

Viral P. Sanghavi vs State Of Delhi & Anr on 19 February, 2024

Author: Jyoti Singh

Bench: Jyoti Singh

\$~90

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 1357/2024
VIRAL P. SANGHAVI

.....

Through: Mr. Mangesh Patel and
Utkarsh, Advocates.

versus

STATE OF DELHI & ANR.

Through: Mr. Digam Singh D
State with SI Sachin Dhama
Mr. Kislay Komal, Mr. Shas
Mr. Abid Khan, Advocates f

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH
ORDER

% 19.02.2024 CRL.M.A. 5363/2024 & CRL.M.A. 5364/2024 (exemptions)

1. Allowed, subject to all just exceptions.

2. Applications stand disposed of.

CRL.M.C. 1357/2024 & CRL.M.A. 5362/2024 (interim relief)

3. This petition has been filed by the Petitioner under Article 227 of the Constitution of India read with Section 482 Cr.P.C. assailing the order dated 31.01.2024 passed by the learned Additional Sessions Judge, District North- West, Rohini Courts, Delhi whereby order dated 28.07.2023 passed by learned M.M., dismissing the application filed by the complainant under Section 156(3) Cr.PC has been set aside. Quashing of FIR No.67/2024 dated 02.02.2024 registered under Sections 403/406/420/506/34 IPC at PS:

Shalimar Bagh is also sought.

4. As per the allegations levelled by the complainant, who is one of the Directors in M/s. Vasu Polymers (India) Pvt. Ltd., Praful C. Sanghvi called This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 08/03/2024 at 21:05:31

the complainant in the first week of February, 2018 representing himself to be one of the partners of M/s. Elite Packaging and expressed interest in purchasing several tonnes of LLDPE Stretch Film (Manual Grade), per month. It was assured that the complainant will not face any difficulty with respect to the payments. Complainant placed a trial order vide e-mail dated 21.02.2018 for a huge quantity. Thereafter, from 24.02.2018 to 09.03.2019, supplies of goods worth Rs.2,45,97,014/- were made to M/s. Elite Packaging under 142 invoices. From 16.03.2019 to 21.08.2019, goods worth Rs.15,72,918/- were supplied to M/s. Midas under 13 invoices. However, despite receiving the goods, only part payments were made by the Firm and a sum of Rs.1,99,20,146/- is stated to be outstanding from M/s. Elite Packaging and M/s. Midas including interest amounting to Rs.25,00,000/-. When demands were made for release of outstanding payments and legal notices were sent by the complainant, the accused started threatening and intimidating the complainant. No action was taken by the Police despite filing complaints dated 30.12.2020 and 14.02.2021 with SHO and DCP of the area concerned.

5. As the chronology goes, Complainant thereafter filed an application under Section 156(3) Cr.P.C. in his capacity as one of the Directors in M/s. Elite Packaging and sought a direction from the learned Magistrate to the police to register an FIR, however, the application was dismissed by the learned MM observing that complainant could lead pre-summoning evidence on his complaint under Section 200 Cr.P.C.

6. The order of the learned MM dated 28.07.2023, dismissing the application under Section 156(3) Cr.P.C., was challenged by the complainant in Cr. Rev. 354/2023. By the impugned order dated 31.01.2024, This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 08/03/2024 at 21:05:31 the Revision Court set aside the order of the MM and directed the SHO of the concerned police station to register an FIR on the facts of the case, under appropriate Sections, without being influenced by the Sections mentioned in the complaint. It was made clear that the order will not be construed as a direction to the SHO to immediately arrest the accused persons and the SHO/investigating agency would first investigate the matter and find out whether actually any offence was committed and thereafter proceed as per law.

7. Learned counsel for the Petitioner states that the impugned order cannot be sustained in law as the interference by the Revision Court in the order of the learned MM dismissing the application under Section 156(3) Cr.P.C. was unwarranted. Learned Sessions Judge has imported his own conclusion in the order that a case under Section 403 IPC i.e. misappropriation of property is made out against the Petitioner. Even assuming that a case is made out under Section 403 IPC, the same is non- cognizable and police investigation cannot be ordered under Section 156(3) Cr.P.C., which provides that any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XII. Reliance is placed on the judgment of the Supreme Court in *Kailash Vijayvargiya v. Rajlakshmi Chaudhuri and Others*, 2023 SCC OnLine SC 569, to highlight the difference in the power of the

Magistrate to issue direction to register an FIR under Section 156(3) Cr.P.C. and the power exercisable at the post-cognizance stage under Section 202 Cr.P.C. It is urged that power of the Magistrate to direct investigation falls under two This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 08/03/2024 at 21:05:31 different provisions of the Cr.P.C.: one is pre-cognizance stage under Section 156(3) Cr.P.C. and other is upon cognizance under Chapter XIV read with Chapter XV and the two powers are different, apart from a procedural distinction between the two. In the present case, once the Magistrate exercised the power holding that no directions were required under Section 156(3) Cr.P.C. and complainant could lead pre-summoning evidence under Section 200 Cr.P.C., based on good reason that the allegations were in respect of cheating; the identity of the alleged persons was known to the complainant, who was in possession of documents such as ledger accounts statements etc. and a civil suit was pending, the Revision Court erred in law in setting aside the order and directing registration of the FIR and that too in respect of non-cognizable offence.

