

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

% Order delivered on: 27th April, 2015

+ **CrI. M.C. No.2863/2008 & CrI. M.A. No.16253/2013**

PUSHPA AHUJA & ANR Petitioners
Through Mr.V.Hari Pillai & Mr.Manish
Saryal, Advs.

versus

STATE & ANR Respondents
Through Mr.Sushil Kr. Dubey, Adv. for
Ms.Sonia Mathur, Adv. for R-1.
Respondent No.2 in person.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioners have filed the present petition under Section 482 Cr.P.C. for quashing of the summoning order dated 12th May, 2008 passed by the Metropolitan Magistrate, Delhi in case arising out of the FIR bearing No.RC 4S/2003/SCB-1 DLI and all the consequent proceedings arising therefrom.

2. Brief facts of the case as per the petition are that the petitioner No.2 filed a complaint with the Police Station Connaught Place Smt.Meera Ahuja on 20th July, 2000 mainly on the reason that she was trying to grab office bearing No.1003, Akashdeep Building, 26 A Barakhamba Road, belonging to the firm of M/s. Ahuja Finance Corporation. Another complaint was filed by the petitioner No.2 with

the Police Station Connaught Place that upon visiting office he found that the office was unattended and without the lock. On the same date i.e. 24th July, 2000 respondent No.2/Mr.N.S. Hoon claiming himself to be the tenant of the said premises also filed a complaint with the Police that the petitioner No.2 along with one Dewan forcibly evicted the premises by threatening the workers and he picked up the briefcase of the respondent No.2 which was kept in the office, containing rent deed, other documents and money. Mr.N.S. Hoon also filed a subsequent complaint on 26th July, 2000 against Sanjay Ahuja and others. On 6th November, 2000 Mr.N.S. Hoon filed a writ petition, being W.P. (Crl.) 947/2000 in this Court seeking direction to register the FIR. The same was registered being FIR No.732/2000 under Sections 448/379/34 IPC. The respondent No.2 filed another writ petition being W.P. (Crl.) 1050/2002, praying for transferring the investigation to CBI on 18th September, 2002. In the said petition, the petitioner filed an application for intervention on 17th December, 2002. The said writ petition was disposed of by order dated 28th May, 2003 transferring further investigation to CBI. On 13th June, 2003 the CBI registered the case under No.RC 4S/2003/SCB-1 DLI. On 11th January, 2005, after investigation the CBI filed a final report in the said case exonerating the petitioners under Sections 448/379/34 IPC due to lack of any evidence observing further as under:-

- (i) As per partnership deed, Smt Meera Ahuja was not a partner of M/s Ahuja Finance Corporation and therefore could not dispose off or rent properties belonging to the firm.

- (ii) The rent deed was executed by Smt. Meera Ahuja in the capacity of partner of M/s Unitex Corporation which was not the owner of the property in question.
- (iii) Moreover Smt. Meera Ahuja was not partner of the said M/s Unitex Corporation.
- (iv) Complaint dated 20th July, 2000 was filed by petitioner No.2 against Smt Meera Ahuja that in their absence, the latter was trying to grab properties belonging to the firm of M/s Ahuja Finance Corporation. Smt. Meera Ahuja had allegedly informed the Estate Manager, Akashdeep Building in writing that she was authorizing Mr Hoon (Respondent No.2) to use the property in question as his office.
- (v) No independent witness corroborates story of respondent No. 2 regarding presence of police personnel or theft of briefcase.
- (vi) No proof of threats or commotion thereby having no proof of criminal trespass.

3. It is also a matter of fact that another complaint was filed against the petitioners, their son and brother Avtar Ahuja by Meera Ahuja under Sections 380/406/420/448/468/451 read with 120B IPC on 20th September, 2001 and the investigation was transferred to CBI by an order of this Court. Closure report was filed in the said complaint and the same was accepted by the Magistrate further observing that the CBI had rightly concluded that the allegations made by the respondent No.2 against the petitioners were of civil nature and there was no need to initiate any legal action under any provision of law.

