

Chief Justice's Court

Case :- CRIMINAL MISC. WRIT PETITION No. - 10893 of 2023

Petitioner :- Niraj Tyagi And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Sankalp Narain

Counsel for Respondent :- G.A.,Pawan Kumar Srivastava,Suresh Singh

Hon'ble Pritinker Diwaker,Chief Justice

Hon'ble Ashutosh Srivastava,J.

1. Heard Sri Rakesh Dwivedi, learned Senior Counsel assisted by a team of Advocates namely, Sri Sankalp Narain, Sri Ashish Batra, Sri Ankit Banati, Sri Raghav Dwivedi and Sri Eklavya Dwivedi, for the Writ Petitioners, learned Standing Counsel for State-Respondent Nos.1 & 2, Sri Aditya Bhushan Singhal, learned Counsel for Respondent No.3 and Sri Sikandar Bharat Kochar, learned counsel appearing for Respondent No.4, Directorate of Enforcement.

2. The writ petition has been filed seeking issuance of an appropriate writ, order or direction, declaring Section 420 of I.P.C. as manifestly arbitrary and ultra vires to the Constitution of India on the vice of Articles 14 & 21 as also for issuance of a writ of certiorari quashing, qua the writ petitioners, their officers, representatives and managers, the impugned F.I.R. No.0197 of 2023 dated 15.04.2023, under Sections 420, 467, 468, 471 and 120-B I.P.C., Police Station Beta-2, Greater Noida, Gautam Buddha Nagar, registered by Respondent No.3 with all the consequential proceedings arising therefrom together with the consequent proceedings initiated by Respondent No.4 in E.C.I.R. bearing No.ECIR/HIU-1/06/2023.

3. The petitioners, by way of interim relief, have prayed for stay of the summoning of the petitioners, its Officers, Representatives and Managers by the Officers of Respondent Nos.2 & 4 as also the proceedings qua them arising from and consequent to the institution of the impugned F.I.R. No.197 of 2023 dated 15.04.2023 and ECIR/HIU-1/06/2023 registered by Respondent No.2 and 4 respectively.

4. Sri Rakesh Dwivedi, learned Senior Counsel appearing for the petitioners has addressed this Court on the question of Section 420 I.P.C. being manifestly, arbitrary and *ultra vires* of the Constitution of India on the vice of Articles 14 and 21 of the Constitution by submitting that there are mainly two provisions in the I.P.C. providing for punishment for cheating concerning delivery of property i.e. Sections 417 and 420 I.P.C. It is contended that though there is no material difference between the offence of cheating concerning the delivery of property punishable under Section 417 I.P.C. and that punishable under Section 420 I.P.C., there is lack of clarity and stark distinction in the two punitive provisions for procedural safeguards for investigating as well as in punishment prescribed for

cheating under the two provisions inasmuch as Section 420 I.P.C. provides for higher punishment and being against personal liberty, without any intelligible differentia. He, however, presses the application for interim relief (stay application) at this stage.

5. We proceed to consider the application for interim relief.

6. The facts necessary for consideration of the application for interim relief (stay), briefly stated, are that Petitioner No.2, Indiabulls Housing Finance Ltd. (IHFL) being a non banking financial institution incorporated under the provisions of the Companies Act, 1956 between 2017-2020 sanctioned 16 loan facilities to the tune of Rs.2801.00 Crores to "Shipra Group/Borrowers" comprising of Shipra Hotels Ltd., Shipra Estate Ltd. and Shipra Leasing Pvt. Ltd. for the purposes of construction and/or development of housing/residential projects. Against the said sanction, a sum of approximately 1995.37 Crores was disbursed. The financial assistance was secured by executing 22 pledge agreements whereby shares of various companies were pledged in favour of Petitioner No.2.

7. Meanwhile, one M/s Kadam Developers Pvt. Ltd. which had a sub-lease of a parcel of land ad-measuring 73 acres allotted by the YEIDA/Respondent No.3 was granted permission to mortgage the land under its sub-lease with Petitioner No.2, Indiabulls Housing Finance Ltd., vide permission dated 11.07.2019. A pledge agreement was also entered by the Shipra Groups and M/s Kadam Developers Pvt. Ltd. with Petitioner No.2, Indiabulls Housing Finance Ltd., regarding pledging of 100% equity shares (demated) of M/s Kadam Developers to secure the loan. The Shipra Group committed default and Petitioner No.2, in terms of the stipulation contained in the loan agreement, issued notices on 20.10.2020 to Shipra Group requiring them to provide alternate security within 15 days and on the failure of the Shipra Group to respond, issued 14 loan recall notices on 05.11.2020, 14.12.2020 and 15.12.2020 whereby approximately Rs.1763.00 Crores was sought to be recovered. Ultimately, Petitioner No.2, Indiabulls Housing Finance Ltd., under the share sale and purchase agreement dated 01.07.2021 sold the pledged equity shares to one M/s Finalstep Developers Pvt. Ltd. (earlier known as Creative Souls Technology India Pvt. Ltd.) with M3M India Pvt. Ltd., as confirming party for a consideration of R.900.00 Crores. The fact of the sale was informed to YEIDA/ Respondent No.3 by M/s. Kadam Developers within 45 days of the sale. Besides the sale of the shares of M/s Kadam Developers, the Petitioner No.2 also sold a property mortgaged by Shipra Group namely "Shipra Mall" after favourable orders were passed in favour of Petitioner No.2 by Debt Recovery Tribunal, Lucknow, this Court as also the Delhi High Court. It is also contended that between 2021 to 2023, various civil proceedings were initiated by the Shipra Group but it failed to get any protection from any Court.

