

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.852/2008
(arising out of SLP (Crl) No. 2142/2007)

Mosiruddin Munshi

.....Appellant

Vs.

Md. Siraj & Ors.

.....Respondents

JUDGMENT

HARJIT SINGH BEDI, J.

1. Leave granted.
2. In the light of the order that we propose to make, only the bare facts have been given hereunder:
3. In January 2005, the appellant who was in dire need of a plot of land for construction of a residential house, was approached by respondent No.2, Masud Alam, a public servant, who represented to the appellant that he could arrange for such a plot. Respondent No.2 thereupon introduced the appellant to respondent No.1, who stated that he had a plot of land which he was willing to sell.

The appellant believing the representation made by respondent No.2 entered into an agreement for sale with respondent No.1 and also paid a sum of Rupees five lakhs and one in cash. Despite this payment, however, the respondent refused to honour the agreement and refused to hand over the necessary documents to the appellant. All other methods to compel the respondents to complete the sale having failed, the appellant filed a complaint on 28th October 2005 before the Additional Chief Metropolitan Magistrate, Calcutta against respondent Nos. 1 and 2 for offences punishable under sections 420/120B of the Indian Penal Code. The Magistrate forwarded the complaint to the Officer In-charge of the Amherest Street, Police Station and directed that it be treated as a FIR and investigated under Section 156(3) of the Code of Criminal Procedure. After protracted legal wranglings, respondent No.1 filed an application under section 482 of the Code of Criminal Procedure for the quashing of the proceedings. As the appellant had not been impleaded as a party, a direction

was issued by the High Court on 13th July 2006 to respondent No.1 to implead the appellant as a party. It appears, however, though the appellant was impleaded as a party, no attempt was made to serve a copy of the notice on him with the result that by its order dated 9th August 2006, a Single Judge of the Calcutta High Court quashed the complaint proceedings against the respondents in the absence of the appellant. It is against this order that the present appeal has been filed.

4. We have heard the learned counsel for the parties and gone through the record. The broad facts stated above have not been denied. It, therefore, stands uncontroverted that the proceedings against the accused respondents had been quashed without notice to the appellant, who was the original complainant. We are, therefore, of the opinion that the order of the learned Single Judge impugned before us must be set aside and we order accordingly. We also remit the case to the High Court for a fresh decision in accordance with law. The appeal is accordingly allowed,

..... J.
(TARUN CHATTERJEE)

.....J.
(HARJIT SINGH BEDI)

New Delhi,
Dated: May 9, 2008

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JUDIS