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

\+ W.P.(CRL) 1006/2012 & CRL.M.A. 5142/2013

% **Judgment dated 08 November, 2013**

JAMUNA PRASAD ..... Petitioner
Through: Mr.P.S. Dahiya, Advocate

versus

STATE & ORS ..... Respondent
Through: Mr.Rajesh Mahajan and Ms.Urvi K. Malik, Advocates for the State
Mr.Sunil K. Mittal and Mr.Rajesh Kaushik, Advocates for the respondents No.6
Mr.Zubair Raza and Mr.Sameer Chandra, Advocates for respondent no.7
Mr.Narender Mann, Spl.P.P. for CBI with Mr.Manoj Pant, Advocate for the CBI
S.I. Shivdarshan, Crime Branch.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. With the consent of counsel for the parties, the present petition is set down for final hearing and disposal.
2. The facts of the case as stated by the petitioner in this petition are that on 7.12.2011 respondent no.7 along with 7 - 8 persons knocked the door of the petitioner at approximately 11:15 at night. The petitioner found 7 - 8 unknown persons standing with weapons along with respondent no.7; he was threatened and a revolver was put on his head; and his family members were dragged and were directed to follow the directions else they would be burnt alive in the house. The petitioner was not allowed to

inform the police. The petitioner and his family members were kidnapped; and the were taken to the office of respondent no.7. Respondent no.6 directed respondent no.7 to call a truck to load the goods of the petitioner, and his goods were loaded in a truck and sent to Madhya Pradesh; petrol was spread in the empty house of the petitioner and it was demolished and burnt down.

3. On the following day, the petitioner was forced to go to Dwarka Court under threat of elimination. He and his family members were made to sign an affidavit of sale of the plot, according to which the petitioner sold the plot to Sh.S.K. Jain for three lacs in cash and two cheques bearing No.082443 and 082444 dated 7.12.2011 were handed over to him; thumb impressions of the petitioner and his wife and others were taken; he was then forced to go to Madhya Pradesh. Thereafter complaint was lodged by the petitioner in the office of Commissioner of Police on 14.12.2011, copies marked to various other persons, were not considered and no action was taken.

4. According to the petitioner, he had purchased the plot measuring 500 sq. yds. having Khasra No.16/22 and plot No.D-1/60 Jeevan Park in the year 1980 from Sh.Dalpat Singh for approximately Rs.48,500/- in the year 1984. Out of 500 sq. yds. plot at Khasra No.16/22, which was purchased by the petitioner from Sh.Dalpat Singh, petitioner had sold 400 sq. ft. to one Bharat Singh and on the remaining 100 sq. yds. petitioner erected a house and he has been living there for the last more than 30 years, supporting documents in the form of electricity bill, including voters identity card have been placed on record; and details of documents including agreement to sell have been annexed with this petition. The petitioner claims himself to be working with the labour contractor in building construction work.

5. In the light of the above facts the petitioner contends that all the police official including ACP Mr.Mahender Singh and Ram Kishan, SHO are hand in glove with respondents no.6 and 7 and thus no FIR has been lodged on the complaint of the petitioner, but an FIR has been lodged against the petitioner on the complaint of respondent no.6 and for which he was arrested. Counsel for the petitioner submits that he is the owner of the disputed land and he has documents and title in his possession; he has been forcibly dispossessed and his belongings were loaded in a truck and were sent to Madhya Pradesh; he was threatened and his property was burn down. Counsel for the petitioner submits that the police is not carrying out the investigation in fair and just manner.

6. In this background following prayers have been made by the petitioner:

> "a) direct the CBI to investigate the matter;
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> b) direct the Commissioner of Police to terminate the services of the above mentioned erring officers namely ACP Mr.Mahender Singh and SHO, P.S. Dabri Mr.Ram Kishan;
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> (c) direct the respondents No.6 and 7 along with their allies to restructure the house of the petitioner as the petitioner is roaming from one place to other to save his and his family members life without home and direct the respondents no.6 and 7 to peacefully hand over the possession of the said land, to the petitioner;
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> (d) send behind bar Mr.Sanjay Jain, Mr.Pawan Tiwary along with his allies numbered 7 for the offences they have committed upon the petitioner and his family members;
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> (e) fine of exemplary cost must be imposed upon the respondents no.6 and 7 including the cost of the house as this was demolished by the respondent No.6 and 7 along with their allies."

