

Nepal Singh vs State, Nct Of Delhi & Anr on 19 January, 2016

Author: Suresh Kait

Bench: Suresh Kait

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgement delivered on: 19th January, 2016

+ CRL.M.C. No. 558/2015

NEPAL SINGH Petitioner
Represented by: Mr. R.M. Sinha, Advocate.

Versus

STATE, NCT OF DELHI & ANR Respondents
Represented by: Mr.Hirein Sharma, Additional
Public Prosecutor for the State
with Inspector Nipun Kumar,
P.S. Shakarpur.
Mr. Pradeep Kumar Arya,
Mr. Narinder Chaudhry,
Mr. Pankaj Singh and Mr. Raj
Karan Sharma, Advocates for
Respondent No.2 with
Respondent No. 2 in person.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), petitioner seeks directions thereby quashing of FIR No.132/2015 registered at Police Station Shakarpur, Delhi, for the offence punishable under Sections 406/409/420/468/471 of the Indian Penal Code, 1860 ('IPC').

2. The aforesaid case was registered against the petitioner on the complaint of respondent No.2, who stated therein that the petitioner is the founder member of Shiksha Vihar Co-operative Housing Society Limited (for short 'Society'), having registered office at 123-A, Aakanksha Apartment, Abhay Khand-III, Indrapuram, Ghaziabad, Uttar Pradesh. The said Society was registered in the year 1982. Since then, office of the Society had been located at R-61, Vikas Marg, Delhi, till the year 2000 and thereafter till 2005-2006 remained at Babarpur, Shahdra, Delhi.

3. It is alleged that the petitioner has misappropriated the funds of the Society to the tune of crores of rupees. The cost of the land of the aforesaid Society was worth Rs.350-375 Crores. The petitioner, the then Secretary, had purchased 17 bighas of land in the name of his brother with the funds of the Society which was subsequently sold by them. In addition, without permission of Housing Development Authority and without the permission of the Managing Committee as well General Body Meeting of the Society, the petitioner had sold 25 acres of land to the tune of Rs.50,00,000/- to Motilal Goyal, but on the advise of the petitioner, only Rs.23,00,000/- were shown in the accounts of the Society and only Rs.19,15,975/- were deposited in Account No.6559 of the Society, being maintained with Canara Bank, Ghaziabad Branch, and rest of the amount is still unknown, which is the subject matter of investigation.

4. It is further stated that at that time, when the land was sold, cost of one bigha of land was about Rs.1,00,000/-. The petitioner had played a fraud by selling the land at the higher price but by showing the sale of land at the low price. Thus, he misappropriated the funds of the Society to the tune of Rs.27,00,000/- and in this manner, he misappropriated the entire amount of sale of land of 25 acres.

5. Moreover, the petitioner in connivance with Mr.Ranveer Singh and other associates had withdrawn the amount from Account No.6559 on 18.05.1991 vide cheque No.8065552 for Rs.4,10,000/-, on 25.05.1991 vide cheque No.8065553 for Rs.2,50,000/-, on 15.07.1991 vide cheque No.8065554 for Rs.3,00,000/-, on 14.08.1991 vide cheque No.8065556 for Rs.5,00,000/- and on 17.08.1991 vide cheque No.8065557 for Rs.4,90,000/-. Thus, the aforesaid sum totalling to Rs.19,50,000/- has not been spent in any manner for the account of the Society. Neither the land was purchased nor any development was done and that the Society was authorized only to keep Rs.5,000/- in hand. Thus, the petitioner has misappropriated to the tune of Rs.19,50,000/- within a period of three months in collusion with his associates.

6. The petitioner has shown deposited cash of Rs.69,500/- in his membership account No.1, however, nothing was deposited in the account of the Society. A sum of Rs.69,000/-, Rs.43,000/- and Rs.45,000/- was also shown to have been deposited by three sons of the petitioner, namely, Rajeev Kumar Sisodia, Sanjeev Kumar Sisodia and Sunil Kumar Sisodia respectively. However, the said amount has also not been deposited in the account of the Society. Though a sum of Rs.2,26,000/- has been shown deposited in the account of the Society, in fact, nothing was deposited in that account.

