43# $

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

\+ **CRL.M.C. 2622/2016**

% Decided on: 26th July, 2016

SURINDER KUMAR GOLYAN & ANR. ..... Petitioners
Through: Mr.Krishan Kumar, Advocate.

versus

STATE & ORS. ..... Respondents
Through: Ms. Rajni Gupta, APP for the State with SI Hira Lal, PS Moti Nagar.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl. M.A. No. 11234/2016 (Exemption)

Allowed, subject to all just exceptions.

CRL.M.C. 2622/2016

1. Grievance of the petitioner in the present petition is against the order dated 28th April, 2015 passed by the learned Metropolitan Magistrate whereby his application under Section 190 read with Section 204 Cr.P.C for summoning the respondent No.2 Shashi Kant as an accused was dismissed.

2. The allegations in the FIR filed by the petitioner were that the late grandfather and father of the petitioner and respondent No.3 Inder Chand Golyan, during their lifetime purchased various HUF properties at different places, one of such property being an industrial plot at 44, Rama Road, Najafgarh Road admeasuring 1202 Sq. yards vide registered Sale Deed dated 4th March, 1949 in the name of Lakhi Ram Leela Dhar. On 12th May, 1968 a partition took place amongst the brothers of late Lakhi Ram and the property

came to the share of their father Leela Dhar as a Hindu Undivided Family property. The eldest son of Leela Dhar, that is, late Shri Babu Ram took his share on 8th August, 1980 and separated from the joint family. Thus at the time of death of Leela Dhar, Sarita Devi, Inder Chand, Sita Devi, Devki Nandan, Sushila Devi, Uma Devi, Surender Kumar, Prem Kumar, Anjana Devi and Shiv Kumar inherited the rest of the property. The responsibility of maintaining the undivided property was vested with Inder Chand Golyan and all original documents of the property were with the complainant at Shri Ganganagar. Around 1 -1½ months back, the complainant Surender Kumar and the other shareholders sought partition and sale of the aforesaid property. However, Inder Chand Golyan adopted dilatory tactics. Thereafter the complainant and other shareholders came to know that the aforesaid property was in possession of some accused having been sold to them illegally. Thus it was alleged that in criminal conspiracy Inder Chand Golyan sold away 121 Sq. yards portion of the property to Smt. Rajkumari, 121 sq. yards to Kishan Chand, 165 sq. yards portion of the property to Navneet, 165 sq. yards to Shashi Kant and on the same date Rajkumari and Kishan Chand sold the property further to Smt. Anita Goyal and Smt. Monica Gupta, who sold it to Smt. Meenakshi Gupta. It was alleged that the sales had been effected on the basis of forged documents, thus action be taken against the accused.

3. After investigation, a charge sheet was filed against Inder Chand Golyan. Shashi Kant, respondent No.2 was kept in column No.12. The petitioner preferred an application under Section 190 read with Section 204 Cr.P.C. seeking summoning of Shashi Kant stating that there was a deep rooted conspiracy between the two and the entire property was usurped on the basis of forged and fabricated documents. It was argued that Shashi Kant

has been involved in the transaction since inception and in certain sale deeds it was noted that the property had been inherited from Leela Dhar and Lakhi Ram without even mentioning their alleged Wills and in other it was simply written that he was the owner. It is alleged that Shashi Kant purchased the property without seeing original documents of the property or without mutation with the MCD. Vide the order dated 28th April, 2015 the learned Metropolitan Magistrate held as under:

> *"I have heard the arguments adduced by the Ld. Counsel for the complainant and have perused the main charge sheet, supplementary charge sheet and other documents attached therewith. In the present case accused Inder Chand Guliyan was one of the co-sharer of the property in question. The other co-sharer i.e. his brother and relatives were living in Rajasthan and he was living in Delhi and looking after the property in question. This accused Inder Chand Guliyan had sold parts of the property in the year 1996, 2003 and 2004. Though he had sold the property on the basis of an allegedly forged Will. Said Shashi Kant was one of the initial purchaser of the part of the property. Later on he purchased major share of the property. However, it is to be noted that first sale deeds were executed by accused Inder Chand Guliyan in the year 1996 and last of such sale deeds were executed in the year 2004 i.e. he executed the sale deeds over a period of 8 years. No objection regarding the same has ever been raised by any of the co-sharer during that period. These vigilant co-sharers who are complainants in the present case never bothered to ensure whether the persons who are in possession of their property are their tenants or have become owner of that property. Even from 2004 till 2011 the present complainants never taken the interest in knowing about the fate of their property which was in the hands of their brother (accused Inder Chand Guliyan). It was only on 15.12.2011 they filed the complaint on the basis of which present case has been registered. IO of the present case has conducted*

