with the views expressed by the High Court that a prima facie case had been made out to go to trial. There is a positive assertion in the complaint that an assurance had been given by the Petitioner to the complainant that the property in question was E free from all encumbrances and that the Accused No.1 was the sole owner of the property. It has been mentioned in the complaint that had not such a representation been made relating to the status of ownership of the property in question, the complainant may not have entered into the transaction at F all. Whether or not the Petitioner was truly mistaken with regard to the information given by him is a question of utmost importance in answering a charge of the nature indicated in the complaint. Merely because the Petitioner had received part payment of the consideration amount and had made over the G same to the Accused No.1 and merely because possession of the land had been handed over by him to the complainant, cannot form the basis of a presumption that he had no knowledge that there was a dispute regarding the ownership of the property, as to whether the same belongs to a HUF or H not. It is true, as pointed out by Mr. Lekhi, that Section 415 IPC,

which defines the offence of cheating, provides in Illustration (g) as follows :

> "(g). A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery, A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract."

However, the aforesaid provision clearly indicates that if at the very initiation of the negotiations it was evident that there was no intention to cheat, the dispute would be of a civil nature. But such a conclusion would depend on the evidence to be led at the time of trial. In the instant case, the complaint does not make out a prima facie case to go to trial. The Petitioner may have discharged his functions as a constituted attorney for the Accused No.1 by acting as a liaison between the Accused No.1 and the father of the Respondent, but that does not in itself indicate that he did not have any knowledge of the status of ownership of the land forming the subject matter of the transaction.

14. We are not, therefore, inclined to interfere with the order of the High Court impugned in the Special Leave Petition and the same is, accordingly, dismissed.

D.G. Special Leave Petition dismissed.