7. The present petition has been filed on the ground that even if the allegations made in the FIR are accepted as true on the face of it, then cause of action accrued within the territory of Ghaziabad, Uttar Pradesh. Moreover, the land is situated in Ghaziabd, the registered office of the Society is also situated over there, thus, the Delhi Police has neither jurisdiction to investigate the matter nor to lodge the FIR.

8. In addition, learned counsel submitted that the present FIR is an abuse of the process of law as the issue raised in the FIR has already been defended by the complainant under his signature before the Joint Commissioner, U.P. Awaz Vikas Parishad Lucknow, which Authority has already closed the

case vide its order dated 13.10.2008. It is submitted that the FIR is absolutely mala fide and is lodged with mala fide intention and ulterior motive. In addition, the present case is of private vendetta against the petitioner. On the contrary, the complainant was found guilty of financial misappropriation of the funds of the Society and vide inspection report dated 22.04.2014 issued by the Deputy Commissioner (Housing), the powers of the complainant, the then Secretary were withdrawn.

9. Vide order dated 01.09.2014, UP Housing Development Council appointed Dr. D.P.Singh as new Secretary of the Society substituting the complainant. Therefore, the complainant has lodged FIR to harass the petitioner and to regain the Secretaryship in the Society. Thus, the FIR deserves to be quashed.

10. While arguing, learned counsel for the petitioner has raised four issues, i.e., (i) limitation, (ii) jurisdiction, (iii) private vendetta and (iv) civil nature of case.

11. To strengthen his arguments on the point of limitation, the learned counsel for the petitioner has relied upon the case of Suresh Vs. Mahadevappa Shivappa Danannava and Another, AIR 2005 SC 1047, wherein the Supreme Court held as under:-

"11. We have also perused the Annexures P1-P3 which are copies of the pleadings/documents which form part of the records of the case in the High Court against whose order leave to appeal was sought for in this appeal. We have carefully perused the order passed by the High Court. The High Court, in our opinion, has passed the order in a mechanical way without applying its mind. A perusal of the complaint would show that the entire dispute raised by the complainant is based on the alleged agreement to sell dated 25.12.1988 nearly 11 years prior to the filing of the private complaint on 17.05.1999. The existence of any such agreement or any advance taken has been specifically denied by the appellant by way of his reply dated 06.07.1996 in response to the legal notice dated 11.07.1996 sent by the complainant through his lawyer. For nearly 3 years from the date of reply, the complainant kept quiet before filing his complaint on 17.05.1999 before the Magistrate. It is stated that even as per the police report, no offence is made out against accused Nos. 2-4. Despite this, the Magistrate issued process against accused Nos. 2-4 as well which clearly shows the non- application of mind by the Magistrate. A perusal of the complaint would only reveal that the allegations as contained in the complaint are of civil nature and do not prima facie disclose commission of alleged criminal offence under Section 420 IPC. The Magistrate, in our opinion, has not considered the report filed by the police under Section 156(3) Cr.PC judicially. Irrespective of the opinion of the police, the Magistrate may or may not take cognizance under Section 190(1) of Cr.PC. In the instant case, as could be seen from the records, that the police has given a clean chit to accused Nos. 2-4. In our opinion, the Magistrate ought not to have taken cognizance of the alleged offence against the accused No.1, the appellant herein and that the complaint has been made to harass the accused No.1 to come to terms by resorting to criminal process.

12. As already noticed, the complaint was filed on 17.05.1999 after a lapse of 11 years and, therefore, the very private complaint filed by the respondent No.1 is not at all maintainable at this distance of time. It is the specific case of accused No.1 that he has not executed any agreement to sell or received any advance payment. In our view, the complaint does not disclose the ingredients of Section 415 of Cr.PC and, therefore, we have no hesitation to set aside the order passed by the Magistrate taking cognizance of the offence alleged. It is also not clearly proved that to hold a person guilty of cheating, it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. The order of the Magistrate and of the High Court requiring the accused No.1 appellant herein to face trial would not be in the interest of justice. On the other hand, in our considered opinion, this is a fit case for setting aside the order of the Magistrate as confirmed by the High Court of issuance of process and the proceedings itself."

