

Ats Infrastructure Limited & Ors 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

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W.P.(CRL) 3729/2023

ATS INFRASTRUCTURE LIMITED & ORS.

STATE OF NCT OF DELHI & ORS.

103.

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W.P.(CRL) 3740/2023

DOMUS GREENS PRIVATE LIMITED

STATE OF NCT OF DELHI & ORS.

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CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

% 18.12.2023 CRL.M.A. 34740/2023 In W.P.(CRL) 3729/2023 CRL.M.A. 34796/2023 In W.P.(CRL) 3740/2023

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(CRL) 3729/2023 AND CRL.M.A. 34739/2023 (stay) W.P.(CRL) 3740/2023 AND CRL.M.A. 34795/2023 (stay)

3. Both the petitions have 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. 82/2023 under Sections 406/420/120B IPC registered at Police Station EOW and all proceedings emanating therefrom.

4. It has been argued by the learned Counsel for the petitioners that no offence under Section 406/420/120 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 malafide and has been maliciously instituted with ulterior motive.

5. It is further submitted that the said Tripartite Agreement, has been signed between Domus Greens Private Ltd.(Developer of the project "ATS DOLCE" at Greater Noida, Gautam Budh Nagar, Uttar Pradesh) and the respective respondents and ATS Infrastructure This is a digitally signed order.

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6. It is submitted that both the Developer (petitioner in W.P(CRL) No. 3740/2023) and the purchaser (petitioner No.1 in W.P(CRL) No. 3729/2023) have filed individual Petitions. Further, in the petition filed by the purchaser, other parties have also been impleaded as petitioners and according to the Learned Counsel, although Petitioner No.2 and Petitioner No.4 are presently the Directors in the Petitioner No.1 Company, however at the time of transaction of the aforesaid Allotment/Tripartite MOU(s) etc., Petitioner No.4 was not a Director of the Company. Moreover, Petitioner No.3 is an erstwhile Director in the said Company and the mala fide in instituting the present FIR is writ large from the fact that Petitioner No.5 is neither a Director in the Petitioner No.1 Company nor has got any relation whatsoever with the Petitioner No.1 or DGPL except for the fact that Petitioner No.5 is the daughter of the Petitioner No.2 and apparently has been impleaded in the said FIR as an Accused without any correlation whatsoever, merely to cast undue pressure for

wreaking vengeance on the Petitioner No.2, who is the director of the Petitioner No.1 Company, due to private & personal grudges.

7. It is further submitted by learned counsel for the petitioners that there are material suppressions and malicious concealment of vital This is a digitally signed order.

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8. 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 Agreement and even for the sake of argument, the respondent/complainant were entitled for

recovery only of the purchase value and the criminal machinery cannot be used for recovery of any amount. 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 against the petitioners. It has been further argued that a detailed reply had been sent to the Police by the This is a digitally signed order.

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9. 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 Stat
Sunil Bharti Mittal Vs CBI,
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
Randheer Singh V/s the stat
of 2021).

10. Issue notice. Learned ASC for the State as well as learned This is a digitally signed order.

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11. 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.

12. I have perused the FIR and the judgement referred by the Ld. Counsel for the petitioners as well as the judgment passed in Shiv Kumar and Another V. State of NCT of Delhi and Another in Crl.M.C. 1537/2023 by the co-ordinate bench of this court, whereby FIR having the similar facts and circumstances was quashed.

13. 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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14. 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 in the year 2016 itself. 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.

15. 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. The alleged transaction is of year 2016 and the present FIR has been lodged after seven years of the said transaction. It seems the respondent/complainant have intensified their adventure of lodging the present FIR apparently due to the long process of 138 NI Act proceedings coupled with the fact that an unfavourable order was passed by the NCLT on 06.09.2023 as the complaint, which has This is a digitally signed order.

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culminated into the present FIR had been filed on 09.11.2022.

16. 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 nature would tantamount to an abuse of the process of court. The Hon'ble Apex court deprecated the practise of setting Criminal Machinery in motion for breach of civil or contractual disputes. Reliance can be placed upon Iqbal V/s state of U.P 2023 SCC Online SC 949.

17. Learned ASC has 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.

18. List on 24th January 2024.

19. Taking the overall view of the matter and looking into the facts and circumstances of this case, the Investigation in the FIR No. 82/2023 under Sections 406/420/120B 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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