

Ats Real Estate Builders Private ... vs State Of Nct Of Delhi & Ors on 18 December, 2023

Author: Rajnish Bhatnagar

Bench: Rajnish Bhatnagar

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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(CRL) 3728/2023
ATS REAL ESTATE BUILDERS PRIVATE LIMITED

STATE OF NCT OF DELHI & ORS.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR
ORDER

% 18.12.2023

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(CRL) 3728/2023 AND CRL.M.A. 34737/2023 (stay)

3. The present petition has been filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C. by the petitioner for quashing of FIR No. 81/2023 under Sections 406/409/420/120B IPC registered at Police Station EOW and all proceedings emanating therefrom.

4. It has been argued by the learned Counsel for the petitioners 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 21/12/2023 at 21:56:33 that no offence under Section 406/409/420/120 IPC is made out as the ingredients of the said sections are not fulfilled and dispute is purely civil in nature which has been given a criminal colour

and it is arising only out of MOUs/Tripartite Agreement amongst the parties. It has been argued that the present FIR is frivolous, vexatious and is manifestly attended with mala fide and has been maliciously instituted with ulterior motive.

5. It is further submitted that Tri-partite Agreement, has been signed between ATS Real Estate Builders Pvt. Ltd. (Developer of the project "ATS MARIGOLD" at Gurugram, Haryana) and the respective respondents and ATS Infrastructure Limited. It is also submitted that as per the said Agreement, it was required of ATS Infrastructure to pay a requisite fixed-sum of amount for purchasing the Units from the respondents/complainants, in view of the individual Tripartite Agreement signed with each respondents respectively, wherein the respondents claimed to have purchased the aforesaid Units from Domus Greens Private Limited.

6. It is submitted that the petitioner is Developer of the project ATS MARIGOLD and has been unnecessarily entangled between a dispute for recovery of sale consideration between the Seller, who are the respondent/complainant of the present FIR and the buyer- M/s ATS Infrastructure Ltd.

7. It is further submitted by learned counsel for the petitioner that there are material suppressions and malicious concealment of vital facts in the FIR, which have intentionally and deliberately not been disclosed in order to give the present civil dispute a criminal colour. It This is a digitally signed order.

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8. It has been further submitted that the OC for the project in question has been obtained, however the respondent/complainant were never interested in their allotment and were merely speculative investor as held by the Ld. NCLT, New Delhi and merely certain breach of the terms of the Tri-partite Agreement could not fulfil the stringent ingredients of section 420/406 IPC. The learned counsel in that regard has relied on a recent judgment passed by the Supreme Court in the case of Sarabjit Kaur v/s State of Punjab and Anr. (2023) SCC Online 210, wherein the court observed that "A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceeding". Relying on the said judgment, it has been submitted that the worst case against the petitioners may be that they could not keep up their promise as per the Agreement and apparently there is no dishonest or fraudulent intention of the petitioners, whether at the inception of the Tri-partite Agreement so as to attract the ingredients of section 420 IPC or dishonest intention after the Tri-partite Agreement, so as to This is a digitally signed order.

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9. It is further submitted by learned counsel for the petitioner that by no stretch of imagination Section 409 IPC is applicable in the facts and circumstances of the present case.

10. The learned Counsel has next placed reliance on the judgment of Vijay Kumar Ghai v. State of WB, (2022) 7 SCC 124, to submit that the Hon'ble Apex Court has time and again cautioned about converting purely civil disputes into criminal cases and also referred to the judgment of Indian Oil Corpn. [Indian Oil Corpn. V. NEPC India Ltd., (2006) 6 SCC 736, wherein the Apex Court noticed the prevalent impression that since civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors and therefore there had been a growing trend to settle civil disputes and claims by applying pressure through criminal prosecution. It has been submitted that in that case, the Apex Court clearly observed to deprecate and discourage all such initiation of criminal cases, which do not involve any criminal offence. It has been argued that the transaction as is apparent from the terms of the Tri-partite Agreement was purely an investment and Purchase value agreement and even for the sake of argument, the respondent/complainant were entitled for recovery only and the criminal machinery cannot be used for recovery of any amount.

