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

Judgment delivered on: 13th July, 2015

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CRL.M.C. 2726/2015

SURINDER SINGH

..... Petitioner

Represented by: Mr. J.C. Mahindroo, Advocate.

Versus

STATE & ORS.

..... Respondents

Represented by: Mr. Ravi Nayak, Additional
Public Prosecutor for the State.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl. M.A.9757/2015 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL.M.C. 2726/2015

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner has assailed the orders dated 30.08.2011 passed by the learned Additional Chief Metropolitan Magistrate (ACMM) and 21.03.2015 passed by the learned Additional Sessions Judge (ASJ), whereby the protest petition against cancellation report filed by the police and the Criminal Revision No.09/2014 respectively were dismissed by the said courts.

2. Learned counsel appearing on behalf of the petitioner submits that the learned Judge has not appreciated the facts in the correct perspective when it was clearly mentioned that in the FIR in question, dispute was regarding two plots. Documents of one plot were stolen and there was destruction/tearing of the original file of the other plot.

3. Also did not consider that the respondents had with common intention and with common motive connived together to have stolen the original transfer papers of Plot No.L-2 from the house of the deceased father of the petitioner and had torn the original papers of the other Plot No.C-180, as has been stated above when respondent Jitender Chaudhary himself accepted to have gone to the house of the deceased complainant, i.e., father of the petitioner on the fateful day.

4. Also failed to appreciate that Shri M.L. Malhotra in active connivance with other respondents had allowed his son Sumit Malhotra to impersonate himself and had even executed a registered Power of Attorney in favour of the deceased father of the petitioner and the respondents had even forged, fabricated and manipulated a receipt of Rs.10 Lakhs.

5. Brief facts of the case are that on 29.06.2005 when respondent Jitender Chaudhary alongwith his associates came to the house of complainant in a White Maruti Car without any number plate and asked the complainant to show documents pertaining to Plot No. L-2, Surajpur, Greater NOIDA, and Plot No. C-180, Sector Sigma, Greater NOIDA. While these documents were being shown to them, they

removed/stole the documents pertaining to Plot No.L-2 and tore the entire file signed by Sh. M.L. Malhotra pertaining to Plot No.C-180.

6. Thereafter, the deceased complainant filed the complaint which culminated into FIR No.341/2006. The extensive investigation was carried out by the Investigating Officer. During investigation, it was revealed that respondent Jitender Chaudhary and deceased complainant Shangar Singh used to be partners in the property business but later on some dispute arose between them. Statement of Azad Singh recorded on 05.10.2006 under Section 161 Cr.P.C. shows that a meeting was arranged between the complainant and respondent Jitender Chaudhary on 29.06.2005 and some sort of settlement was arrived at between them. As per the aforesaid witness, meeting was peaceful and the same was held in his presence and in the presence of three sons of the complainant.

7. Learned ACMM, vide order dated 30.08.2011, while considering the aforementioned facts, opined that entry of accused Jitender Chaudhary in the house of the complainant was not forceful. The allegedly stolen papers of Plot No.L-2 are the key documents in the complaint.

8. It was also noticed by the Trial Court that a civil suit was filed by the deceased complainant, i.e., father of the petitioner in the court of Civil Judge, Senior Division, Gautam Budh Nagar, in the year 2006. In para-9 of the said complaint, the complainant explained the incident dated 29.06.2005 and stated that apart from tearing certain

documents, respondent Jitender Chaudhary also stolen the allotment letter and possession letter regarding another plot.

9. It was further recorded that the petitioner, first time in the protest petition, mentioned that the documents pertaining to Plot No.- 2 were, in fact, blank. The petitioner further averred that these blank documents were the original transfer documents of Sh. R.C.Goel. However, no details have been mentioned as to when Sh. R.C. Goel had executed the documents in favour of the complainant. It was further stated in the complaint that complete original file of Plot No. L-2 is still available with the petitioner. Keeping in view the statement of Sh. R.C. Goel and the fact that the complainant and respondent Jitender Chaudhary were earlier involved in the property dealing business as partners, the learned Additional Chief Metropolitan Magistrate (ACMM) opined that directly or indirectly, the incident dated 29.06.2005 related to them.

10. In view of the above recorded facts, the learned ACMM accepted the cancellation report filed by the police.

11. Being aggrieved, the petitioner filed the Criminal Revision No.09/2014, wherein the learned ASJ recorded that the main allegations were regarding incident dated 29.06.2005 on which date Jitender Chaudhary alongwith three other persons had come to house of the complainant late Sh. Shangara Singh and had stolen/removed documents of property No. L-2 and torn documents of property No. C-180 as mentioned above. The learned ASJ recorded that submissions qua property No C-180, were not relevant for the subject

matter of this case and only the incident regarding theft and tearing of the papers qua Plot No. L-2 was to be considered in this case. As per the documents, it was established that the complainant did not tell the number of the car in which Jitender Chaudhary had come alongwith his associates to the house of the complainant.

12. Accordingly, it was opined by the two courts below that this allegation is to be doubted and seems to have been made purposely as by making this allegation, the complainant was relieved of the burden to fix the identity of the vehicle in which Jitender Chaudhary and his associates had allegedly come. The learned ASJ noted that it was also quite astonishing that some persons committed theft of one set of papers but only tore the other set and left it in the hands of the complainant. If they could take away one set of papers regarding one property, they could also similarly take away the other set regarding the other property. Why had they left the other set with the complainant? This allegation also appeared to be an afterthought. Complainant allegedly possessed the other set of documents which was allegedly torn.

13. It is not in dispute that the complainant and Jitender Chaudhary were partners in the property dealing business and some misunderstanding took place between them due to which the complaint in question was made. Since after intensive investigation, no evidence was found against the respondents and the petitioner has failed to establish the contents of the complaint, therefore, the learned

ACMM has rightly accepted the cancellation report and the same was confirmed by the learned ASJ.

14. Moreover, initially, the petitioner has not given the clean and true facts of the case and thereafter filed the protest petition by stating some new facts, which, in my opinion, have rightly not been considered by the courts below because those were not the base of complaint.

15. In view of the above discussion, I find no perversity and illegality in the orders dated 30.08.2011 and 21.03.2015 passed by the courts below.

16. Accordingly, the petition is dismissed with no order as to costs.

**SURESH KAIT
(JUDGE)**

JULY 13, 2015
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