8. Learned APP appearing on behalf of the State defends the impugned order and urges that no ground to interfere in the impugned arises in the present petition warranting exercise of inherent jurisdiction of this Court under Section 482 Cr.P.C. It is argued that Petitioner is misreading and misconstruing the observations and the directions of the Revisional Court. Reading of the impugned order reflects that the Court has nowhere stated that offence under Section 403 IPC is made out. All that has been observed is that given the nature of allegations and transactions, Section 403 IPC can be invoked by the complainant. In fact, in paragraphs 13 and 14, the Revisional Court has noted that given the circumstance that various documents such as GSTR-2A etc. are apparently in the possession of the Petitioners herein and investigation is required to verify the allegations of the complainant. In this backdrop, the Court directed registration of an FIR looking to the facts of the case and under appropriate Sections of law, This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 08/03/2024 at 21:05:32 however, making it clear that before doing so the SHO/Investigating Agency would first investigate the matter and find out whether actually any offence has been committed or not and thereafter proceed as per law. In the impugned order, there was no direction to register an FIR for offence under Section 403 IPC and it was left to the Investigating Agency to proceed as per law. Thereafter, the investigation was carried out and FIR was registered under Sections 403/406/420/506/34 IPC, i.e both cognizable and non- cognizable offences. In *State of Orissa v. Sharat Chandra Sahu and Another*, (1996) 6 SCC 435, the Supreme Court has held that sub-Section (4) of Section 155 Cr.P.C. creates a legal fiction and provides that although the case may comprise of several offences of which some are cognizable and others are not, it would not be open to the Police to investigate the cognizable offences only and omit the non-cognizable offences. Where the whole case comprises of both kinds of offences, it is to be treated as cognizable and Police has no option but to investigate the whole case. Learned counsel for the Complainant adopts the arguments canvassed on behalf of the State and prays for dismissal of the petition.

9. I have heard learned counsel for the Petitioner, learned APP for the State as well as learned counsel for the Complainant.

10. The primordial contention raised on behalf of the Petitioner before this Court is that the Revisional Court has erroneously directed registration of an FIR against the Petitioner for an offence under Section 403 IPC. The argument has two limbs. It is urged that Revisional Court had no jurisdiction to direct that an FIR must be registered under a particular provision and/or import its own observation that an offence of misappropriation under Section 403 IPC is made out. The second limb of the argument is that even This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 08/03/2024 at 21:05:32 assuming that an offence under Section 403 IPC is made out, the same being non-cognizable, no investigation by the Investigating Agency can be directed under Section 156(3) Cr.P.C., which empowers the Police to investigate only with respect to cognizable offences. As a side point, it was also argued that the disputes relate to supply of goods and are purely civil in nature, in respect of which a civil suit is already pending between the parties.

11. In the considered opinion of this Court, the contentions raised by the Petitioner are wholly misconceived and are based on a misreading of the impugned order. For the sake of ready reference, relevant part of the impugned order is extracted hereunder:-

"10. Reverting back to the proceeding before the Ld. MM, the complainant filed the complaint before the Ld MM on 08.06.2022. Thereafter, ATR was called from the police station concerned. The status report was filed on 26.09.2022 and subsequently further status report through DCP was filed on 22.07.2023. After hearing the complainant and going through the ATR the Ld. MM dismissed the application under Section 156(3) for registration of FIR.

11. The Ld. Trial Court dismissed the application for registration of FIR mainly on the ground that the complainant has failed to point out as to what documents or information is to be obtained from the respondents. The relevant extract of the order is reproduced below for ready reference:-

" Complainant has failed to point out as to what documents or information is to be obtained from the alleged persons with the help of police. Considering that all the documents are either already in possession or within reach of the complainant, therefore no field investigation by the police appears to be required. In the facts and circumstances of the case as mentioned in the complaint and the application, there is no requirement of collection of evidence by the police at this stage as the complaint can lead his evidence. It is also noticeable that the court may issue summons to any relevant witness/person/authority at the instance of Complainant for brining full fact and material pertaining to the incident in question"

12. It is the contention of the complainant that he has been dishonestly induced to supply the goods to the tune of Rs. 2,45,17,014/-. The respondents have taken the defence that he has paid a sum of Rs.

