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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(CRL) 1675/2009
MAHIPAL SINGH Petitioner

Through: Mr. Sunil Kumar, Advocate

versus

STATE N.C.T. OF DELHI & ORS. Respondent

Through: Mr. Dayan Krishnan, ASC for State
with Mr. Nikhil Menon, Advocates
Mr. Rahul Malhotra, Advocate for
R-2.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

ORDER

% **12.12.2011**

1. This is a petition under Article 226 of the Constitution of India read with Section 482 Cr.P.C for issuance of writ of certiorari, prohibition or any other appropriate writ, order or direction for quashing of FIR No.29 of 2009 under Sections 420/467/468/471/120B IPC registered at Police Station Economic Offences Wing, Delhi and all the consequential proceedings arising therefrom.

2. The facts in brief are that one late R.K. Bhalla was the owner of the property bearing number J-12, Green Park, New Delhi. He allegedly executed a Will dated 7.3.1994 in favour of petitioner in presence of one Kimti Lal Jain and Raj Kumar (since deceased). The petitioner filed a probate petition no.85/96 on 23.2.1996 in the court of learned District Judge for grant of probate. In the said petition, the legal heirs of late R.K. Bhalla namely Promila Bhalla wife and son Deepak Bhalla through their special power of attorney Mr. Rajinder Sharma (husband of the complainant Mrs. Nita Sharma) filed their objections on 18.2.1998. Later Mr. Rajinder Sharma sought to file objections in the said petition in his personal capacity also and moved an

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application under Order I Rule 10 CPC for impleading him as a party in those proceedings alleging him to be a bonafide purchaser of the said property allegedly bequeathed under the Will in question in favour of the petitioner. He also claimed himself to be in possession of the property for number of years having purchased the same from vendees of late R.K. Bhalla. In the meantime, he also filed a complaint with EOW of Delhi police. The said complaint was closed by the department and the application under Order 1 Rule 10 CPC filed by him was also dismissed. Against the said order, a civil revision was preferred before this Court which was also dismissed on account of non-maintainability. Thereafter, his wife (respondent no.2) herein filed a complaint before the police claiming herself to be the owner of the part of the property in question. In the probate proceedings also she stated having purchased the same along with her husband Ravinder Sharma through the power of attorney executed by the legal heirs of late R.K. Bhalla. She also disputed the execution and validity of the Will dated 7.3.1994 and alleged the same to be a forged and fabricated document. It was also alleged by her that the remaining witness to the Will Mr. Kimti Lal Jain was not the signatory of the said Will. She also stated that the complaint earlier filed by her husband was closed by the EOW on the ground that the original Will was not produced by the petitioner.

3. The case of the petitioner is that initiation of criminal complaint by respondent no.2 herein and registration of FIR at her instance is nothing but an attempt to seek title of the property which is subjudice before the court in probate proceedings. It is also averred that the earlier complaint filed by her husband with EOW of Delhi Police was closed in the year 2003, the filing of fresh complaint and registration of FIR 29/2009 against the petitioner at the instance of the respondent Neeta Sharma wife of Ravinder Sharma was nothing but an abuse of process of law. Based on these grounds, the aforesaid FIR is sought to be quashed.