12. Also relied upon the case of Joseph Salvaraj A. Vs. State of Gujarat and Ors, 2011 VIII AD (SC) 362, wherein the Supreme Court held as under:-

"24. Thus, from the general conspectus of the various sections under which the Appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the Complainant's FIR. Even if the charge sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the Appellant were prima facie made out from the complainant's FIR, charge sheet, documents etc. or not.

25. In our opinion, the matter appears to be purely civil in nature. There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the Appellant. The present FIR is an abuse of process of law. The purely civil dispute, is sought to be given a colour of a criminal offence to wreak vengeance against the Appellant. It does not meet the strict standard of proof required to sustain a criminal accusation."

13. On the other hand, learned Additional Public Prosecutor appearing on behalf of the State/respondent No.1 submitted that all the issues raised by the petitioner cannot be decided at this stage as the case is still pending under investigation. The chargesheet is yet to be filed. Therefore, present petition has been at the pre-mature stage. Moreover, investigation cannot be stopped as law is well settled on this issue.

14. While refuting the submissions made by learned counsel for the petitioner, learned counsel appearing on behalf of the complainant/respondent No.2 submitted that law of limitation does not apply to the present case in view of the provisions contained in Section 468 Cr.P.C. On jurisdiction, learned counsel submitted that the alleged fraud came to the knowledge of the complainant in the month of June, 2014 and that the same had taken place while the office of the Society was at Shakarpur, Delhi.

15. Learned counsel for the respondent No.2 further submitted that the present case is not of private vendetta as the petitioner was the first Secretary of the Society since its inception, i.e., from

13.01.1982 till 2008 and that the complainant/respondent No.2 was Secretary of the Society from 2009 to June, 2014, during which period he came to know of the fraud committed by the petitioner and took steps accordingly.

16. Moreover, this Court should not generally interfere in the investigation of the case unless it is of the view that interference is warranted because of police officer is conducting investigation in a mala fide manner. In support of his submission, learned counsel for the respondent No.2 has relied upon the case of State of Karnataka Vs. M. Devendrappa & Anr. (2002) 3 SCC 89, wherein the Supreme Court held as under:-

"9. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See. The Janata Dal etc. v. H.S. Chowdhary and Ors. etc. 1993 SCC Cri 36, Raghubir Saran (Dr.) v. State of Bihar AIR 1964 SC 1]. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would and in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court.

When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no

consequence and cannot by themselves be the basis for quashing the proceeding. [See: Dhanalakshmi v. R. Prassanna Kumar and Ors. 1990 SC 494, State of Bihar v. P.P. Sharma. 1992 SSC Cri 192, Rupan Deol Bajaj v. Kanwar Pal Singh Gill 1995 SCC Cri 1059, State of Kerala v. O.C. Kuttan 1999 SCC (Cri) 304, State of U.P. v. O.P. Sharma 1996 SCC (Cri) 497, Rashmi Kumar v. Mahesh Kumar Bhada (1997)2SCC397, Satvinder Kaur v. State (Govt. of NCT of Delhi) and Anr.1999 SCC (CRI) 1503 and Rajesh Bajaj v. State NCT of Delhi (1999) 3 SCC 259]."

17. I have heard the learned counsel for the parties.

18. As regards the issue of limitation, the aforesaid FIR is lodged for the offences punishable under Sections 406/409/420/468/471 IPC. Limitation prescribed under Section 468 Cr.P.C. applies to only non- serious cases where the imprisonment term does not exceed three years.

19. For easy reference, Section 468 Cr.P.C. is reproduced as under:-

"468. Bar to taking cognizance after lapse of the period of limitation.-

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be -

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years."

20. On bare perusal of Section 468 Cr.P.C., this Court finds that it pertains to bar of taking cognizance after lapse of period of limitation. Whereas, keeping in view the offences for which FIR in question is registered against the petitioner, bar of limitation under Section 468 Cr.P.C. is not applicable as maximum punishment exceeds three years.

21. In the case of Vanka Radhamanohari (Smt) Vs. Vanka Venkata Reddy And Ors. (1993) 3 SCC 4, the Supreme Court held as under:-

"6. At times it has come to our notice that many courts are treating the provisions of Section 468 and Section 473 of the Code as provisions parallel to the periods of limitation provided in the Limitation Act and the requirement of satisfying the Court that there was sufficient cause for condonation of delay under Section 5 of the Act.

