IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS 07, SOUTH-WEST, DWARKA COURTS, NEW DELHI

Presided over by- Sh. Visvesh, DJS

CT. CASE NO. 1235/2023
RENU SHARMA VS. DHARAM VIR SINGH GAHLOT AND ORS.
PS: CHHAWLA

ORDER ON SUMMONING -:

1. Briefly stated, the allegations of the Complainant are that she had executed an agreement to sell dated 26.07.2021 with Sh. Jai Narain, Sh. Dharam Vir Singh Gahlot, Sh. Viney Uppal and Sh. Gulshan Maggo for purchasing the land ad-measuring 16 bighas and 17 biswas comprising under Khata Khatauni No. 285, Khasra No. 727/1(3-11), 732/1m (4-02), 734/1 (4-11) and 737(4-13) situated in the revenue estate of Village Deedar Pur, Tehsil Najafgarh, New Delhi. It is state that in November 2022, Complainant had got to know about the illegal Sale Deeds got executed on 27.10.2022 in the office of the Sub-Registrar-IX, GNCTD bearing No. 12601 and 12602 in favour of some other persons qua the property in question. It is allged that Accused no. 1 and 2 have ousted the Complainant in the alleged deed. It is alleged that the agreement to sell was executed for a consideration amount of Rs. 4,80,00,000/- and Rs. 50,00,000/- were paid via various cheques by the Complainant along with the other Co-Vendees (Proposed Accused No.1 to 2) to the Vendors (Proposed Accused No. 4 to 5) as the earnest money. It is stated that the balance amount of Rs. 3,80,00,000/- was to be paid within the period of 15 days from the date of agreement to sell which was agreed to be paid by Complainant & other co-Vendees to Vendors on or before 30.09.2021. It is further stated that on 26.07.2021, possession letter was also duly executed in favour of Complainant alongwith other co-vendees and handing over the vacant physical possession of the

VISVESH Digitally signed by VISVESH Date: 2025.02.14 11:46:17 +05'30'

Agricultural Land measuring 16 Bighas and 17 Biwas comprising under Khata Khatauni No. 285, Khasra No. 727/1 (3-11), 732/1m (4-02), 734/1 (4-11) and 737 (4-13) situated in the revenue estate of Village Deendar Pur. Tehsil Najafgarh, New Delhi. Thereafter, one legal notice was also sent to him for completion of terms and condition of the above-mentioned agreement to sell. Thereafter, a legal notice dated 14.11.2022 was sent by Complainant to execute the sale deed but of no use. It is stated that the Complainant is having full physical possession of the said property since 26/07/2021 and had incurred expenses in the said property. It is further alleged that the Complainant and Accused no. 1 and 2 have to bear the full expenses for the registration charges and payment of stamp duty w.r.t the execution of the sale deed of the said property. But due to the COVID-19 pandemic the Complainant was going through financial crunch and asked for more time to do the same. It is further alleged that instead of granting the time Accused No. 1 to 5 got registered the sale deed before O/o Sub-Registrar-IX, GNCTD, leaving the Complainant. As such, it is prayed that the proposed Accused have committed offences and they be summoned to face trial.

2. In the pre-summoning evidence, the Complainant has examined only one witness i.e. Complainant herself to prove his case.

3. **CW1** is the Complainant Renu Sharma, deposed that she had executed an Agreement to Sell dated 26.07.2021 along with Mr. Jai Narain, Mr. Dharam Vir Singh Gahlot (i.e.'Vendee'), along with Sh. Viney Uppal & Sh. Gulshan Maggo (i.e. 'Vendors'), for purchasing the land ad-measuring 16 bighas and 17 biswas comprising under Khata Khatauni No. 285, Khasra No. 727/1(3-11), 732/1(4-02), 734/1 (4-11) and 737(4-13) situated in the revenue estate of Village Deedar Pur, Tehsil Najafgarh, New Delhi. The consideration amount was fixed Rs. 4,80,00,000/- and Rs. 50,00,000/- was paid via various cheques by him. He further deposed that on

