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

+ CRL.L.P. 432/2016 and Crl. M.A. Nos.12666-668/2016

PARKASHO DEVI

..... Petitioner

Through: Mr. B.S. Chauhan, Advocate along
with petitioner in person.

versus

STATE (GOVT OF NCT OF DELHI) & ANR

..... Respondents

Through: Ms. Anita Abraham, APP along with
SI Ranbir Singh, PS-New Ashok
Nagar, for the State.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
27.09.2016

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CRL.L.P. 432/2016 and Crl. M.A. Nos.12667/2016 (to seek condonation of 585 days delay in filing the leave petition) & 12668/2016 (to seek condonation of 25 days delay in re-filing the leave petition)

1. The petitioner has preferred the present leave petition to seek leave to appeal against the judgment dated 15.07.2014 passed by the learned Additional Sessions Judge-03 (East), Karkardooma Courts, Delhi in Criminal Appeal No.34/2014. The said criminal appeal had been preferred by the respondent accused against the judgment dated 20.11.2013 passed by the Trial Court, whereby the Trial Court convicted the respondent accused

under Section 427/ 448/ 506 (Part-I) read with Section 34 IPC and sentenced the accused/ respondent on 26.11.2013 to undergo Simple Imprisonment for a period of one year and to pay compensation of Rs. 2 Lakhs for the offence punishable under Section 427 IPC and in default to undergo Simple Imprisonment for a period of 3 months. The respondent accused was also sentenced to undergo Simple Imprisonment for a period of one year and to pay compensation of Rs.2 Lakhs for offence punishable under Section 448 IPC, and in default to undergo Simple Imprisonment for 3 months. In respect of offence punishable under Section 506 (Part-I) IPC, the respondent was directed to undergo Simple Imprisonment for a period of 6 months and to pay compensation of Rs.1 Lakh and in default to undergo Simple Imprisonment for 15 days.

2. By the impugned judgment, the learned ASJ has allowed the said appeal and set aside the judgment dated 20.11.2013 and the order on sentence dated 26.11.2013. The respondent accused was acquitted of the charges framed against him.

3. The case of the complainant/ PW-1 Smt. Prakasho Devi was that Plot No.1162 at Gharoli Dairy Farm was allotted to her husband by the MCD. Plot Nos. 1169 and 1170 were allotted to Sant Ram, the father of the accused Jai Singh. The complainant stated that she and her family started living in the allotted plot. The complainant's husband was not keeping well. Therefore, the Dairy Farm was closed and the complainant started living at Laxmi Nagar. At the end of the year 1979, the complainant's husband expired. The complainant went to her village at Bhind Morena for 3-4 months. She and her family came back and again started living at the said

plot. In 1982, complainant with her children went to Ettah UP. She used to send her son to look after the plot. In 1985, her son informed her that Sant Ram had kept his buffaloes in her husband's plot. The complainant's son also told her that Sant Ram had stated that he was only taking care of the plot and would vacate the same as and when demanded by complainant. The complainant's son kept on visiting the plot later on also. When the complainant came to Delhi along with her son to see the plot, she found that rooms had been constructed on her plot and buffaloes were also being kept there. When she confronted Sant Ram, he told her that the plot was owned by him. Sant Ram threatened the complainant and her son. The complainant complained to the panchayat but the panchayat told her to take Rs. 10,000/ only, which she refused. The complainant alleged that Sant Ram and her son have trespassed into her plot and also prepared forged documents of ownership. She alleged that her own documents of ownership were stolen by the accused. The aforesaid FIR came to be registered, whereafter the charge-sheet was filed under Section 448/ 420/ 380/ 468/ 471/ 411 read with Section 34 IPC. There were two accused in the case, i.e. Sant Ram and his son, the present respondent Jai Singh. Sant Ram died during the trial and proceedings qua him abated. As noticed above, the Trial Court convicted the respondent accused. However, the same has been reversed by the First Appellate Court.

4. While reversing the judgment of the Trial Court, the First Appellate Court took into account the admission made by the complainant/ PW-1 Smt. Prakasho Devi during her cross-examination, wherein she admitted the fact that she had executed a General Power of Attorney in favour of Smt.

Shakuntla Devi – the wife of the accused on 04.07.2000. She admitted having affixed her thumb impression thereon. Though she denied having received any money at the time of execution of the said document and that she had not received Rs.1,25,000/- in lieu of executing the said document and that the said document was executed in pursuance of a settlement, she did not explain as to why she had executed the Power of Attorney in respect of the plot in favour of Smt.Shakuntla Devi without accepting the money and why she had not taken any steps in respect of the GPA when she had not received the money.