8. In the aforesaid backdrop, the impugned F.I.R. dated 15.04.2023 has been lodged at the instance of Respondent No.3, YEIDA, alleging that the transfer of share holding of M/s Kadam Developers Pvt. Ltd. was in violation of the law and has

caused financial loss of Rs.200 Crores to the first informant YEIDA. The F.I.R. mentions that action is desired so as to protect the interest of YEIDA in compliance of its CEO's approval dated 11.04.2023. The F.I.R. has been registered under Sections 420, 467, 468, 471 and 120-B IPC at Police Station Beta-2, Greater Noida, U.P. against Petitioner No.2. The Directorate of Enforcement has registered an E.C.I.R. being ECIR/HIU-I/06/2023 treating the F.I.R. as a scheduled offence.

9. Sri Rakesh Dwivedi, learned Senior Counsel for the petitioners has made the following submissions:-

i) the registration of the impugned F.I.R. is an abuse of the process of law. Ingredients of none of the penal provisions as alleged are made out against the petitioners.

ii) the allegations in the impugned F.I.R. do not constitute any offence cognizable so far as the petitioners or their Mangers, Officers or Representatives are concerned. The cognizable offences have been invoked to subject the petitioners financial institution to multiple criminal proceedings to bring them to their knees. The consequential proceeding vide E.C.I.R. are unwarranted.

iii) the dispute is at most a civil dispute and resort to criminal proceedings is tainted with mala fides. In the absence of any criminality in the action taken by the petitioners, the continuation of criminal proceedings would be a travesty of justice and abuse of the process of law.

iv) the first charge of YEIDA is still perversed. The sub-lease holder of the subject property is still Kadam Developers and all obligations and concessions under the sub-lease are very much in force. M/s Kadam Developers duly informed YEIDA on 29.07.2021 regarding sale of shares with no objections forthcoming from YEIDA against the sale. There has been no violation of the mortgage permission. The notice dated 11.4.2023 has been withdrawn by YEIDA and no demand has been raised on any party.

v) F.I.R. No. 427 of 2023 dated 9.4.2023 registered at Police Station Indirapuram, which has a reference in the impugned F.I.R. No.197 dated 15.04.2023 registered at Police Station Beta-2, Greater Noida, U.P. and E.C.I.R bearing No. ECIR/HIU-I/06/2023 in Delhi was the subject matter of Contempt Petition (Civil) No.774 of 2023 arising out of Criminal Appeal No.463 of 2023 (Gagan Banga versus Samit Mandal and another) along with Writ Petition (Crl.) No.166 of 2023 and SLP (Crl.) Nos.4639-4641/2023 before the Apex Court. The Apex Court disposed off the petitions by making observations as regards the impugned F.I.R. and E.C.I.R. that no coercive steps would be taken against the petitioner financial institution and its Officers, Representatives and Managers till final disposal of the writ petition before the High Court and it would be open for the petitioners to seek stay of the proceedings which would be considered by the High Court on its own merits.

10. In the light of the above, it is submitted that the interim relief prayed for be granted. Reliance has been placed upon the decision of the Apex Court in the case of **Vijay Choudhary versus Union of India** reported in **2022 SCC Online 929**.

11. The application for interim relief has been opposed by the counsel for Respondent No.4 on the ground that E.C.I.R. bearing No. ECIR/HIU-I/06/2023 has been registered at Delhi and since the Apex Court while disposing off the contempt proceedings has permitted the petitioners therein to approach the respective High Courts to challenge the F.I.R.'s and the E.C.I.R, it would be appropriate for the present petitioners to invoke the jurisdiction of the Delhi High Court and this Court may not have the jurisdiction to entertain the plea of the petitioners. Learned counsel for Respondent No.3 has reiterated the F.I.R. version.