26.07.2021 balance sale consideration of Rs. 3,80,00,000/-, was agreed to be paid 30.09.2021 and that would also be the date of registration of the proposed Sale Deed. He further deposed that in total he paid Rs. 23,00,000/- as earnest money to the Accused No. 4 & 5 on different dates. He further deposed that on 26.07.2021, Possession Letter was also duly executed in his favour with other Co-Vendees i.e. Accused No. 1 & 2, handing over the vacant physical possession of the Agricultural Land measuring 16 Bighas and 17 Biwas comprising under Khata Khatauni No. 285, Khasra No. 727/1 (3-11), 732/1 (4-02), 734/1 (4-11) and 737 (4-13) situated in the revenue estate of Village Deendar Pur, Tehsil Najafgarh, New Delhi. He further deposed that in July, 2022 he alongwith Accused No. 1 and 2 received a Legal Notice on behalf of Accused No. 4 and 5, asking for completing the terms and conditions of the sale deed within the period of 03 days from the date of receiving the said Legal Notice. He replied to the same and on 10.11.2022 he received Rs 18,00,000/- from the Proposed Accused No.5 in her Indian Bank A/c through RTGS, which is very surprising to him. It is further stated that on 14.11.2022 he sent a legal notice to Accused No. 1, 2, 4, and 5 for seeking the execution of the Sale Deed for the said property. Further on 15.11.2022 he again received Rs 3,00,000/- from the Accused No.4 in her Indian Bank A/c through Cheque which he reverted back on 16.11.2022 and sent reminder of legal notice on 19.11.2022. Thereafter on 24.11.2022 he came to know through DORIS, Delhi Govt. website about the alleged illegal Sale Deeds executed on 27.10.2022 in the O/o the SR-IX, Delhi, vide Registration No. 12601 and 12602 in favour of Accused No. 1, 2 & 3 by the Accused No. 4 & 5. She further deposed about the Complaints made by him in PS concerned.

4. Thereafter, Complainant closed her pre-summoning evidence and matter proceeded towards arguments on the point of summoning.

5. I have heard the ld. counsel appearing for the Complainant and have given

my thoughtful consideration to the material appearing on record.

6. To summarize, the Ld. Counsel has argued on the following points:

(a) *It is stated that the Complainant had bonafide entered into the agreement to sell dated 26.07.2021 with Accused No. 4 & 5 wherein the said Accused were the vendors and the Complainant along with one Jai Narain and Accused No.2 as co-vendees. It is stated that the Complainant was put in possession of the subject property and had also made part-payment of earnest money but could not make the payment of balance amount due to cash crunch faced by her due to pandemic, for which she can't be penalized. The agreement was as such irrevocable and the Accused No. 4 & 5, by executing sale deeds in respect of the same subject land but in favour of Accused No. 1 and Accused No. 3, thereby ousting the Complainant from her rights in the property, prima facie amounted to the offence of cheating (s. 418/420/421/424 etc.) in respect of the part-earnest money already in the hands of the Accused persons and also in respect of the amount spent by the Complainant in the upkeep of the subject property. In the alternative, the Complainant has argued that the vendors, i.e., Accused No. 4 & 5 could be held to be trustees of the amount of the Complainant so long as the sale deed was not executed and hence, by not returning the said amount, have acted in breach of trust (s.406 IPC).*

(b) *It is stated that when the agreement dated 26.07.2021 was irrevocable by the parties, then, by superseding the agreement and executing sale deed in favour of third parties qua the subject property on 27.10.2022, the Accused persons have made false documents and thereby committed the offence of forgery (s. 465/467/468/471 IPC etc.)*

(c) *It is stated that the Accused persons, by suppressing information regarding existence of antecedent agreement to sell dated 26.07.2021 at the time of executing sale deed dated 27.10.2022, have committed offences u/s 82 of the Indian Registration Act, 1908.*

(d) *It is stated that despite information sent by the Complainant to the SHO concerned regarding existence of prima facie cognizable offences, he has failed to* *register FIR in this matter and is thus, liable for the offence u/s 166A IPC.*

Legal position, analysis of the material on record and findings thereon

A. Duty of the Court at the stage of forming an opinion to summon/not to summon an Accused person

7. It has been held in the case of **Pepsi Food & Ors vs. Special Judicial Magistrate & Ors**[1],

> "*Summoning of an Accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course*. It is not that the Complainant has to bring only two witnesses to support his allegations in the Complaint to have the criminal law set into motion. The order of the Magistrate summoning the Accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the Complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the Complainant to succeed in bringing charge home to the Accused. *It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the Accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the Complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the Accused.*"

8. Also, in the case of **Anjani Gupta vs The State (NCT of Delhi)**[2] it has been held that it can therefore, be reasonably inferred that while issuing summons, *a prima facie appreciation of evidence coupled with application of judicial mind needs to be carried out for a summoning order to be just and legal*.