5. Pertinently, the son of the complainant/ PW-2 also admitted that he was present along with his mother, i.e. PW-1/ complainant when documents Mark X (Colly.) were prepared. He admitted that the document Mark X 2 bears the photograph of his father but he denied the signature of his father. Though he explained that his mother had signed on documents Mark X 1 on the assurance that sale consideration would be handed over to them but in fact the same was not so given. Once again, PW-2 admitted that no complaint was made against the accused persons after execution of documents on account of alleged non-payment. Pertinently, he admitted his signature on the documents. However, he stated that he signed the same in the chamber of an Advocate and not in the office of Registrar.

6. The First Appellate Court also took note of the fact that at the time of grant of anticipatory bail to the accused on 15.07.2000, it was recorded that the matter was mutually settled with the complainant and that the complainant had executed sale documents. The submission of learned counsel for the appellant is that PW-7, the I.O. deposed about the

investigation conducted by him and during his examination, he supported the case of the prosecution that the accused had trespassed into the plot of the complainant. He also deposed with regard to the alleged forgery and fabrication of Exhibit PW-7/B and PW-7/C. Learned counsel submits that the complainant was not present when the anticipatory bail was granted to the accused on 15.07.2000 and anticipatory bail was obtained by making a false representation to the Court that the matter had been mutually settled with the complainant and the complainant had executed the sale documents.

7. Having heard learned counsel for the petitioner and perused the impugned order as well as the documents placed on record, I do not find any merit in the present petition.

8. The learned ASJ has correctly observed that the judicial order regarding grant of anticipatory bail specifically mentions that parties had arrived at a settlement. Both PW-1 and PW-2 had admitted the execution of the documents Mark X (Colly.). However, they had stated that they had not received the promised amount of Rs.1,25,000/-. Pertinently, no complaint was made against the accused in this regard from July 2000 till the evidence was recorded in the Court between 2008-10. This conduct of the complainant and her son, i.e. PW-1 and PW-2 belied their stand that they had not received the consideration of Rs.1,25,000/-. The learned ASJ held that the only conclusion which could be legitimately drawn is that the complainant and her son had put the signatures after receiving the said amount. The settlement had been arrived at after lodging of the FIR and, thus, it was not likely that they would sign the settlement without receiving the amount.

9. The First Appellate Court has also examined the submission of the complainant premised on the testimony of PW-7 by observing as follows:

“22. Ex. PW 7/B & Ex. PW 7/C were reported to be fake as per report Ex. PW 7/D. As per this report, Sh. Sita Ram was the person who was allotted plot no. B1162 at Gharoli Dairy Farm. There is no mention of Ex. PW 7/B (which is a receipt of Rs. 6500/-) or Ex. PW 7/C (which is a Deed of Will). These two documents are nowhere mentioned in report Ex. PW 7/D. From where the IO concluded that MCD reported about fakeness of Ex. PW 7/B & 7/C is known to IO only. When the report Ex. PW 7/D does not contain even a single word about these two documents, it is ridiculous to allege that these two documents could be fake documents on the basis of report Ex. PW 7/D. Learned ACMM also overlooked these facts.”

10. The First Appellate Court has also found contradictions in the statement of PW-1. The First Appellate Court has held that documents Mark X (Colly.), which admittedly were executed by the complainant and her son do show that the entry over the property by the accused person was not forcible entry and was a consensual one. In any event, the complainant had agreed to possession of the appellant at least from the date of execution of the documents Mark X (Colly.).

11. The submission of learned counsel for the appellant that the complainant was not present when the anticipatory bail order dated 15.07.2000 was passed, wrongly recording that a mutual settlement had been arrived at between the complainant and that the complainant had executed sale documents, has no force. If anticipatory bail had been obtained by making a false statement to the Court, firstly, the State would have pointed out that there is no such settlement. Secondly, even if the said statement

was not objected to by the State, nothing prevented the complainant from seeking cancellation of anticipatory bail on the ground that the same had been obtained on the basis of a false statement. Pertinently, the complainant never sought cancellation of anticipatory bail by claiming that no settlement had been reached with the accused and that the Court had been misled while passing the anticipatory bail order dated 15.07.2000.

12. It appears to this Court that the petitioner is only seeking to extract her pound of flesh and the present petition appears to be an endeavour to witch hunt the accused. The judicial process cannot be permitted to be misused for such oblique purposes. There is no valid reason for this Court to interfere with the impugned judgment as it cannot be said that any injustice has been caused to the petitioner/ complainant.

13. Accordingly, the petition is dismissed.

SEPTEMBER 27, 2016

B.S. Rohella

VIPIN SANGHI, J