

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 9th December, 2009*
Judgment Delivered on: 11th December, 2009

+ **CRL.M.C.2135/2007**

GIAN SINGH ...Petitioner
Through: Mr.Vijay Aggarwal, Advocate.

versus

STATE & ANR. ...Respondents
Through: Mr.Manoj Ohri, APP for the State.
Mr.Rana Mukherjee & Mr.Jayant
K.Mehta for R-2.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. Petitioner Gian Singh is seeking quashing of FIR No.369/2004 registered at police station Tilak Marg under Sections 420/467/468/469/471/120B against the petitioner and the other co-accused.

2. Briefly stated the facts are that on the complaint of Smt. Savitri Goenka pursuant to orders passed on an application under Section 156(3) of the Cr.P.C. the present case was registered. Complainant Savitri Goenka had alleged that a forged will dated 21.3.2003 of late Ashwni Kumar Goenka the son of the complainant had been set up by Kusum Lata Damani, Anup Kapoor, petitioner

Gian Singh and Ashok Jain an advocate whereby the beneficiary of the properties of the deceased was Kusum Lata Damani. In the course of the investigation this will had been sent to the CFSL and the CFSL had opined that the signature of late Ashwani Kumar Goenka in the will dated 21.3.2003 did not match with his admitted signatures; the will was thus opined to be a forged and fabricated document. Petitioner herein was the notary who had attested the will.

3. On behalf of the petitioner, it is submitted that the petitioner is a 75 years old man. He had notarized the will in his official capacity. He is protected under Section 13 of the Notaries Act 1952 by virtue of which no cognizance can be taken of any offence committed by a notary in the exercise or purported exercise of his functions under this Act save upon complaint in writing made by an officer authorised by the Central Government or a State Government. It is stated that in these circumstances the petitioner having acted in his capacity as a notary, the cognizance of the offences taken against him in terms of the order dated 10.7.2006 and 18.9.2006 is bad and liable to be set aside. At best the allegations levelled against the petitioner disclose an offence under Section 188 of the IPC for which also the procedure as contained in Section 195 of the Cr.P.C. has to be followed; in the absence of which, the cognizance of such an offence is liable to be set aside.

4. Learned counsel for the petitioner has placed reliance upon a judgment of Bombay High Court reported as Chandmal Moti Lal Bora vs. State of Maharashtra, 2004(2) Mh.L.J. 41 to substantiate his

argument that Section 13 adequately protects the acts of a notary which he had performed as per Section 8 of the said Act. It is submitted that the ratio of this judgment had granted protection to the notaries to protect them from a false and vexatious implication in numerous offences in which they could be embroiled because numerous documents are notarised by a notary in the normal course of duty in his notarial register which may be for the offences of cheating, blackmailing and other commercial transactions but a notary is not supposed to know each and every person before him for the purpose of notifying a document in his notarial register; he is not supposed to know truth behind the documents brought before him for entries; such a person being an advocate performs his function in his capacity as a professional; it was with this view that Section 13 of the Notaries Act had been promulgated by the legislature. The act of the petitioner is adequately protected by this provision.

5. Counsel for the petitioner has relied upon 2009 IV AD Delhi 477 C.P.Thakur vs. CBI as also another judgment reported in 2009 VIII AD SC 630 State of Madhya Pradesh vs. Sheetia Sahai to support his submission that a similar provision is contained in Section 197 of the Cr.P.C. which grants an immunity to a public servant from a malicious prosecution without a valid sanction.

6. Learned counsel for the petitioner has also placed reliance upon a judgment reported in 1973 SCC (CRI) 309 Hira Lal Jain vs. Delhi Administration to support his submission that where in the charge sheet allegations are only of a conspiracy and there is no

prima facie evidence of the same, petitioner on the merits as well would be entitled to a discharge.

7. It is submitted that the petitioner in fact would have been a best witness of the prosecution but the prosecution has chosen to array him as an accused; acts of the petitioner do not qualify for any of the offences for which cognizance had been taken by the Trial Court.