9. With this backdrop in mind, this Court has to proceed to appreciate the evidence on a *prima facie* level but at the same time, the Court must endeavour to sift the grain from the chaff and arrive at the conclusion which is supported by clear and cogent reasons.

B. Qua the offence of cheating/criminal breach of trust/forgery

---

[1] AIR 1998 SC 128

[2] CRL.M.C. 2120/2018 (DelHC)

etc.

10. It has been held in the case of **Samsung India Electronics Pvt. vs The State of Assam**[3] that criminal breach of trust and cheating are antithetical to each other. Reliance is also placed on **Velji Raghavji Patel vs. State**[4] which had held:

> "(6).Upon the plain reading of section 405 I.P.C., it is obvious that before a person can be said to have committed criminal breach of *trust it must be established that he was either entrusted with or entrusted with dominion over property which he is said to have converted to his own use or disposed of in violation of any direction of law etc.* (…) *In order to establish "entrustment of dominion" over property to an Accused person the mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result of entrustment*."

11. Also, in the case of **Milan Anandan vs State Of U.P**[5]**,** it was held:

> From the plain reading of this section it is clear that the trust contemplated by section 405 IPC would arise only when there is entrustment of property or dominion over property*. There has, therefore, to be a property belonging to someone which is entrusted to the person Accused of offence under Section 405 IPC The entrustment of property creates a trust which is only an obligation annexed to the ownership of property and arises out of confidence*

12. It has been held in **State of Gujarat v. Jaswantlal Nathalal**[6], "The term "entrusted" found in Section 405 IPC governs not only the words "with the property" immediately following it but also the words "or with any dominion over the property" occurring thereafter[7]. Before there can be any entrustment there must be a trust meaning thereby an obligation annexed to the ownership of property and a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner. But that does not mean that such an entrustment need conform to all the technicalities of the law of trust[8]. The expression "entrustment" carries with it the implication that the person handing over

[3] Criminal Petition No. 82 of 2008
[4] AIR 1965 SC 1433
[5] 2014 (5) ADJ 263
[6] (1968) 2 SCR 408
[7] see Velji Raghvaji Patel v. State of Maharashtra [(1965) 2 SCR 429].
[8] see Jaswantrai Manilal Akhaney v. State of Bombay [(1956) SCR 483, 498-500].

any property or on whose behalf that property is handed over to another, continues to be its owner. Further the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an entrustment[9].

13. Every offence of criminal breach of trust involves a civil wrong, in respect of which, the Complainant may seek a civil redress for damages in the civil Court. But it cannot be said that every breach of trust in the absence of *mens rea* or criminal intention, cannot legally justify criminal prosecution – criminal intention is the gist of the offence[10]. It may, however, be borne in mind that the same set of facts may give rise to both, to civil liability and a criminal prosecution. But if there is no *mens rea*, or if the other essential ingredients of an offence are lacking, the same facts may not sustain a criminal prosecution, though a civil action may lie[11].

14. In **Hridaya Ranjan Prasad Verma & others v. State of Bihar & another**[12] the distinction between breach of contract in one hand and the offence of cheating in the other was succinctly laid down:

> "15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the Accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. <u>*Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed*</u>."

15. Adverting back to the facts of the instant case – As per the averments of

[9] MESCO Vs. State of Jharkhand, CRMP 1744/2020 (Jak HC)
[10] L Dhanya Naik Vs. State , 1977 CriLJ 654
[11] Jaswantrai vs. State of Bombay, AIR 1956 SC 575
[12] (2000) SCC (Cri.) 786,

the Complainant, the Complainant had entered into an agreement to sell with the Accused persons on 26th of July 2021, the performance of which was stipulated to complete on 30th of September 2021. As per the case of the Complainant herself, she was not able to perform the covenants of the agreement regarding payment of the balance amount of sale consideration and contented herself with the mere payment of part-earnest money. The Complainant has stated that the reason for the non-payment was due to the supervening pandemic and cash crunch from her side. The vendors had admittedly sent notices to the Complainant to complete the performance of her bargain as far as in July 2022, failing which the said agreement was to be treated as cancelled and even then, the Complainant was not able to fulfil the agreement.

