

**(2009) 10 DEL CK 0035**

**Delhi High Court**

**Case No:** Criminal M.C. 102 of 2004

Sunil Kapoor and Another

APPELLANT

Vs

State and Another

RESPONDENT

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**Date of Decision:** Oct. 6, 2009

**Acts Referred:**

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 155(2), 156(1), 156(3), 203, 250
- Penal Code, 1860 (IPC) - Section 120B, 193(1), 34, 406, 420

**Citation:** (2010) 1 Crimes 90

**Hon'ble Judges:** Mool Chand Garg, J

**Bench:** Single Bench

**Advocate:** Mohit Mathur and V.S. Panwar, for the Appellant; Santosh Kohli, APP, for the Respondent

**Final Decision:** Allowed

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**Judgement**

Mool Chand Garg, J.

This order shall dispose of a petition filed u/s 482 Cr.P.C. read with Article 227 of the Constitution of India seeking quashing of the complaint titled as "Har Raj B. Singh v. Sonia Kapoor and Anr." pending in the Court of M.M., New Delhi and the consequent proceedings arising there from.

2. Briefly stating, the facts giving rise to the filing of the present petition are as follows:

i) On the basis of an agreement alleged to have been entered into between the parties for the sale of a plot No. 18A, J-Block, Sainik Farms measuring 1200 sq. yards being part of Khasra No. 12/24, Village Devli, in 1991 a civil suit bearing No. 2999/1991 was filed by the complainant seeking specific performance of the aforesaid agreement against Sonia Kapoor the wife of the petitioner and Janki

Kapoor the purchaser of the suit property prior to the execution of the alleged agreement on the allegations that the petitioner and the other co-accused person were not executing a sale deed in their favour despite receiving a sum of Rs. 4,00,000/- as per the receipt dated 04.08.1991. An application for injunction (IA No. 10423/91) filed along with suit seeking injunction order against Sonia Kapoor for restraining her from selling or parting with the possession of the aforesaid property was also dismissed vide order dated 07.01.1996. In the said order a Learned Single Judge of this Court had gone through the details of the plaint filed by the complainant and the written statements filed by Sonia Kapoor and the second defendant in that case. On the basis of the averments made therein and the documents annexed with the pleadings as well as the report filed by the CFSL which categorically stated that the receipt relied upon by the complainant was a fabricated document and did not bear the signatures of the second petitioner, it was observed:

3. Prima facie I am satisfied that the case of defendants 1 and 2 is more probable than the case of the plaintiff. The plaintiff has failed to establish a prima facie strong case for injunction. The balance of convenience lies in favour of the defendants. Therefore, IA No. 10423/91 for injunction is dismissed. There shall be no order as to costs.

Post the matter for admission denial of documents before the Joint Registrar on 12.05.1996. Thereafter the matter be listed for framing of issues on 09.07.1996.

ii) In the meanwhile, the complainant filed a complaint against the petitioners on 22.04.1992 on the same facts alleging that by violating the terms of the contract of sale and having appropriated the money given to them to their own use and having not refunded the same and as such, they were guilty of committing offences u/s 406 of the IPC. It seems that no orders favouring the complainant were passed in that complaint which was kept pending.

iii) A perusal of the record goes to show that this complaint which was pending before C.K. Chaturvedi, Metropolitan Magistrate concerned at the relevant time was fixed for recording complainant's evidence after dismissing his application u/s 156(3) Cr.P.C. which was moved in those proceedings and it is thereafter on 14.02.1994 another complaint was filed by the complainant/respondent No. 2 against the petitioners materially on the same facts again making similar allegations against the petitioners. This time, the Magistrate, who dealt with the complaint directed investigation u/s 156(3) of the Cr.P.C. A perusal of the complaint which is annexed with the present petition goes to show that the complainant had not disclosed about the filing of the first complaint in the second complaint.

iv) A very important fact which needs notice is that while in the first complaint it was not stated by the complainant/ second respondent that the payment of Rs. 4 lakhs was made to petitioner No. 1, there is a mention that the payment was made to petitioner No. 2 who also executed a receipt in this regard, in the second complaint

a new fact has been introduced by the complainant, that is to say, the payment was received by petitioner No. 1 and the receipt which was given to the complainant was a pre-signed receipt, that is to say, it was not signed by petitioner No. 2 in his presence and thereby, a new case has been sought to be introduced in the second complaint.

v) On the basis of the second complaint directions were given to the Police to investigate the matter u/s 156(3) Cr.P.C. Pursuant thereto, a report was filed stating that no case was made out against the petitioners. Thereafter, the Metropolitan Magistrate has also directed the I.O. of the case to send complete and admitted signatures of the petitioner to the CFSL. The I.O. complied with the aforesaid order and he sent the documents to CFSL. As per the report of CFSL, the petitioner No. 2 was completely exonerated inasmuch as the report said that the receipt relied upon by the complainant does not bear the signatures of petitioner No. 2 and thus, it was opined that the said receipt was not a genuine document.

vi) Despite the aforesaid report, the trial Court after recording the statement of the complainant and after clubbing both the complaints together issued summons to the accused petitioners u/s 420 IPC vide order dated 05.06.1997 and fixed the case for recording pre-charge evidence. The petitioner moved an application u/s 203, 340 of the Cr.P.C. as well as u/s 193(1) of the IPC which was not decided by the Magistrate concerned.