4. It is submitted by learned APP for the State that it was because of non

filing of the alleged original Will by the petitioner, it was stated that now since the petitioner filed the said original Will in the court where the probate proceedings were pending, that the investigation was conducted on the basis of the complaint made by the complainant/R-2, during investigation it came to be revealed that the aforesaid property was purchased by late Shadi Lal Bhalla and he executed his Will dated 24.9.1964 in favour of his wife late Ram Pyari who further relinquished her rights in favour of her two sons Mr.R.K. Bhalla and Mr. S.K. Bhalla vide the relinquishment deed dated 18.4.1980. Thereafter, vide the relinquishment deed dated 18.9.1987, late S.K.Bhalla and his legal heirs i.e. his wife and sons also relinquished their rights in favour of R.K. Bhalla. Subsequently, R.K. Bhalla collaborated with some builders and constructed flats on the said property and executed an agreement to sell and power of attorney in respect of those flats in favour of ten different persons in the year 1991-92. Thereafter, S.K. Bhalla filed a petition 1333/92 before this Court seeking cancellation of his relinquishment deed dated 28.12.1987 in favour of R.K. Bhalla in this Court and this Court vide order dated 16.4.1992 restrained R.K. Bhalla from selling the said property. Further, in the year 2004, vide the compromise petition 371/2004, legal heirs of R.K. Bhalla and S.K. Bhalla became owner of 50% each in the said property. Mr. R.K. Bhalla mortgaged the said property to various banks prior to execution of the agreement to sell the flats to different purchasers. The flat owners transferred their rights vide documents such like agreement and GPAs in favour of complainant/ respondent no.2 herein and her husband Rajinder Sharma in the year 1996. The legal heirs of R.K. Bhalla also endorsed the said transfer in favour of respondent no.2/ complainant and her husband and also executed the relevant documents and vide letter dated 1.9.2001 had informed the complainant about filing of probate petition by the petitioner and authorizing the complainant and her husband to pursue the said proceedings. A special power of attorney was also given to Rajinder Sharma to pursue the same. The general power of attorney was executed in favour of complainant and her

husband to manage, control and proceedings and sell, mortgage etc. the said property. Some more power of attorneys for doing different works were also given by them in addition to affidavits, undertakings, bonds etc. Rajinder Sharma being the GPA Holder of Lrs of late S.K. Bhalla and being a GPA holder of sons of deceased R.K. Bhalla and also the legal heirs of S.K. Bhalla transferred 50% shares in favour of his wife Nita Bhalla/ complainant (respondent no.2 herein) by way of sale deed dated 31.8.2005. The Will dated 7.3.1994 executed by R.K. Bhalla on the letterhead of Swarn Kamal Apartments and allegedly witnessed by Kimti Lal Jain and Rajinder Kumar was alleged to be forged and fabricated on various grounds.

5. I have heard learned counsel for the petitioner and learned counsel for the respondent no.2/complainant Neeta Sharma as well as learned APP for the State.

6. During investigation it came to be revealed that Raj Kumar, one of the witnesses to the Will had expired and Kimti Lal Jain in his statement before the Court in the probate proceedings stated that he had never met the petitioner prior to 1995. This statement of Kimti Lal was in total contradiction of being a witness on the execution of the Will dated 7.3.1994. In the said case, Kimti Lal had also submitted his written statement with his affidavit stating therein that he had never signed the said Will as a witness and stated that the petitioner who was an advocate got his signatures on 3-4 blank papers and on blank letterheads 6/7 years back on the pretext that these papers were required for settling of various issues with R.K. Bhalla. It also came to be revealed that Kimti Lal was an old acquaintance of late R.K. Bhalla and was aware of sale of the property and regarding sale of the flats to various persons. R.K. Bhalla was also arrested in the case FIR No.65/94 Police Station Prashant Nagar and he died in jail on 4.6.1994.

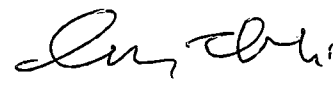
7. The Will dated 7.3.1994 of late R.K. Bhalla made on letterhead of Swarn Kamal Apartments was also examined from the FSL. The same is found to be forged and fake document. The probate petition filed by the

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petitioner now stands dismissed on the ground that the petition for grant of probate of the Will dated 7.3.1994 filed by Mahipal Singh enumerating various factors raised suspicion about the authenticity of the said Will.

8. All the facts noted by the Probate Court weighed against the petitioner in dismissing his Probate Petition. Moreover, the learned ADJ recored its finding that a prima facie case is made out against petitioner Mahipal and Kimti Lal for committing offences of using forged documents in court proceedings, giving false statement and filing false affidavits punishable under Sections 177, 181, 191, 192,193, 196, 199, 209 IPC and ordered the logding of complaint by the court vide its order dated 5.11.2011.

9. Having regard to the foregoing facts and circumstances, it can be seen that there are sufficient and cogent grounds to proceed against the petitioner and hence the FIR cannot be quashed. The petition is hereby dismissed having no merits. No costs.


M.L. MEHTA,J

DECEMBER 12, 2011

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