4. By order dated 31st March, 2006, the trial Court had accepted the final report of CBI while observing that despite of sufficient notice given to respondent No.2, he did not appear nor filed any protest petition in rebuttal.

5. On 15th April, 2006, respondent No.2 filed a revision petition being Crl. Rev. No.117/2006 before the District Judge against the order of the Metropolitan Magistrate dated 31st March, 2006. On 6th August, 2007, the Additional Sessions Judge remanded the matter back to the Magistrate, while observing that the investigating agency was not competent to decide ownership or title of the premises in view of the allegations of dispossession and no one had denied the said fact that petitioner No.2 took over possession of the said flat.

6. On 12th May, 2008, the Metropolitan Magistrate passed the order summoning the petitioners for being tried for offences under Section 448/380/34 IPC particularly on the basis of the observations made by the Additional Sessions Judge in his order dated 6th August, 2007. It was also observed that the filing of a protest petition was not mandatory.

7. Thereafter, the petitioners filed the present petition under Section 482 Cr.P.C. seeking quashing of summoning order dated 12th May, 2008. The interim order was passed on 29th August, 2008. The matter is pending before this Court for the last about seven years. By order dated 28th October, 2013, the petitioners were directed to produce the original partnership deed. It was mentioned that if the said partnership deed is not produced then the petitioners have to explain to the Court as to why it is not produced. On 19th December,

2013 counsel for the petitioners submitted that the petitioners do not have the original partnership deed. It appears from the record that the petitioners also filed an application seeking amendment of the petition being Crl.M.A. No.16506/2013. Along with the application the amended petition was also filed. The application was allowed by order dated 19th December, 2013 and the amended petition was taken on record. The prayer made in the amended petition reads as under:

“(A) Quash the RC 4S/2003/SCB-I DLI, and all proceedings emanating therefrom, presently pending in the court of Sh.A.S. Aggarwal, Ld. Metropolitan Magistrate, Karkardooma Courts, New Delhi;

(B) Quash the summoning order dated 12.05.2008 and the summons issued thereupon in RC 4S/2003/SCB-I DLI;

(C) Set aside and quash order dtd. 06.08.2007 (Annexure P-10) passed by the Ld. Addl. Sessions Judge, Karkardooma Courts in Criminal Revision No.117/2006;”

8. At the time of hearing of the petition, the main contention of the petitioners is that in the impugned order dated 6th August, 2007, no opportunity was afforded to the petitioners of being heard in the revisional proceedings initiated by respondent No.2 who did not choose to array the petitioners as respondents. Therefore, the impugned order is bad in law and contrary to the decision of the Supreme Court. It is further stated that the summoning order passed by the Metropolitan Magistrate was completely bad in law which is

influenced by the observations made in the impugned order. Learned counsel for the petitioners states that in case the Court is not satisfied with these submissions, then the petitioners are also prepared to argue the petition on merits.

9. In support of his submissions, the learned counsel for the petitioners has referred the decision of the Supreme Court, in the case of ***Manharibhai Muljibhai Kakadia and another v. Shaileshbhai Mohanbhai Patel and others***, reported in (2012) 10 Supreme Court Cases 517 (para 48) which reads as under:-

“48. In a case where the complaint has been dismissed by the Magistrate under Section 203 of the Code either at the stage of Section 200 itself or on completion of inquiry by the Magistrate under Section 202 or on receipt of the report from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings. On a plain reading of sub-section (2) of Section 401, it cannot be said that the person against whom the allegations of having committed the offence have been made in the complaint and the complaint has been dismissed by the Magistrate under Section 203, has no right to be heard because no process has been issued. The dismissal of complaint by the Magistrate under Section 203—although it is at preliminary stage—nevertheless results in termination of proceedings in a complaint against the persons who are alleged to have committed the crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or the Sessions Judge, by virtue of Section 401(2) of the Code, the suspects get the right of hearing before the Revisional Court although such order was passed without their participation. The right given to “accused” or “the other person” under Section 401(2) of being heard

before the Revisional Court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of the complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post process stage.”