3. It is thereafter the present petition has been filed seeking quashing of the complaint inter alia on the following grounds:

i) On 04.09.1991 a receipt for Rs. 4,00,000/- was allegedly signed by petitioner No. 2. However, a report of CFSL dated 31.10.1994 admittedly exonerates the petitioner No. 2 to the extent that her signatures do not match with the signatures on the said receipt.

ii) As per the law and the terms of the said receipt, a Suit for Specific Performance bearing No. 2999/1991 was filed by Respondent No. 2 against the petitioners & Smt. Janki Devi and the Sub-Registrar, Asaf Ali Raod, New Delhi. The said suit was dismissed with costs to the defendants vide order dated 28.01.1998 by this Court for want of prosecution by respondent No. 2. No attempt has been made to restore the said Suit by respondent No. 2 till date. An application filed for the grant of injunction under order 39 R1&2 CPC has also been dismissed by this Court vide detailed orders passed by Learned Single Judge of this Court dated 03.01.1996.

iii) No complaint could be entertained by the trial Court after the Suit for Specific Performance was dismissed for want of prosecution. The Agreement to Sell/Receipt allegedly executed between the parties categorically mention that only a Suit for Specific Performance to be instituted by the parties in case of default by the either. In this regard, petitioners have also relied upon a judgment in Narender Singh v. Rejinder Kumar Lamba and Ors. 2007 (III) AD (Delhi) 544.

iv) It is also alleged that the property in question was not available for sale on the date on which the alleged agreement to sale/receipt is stated to have been executed because on that date the property stood transferred in the name of Smt. Janki Kapoor the second defendant arrayed as a party by the complainant in his civil suit which fact has been taken note of by this Court in the civil proceedings while dismissing the injunction application as stated above. Some observation made in the order dismissing the injunction application which details history of the litigation between the parties and the conduct of the complainant is also reproduced hereunder which fact has been taken note of by a Learned Single Judge of this Court in the civil proceedings from the pleadings of the parties:

That the present suit is not maintainable in view of the fact that the plaintiff has not come to this Court with clean hands and has concealed material facts from this Hon"ble Court. It is respectfully submitted that the present property was brought by the present defendant from Shri Hukum Singh and Shri Jagdish Singh on 25th September, 1990. A copy of the sale deed executed with respect to the said Sale deed executed with respect to the said property is hit hereto annexed and marked as Annexure-I. Prior to the execution of the said Sale Deed a Power of Attorney was executed in favour of Shri Sunil Kapoor who is the husband of the present defendant No. 1. A copy of the said power of attorney is annexed and marked as Annexure-2. It may be pertinent to state that at this stage that the present plaintiff was witness to the said Power of Attorney as would be evident from a bare perusal of the same. The Defendant is pointing out this fact only in order to show that the present plaintiff was aware of the said transaction, which was dated 3.5.1989. The plaintiff is therefore, surreptitiously, with malafide intentions is trying to give an impression that the present property in dispute is encumbered in some way or the other to reduce the price of the said property and is trying to illegally extract money from the defendants by filing the present false and frivolous suit. It is further respectfully, submitted that the falsehood of the present suit is evident from the fact that the present defendant had never entered into an agreement to sell with the present plaintiff as the alleged transaction is dated 4.9.91. Whereas that the present defendant had already before the said date sold the property, in dispute in the present case to the defendant No. 2 vide a Sale Deed which was registered on 11.9.91 much before the alleged so called sale was made to the present plaintiff and had handed over possession of the said property on the said date. It is further respectfully submitted that the RECEIPT filed by the present plaintiff is totally false, frivolous and forged and does not bear the signature of the present defendant. The plaintiff has committed perjury by forging the said signature and is liable to be proceeded against in accordance with law for the same. The registration of the sale deed with the defendant No. 2 was made on 11th September, 1991. It is further respectfully submitted that the said forger, is evident from the fact that the defendant No. 1 has, at that point of time signed various documents in which she has also given her specimen signatures. A copy of the said documents which would

indicate her specimen signature during the relevant time when the receipt in question has been allegedly signed by her will be filed by the defendant at the appropriate time. The signature of the defendant No. 1 in the VAKALATNAMA, also be compared with the signature on the receipt in order to verify the authenticity of the signature of the receipt.