16. Thus, ultimately, the Accused persons had transferred the subject property to the Accused No. 1 and Accused No. 3 on 27 October 2022, i.e., after more than 1 year of lapse of stipulated time of performance of the agreement dated 26.07.2021.Whether the pandemic amounted to frustration of the contract, rendering its performance impossible or whether the pandemic enacted an implied *force majeure* clause extending the time of performance of the contract to a period beyond the pandemic period is a question for the competent Civil Court to decide after interpretation of the agreement. However, no fraudulent or dishonest intention is made out against the Accused persons at the outset, i.e., at the time of executing the agreement, to make out a case of cheating - rather from the averments in the Complaint, the vendors had sought performance of the said agreement, which the Complainant was not able to do and as per the PSE itself, the vendors had also tried to refund the earnest money back to the Complainant, which the Complainant did not take and sent it back to the account of the vendors.

17. In such a situation, when the Complainant continued in the possession of the said property without performing her covenants under the agreement and without there being any sale deed in her favour, the subsequent sale deeds in favour of some 3rd parties, one of whom was a party to the agreement to sell cannot be *ipso facto* stated to be false documents. An agreement to sell is one thing and the sale deed is another. While an agreement to sell clothes the party with the right to seek performance of the agreement, the sale deed operates as a conveyance of property from one party to another, thereby transferring title to the said party.

18. Thus, at most the said sale deeds could be said to be in contravention of the agreement to sell (and even that is going to a stretch, since the Complainant herself was in default) but they cannot be said to be *ipso facto* false documents as it is not the case of the Complainant that she had one set of sale deeds in her favour and the Accused had prepared another set of sale deeds in respect of the same property in favour of some third party. Complainant was admittedly merely a holder of an agreement to sell and any contravention thereof grants a remedy in favour of the Complainant to either apply for cancellation of the subsequent sale deeds/damages for breach or seek specific performance of the agreement to sell in her favour. But it does not make the act of executing the sale deed in favour of a third party fraudulent/dishonest etc. within the meaning of the provision – as the necessary intent is absent and cannot be readily inferred by presumptions or surmises. As stated elsewhere in this order, the fact as to whether the agreement was validly rescinded/cancelled is a matter for the Civil Court to decide and when the commission of an alleged offence is an arguable question turning upon facts and not borne out clearly and unequivocally from the Complaint and the annexed documents, no summoning order can be passed by Court.

19. The word '*irrevocable*' is to be interpreted in the context of the said agreement and not otherwise. The word irrevocable has to be read in context to mean that the agreement is irrevocable only so long as both of the parties perform their respective covenants and not otherwise. It could not be the case that the Complainant does not perform her part of the bargain and postpones the performance of the agreement indefinitely by claiming on the one hand to be not able to pay the balance amount of the cash crunch and pandemic while on the other hand stating herself in the reply to the legal notices and in the Complaint that she was always ready and willing to perform the contract - merely by relying on a single word i.e., irrevocable.

20. Whether this agreement to sell was validly rescinded by the Accused or not and whether the Complainant is entitled to specific performance of the said agreement is again a matter to be decided by the competent Civil Court. Similarly, the mere fact that the Complainant had to undertake expenses in the upkeep of the subject property during the said period would not make such amount as a cheated amount when the property ultimately stood conveyed to some other party. The Complainant is well within her rights to seek recovery of the said amount from the Accused persons through appropriate civil proceedings but solely on that score, no criminal liability would lie.

21. So far as criminal breach of trust is concerned, failure of a sale transaction cannot make the vendor in possession of earnest money as someone "*entrusted*" with property. The money was given with the intent to take the sale transaction forward and not with the understanding that the Complainant continued to be the owner thereof. Merely because the sale agreement could not be performed due to failure of the Complainant to pay the balance sale consideration, cannot make the Vendor or any subsequent purchaser, liable for criminal breach of trust.