There is a basic difference between Section 5 of the Limitation Act and Section 473 of the Code. For exercise of power under Section 5 of the Limitation Act, the onus is on the appellant or the applicant to satisfy the Court that there was sufficient cause for condonation of the delay, whereas Section 473 enjoins a duty on the Court to examine not only whether such delay has been explained but as to whether it is the requirement of the justice to condone or ignore such delay. As such, whenever the bar of Section 468 is applicable, the Court has to apply its mind on the question, whether it is necessary to condone such delay in the interests of justice. While examining the question as to whether it is necessary to condone the delay in the interest of justice, the Court has to take note of the nature of offence, the class to which the victim belongs, including the background of the victim. If the power under Section 473 of the Code is to be exercised in the interests of justice, then while considering the grievance by a lady, of torture, cruelty and inhuman treatment, by the husband and the relatives of the husband, the interest of justice requires a deeper examination of such grievances, instead of applying the rule of limitation and saying that with lapse of time the cause of action itself has come to an end. The general rule of limitation is based on the Latin maxim:

vigilantibus, et non- dormientibus, jura subtenunt (the vigilant, and not the sleepy, are assisted by the laws). That maxim cannot be applied in connection with offences relating to cruelty against women.

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9.....Nothing has been said by the High Court in respect of the offence under Section 494 of the Penal Code, to which Section 468 of the Code is not applicable the punishment being for a term extending up to seven years. Even in respect of allegation regarding an offence under Section 489A of the Penal code, it appears that the attention of the High Court was not drawn to Section 473 of the Code. In view of the allegation that the complainant was being subjected to cruelty by the respondent, the High Court should have held that it was in the interest of justice to take cognizance even of the offence under Section 498A ignoring the bar of Section 468."

22. So far as the issue of jurisdiction is concerned, Chapter XIII Cr.P.C. speaks of jurisdiction of the criminal courts in inquiries and trials. By virtue of Section 177 Cr.P.C., every offence has to be inquired into and tried by a court within whose local jurisdiction it was committed. Section 178 Cr.P.C. envisages a position where it is uncertain in which of several local areas an offence was committed or, where an offence is committed partly in one local area and partly in another or, where an offence is a continuing one, and continues to be committed in more local areas than one or, where it consists of several acts done in different local areas. Section 179 Cr.P.C. speaks of a situation where an act is done at one place and consequence ensues at the other place. In such eventuality, an offence can be inquired into or tried by the Court within whose local jurisdiction such thing has been done or such consequence has ensued. There is no dispute that offence under Section 420 IPC in the present case would be governed by Section 179 Cr.P.C.

23. This court in exercise of its power under Article 226 of the Constitution of India read with Section 482 Cr.P.C. though can issue an appropriate writ so as to restrain the police or any other investigating agency from exercising its authority in a manner unwarranted by law. However, the Court has to exercise this power sparingly and should not generally interfere in the investigation of the case unless it is of the view that interference is warranted because of police officer conducting investigation in a mala fide manner.

24. In the case of Satvinder Kaur Vs. State (Govt. of NCT of Delhi), 1999 (8) SCC 728, while noticing various provisions of the Code of Criminal Procedure, the Supreme Court opined as under:

"12. A reading of the aforesaid sections would make it clear that Section 177 provides for ordinary place of enquiry or trial. Section 178, inter alia, provides for place of enquiry or trial when it is uncertain in which of several local areas an offence was committed or where the offence was committed partly in one local area and partly in another and where it consisted of several acts done in different local areas, it could be enquired into or tried by a court having jurisdiction over any of such local areas. Hence, at the stage of investigation, it cannot be held that the SHO does not have territorial jurisdiction to investigate the crime."

25. Moreover, whether an officer-in-charge of a Police Station has the requisite jurisdiction to make investigation or not will depend upon a large number of factors including those contained in Sections 177, 178 and 181 of the Code of Criminal Procedure. In a case where a trial can be held in any of the places falling within the purview of the aforementioned provisions, investigation can be conducted by the concerned officer in-charge of the police station having jurisdiction to investigate in relation thereto. Sub-section (4) of Section 181 of the Code of Criminal Procedure would also be relevant therefore.