4. It is, thus, contended that the initiation of criminal complaints, now clubbed by the learned Magistrate, on the same facts on which the civil suit was also filed and dismissed is an abuse of process of Court and continuation of those proceedings tantamount to mis-using the process of Court inasmuch as the petitioners are compelled to face the complaint even though they are not guilty of any offence as alleged by the complainant. It is, thus, submitted that this Court may come to the rescue of the petitioners by invoking its inherent powers u/s 482 Cr.P.C. by dismissing the complaint and quashing the proceedings arising therefrom in favour of the petitioners.

5. Insofar as the complainant is concerned, despite opportunity granted he has not cared to file the synopsis. It would not be out of place to mention that the Metropolitan Magistrate concerned has not taken note of the facts as stated above which were very much available on the file of the complaint case and which reflects the ill intention on the part of the complainant and somehow pressurizing the petitioner for their illegal demands despite losing in the Civil Court.

6. A perusal of the record goes to show that the case which has been sought to be pressed in service by the complainant against the petitioners in the second complaint is an after-thought by making averments in the second complaint an impression is sought to be created upon the Court that the money was given to the first petitioner against a receipt which was already signed though it was not the case put up in the first complaint. In any event, the purpose of executing the receipt was to enforce an agreement to sell by way of specific performance. The said suit was filed but has not been successful. Thus, even if the facts as disclosed in the second complaint are taken as correct, the filing of the said complaint in the wake of filing of the first complaint on different facts results in mis-carriage of justice and abusing the process of Court. This is more so because the Trial Judge while issuing summons has not even considered the averments made in the first complaint which were very material in this case.

7. The law with regard to quashing of complaint now is well-settled. In the case of [R.S. Raghunath Vs. State of Karnataka and another](#), the Apex Court was pleased to give illustrative categories where complaint/FIR can be quashed if the facts would fall in the following categories i.e.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of a Magistrate as contemplated under S. 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

8. In the facts of the present case, it is apparent that the purpose of filing of complaint in the year 1992 and again in 1994 after invoking civil jurisdiction of this Court was only to pressurize the petitioner to make a settlement with the complainant so as to compel them to either return the amount allegedly received by them at the time of entering into the Agreement to Sell or to sell the property despite there being no agreement executed between the parties and the receipt was not even signed by petitioner No. 2 as held by the CFSL. In any event, once the civil suit for specific performance was dismissed the rights of the parties stand crystallized. Nothing has been brought to the notice of this Court about steps taken, if any, to revive the suit dismissed in default. Insofar as the complaints are concerned, admittedly, the record shows that even the receipt was not signed by the petitioner and therefore, permitting those complaints to be tried by the concerned court would naturally be an attempt to help the complainant to secure money which he is not otherwise entitled to by using the process of criminal court as a tool for ulterior motives, which is the seventh illustration given by the Hon"ble Apex Court in Bhajan Lal's case (supra).

9. In fact the perusal of the two complaints goes to show that the second complaint filed by the complainant is based upon new facts which were not there in the first complaint i.e. making a reference to an unidentified lady being present at the time of handing over the sum of Rs. 4 lakhs that also to the first petitioner instead of the second petitioner, who is the owner of the property and allegedly agreed to sell the property as alleged in the first complaint that also after an order passed by the Metropolitan Magistrate refusing to direct the Police to investigate into the matter u/s 156(3) Cr.P.C. This goes to show that the process adopted by the complainant was an abuse of process of Court.

10. In the case of Narender Singh v. Rajinder Kumar Lamba and Ors. 2007 III AD (Delhi) 544 also relied upon by the petitioner (supra) the law on the subject has been discussed by Learned Single Judge of this Court by giving reference to various earlier judgments in a similar case where also on the similar facts a complaint was filed by the complainant u/s 420/406/506/Part-II/448 read with Section 120B IPC despite filing a civil suit by alleging that there was an agreement to sell executed by the accused whereby he had agreed to sell his 2/7 shares in the undivided property to the complainant for a consideration of Rs. 48.50 lakhs and out of the same the complainant paid Rs. 3.50 lakhs and the balance was yet to be paid at the time of execution but which was not paid by the complainant. The suit filed by the complainant CS-05 (2100/96) for specific performance of the contract was pending. After filing of the suit the complainant also filed a complaint as has been done in the present case. The accused then approached this Court by filing a petition u/s 482 Cr.P.C. and had contended that for a civil dispute there cannot be a criminal prosecution. Reference was made to a judgment delivered in the case of [Indian Oil Corporation Vs. NEPC India Ltd. and Others](#). It was also contended in that case that in the peculiar facts of that case the proceedings initiated by way of criminal complaint were uncalled for and unjustified, rather amounted to abuse of process of Court. The Learned Judge taking into consideration the facts of that case made the following observations which are directly applicable to the facts and issues before me:

8. ...It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction u/s 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or other wise to secure the ends of justice.