7. Counsel for the State has drawn attention of the court to two status reports, which have been placed on record. The first status report dated 25.8.2012 has been filed by the Assistant Commissioner of Police, Special Team, Crime Branch, Delhi. As per this status report on 1.11.2011 respondent no.6 lodged a complaint to the Crime Branch that he has been receiving threatening calls from a mobile phone. According to the caller he would face dire consequences, if he did not hand over possession of his plot measuring 500 sq. yds. situated at Pankha Road, Delhi. During enquiry, the caller was identified as Bharat Singh, R/o. VIII, Chand Pur, Delhi. The said Bharat Singh had informed that he had purchased the plot No.D-1/60, Jeewan Park, Pankha Road, New Delhi from the petitioner, Mr.Jamuna Prasad on 9.7.2010 for a consideration of Rs.25.0 lacs in cash; notarized GPA, Agreement to Sell, affidavit , receipt of cash, Will, possession letter and *Ikrarnama* executed in his favour by Mr.Jamuna Prasad were produced by said Mr.Bharat Singh.

8. Similar documents were produced in favour of Mr.Jamuna Prasad by one Mr.Dalpat Singh. The documents bore signatures of two witnesses, namely, Mr.Devender Singh and Mr.Jai Kishan Dabas; on enquiry both the witnesses denied having signed any document and asserted that their signatures on the documents were forged. The property was found duly registered in the name of Ms.Urmila Jain, mother of the complainant, Sanjay Jain. The complainant informed that the said Jamuna Prasad, petitioner herein had been working as a watchman at the said property for many years; hence FIR No.294/11 dated 9.11.11 under Sections 420/467/468/471/506/120 IPC P.S. Crime Branch, Delhi was registered. Accused Bharat Singh and Jamuna Prasad, petitioner herein were arrested and a mobile phone was also recovered from Bharat Singh. The documents were sent to FSL, the report is stated to be still awaited.

9. According to this status report, the documents produced by the petitioner, Mr.Jamuna Prasad, claiming ownership of the property were found to be *prima facie* forged on the following grounds:

(1) The stamp vendor with Licence No.259 did not exist in 1984 from whom stamp papers used for preparation of documents dt. 12.4.84 were shown to be purchased.

(2) The documents dt. 12.04.84 have been shown to be notarized by Mr.M.S. Mehta but as per records, he was appointed Notary w.e.f. 22.04.85 only.

(3) Mr.Mahesh Chand S/o.Sh.Kishan Nath, R/o.VPO Kaurali, Distt. Faridabad (Haryana) who has shown as one of the witnesses on the documents, had never resided at the given address and he is not traceable.

(4) Copy of NOC dt. 5.03.84 was purportedly executed by 8 persons. Only one of the executants namely Virender Singh S/o.Sh.Lal Chand @ Lalu is available out of them who has affirmed that the NOC is forged and it does not bear his signature.

(5) The documents collected from BSES Rajdhani Power Limited show that the electricity connection with CRN No.2650093839 was installed at the given premises on the application submitted by the petitioner Jamuna Prasad on 15.10.2005. As per the documents submitted with BSES, Rajdhani Power Ltd. the petitioner has shown himself to be the owner of premises measuring 50 sq. yds. only and not 500 sq. yds. He has also claimed in the application that he was the owner of the premises since 1981 whereas the documents submitted in the petition show his title w.e.f. 12.4.84.

(6) The documents pertaining to the ownership of the premises in question were reported lost at the time of applying for electricity connection by the petitioner and a copy of complaint lodged by the petitioner at P.S. Janak Puri Delhi on 7.10.2005 has been found on record of BSES Rajdhani Power Limited. However, the complaint annexe (Annexure P-15) at page No.86-88 of the petition shows that the documents pertaining to the ownership of the plot were

found stolen from the house of the petitioner on 15.5.2009 and he had lodged a complaint at P.S. Binda Pur, Delhi on the same day. Once the petitioner had lost the documents pertaining to the ownership of the premises on 7.10.2005 then the same could not be stolen from his house as alleged in the complaint dt. 15.05.2009 which proves its falsity."