26. In any case, it has to be stated that in view of Section 178(c) of the Criminal Procedure Code that when it is uncertain in which of the several local areas an offence was committed, or where it consists of several acts done in different local areas, the said offence can be enquired into or tried by a court having jurisdiction over any of such local areas.

27. More so, appreciation of the evidence is the function of the courts when seized of the matter. At the stage of investigation, the material collected by an investigation officer cannot be judicially scrutinized for arriving at a conclusion that the Police Station officer of a particular Police Station would not have territorial jurisdiction.

28. It is admitted in the petition itself that initially the registered office of the Society was at 32, Laxmi Vihar, Ghaziabad, UP. In the year 1998, it was shifted to 1217/1E, DTC Bus Terminal, Babarpur, Shahdra, Delhi, and remained till 2008 and that the registered office was finally shifted to 123-A, Akanksha Apartment, Abhay Khand-III, Indrapuram, Ghaziabad, UP w.e.f. 2012 and is continuing till now. Moreover, in the FIR in question, it is specifically alleged by the complainant that all transactions were carried out in the office at Shakarpur, Delhi. Thus, the Delhi Police has jurisdiction to register the case and investigate the same.

29. Moreover, it is not in dispute that earlier FIR No.480/1994 was registered against the petitioner at Police Station Shakarpur, Delhi, for the offences punishable under Sections 420/406 IPC. After investigation, chargesheet was also filed in said case. Thereafter, the petitioner compromised the matter with the complainant by paying money. Thus, the Delhi Police has the jurisdiction.

30. Moreover, it is not understandable as to what prejudice the petitioner would suffer if the Police at Delhi carries out the investigations.

31. Therefore, to say at the stage of investigation that the Delhi Police was not having territorial jurisdiction, is on the face of it, illegal and erroneous. That apart Section 156(2) Cr.P.C. contains an embargo that no proceedings of a police officer shall be challenged on the ground that he has no territorial power to investigate.

32. Under these circumstances, when the case is still under investigation and the alleged offence of cheating has been partly committed at Delhi and its consequences ensued at Ghaziabad, it cannot be said that Delhi Police has no jurisdiction and has acted mala fide while registering the case on the complaint of respondent No.2.

33. So far as issues of case of private vendetta and civil nature are concerned, as per the allegations made in the complaint as discussed above, since the petitioner has allegedly committed an offence, therefore, plea of private vendetta does not play at all. As regards the case being of civil nature, allegations in the FIR against the petitioner are of misappropriation of money by misusing the power of the Society and siphoning off the amount for the personal use of the petitioner. Thus, the aggrieved can sue the petitioner for recovery of the amount in a civil suit and can also file a criminal complaint with the police to punish the petitioner for the offence committed.

34. Be that as it may, as stated by the learned Additional Public Prosecutor for the State, on instructions of the Investigating Officer of the case, who is present in the Court, case is at the advance stage of the investigation and chargesheet is yet to be filed. Therefore, in view of the submissions made on behalf of the State, matter is pending for investigation. Thus, at this stage, it cannot be said that there is no evidence or material against the petitioner.

35. As argued by learned counsel for the petitioner that land of the Society in question was sold after Resolution having been passed by the Executive and General Body as well. Moreover, there are orders passed by the judicial/quasi judicial authorities qua the said land and, therefore, the Investigating Agency be directed to look into those documents and if still feel that petitioner has committed any offence, action may be taken accordingly.

36. In view of the aforementioned facts, after completing the investigation and after considering the documents in the hands of the petitioner, the Investigating Agency may either close the matter or if any material is there may file the chargesheet against the petitioner. Thus, I am of the considered opinion, the present petition has been filed pre-maturely.

37. In view of the above discussion, I do not find any merit in the instant petition. The same is dismissed accordingly.

Crl. M.A. No.2185/2015 (for Stay) Dismissed as infructuous.

SURESH KAIT (JUDGE) JANUARY 19, 2016 Sb/jg