

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

% Order delivered on: 27th April, 2015

+ **CRL.M.C. No.849/2015 & CrI.M.A. No.3212/2015**

RAVI ARORA Petitioner

Through Mr.Vijay Aggarwal, Adv. with
Ms.Chaitali Jain, Adv.

versus

STATE & ORS. Respondents

Through Mr.Ravi Nayak, APP for the State.

**CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C. seeking setting aside of the order dated 28th September, 2013 passed by the trial Court and order dated 29th August, 2014 passed by the Revisional Court whereby the protest petition filed by the petitioner was dismissed.

2. The admitted facts recorded by the trial Court as well as the Revisional Court are as under:

“2. Brief facts of the case are that an application u/s 156(3) Cr.P.C. was filed by the complainant earlier against Satish Verma and Pradeep Verma (respondent Nos.1 and 2) alleging that the accused persons approached complainant in the month of November 2005 and expressed their desire to reconstruct

their property bearing No.B-6/8, Vasant Vihar, New Delhi in collaboration with complainant. It was stated that the accused persons allegedly told complainant that they are lawful owners of the said property and no one else has any right or interest over the same. It was stated that the above said property was earlier allotted jointly to Sh. S.S. Verma and Smt. Sheela Devi Verma (i.e. parents of accused). Sh. S.S. Verma died on 23.05.1999 leaving behind his last Will and testament dated 29.10.1989, whereby he bequeathed his entire half undivided share in the property in question in favour of his wife Mrs. Sheela Devi Verma to the exclusion of all others. It was stated that the said Will was accepted as genuine and acted upon, as such, the mother of accused persons i.e. Mrs. Sheela Devi Verma became absolute owner of entire property in question. It was further stated that the property in question was got converted into free hold by Mrs. Sheela Devi Verma in her own name vide conveyance deed dated 13.07.2005. Smt. Sheela Devi Verma expressed her desire to execute a gift deed of the said property in favour of accused persons who are also her sons in equal shares. The accused persons assured the complainant that the property in question is free from all sorts of encumbrances, charges, liens, lease etc. The accused persons persuaded the complainant to pay a sum of Rs.5,00,000/- to Smt. Sheela Devi Verma out of the total consideration of collaboration agreement, to be entered between the parties as token money. On payment of said Rs.5,00,000 by complainant to Mrs. Sheela Devi Verma on 29.11.2005, Mrs. Sheela Devi Verma transferred the property in question in favour of accused persons by way of two separate gift deeds.

3. It was stated that thereafter both the accused persons entered into a collaboration agreement with the complainant's firm on 14.12.2005 with respect to property in question for a total consideration amount of Rs.1,05,00,000/- (One crore five lakhs) in addition to the arrangement that complainant's firm would incur entire costs and expenses of construction. A sum of Rs.35,00,000/- was given by the complainant to the accused persons in advance by way of cheques as well as cash. It was agreed that the balance amount of Rs.75,00,000/- would be

paid by the complainant to accused persons on actual handing over of vacant physical possession of property in question by the accused to the complainant. It was stated that in addition to above mentioned amount complainant also paid an additional sum of Rs.5,00,000/- to the accused persons on account of alternative accommodation. In the collaboration agreement it was assured by the accused persons to complainant that the property in question was free from all kind of encumbrances, however, while entering into the agreement and making of payment, it came to the knowledge of complainant that accused persons have a sister namely Nita Saxena who was also having share in the property in question. The complainant insisted for making Nita Saxena as party in the agreement, on which accused persons showed complainant a relinquishment deed signed by Nita Saxena in favour of accused persons.

4. It was stated that as per the collaboration agreement, accused persons were supposed to handover vacant physical possession of property in question to the complainant by 01.06.2006. However, both the accused persons failed to honour the terms of agreement and failed to handover the vacant possession of property in question and kept delaying the matter on one pretext or the other. When despite much requests made by the complainant, the possession of property in question was not given by the accused, the possession of property in question was not given by the accused, the complainant filed a civil suit in Hon'ble Delhi High Court against the accused persons. It was stated that on filing the said suit, complainant learnt that a civil suit bearing No.475/2006 titled as Nita Saxena vs. Satish Verma was already pending in Hon'ble Delhi High Court qua property in question and wherein an order dated 20.03.2006 had been passed by the High Court vide which 'status quo' was to be maintained qua property in question.

5. It is alleged by the complainant that the accused persons knowing the claim of their sister and knowing about non relinquishment of her share, dishonestly represented that the property in question was free from all encumbrances with the intention to cheat the complainant. It is further alleged that the

accused persons concealed the facts from complainant that 'status quo' order qua property in question was passed by Hon'ble Delhi High Court. It is further alleged that due to acts of accused persons, the complainant and their firm suffered huge loss of money. It is alleged that the accused persons fraudulently and dishonestly induced the complainant for a huge sum of money and used the said amount for their benefit. It is further alleged that the accused persons with dishonest and fraudulent intention prepared fake relinquishment deed and thus committed forgery against complainant. It is further alleged that accused persons have committed offence of forgery for the purpose of cheating the complainant and also used the forged documents as genuine. It is further alleged that accused persons approached the complainant in connivance with each other in order to cause wrongful losses to the complainant and wrongful gain to the accused and as such committed the offence of criminal conspiracy. With these submissions, complainant prayed for registration of FIR against the accused persons u/s 107/109/420/463/465/467/468/471/120B/34 IPC."