10. Another status report has also filed by the Additional Commissioner of Police, South West District. While some of the facts have been reiterated, the relevant portion of this status report reads as under:

> "....
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> The present status report is being filed to reply to the allegations against respondent 3, 4 and 5 and also to supplement the said status report being filed by Crime Branch. In fact the petitioner and SH.Bharat Singh were arrested in the above said case and after releasing on bail both had made various complaints against Sh.Sanjay Jain and police, which were initially sent to crime branch as the matter was being investigated by Crime Branch and local Police was no where in picture. But crime branch did not entertain the complaints and sent back these complaints to local on dt. 07.08.12 where the matter was looked into and these complaints were filed.
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> On receipt of these complaint from crime branch local inquiry were conducted which revealed that the petitioner was a caretaker of Sh.Sanjay Jain, who was arrested by crime branch in above case and after his release from Jail. The family members convinced the petitioner to apologize before Sh.Sanjay Jain and vacate the property peacefully. Inquiries from the neighbours and the family members were conducted which revealed that the petitioner along with his family members compromised this matter with Sh.Sanjay Jain. Petitioner took Rs.3 lacs in cash and two cheques of Rs.2 lacs each his name and the name of his wife. After compromising the matter the petitioner voluntarily vacated the property and went to his native place Reeva, Madhya Pradesh. During negotiation it was decided Rs.7 lacs would

be paid by the respondent no.6 to the petitioner. However, respondent no.7 paid Rs.3 lacs in cash to the petitioner and gave two cheques of Rs.2 lac each to petitioner. Later on respondent no.7 stopped the payment of these two cheques reason best known to him. Hence it is presumed that the petitioner is now levelling false allegations against the respondent.

It is important to mention that the petitioner filed a copy of complaint along with the petition which he claims to be filed in Police Station Bindapur on 15.05.2009, in which he alleged regarding the missing of his household articles and the documents of house in question. On enquiry from Police Station Bindapur it was found that a complaint was filed by the Petitioner on the same day i.e. dated 15/5/2012 which is registered in Police Station Bindapur vide DD No.41-A and Local Complaint Diary No.LC-1093/BP dated 15.05.2009. In that complaint he has reported the missing of household articles only. There is no mention about the missing of documents of said property in this complaint. Hence, the conduct of the Petitioner clearly indicates his intension to gain favour / sympathy after misguiding the Hon'ble Court.

It is denied that there was any connivance of Respondent 3, 4 & 5 as alleged by the petitioner. It is denied that there was any collusion by SHO and ACP Dabri in alleged kidnapping of family of Sh.Jamuna Prasad on 7/12/11. The said allegations are false, baseless and motivated and are vehemently denied. The complaints in this regard given by the petitioner were duly inquired into. Since those could not be substantiated, the same were closed.

The prayer (b) being sought in the writ petition which pertains to the answering respondents be rejected. The petition is liable to be dismissed with costs."

11. Counsel for the complainant / respondents no.6 and 7 are also present in court. They have refuted each and every allegations made by the petitioner in these proceedings.

12. Counsel for the State and the complainant submits that the present petition raises disputed questions of fact, which cannot be decided in these proceedings. It is further submitted that by the present petition, the petitioner has sought for an independent investigation. The matter is not being investigated by the Local Police, but has been referred to the Crime Branch, hence, the petitioner can have no grievances with regard to the fair investigation in the matter.

13. It is further submitted that the remaining prayers made in the petition cannot be granted as the same are absurd, as the petitioner seeks a direction to the Commissioner of Police to terminate the services of the erring officer. Petitioner also seeks a direction for re-construction of his house and for payment of compensation.

14. I have heard counsel for the parties and considered their rival submissions. The petitioner claims himself to be the owner of the plot No.D-1/60 Jeevan Park, measuring 500 sq. yds. It is claimed by the petitioner that area measuring 400 sq. yds. was sold to Sh.Bharat Singh by means of a General Power of Attorney and other supporting documents for a sale consideration of Rs.25.0 lacs received in cash. This fact is disputed by counsel for the respondent no.7, who claims himself to be the owner by means of a sale deed. As per the status report filed by the police the documents in favour of the petitioner and Bharat Singh *prima facie* appear to be forged and the petitioner was put in possession only as a care taker for the property. Patently this petition raises disputed questions of fact which cannot be decided in these proceedings and can only be adjudicated in civil proceedings upon recording of evidence.

15. As far as the prayers made by the petitioner seeking termination of the erring police offices, the rights of the petitioner are kept open to be agitated in appropriate proceedings as it is not for this court to direct

termination of these officers. It would be open for the petitioner to make a representation to the Commissioner of Police, who will consider the representation and pass a suitable order in accordance with law within six weeks of receipts of the representation.

16. It is made clear that the court has not expressed any opinion on the merits of the matter. All rights of the petitioner are kept open to be agitated in appropriate proceedings in accordance with law.

17. Accordingly, the present petition and the application stand disposed of, in above terms.

G.S.SISTANI, J

NOVEMBER 08, 2013
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