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 08/03/2024 at 21:05:32 82,50,240/- to the complainant according to the quantity of goods supplied to him. This is not a case where the respondents have stopped the payment on the ground of supply of defective goods rather the respondents have disputed the quantity of material supplied to them. To verify the quantity of material supplied, the Inquiry Officer while filing the action taken report has categorically mentioned that the respondents have failed to submit the statement of account and GST Return (GSTR- 2A). The relevant portion of the action taken report is reproduced below for ready reference:-

"..... They have acknowledged the payments of Rs. 82,50,240/- made to the complainant company. Another notice was issued to both Sh. Praful C. Sanghavi and Sh. Viral C. Sanghavi to produce statement of account, GST Returns (GSTR-2A), ownership proofs of M/s. Elite Packaging and M/s. Midas, bank details by 30.09.2021. However, both Sh. Praful C. Sanghavi and Sh. Viral C. Sanghavi didn't produce any document. ... The transport ledgers shows that Sh. Viral C. Sanghavi and Sh. Praful C. Sanghavi have received all material alleged by the complainant company as Sh. Viral C. Sanghavi and Sh. Praful C. Sanghavi have paid the freight of all material to the transporter through bank ..."

13. Once the respondents dispute the supply of the material and the complainant is able to show that the goods were supplied, then the offence of criminal misappropriation under Section 403 IPC can be invoked against the respondents. Statement of account of the relevant period and the GSTR-2A are the documents, which are apparently in the possession of the respondents and has not been supplied by the respondents to the Inquiry Officer. These are the relevant documents, which goes to the root of the matter as GSTR-2A details the purchases a company makes in a particular month, thereby noting all invoice details.

14. Therefore, this Court has no hesitation to hold that the police investigation is required in the present matter to verify the allegation of the complainant by collecting the documents relating to the purchase and supply of goods. Accordingly, the impugned order is hereby set aside and it would be appropriate that an FIR is registered in the present matter so that a complete investigation is carried out. In these circumstances, SHO of PS concerned is directed to register an FIR on the facts of the present case under appropriate sections of law without being influenced by the sections mentioned in the complaint. It is however, made clear that this order is no direction to the SHO to immediately arrest the accused persons. The SHO/Investigating Agency should first investigate the matter and find out whether actually any offence has been committed or not and thereafter proceed as per law. File be consigned to record room after due compliance."

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 08/03/2024 at 21:05:32

12. From a bare reading of the impugned order, it is evident that the Revision Court has first noted that the transaction relates to supply of goods by the complainant to the accused company and allegedly after supplies were made, money was outstanding towards the complainant. Reference is thereafter made to an Action Taken Report filed before the learned MM in which it was stated that Praful C. Sanghvi and Viral C. Sanghvi had acknowledged payments of Rs.82,50,240/- to the complainant company but after notice was issued to produce statement of account, GSTR-2A etc., they did not produce the said documents. Revision Court thereafter observed that once the complainant is able to show that goods were supplied, offence of criminal misappropriation under Section 403 IPC can be invoked by the complainant. Documents such as GSTR-2A etc. are in possession of the Petitioner herein, which go to the root of the matter and therefore, police investigation would be required to verify the allegations. Having so stated, the Revision Court directed registration of an FIR, setting aside the order of learned MM, dismissing the application under Section 156(3) Cr.P.C. However, this direction was not without a caveat. The learned Sessions Judge clarified in the later part of the order that the direction to register an FIR should not be construed as a direction to forthwith arrest the Petitioner herein and that the SHO/Investigating Agency should first investigate the matter to find out if any offence has been committed or not and thereafter proceed as per law. Therefore, the direction in the impugned order cannot be construed as a mandate to the Investigating Agency to register an FIR straightaway and to this extent the argument of the Petitioner is misconceived, based on a misreading of the order. Equally misconceived is the argument that the Sessions Judge has directed registration of an FIR This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 08/03/2024 at 21:05:32 under Section 403 IPC. Reading of the order shows that the learned Judge has only observed that as the goods were supplied by the complainant and money was outstanding since only part payment was admittedly made, the complainant could invoke Section 403 IPC which pertains to an offence of dishonest misappropriation of property. Paragraphs 13 and 14 of the impugned order will have to be read in entirety and when read holistically, this Court is unable to discern any direction by the Revision Court to register an FIR forthwith without carrying out investigation and coming to a conclusion that any offence is allegedly committed. Impugned order warrants no interference by this Court.

13. Indisputably, after conclusion of investigation, FIR has been registered under Sections 403/406/420/506/34 IPC, some of which are cognizable while others are non-cognizable. Applying the ratio of the judgment in State of Orissa (supra), by a deeming fiction of law, the Investigating Agency is required to treat the case as one relating to cognizable offence.

14. At this stage, learned counsel for the Petitioner submits that he may be given liberty to take recourse to appropriate remedies seeking quashing of the FIR on independent and separate grounds including on merits. Liberty as prayed for, is granted, in accordance with law.

15. Petition is dismissed making it clear that this Court has not expressed any opinion on the merits of the case. Pending application also stands disposed of.

JYOTI SINGH, J FEBRUARY 19, 2024/kks/shivam This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 08/03/2024 at 21:05:32