investigation on the part of involvement of said Shashi Kant in the conspiracy. It has been written by the IO in the charge sheet that during the investigation it was found that accused Inder Chand Guliyan was residing at the above plot for many years and taking benefit of the same, he has sold the above stated plots in parts, however, all the sale deeds of the plot No.44, Rama Road, Delhi from 1996 to 2003 were got verified from Sub-Registrar, Janak Puri and same were found to be registered and genuine. Certified copies of the same were obtained and placed on file. It is further written by him that moreover payment of consideration amount paid by said Shashi Kant and his brother Navneet Kant has also been verified from Allahabad Bank, Union Bank of India and Punjab & Sind Bank. Hence, the allegations leveled against the purchaser including Shashi Kant could not be substantiated and their connivance with the accused Inder Chand Guliyan could not be found and they are found to be genuine purchaser of the plot. It is also stated by the IO that said Shashi Kant apprised him that initially he bought some portion of the plot in the year 1996, however, the MCD was sealing small units running in a single industrial Plot. But one factory running from an industrial plot was exempted from sealing, hence, he purchased the other portion of the plot from its other owners and became the single owner of the property and all the consideration amount was paid by him through bank.

In these circumstances when the accused Inder Chand Guliyan himself was a co-sharer and was exclusively managing the property in question and was the only co-sharer available in Delhi and was also having some Will in his favour (which later on proved to be forged), in such situation it is possible that said Shashi Kant had purchased the property from Inder Chand Guliyan in good faith without knowing his evil design. It should also be considered that all the sale deeds were duly registered and the money was also paid by said Shashi Kant from his bank *accounts. It is also to be noted that from the year 1996 till the year 2011, i.e. for 15 years none of the present complainants came to question him about his possession.*

In such situation it cannot be assumed that said Shashi Kant was involved in the conspiracy with accused Inder Chand Guliyan to commit the offences in question. Thus, the application of the complainant is hereby dismissed."

4. Aggrieved by the order dated 28th April, 2015 the petitioner preferred a revision petition before the learned Additional Sessions Judge which was dismissed vide order dated 4th February, 2016.

5. The learned Additional Sessions Judge also noted that the allegations of forgery and cheating were against Inder Chand Golyan and came to the conclusion that Shashi Kant had purchased the property from Inder Chand Golyan as a bona fide purchaser for the reason Inder Chand Golyan was in possession of the property since long and the consideration paid by Shashi Kant was all reflected in the bank account of Inder Chand Golyan.

6. Before this Court learned Counsel for the petitioner re-agitates the same issues and states that there was a collusion and connivance between Shashi Kant and Inder Chand Golyan. As noted by the learned Metropolitan Magistrate and this Court reiterates that the Sale Deeds between Shashi Kant and Inder Chand Golyan were executed between the years 1996 to 2004 over a period of eight years and no objection of any kind whatsoever was raised by any of the co-sharer in the meantime. Even after the last sale in the year 2004 the first complaint was made on 15th December, 2011 on the basis of which FIR was registered. During investigation all Sales Deeds have been found to be registered, valid considerations had been paid for the sale

transactions which were reflected to have been transmitted into the bank account of Inder Chand Golyan. Shashi Kant was examined during investigation and he informed that initially he purchased a portion of the property however, since portions of single industrial plot could not be run separately as per MCD policy, he bought the residuary portions also from the other owners and became single owner of the property and for each sale transaction he paid the sale consideration. The Will being forged was not in the knowledge of Shashi Kant and he had no means to ascertain the same.

7. Considering the investigation carried out and the material on record, I find no error in the order of the learned Metropolitan Magistrate dated 28th April, 2015 or the decision of the learned Additional Sessions Judge dated 4th February, 2016 refusing to summon Shashi Kant who prima facie is a bona fide purchaser for valid consideration.

8. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

JULY 26, 2016
'vn'