

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

% Decided on: 5th December, 2016

+ **CRL.M.C. 4226/2012**

GURCHARAN SINGH CHAWALA

..... Petitioner

Represented by: Mr. Debasis Misra, Adv.

versus

RANJEET KAUR & ORS.

..... Respondent

Represented by: Mr. Ravi Nayak, APP.
Mr. Ajay Bahl, Adv. for
R-7&8.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. A criminal complaint was filed by the petitioner being CC No.752/1/1999 before the learned CMM seeking summoning of as many as 33 accused for offences punishable under Sections 448/320/420/467/468/471/506/120B/192/182 IPC. In the complaint, the petitioner claimed that he was in actual physical possession of property bearing Block No.10, House No.342, Sunder Vihar (in short the property) since 1984. He had purchased the said plot from Shri K.L. Bedi and thereafter raised super-structure thereon. He enclosed various documents to show his ownership and possession of the property. He claimed that Ranjeet Kaur, his mother who was a permanent resident of Montreal, Canada since 1984-85 was not on visiting terms with the petitioner for the last 10 years

and as and when she visited India she did not stay either with him or in any of his properties. Ranjeet Kaur instituted probate case in 1990 on the basis of a forged will of his father Sardar Hira Singh which was dismissed on 16th March, 1999. In the probate case No.154/90 dated 17th July, 1999 Ranjeet Kaur gave her residential address as FA-57, Inder Puri and of Montreal Canada besides 1/57, Subhash Nagar. As per the report of the local commissioner, the petitioner was found to be the resident of House No.10/342, Sunder Vihar, New Delhi. It is claimed that Ranjeet Kaur had an evil eye on his property. On 15th February, 1997 the petitioner visited his property for taking out almirah, furniture etc., to be sent to the in-laws of his daughter. The petitioner was shocked to see that locks were broken and Ranjeet Kaur, Kanwaljeet Kaur W/o Shri Satinder Singh and her two sons namely Amardeep Singh and Bunty along with one Lala Ram of Chawla Chick Inn, were present there. Lala Ram was armed with a single barrel gun. Petitioner found his goods missing from the house. Thus he made a phone call at 100 number. Ranjeet Kaur asked Lala Ram to shoot at the petitioner who aimed the gun at him, however before he could fire, the petitioner overpowered him. Ranjeet Kaur tried in vain to run away, in the process fell down and sustained injuries. Lala Ram also sustained injuries and both of them were apprehended at the spot. A PCR Gypsy came to his house and assured of action. On 18th February, 1997 when he went to the Police Station, he found no FIR was registered. He also told the Police that the gun, license of gun, cartridges, empty cartridges, identity card of Lala Ram were lying in the house and SI Sukhdev Meena stated that the articles were to be seized but since the house was lying locked and due to the non-availability of the petitioner being busy in his daughter's marriage, the same could not be

seized. Despite repeated complaints being sent and petitioner meeting the senior officers, however no action was taken. It is alleged that on 27th February, 1997 SI Manoj Kumar and SI Y.P. Singh of PS Paschim Vihar visited his property along with one Jasbir Singh Sodhi (as the entry gate was locked with keys in his possession) entered the compound and started thumping the entry door with great force due to which his son got up. He was informed by his son and when he reached the home he came to know that his son had been taken to the Police Station. The complaint further narrates the various efforts made by the petitioner with the other officers and the civil proceedings carried on between the parties.

2. On the said complaint the petitioner was examined and vide order dated 11th June, 2008 the learned Metropolitan Magistrate issued summons against Ranjeet Kaur, Lala Ram and Anil Kumar. The petitioner filed an application under Section 319 Cr.P.C. seeking issuance of process against 9 accused persons namely Smt. Ranjeet Kaur, Sardar Jagjivan Singh, Sardar Harbans Singh, Manoj Shokeen, Gurcharan Singh, Savneet Kaur, Arun Kumar Dawar, Usha Dawar and Jasbir Singh Sodhi. In the meantime, the learned Additional District Judge decided the probate petition on 28th November, 2011 copy whereof was filed and thus the petitioner claimed additional ground for summoning of the said accused. Application under Section 319 Cr.P.C. was dismissed vide order dated 8th May, 2012. The order dated 8th May, 2012 was challenged by the petitioner in a revision petition which was dismissed vide the impugned order dated 29th September, 2012. Hence the present petition.

3. The operative portion of the order dated 8th May, 2012 passed by the learned Metropolitan Magistrate is that vide order dated 11th June, 2008

accused persons namely Ranjeet Kaur, Lala Ram and Anil only were summoned for the offences punishable under Sections 445/448/452/380/34 IPC and the Magistrate had no power to recall the previous summoning order, hence the application was dismissed. The learned ASJ vide the impugned order noted that the judgment of the learned Additional District Judge in the probate case or part of its evidence could not be considered at this stage in an application under Section 319 Cr.P.C. and hence the revision petition was dismissed.

4. Before this Court again petitioner agitates that in suit No.104/10 decided by the Additional District Judge on 28th November, 2011 detailed evidence has been led which should form part of the proceedings in the criminal Court and summons should be issued to the remaining accused as prayed above. By merely placing the judgment on record the petitioner cannot state that in view of the evidence led before the civil Court, additional accused should be summoned. Accused could be summoned only as per the deposition of witnesses examined by the petitioner/ complainant in the complaint case. The grievance of the petitioner is not against the initial order summoning only three accused but against the order dismissing the application under Section 319 Cr.P.C. Since no role was attributed to any of the other accused in the statement recorded before the Court, the learned Metropolitan Magistrate did not summon the other accused and only when material evidence in the form of depositions come before the Court that additional accused can be summoned. The prayer of the petitioner that on the basis of the judgment in the civil suit No. 104/10 further accused be summoned is mis-conceived and liable to be rejected.

5. Finding no infirmity in the two orders, the petition is dismissed.

(MUKTA GUPTA)
JUDGE

DECEMBER 05, 2016
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