8. Learned public prosecutor has rebutted these arguments. It is submitted that the act of the petitioner Gian Singh was not in his functional capacity as a notary and this is clear from the averments which has been made in the charge sheet which inter alia reads as follows:-

“..... Sh.Gian Singh Notary was questioned about the said WILL. Initially he was confronted with a photocopy of the WILL on 04.08.2004, wherein he straightaway refused having any knowledge of the same and stated that he did not made any attestation on the said WILL and the stamps etc. appearing thereupon are forged one. He even made an endorsement on the said copy of the WILL in his handwriting that the same is not executed, signed or attested by him. But on 04.01.2005 Sh. Gian Singh gave an affidavit in the Hon'ble High Court in Case No.10 of 2004 Smt.Kusum Lata Damani Vs. State of Delhi & Others wherein he claimed that the said WILL was executed in his presence and that the Testator had actually appeared before him along with the witness Anoop Kumar. On 26.02.2005 he was again questioned regarding his stand on the said WILL. He gave a written statement where he said that he actually executed the same. The notary register was scrutinized, and the same did not contain any entry of the said WILL, regarding which he could not give any satisfactory answer. The Notary Register was seized as per legal procedure for the purposes of evidence.”

It is further submitted that under Rule 11(2) of the Notaries Rules 1956 a notary shall register notaries and shall protect and maintain a Notarised Register in the prescribed form XV; the entry of the will does not find mention in this register.

9. The averments contained in the charge sheet clearly show that petitioner has taken contrary and shifting stands. On 4.8.2004 he had refused knowledge of the will purported to have been notarised by him and in fact had made an endorsement to the said effect. Thereafter on 4.1.2005 an affidavit in writing had been given by him in probate proceedings i.e. in case no.10/2004 claiming that the said will had been executed in his presence and the testator had appeared before him along with witness Anoop Kapoor. On 26.2.2005 he in writing admitted that he had executed the will but the notary register did not contain any such entry.

10. In (2007) 1 SCC 1 Parkash Singh Badal & Anr. vs. State of Punjab & Ors. it had been held by the Supreme Court that principle of immunity of a public servant is only for those acts which are performed in the exercise of the functions of the public servant where an criminal act is performed under the colour of authority but which in reality is for the public servant's own pleasure or benefit then such acts shall not be protected under the doctrine of State immunity. These observations were made on the requirement of the grant of a sanction for prosecution of a public servant under Section 6 of the Prevention of Corruption Act 1947. In this context it had also been observed that the offence of cheating under Section 420 or the offences relating to Section 467,468,471 and 120B of the IPC

can by no stretch of imagination by their very nature be regarded as having been committed by any servant while acting or purporting to act in discharge of official duty.

11. The judgment of Chandmal Bora (supra) by the application of Section 13(2) of the Notaries Act 1952 had given a protective cover to such notaries who had performed their functions in such an official capacity and not to acts which fall outside the purview of the duty of such a functionary.

12. The judgment of Hira Lal (supra) would also does not apply to the facts of the instant case as in the said case the documentary evidence has clearly established that the appellant therein had filed his vakalatnama and only identified the real claimant. No other role was ascribed to him. This is not so in the instant case as is clear from the discussion supra.

13. Argument of the applicability of the procedure as contained in Section 195 of the Cr.P.C. is misconceived; cognizance has been taken of the offences punishable under Sections 420/468/469/471/120B of the IPC; Section 188 of the IPC is not in the picture.

14. It is thus clear that the role attributed to the present petitioner can by no stretch of imagination at this stage be said that it was in the discharge of his duty as a notary; it was not within his functional capacity as a notary to have taken shifting stands and giving different statements in writing as to whether he had or had not notarised the disputed will dated 21.3.2003; the repercussion of this act would have substantial bearing on the rights of the complainant

who had alleged that this will dated 21.3.2003 of her son bequeathing his properties in favour of Kusum Lata Damani is a forged document.

15. The prima facie allegations made against the petitioner bring out his role in the conspiracy to forge this disputed document i.e. the will dated 21.3.2003.

16. No case is made out for quashing the proceedings; petition is without any merits; dismissed.

(INDERMEET KAUR)
JUDGE

December 11, 2009
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