12. We have heard learned counsel for the parties and have perused the record.

13. We find that the objection taken by Respondent No.4 regarding jurisdiction to entertain the writ petition is ill founded inasmuch as the registration of the E.C.I.R. is consequent to the registration of the F.I.R. dated 15.04.2023 at Greater Noida, U.P. which is very much within the territorial jurisdiction of this Court. Based on the ratio laid down by the Apex Court in **Vijay Madanlal Choudhary (supra)**, we are of the view that the objection of Respondent No.4 to the territorial jurisdiction of this Court does not merit consideration and is, accordingly, overruled.

14. Now, coming to the merits of the case, prima facie, we find that ex-facie the dispute is of civil in nature and has been given a colour of criminal nature. We also find that Respondent No. 3, YEIDA has not made any attempt to institute civil proceedings against Petitioner No.2, except by lodging the present F.I.R. This action appears to be mala fide and unsustainable.

15. The Apex Court in **Indian Oil Corporation Ltd. versus NEPC (India) Ltd.**, reported in **2006 (6) SCC 736** observed as under:-

"13.Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged"

16. The Apex Court further noticing a growing trend in business circles to convert purely civil dispute into criminal cases while disposing of the **Contempt Petition (Civil) No. 774 of 2023 (supra)** observed:-

"3. In "Priyanka Srivastava Vs. State of U.P.", (2015) 6 SCC 287, this Court had noticed that taking recourse to criminal law by bypassing statutory remedies to bring the financial institutions on their knees, has the inherent potentiality to affect the marrows of economic health of the nation. Further, in "Vijay Kumar Ghai & Anr. Vs. State of W.B. & Ors." (2022) 7 SCC 124, this Court quashed the criminal proceedings being abuse of law in a purely civil financial dispute and being a case of forum shopping. Despite these judgments, continuation of such trend appears extremely disturbing."

17. We further find that the Apex Court had vide its order dated 28.4.2023 passed in Writ Petition (Crl.) No. 166 of 2023 stayed the criminal proceedings in the three F.I.Rs. including the F.I.R. No. 427 of 2023 dated 9.4.2023 registered at Police Station Indirapuram which F.I.R. has reference in the impugned F.I.R. and at the same time has directed that no coercive steps would be taken against the petitioner financial institution and its Officers, Representatives and Manager till final disposal of the writ petition. The protection granted by the Apex Court is operative in favour of the petitioners herein. The order dated 28.4.2023 reads as under:

"Issue notice returnable on 16.05.2023.

Dasti service, in addition, is permitted.

There shall be stay of all proceedings in the impugned three FIRs filed in three different States."

18. Further, on 4 July, 2023, in the case **Ganga Banga vs. Samit Mandal & Anr. (Contempt Petition (Civil) No.774 of 2023)**, the Supreme Court has passed the following order:

"6. In the circumstances, as it may also involve adjudication on facts, we deem it appropriate to permit the petitioners to approach the respective jurisdictional High Courts to challenge all four FIRs and the ECIR within two weeks from today, with a request to the respective High Courts to consider and decide the petitions expeditiously, not later than six months of their presentation.

7. We also direct DGPs of respective States to look into the matter, examine the contentions of the petitioners in respect of the contents of FIRs, and to take appropriate measures in accordance with law within a period of one month.

8. Till final disposal of the respective petitions, interim order dated 28.04.2023 passed in W.P. (Crl.) No.166/2013 would continue in the three FIRs mentioned therein.

9. In so far as the further FIR No.197/2023 dated 15.04.2023 filed by YEIDA and ECIR bearing No.ECIR/HIU-I/06/2023 are concerned, no coercive steps would be taken against the petitioner financial institution and its officers, representatives and managers till final disposal of such petitions by the High Court, and it would be open for the petitioners to seek stay of proceedings which would be considered by the High Court on its own merits. It is clarified that this interim protection would only be applicable to the petitioner financial institution and its officers, representatives and managers, and not to any other person."

19. In view of the above, we are of the opinion that the petitioners have made out a case for grant of the interim as relief prayed for. Accordingly, in furtherance of the protection granted by the Apex Court to the petitioners by the order dated 4th July, 2023, while disposing of the **Contempt Petition (Civil) No. 774 of 2023**, it is provided that further proceedings, including summoning of the officers, consequent to the F.I.R. No. 197 of 2023 dated 15.4.2023 under Sections 420, 467, 468, 471 and 120-B IPC, Police Station Beta-2, Greater Noida, Gautam Budh Nagar,

registered by Respondent No.2 and consequent ECIR No. ECIR/HIU-I/06/2023 registered by Respondent No. 4, shall remain stayed so far as it confines to the petitioners only and no coercive action shall be taken against them.

20. The parties are granted six weeks' time to exchange pleadings.

21. List the case in the week commencing 28 August, 2023.

Order Date :- 13.7.2023

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(Pritinker Diwaker, CJ)

(Ashutosh Srivastava, J)