11. According to the Learned Counsel, merely because since the transaction was of year 2016 and the respondent/complainant may face a hurdle of limitation in Civil recovery, the criminal machinery cannot be utilized to supplement the said recovery proceedings This is a digitally signed order.

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12. Learned counsel for the petitioner has also relied upon the judgment passed by the co-ordinate Bench of this Court in Shiv Kumar and Another V. State of NCT of Delhi and Another in CrI.M.C. 1537/2023 whereby FIR No. 7/2022 under Sections 420/406/120B IPC, registered at P.S. Economic Offence Wing involving similar questions of facts and law was quashed and has prayed that in order to avoid any miscarriage of justice the investigation or any proceedings arising of the said FIR should be stayed and has also relied on the following judgments:

Mitesh Kumar J. SHA Vs State of Karnataka, 2021 SCC Online 976; Wolfgang Reim & Ors. Vs State & Anr. 2012 SCC Online Del 3341;

Sunil Bharti Mittal Vs CBI, 2015(4) SCC 609;

Shiv Kumar Jatia V/s State

N. Raghavender V/s State of
R. Nagender Yadav V/s State
Sarabjit Kaur Vs State of P
Sushil Sethi V/s The state

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13. Issue notice. Learned ASC for the State as well as learned counsel for the complainant appears on advance notice and accepts notice.

14. It is submitted by learned ASC duly assisted by learned counsel for the complainant that the order dated 09.06.2023 passed by NCLT is under challenge in an appeal filed by the respondents. It is further submitted that judgments hereinabove relied upon by the petitioner are not applicable in the present case. He seeks time to file status report. Learned counsel for the complainant further submits that the judgment relied upon by the petitioner Shiv Kumar and Another (supra) is under challenge before the Hon'ble Supreme Court.

15. I have perused the FIR and the judgements referred by the Ld. Counsel for the petitioners.

16. In the present case, it is seen that the rights of the parties arise from the individual allotment letters and the MOUs/ Tri-partite Agreement executed inter-se between them. The FIR has been essentially lodged as the buy-back scheme as assured by the petitioners could not be fulfilled in terms of the said Agreement. This court finds that PDC's for the buyback purchase amount were issued to the Respondent/Complainant at the time of the said execution of the Tri-Partite Agreement itself and from the several terms of the said Agreement, apparently, the said MOU/ tripartite Agreement seems to be an Agreement to sell as has also been held by the Ld. NCLT, New Delhi vide its order dated 09.06.2023 filed by the This is a digitally signed order.

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17. Further, from the averment of the FIR it is seen that right at the time when the Tri-partite Agreement was executed between the parties, the respondent/complainant had been given PDC for the buy- back amount. As per the Agreement, the said PDC became due for payment on the respective dates as mentioned in the said Cheque after a Holding period. The FIR categorically mentions that the respondent/complainant, had been extending the Holding period and the dates on the PDC's and have been also accepting fresh Cheque's in lieu of the earlier Cheque's. The respondent/complainant have already initiated proceedings under the provisions of Section 138 Negotiable Instrument for the same amount as has been mentioned in the present FIR, which this court is informed is presently pending before the competent Magistrate Court.

18. This Court finds that though a case of breach of trust may be both a civil wrong and a criminal offence there would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence and giving colour of criminal case to dispute which is otherwise purely civil and contractual in This is a digitally signed order.

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19. Learned ASC has already sought time to file the status report. The Learned Counsel appearing for the Respondents/ complainant, may also file a reply before the next date of hearing with an advance copy to the other side.

20. List on 24th January 2024.

21. Taking the overall view of the matter and looking into the facts and circumstances of this case, the Investigation in the FIR No. 81/2023 under Sections 406/409/420/120B IPC registered at Police Station EOW and all proceedings emanating therefrom shall remain stayed till the next date of hearing.

RAJNISH BHATNAGAR, J DECEMBER 18, 2023/sd This is a digitally signed order.

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