10. The main submission of respondent No.2, Mr.N.S.Hoon is that one who comes to the Court must come with clean hands. The present case in hand is a case where the petitioners have played a fraud upon him as well as before the Court. This Court possesses inherent powers being special jurisdiction to exercise the same where injustice causes to a party and whenever the Court will come to the conclusion that injustice is done, such power can be exercised whenever and wherever justice demands intervention. He submits that the petitioners in connivance with Mr.K.K.Paul, a Senior Police Officer has dispossessed him without due process of law. He submits that there were many complaints against the said Mr.K.K.Paul about his credential. His submission is that since injustice has been done to him by playing a fraud by the petitioners, it is immaterial if the petitioners are not arrayed as respondents in the revision petition filed by him before the Additional Sessions Judge. He further states that the entire matter should be heard by this Court

rather to remand back the case before the Revisional Court to be determined afresh after impleading the petitioners as respondents since this Court has unfettered powers under Section 482 Cr.P.C.

11. There is no valid explanation on behalf of Mr.Hoon, why the petitioners were not impleaded in the revision petition where their rights are allegedly affected, except he submits that this Court can act even suo-moto or even otherwise, in order to get the truth, the Court can go into the entire gamut of the matter while exercising the special jurisdiction, as this Court is empowered to do so. He submits that in the present case exception cannot be created as compared to other general cases as the petitioners have played fraud upon him. It is the admitted position in the present case that the petitioners were not impleaded as respondents in the criminal revision petition filed by Mr.Hoon and they were not given an opportunity to make their submission and the revision court had decided the criminal revision in their absence despite of the fact that the trial court had accepted the closure report of CBI.

12. Section 401 read with Section 399 Cr.P.C. read as under:-

“Section 401(2) read as under:-

‘No order under this section shall be made to the prejudice of the accused or other persons unless he has had an opportunity of being heard either personally or by pleader in his own defence.’

Section 399(2) reads as under:-

‘Where any proceedings by way of revision is commenced before a Sessions Judge under sub-section

(1), the provisions of sub sections (2),(3),(4) and (5) of Section 401 shall, so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.”

13. The petitioners were the aggrieved party before the Revisional Court who has overturned the order of the trial Court in the revision petition by revival of the complaint. Certain observations were also made in the impugned judgments on merit in the absence of the petitioners. Thus, the judgment passed by the Revisional Court is contrary to law. At this stage, it is not proper to express any opinion on merits in view of the legal issue raised by the petitioners in the present case. In case, the above said provisions as well as the decision of the Supreme Court in ***Manharibhai Muljibhai Kakadia*** (supra) are read in a meaningful manner, I am of the view that the presence of the petitioners in the revision petition filed by respondent No.2 was necessary because of the reasons that in the impugned judgment, the Additional Sessions Judge had reversed the order of the trial Court by revival of the complaint. In view of expressed provision and the judgment of the Supreme Court, I am not inclined to take a different view. In case any fraud has been played by the petitioners, the same has to be considered on merit. Even I agree with the argument of Mr.Hoon that truth must come out, but at the same time, the mandate of Supreme Court and statutory provisions cannot be ignored.

14. Under these circumstances, without expressing anything on merit, the judgment dated 6th August, 2007 passed by the Additional

Sessions Judge, Karkardooma Courts, in Criminal Revision No.117/2006 is set aside. Consequently, the summoning order dated 12th May, 2008 is quashed with the direction that the criminal revision petition is restored to its original position. The petitioners are impleaded as respondents in the said criminal revision petition. The Revisional Court shall give an opportunity to the parties including the petitioners to make their submissions. The same would be decided on merit without being influenced of this order. As the respondent No.2 and some of the petitioners are senior citizens, the proceedings in the criminal revision petition are expedited. Parties shall appear before the Revisional Court on 25th May, 2015. The same shall be heard after service of notice to both the parties. The Revisional Court is requested to make its endeavour to decide the revision petition within a period of three to four months.

15. Trial court record be sent back forthwith.

16. The present petition is accordingly disposed of. Pending application also stands disposed of.

(MANMOHAN SINGH)
JUDGE

APRIL 27, 2015