9. ...In State of Karnataka v. E. Muniswamy this Court said that in the exercise of the wholesome power u/s 482 of the code of High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that

the proceedings are to be quashed.

11. ...In Chandrapal Singh v. Maharaj Singh, the judgment started as under (SCC p.467, para 1).

A frustrated landlord after having met his Waterloo in the hierarchy of civil courts, has further enmeshed the tenant in a frivolous criminal prosecution which prima facie appears to be an abuse of the process of law. The facts when stated are so telling that the further discussion may appear to be superfluous.

This Court said (SCC p.474 para 14)

We see some force in the submission but it is equally true that a chained and frustrated litigant should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court. Complainant herein is an advocate. He lost in both courts in the rent control proceedings and has now rushed to the criminal court. This itself speaks volumes. Add to this the fact that another suit between the parties was pending from 1975. The conclusion is inescapable that invoking the jurisdiction of the criminal court in this background is an abuse of the process of law and the High Court rather glossed over this important fact while declining to exercise its power u/s 482 Cr.P.C.

Without burdening this judgment with further case law, as cited by learned Counsel for the petitioner, purpose would be served by referring to a recent judgment of the Apex Court in the case of M/s. Indian Oil Corporation (supra) wherein after taking stock of the available judgments, the Supreme Court took note of the growing tendency of converting civil disputes into criminal cases by levelling frivolous allegations, as would be clear from the following observations:

10. While on the issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriage/ families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal prosecution should be deprecated and discouraged.

It was further observed that:

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and



harassment of innocent parties, is to exercise their power u/s 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may.

12. In a case like this, I am of the view that the remedy for the complainant was to file suit for specific performance as the dispute is of a civil nature, which he filed in the year 1996. No subsequent events took place on the basis of which he could file a criminal complaint in the year 1999. The allegations of subsequent events, namely dispossession from the garage, theft, threats etc. have not been substantiated and the learned ASJ has himself quashed the process in respect of these provisions. The matter is, Therefore, purely of civil nature. This petition is, accordingly, allowed and the summoning orders issued against the petitioner under Sections 420/34 IPC are quashed.

No costs.

11. The observations made in the aforesaid judgment are directly applicable to the facts and issues in the present case. The complainant first filed a civil suit on same facts seeking specific performance of the agreement with respect to an alleged agreement to sell for Rs. 16 lakhs out of which he had only paid Rs. 4 lakhs. The receipt relied upon has not been found to be genuine. The civil suit has been dismissed. The complainant in this case not only filed the civil suit but also filed a complaint in 1992, then again without disclosing filing of the first complaint also filed a second complaint in 1994 which apparently is a mis-use of the process of Court. It is surprising that the Magistrate who was trying the second complaint instead of dismissing the second complaint straightway decided to club the first complaint with the second complaint. The Judge also failed to appreciate the report called for u/s 156(3) Cr.P.C. which has also not supported the case of the complainant. Moreover, the civil suit filed by the complainant stands dismissed. The application of injunction filed in that suit also stands dismissed vide detailed order.

12. In fact, it is a case where the complainant is attempting execution of the agreement to sell just on the basis of part payment despite the report of FSL which has not found the receipt to be a genuine document and having failed in the civil proceedings initiated in 1991.

13. In the peculiar facts which have not been contravened by the respondent/complainant despite opportunity granted to file written synopsis, it is a fit case where powers possessed by this Court u/s 482 Cr.P.C. are exercised for the reason that all the three circumstances which permits this Court to exercise its inherent powers u/s 482 Cr.P.C. i.e. (i) grave injustice would be caused against the petitioner if the complaint is allowed to be continued; (ii) the process of court is being abused; and (iii) the evidence which is sought to be relied upon is not sufficient which may convict the petitioner even if the complainant is allowed to go for a full dress trial in the present case. Reference can also be made in this regard to

an old judgment which still holds good delivered in the case of [R.P. Kapur Vs. The State of Punjab](#), which has been quoted with approval in a judgment delivered by the Apex Court in [Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others](#), and [State of Andhra Pradesh Vs. Bajjoori Kanthaiah and Another](#),

14. In view of the aforesaid, the Criminal Complaint bearing Nos. 55/1/92 dated 20.04.92 & 21/1/94 dated 08.02.94 clubbed together vide order of the Magistrate dated 12.10.1996 pending in the Court of Metropolitan Magistrate, New Delhi and the proceedings arising therefrom are hereby quashed. Petition is allowed. Pending applications, if any, also stand disposed of. The bail bonds, if any, of the petitioners would stand discharged. TCR be sent back along with the copy of the order.