3. On the basis of the said allegations made by the petitioner/complainant the FIR was ordered to be registered on 7th April, 2010. The matter was investigated by the Police who submitted its report on 20th August, 2010 stating that no alleged offence against the accused persons was made out and in view of the evidence collected, no intention to cheat, forgery or misappropriation can be attributed to the accused.
4. The trial court under these circumstances dismissed the complaint of the petitioner on 28th September, 2013.
5. The petitioner/complainant challenged the above said order in the Revisional Court, being CR No.49/2014. By passing the detailed order dated 29th August, 2014, the said revision petition was dismissed.

After dismissal of the revision petition, the said order has been challenged by the petitioner/complainant before this Court.

6. Counsel for the petitioner has referred the following two decisions of the Supreme Court (i) ***Iqbal Singh Marwah vs. Meenakshi Marwah***, (2005) 4 SCC 370 and (ii) ***Kamala Devi Agarwal vs. State of W.B. and Ors.***, (2002) 1 SCC 555.

7. As far as proposition and finding arrived at in the present case are concerned, there is no dispute that while exercising the discretion under Section 482 Cr.P.C., this Court can exercise its discretion in case the order passed by the trial Court or the Revisional Court on the face of it is contrary to law and totally perverse. However, it is not allowed in law or under any provision to file the second revision in the garb of petition under Section 482 Cr.P.C. The similar issue is dealt with in the following two decisions:-

- (i) The Supreme Court in the case of ***Rajan Kumar Machananda v. State of Karnataka***, JT 1987(4) SC 637, (para 2) held as under:-

“2. Heard learned Counsel for the parties. The respondent State had challenged the order before the Court of Sessions when the learned Magistrate before whom the matter was proceeding directed release of the truck in favour of the appellant. The Revisional Court dismissed the petition of the State. A second Revision did not lie at the instance of the State to the High Court in view of the provisions of Section 397(3) of Cr.P.C. Obviously, to avoid this bar, the application moved by the State before the High Court was stated

to be under Section 482 Cr.P.C. asking for exercise of inherent powers. In exercise of that power, the High Court has reversed the order of the Magistrate as affirmed by the Sessions Judge. The question for consideration is as to whether the bar under Section 397(3) Cr.P.C. should have been taken note of to reject the revision at the instance of the State Government or action taken by the High Court in exercise of its inherent power has to be sustained. It is not disputed by counsel appearing for the State that the move before the High Court was really on application for revision of the order of the Magistrate releasing the truck. That is exactly what is prohibited under Section 397(3) Cr.P.C. Merely by saying that the jurisdiction of the High Court for exercise of its inherent power was being invoked the statutory bar could not have been overcome. If that was to be permitted every revision application facing the bar of Section 397(3) of the Code could be labelled as one under Section 482. We are satisfied that this is a case where the High Court had no jurisdiction to entertain the revision. The appeal is allowed and we set aside the order of the High Court. The Order of the Magistrate as affirmed by the Session Judge is upheld.”

- (ii) In another case titled as ***Dharampal and others v. Smt. Ramshri and others***, AIR 1993 SC 1361, the Supreme Court held as under:-

“4. There is no doubt that the learned Magistrate had committed an error in passing the subsequent orders of attachment when the first attachment was never finally vacated and had revived the moment the revision application filed against it was dismissed by

the learned Sessions Judge. It appears that none of the parties including the Sessions Judge realised this error on the part of the Magistrate. The learned Sessions Judge had also committed a patent mistake in entertaining revision application against the fresh orders of attachment and granting interim stays when he had dismissed revision application against the order of attachment earlier. Let that be as it is. The question that falls for our consideration now is whether the High Court could have utilised the powers under Section 482 of the Code and entertained a second revision application at the instance of the 1st respondent. Admittedly the 1st respondent had preferred a Criminal Application being Cr. R. No.180/78 to the Sessions Court against the order passed by the Magistrate on 17th October, 1978 withdrawing the attachment. The Sessions Judge had dismissed the said application on 14th May, 1979. Section 397(3) bars a second revision application by the same party. It is now well settled that the inherent powers under S. 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. Hence the High Court had clearly erred in entertaining the second revision at the instance of 1st respondent. On this short ground itself, the impugned order of the High Court can be set aside.”

8. Therefore, while exercising its discretion the court has to keep in mind the facts of the matter and law. Admittedly, in the present case, after the investigation the Police filed cancellation report on 20th August, 2010 informing the trial Court that no alleged offence against the accused was made out and in view of the evidence collected no

intention to cheat, forgery or misappropriation can be attributed to the accused persons.

9. The finding of fact is arrived on the basis of the evidence collected by the Police. It is not disputed that civil dispute between the parties are pending since 2006. The date of transaction is of November, 2005. The complainant's suit is also pending against the respondent. The complaint was filed in the year 2010. The facts in the civil suits and the complaint are common. Counsel for the petitioner is unable to satisfy the court as to why the complaint was filed after a period of about four and half years when the suits between the parties were already proceeded wherein the interim orders were also passed. No satisfactory answer is given. It appears that complaint filed by the petitioner was an afterthought. No party can be allowed to misuse the law with malafide intention. Under these circumstances, once the revision petition is dismissed, no further orders are required to be passed in the facts of the present case. The impugned order is legally correct. Hence, there is no infirmity in the orders. The petition is accordingly dismissed.

(MANMOHAN SINGH)
JUDGE

APRIL 27, 2015