22. The facts disclose a mere breach of contract with no *mens rea* on the part of any of the Accused to constitute any offence. The same is also impliedly admitted by the Complainant and even evident in the reply to the legal notices wherein the Complainant has claimed specific performance of the agreement and in the alternative, conveyance of her share in the property separated by metes and bounds. Thus, very cleverly, a predominantly civil dispute concerning breach of contract has been attempted to be converted into a puffed-up criminal case of forgery/cheating/criminal breach of trust etc.

C. Qua the offence u/s 166A IPC

23. Suffice it to say that in the present case, the matter was pending at the stage of conclusion of preliminary inquiry and verification of documents from the side of the police wherein on the vehement insistence on behalf of the Complainant on 08.12.2023, the Court had passed order on the application u/s 156(3) Cr.P.C. on the basis of materials already on record. The said application stood dismissed and the Complainant has not assailed that order till date and it does not now lie in the mouth of the Complainant to turn around and press the counter-argument/allegation.

D. Qua the offence u/s 82 of the Indian Registration Act, 1908.

24. S.82 of the said Act makes punishable making false statements *in any proceeding or enquiry under that Act*. S.83 of the said Act empowers registering officers to commence prosecutions with the permission of the Competent authority. Now, merely because the offence u/s 82 of that Act is triable by Court of Magistrate does not mean that the statutory requirements regarding the Complaint being made by the de-facto Complainant (i.e., the Registrar) and supported by necessary sanction of the Competent Authority can be dispensed with. The offence has to be read in context of the proceeding under that Act and this Court cannot step in as a knight-errant and proceed against the Accused for an offence which requires the existence of the de-facto Complainant coupled with necessary sanction.

E. Civil proceedings being given criminal flavour

25. In a case titled **M/s. Indian Oil Corporation vs. NEPC India Ltd. & Ors[13].,** it was held:

> ***A growing tendency in business circles to convert purely civil disputes into criminal cases 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 marriages/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 offence, by applying pressure through criminal prosecution should be deprecated and discouraged.
>
> *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 under Section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the Complainant.

26. Also, it was held in the case of **V.Y. Jose & Anr. Vs. State of Gujarat & Anr.[14]:**

> *Only because civil law can be taken recourse to would not necessarily mean that criminal proceedings should be barred. However, there exists a distinction between pure contractual dispute of a civil nature and an offence of cheating. Although breach of contract per se would not come in the way of initiation of a criminal proceeding*, yet in the absence of the averments made in the Complaint petition wherefr*om the ingredients of an offence can be found out, (...).* ***A matter which essentially involves dispute of a civil nature should not be allowed to be the subject-matter of a criminal offence, the latter being a short cut of executing a decree which is non-existent.***

27. This Court is quite constrained to note the approach of the Complainant whereby every effort has been made to give a predominantly civil cause of action, a criminal colour by using obfuscating verbiage and clever

---

[13] AIR 2006 SC 2780
[14] (2009) 3 SCC 78

legalese. The rights, liabilities and duties of the parties herein are governed purely by civil law and there is no *prima facie* criminality against any of the Accused persons. The Court must always be on its guard against unscrupulous Complainants who are insistent to procure a summoning order in their favour so that the resultant criminal proceedings may be used as a tool against the Accused persons to settle civil scores or to coerce the Accused persons into executing a non-existent decree.

Decision

(a) **Accordingly, no sufficient ground is made out to proceed against any of the Accused persons for any of the offences complained of in the present Complaint and analysed hereinbefore. There also appears to be no other offence under any other provisions of the Code made out considering the materials on record.**

(b) **The present Complaint is hereby dismissed without any order as to cost but with the hope and expectation that the Complainant realizes that his precious time, along with judicial time over the last 2 years has been frittered away during inquiry into allegations pertaining to a purely civil dispute.**

(c) **File be consigned to Record Room after due compliance.**

VISVESH

Digitally signed by VISVESH
Date: 2025.02.14 11:47:52 +05'30'

(Visvesh)
Judicial Magistrate First Class-07
South-West, Dwarka, New Delhi
14.02.2025