

\$~31

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

+ **CRL.M.C. 1725/2014**

Date of Decision: March 28th, 2016

ANIL KUMAR BHANDoola PETITIONER
Through Mr.Satish Tamta, Adv. & Ms.Ruchi
Kapur, Adv.

versus

THE STATE & ANOTHER RESPONDENTS
Through Mr.Amit Chadha, APP for the State.
Mr.D.S. Sidhu, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

ORDER

P.S.TEJI, J

1. The present petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure for setting aside the order dated 22nd November, 2013 passed by the learned Additional Sessions Judge, Patiala House Court, New Delhi in Criminal Revision No.73/2013 and the order dated 30th March, 2013 passed by the learned Metropolitan Magistrate, Patiala House Courts, New Delhi.

2. The facts as apprised by learned counsel for the parties and as emanated from records are within the narrow compass and to the extent necessary, put forth hereinafter. On 8th March, 1990, an FIR No.62/1990

under Section 420/403 of the Indian Penal Code was registered at the Police Station R.K. Puram, New Delhi, against the present petitioner wherein during investigation, prosecution seized four air conditioners from the petitioner and custody of case property was given to respondent no.2/complainant on superdari.

3. Vide judgment 14th January, 1999 passed by the learned Metropolitan Magistrate, the petitioner was acquitted of the charges. However, no order regarding case property was passed. The petitioner filed an application under Section 452 of Code of Criminal Procedure and vide order dated 1st February, 1999, the said application was allowed but possession of the goods was not handed over to the petitioner. The petitioner is stated to have filed another application dated 9th February, 1999, for giving effect to the order dated 1st February, 1999 and requested the investigating officer of the case to verify the receipts of ownership, but the ASI did not inquire into the claim of the petitioner and only inquired claim of the complainant who has been arrayed as respondent no.2 herein.

4. Learned counsel for the petitioner submits that the learned Metropolitan Magistrate, relying on one sided inquiry, passed an order dated 18th January, 2001, dismissing the application of the petitioner and declaring complainant (respondent no.2 herein) to be the rightful owner of the case property.

5. Aggrieved by the said order, the petitioner filed an appeal before the Court of Sessions and vide order dated 31st March, 2003, the learned Sessions Judge set aside the impugned order and directed the parties to lead evidence.

6. On 8th April, 2003, the file of the case was received back by the Trial Court and the matter was fixed for appearance of the parties for further proceedings. Despite the direction of the Session Court, the complainant/respondent no.2 did not appear before the learned Metropolitan Magistrate. Court notice was issued to the complainant/respondent no.2 for recording of evidence. The learned Metropolitan Magistrate ordered for summoning of original case file.

7. On 24th July, 2004, the clerk of the record room appeared before the Court and made a statement to the effect that the case file was destroyed on 6th June, 2003. Learned counsel for the petitioner further submits that despite the fact that the proceedings relating to the original case file was going on and the appeal was decided in the year 2003 only, the original file of the case was destroyed. Upon the parties filing certified copies, file of the case was re-constructed. The matter was listed for argument on the application on 23rd December, 2004 when the complainant/respondent no.2 did not appear and Court notices were issued thrice to him. The respondent no.2 was ordered to be summoned through SHO on 12th May, 2006. As he did not appear on the next date,

fresh summons were issued against him. The complainant appeared before the Court in the month of April/May, 2007 and moved an application under Section 311 of the Code of Criminal Procedure for recalling of petitioner for his cross-examination, which application was allowed subject to payment of costs. After completion of cross-examination of the petitioner, an opportunity was given to the complainant/respondent no.2 for leading evidence but he did not avail the same to prove his ownership. The matter was listed for final arguments.

8. When the matter was listed for final hearing, the parties compromised the present matter and all the litigations pending before different Courts and in view of the compromise, the petitioner did not press his application filed under Section 452 of the Code of Criminal Procedure and withdrew the same.

9. Learned counsel for the petitioner has next contended that the complainant/respondent no.2 herein, did not abide by the compromise and the statement made in support thereto before this Court and did not withdraw the other litigations pending before different Courts of Delhi which was undertaken by him. It has further been stated that as the application under Section 452 Cr.P.C. was not disposed of on merits, the petitioner moved an application for restoration of the same. This application was dismissed by the learned Metropolitan Magistrate vide order dated 30th March, 2013 and restoration of the application was

declined on the ground that he could not recall his own order.

10. Aggrieved by the order dated 30th March, 2013, the petitioner filed a revision petition before the learned Sessions Judge. The said revision petition was dismissed by the learned Sessions Judge vide order dated 22nd November, 2013.

11. In support of his contention, learned counsel for the petitioner has submitted that the application of the petitioner was decided on merits and was dismissed as withdrawn for not being pressed because of the reason that the settlement was arrived at between the parties and undertaking to this effect was given by the complainant/respondent no.2 herein to the Court. The petitioner was compelled to move the Court for restoration of the application which was dismissed only due to non-performance of the act on the part of complainant/respondent no.2.

12. On the other hand, learned counsel for respondent no.2 has submitted that the respondent no.2 was doing the business of sale, purchase & hiring of air conditioners and while doing his business, he got installed four air conditioners at Shanti Niketan, New Delhi. However, the said four air conditioners were removed by the petitioner, who is the brother of the respondent no.2, without any authorization in this behalf. The above said FIR was lodged in this regard and the air conditioners were given on superdari by the Court vide superdarinama dated 16th March, 1990.

13. Learned counsel for the respondent no.2 has further contended that the respondent no.2 was declared the rightful owner of the property as the application of the petitioner was dismissed by the learned Metropolitan Magistrate on 18th January, 2001. Thereafter, in the appeal filed by the petitioner, both the parties were directed to lead evidence. Thereafter, the revision petition filed by the petitioner for restoration of application under Section 452 of Cr.P.C., was also dismissed on 22nd November, 2013 by learned Additional Sessions Judge, Patiala House. It is next contended by learned counsel for respondent no.2 that the four air conditioners which are in dispute, were worth Rs.40,000/- at the time of purchase in the year 1990 and that the same have now become junk and are of no value as on date.

14. I have heard learned counsel for the parties at length and gone through the available records. It transpires from the record that initially the petitioner filed an application under Section 452 of Cr.P.C. for the release of goods against which he was claiming ownership and, thereafter, it was apprised to the Court that both the parties have amicably compromised the matter and a statement to that effect was also made by the complainant for withdrawal of the said application. On 7th February, 2011, the said application was dismissed as withdrawn. The petitioner filed an application for restoration of the application under Section 452 Cr.P.C. which was dismissed on the ground that once an application has

been withdrawn as compromised and disposed of, no further grievance remains with the parties and as such, the same cannot be restored. The revision filed by the petitioner was dismissed on the ground that revision against an order is not maintainable unless it is shown that order passed by the Trial Court was bad, illegal or reflects an error apparent on the face of it.

15. In the facts and circumstances mentioned above, I do not find any infirmity in the order dated 22nd November, 2013 passed by learned Additional Sessions Judge and the order dated 30th March, 2013 passed by the learned Metropolitan Magistrate.

16. Consequently, the present petition is dismissed.

(P.S.TEJI)
JUDGE

MARCH 28 , 2016
aa