

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

% *Judgment Reserved on : September 19, 2016*
Judgment Delivered on : September 21, 2016

+ **CRL.M.C. 3923/2013**

NARENDRA KHETWANI Petitioner
Represented by: Mr.Praveen Aggarwal, Advocate with
Mr.Manish Gandhi, Advocate

versus

STATE OF NCT OF DELHI & ORS. Respondents
Represented by: Mr.Akshai Malik, APP for R-1
Mr.Amresh Mathur, Advocate for R-2
Mr.R.P.Nafria, Advocate with
Mr.Chaman Dahiya, Advocate for R-3 and R-4

CRL.M.C. 4834/2014

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Mr.Chaman Dahiya, Advocate for R-2 and R-3
Mr.Amresh Mathur, Advocate for R-4 and R-5

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J.

1. Narendera Khetwani is the petitioner in the above captioned petitions. In CrI.M.C.No.3923/2013 he challenges the order dated July 03, 2013 passed in CC No.82/2010, by which order the learned Metropolitan Magistrate has issued summons to him to appear on August 22, 2013 in a complaint filed by Hema Devi and her husband Narender Prasad alleging that he and one Raju Chetri have committed offences punishable under Section 467/468/471 IPC. In CrI.M.C.No.4834/2014 he challenges the order dated March 03, 2014 passed by the learned Metropolitan Magistrate dismissing an application filed by him under Section 156(3) Cr.P.C. in which application he prayed that the concerned SHO be directed to register an FIR against Raju Chetri and one Satyadev. He also challenges the order dated July 08, 2014 whereunder the learned ASJ has dismissed the revision petition filed by him against the order dated March 03, 2014.

2. The relevant facts are that Narender Prasad and Hema Devi were desirous of selling property bearing private No.572-G comprised in Khasra No.571 min in the extended abadi of village Devli. Title to the land being that of Hema Devi and claim of her husband Narender Prasad being that he purchased the property in the name of his wife. Raju Chetri was the property dealer and there is lack of clarity as regards Satyadev, but it appears that Satyadev was helping Raju Chetri.

3. It is the claim of Narender Prasad and Hema Devi that through Raju Chetri they came into contact with the petitioner and after discussions it was agreed that the property would be sold for ₹25.5 lacs and on October 24, 2008 an agreement to sell was executed, recording therein that 10% of the

agreed sale consideration i.e. ₹2.55 lacs have been received. The balance amount had to be paid when sale documents were to be executed. Petitioner claims that Raju Chetri and Satyadev told him that the sellers were wanting some money in cash and therefore firstly on December 15, 2008 and secondly on January 22, 2009 he gave ₹2 lacs on each occasion to Raju Chetri and Satyadev and the next day the two handed him over receipts executed by Hema Devi acknowledging having received ₹2 lacs on each date. Raju Chetri and Satyadev has signed as witnesses to the receipts. He was told that the sellers would like the sale consideration to be shown in sum of ₹10 lacs and thus he prepared a demand draft in sum of ₹7.45 lacs and handed over the same to Raju Chetri and Satyadev, agreeing to pay the balance amount in cash and get the sale documents executed in his favour. To facilitate the sale, at the asking of Raju Chetri and Satyadev, he executed a special power of attorney on June 24, 2009 in favour of Raju Chetri and handed over to him all original documents pertaining to the transaction, which power of attorney was misused by Raju Chetri to file a suit seeking specific performance of the agreement to sell, the defendants being Hema Devi and her husband Narender Prasad.

4. At this stage it would be relevant to note the case presented by Hema Devi and Narender Prasad. They claimed that served with summons in the suit filed in the Court of District Judge Patiala House, they were shocked to learn that the second page of the agreement to sell had been changed to record that the sale consideration would be ₹10 lacs. Hema Devi's signatures on the said page was forged. This led the two to file a complaint under Section 200 Cr.P.C.

5. In the pre-summoning evidence the two deposed on oath that the

agreement to sell had been forged, in that the second page of the agreement to sell had been replaced with signatures of Hema Devi forged thereon. They also examined a handwriting expert to establish their claim and in view of the pre-summoning evidence led.

6. In view of the pre-summoning evidence led the learned Metropolitan Magistrate issued summons only against Narendra Khetwani. Raju Chetri who was named as accused No.2 in the complaint was not summoned.

7. As per Narendra Khetwani he learnt at that stage that Raju Chetri the property dealer and his friend Satyadev had played a fraud. He claimed that the two forged the two receipts dated December 15, 2008 and January 22, 2009 by forging Hema Devi's signatures thereon, and he had no reasons to suspect the two forging Hema Devi's signatures on the receipts because they had signed as witnesses to the receipts. He claimed that it was Raju Chetri and Satyadev who replaced the second page of the agreement to sell dated October 24, 2008 and changed the sale consideration from ₹22.5 lacs to ₹10 lacs and forged Hema Devi's signatures thereon. Therefore, Narendra Khetwani claims that he filed an application under Section 156(3) of the Code of Criminal Procedure, 1973 praying that an FIR be registered and the police should investigate the matter.

8. Reason given by the learned Metropolitan Magistrate not to summon Raju Chetri as an accused in the complaint filed by Hema Devi that there is no material to infer his involvement. Reason given by the learned Metropolitan Magistrate not to direct FIR to be registered, as prayed by Narendra Khetwani, is that a civil suit had been filed and criminal complaint filed by Hema Devi was already under consideration and thus no direction was required to be issued to the SHO of the concerned police

station to register an FIR.

9. Now, admittedly the suit for specific performance filed with Narendera Khetwani shown as plaintiff is by Raju Chetri, acting as the attorney of Narendera Khetwani. He acts as the attorney of Narendera Khetwani on the strength of the special power of attorney dated January 24, 2009. It is Raju Chetri who has filed in the Court the agreement to sell dated October 24, 2008, the second page whereof is the controversial page.

10. The agreement to sell evinces that one Satyadev and Dilip Kumar are the witnesses. The two receipts dated December 15, 2008 and January 22, 2009 have been witnessed by Satyadev and Raju Chetri. It is the common case of Narender Khetwani and Hema Devi that Raju Chetri was the property dealer, who in law would be required to be treated as the common agent of both parties.

11. Raju Chetri would thus be prima-facie presumed to be in knowledge of the contents of the original agreement to sell. He being a witness to the two receipts would be presumed to know that payments in sum of ₹2 lacs each were allegedly paid by Narendera Khetwani to Hema Devi. A word of clarification here. Hema Devi disputes having received any amount. Narendera Khetwani claims that Raju Chetri told him that Hema Devi and her husband wants part sale consideration to be paid in cash and he gave the cash to Raju Chetri and Satyadev to be handed over to Hema Devi. The two returned next day with receipts witnessed by the two and executed by Hema Devi acknowledging that she had received ₹2 lacs on the two dates mentioned on the two receipts. Thus, Raju Chetri's conduct raises enough suspicion to proceed against him as well.

12. In view of the cauldron of facts hereinabove noted case is made out to

proceed against Narendera Khetwani as also Raju Chetri and not against Narendera Khetwani alone for the reason at present the involvement of both and alternatively either looms large in the dawn of reality.

13. Thus, order summoning Narendera Khetwani in the complaint filed by Hema Devi cannot be faulted. But, refusing to proceed against Raju Chetri is faulty.

14. In view of the rival claims of Raju Chetri and Narendera Khetwani I agree that no police investigation is warranted. The real fight is inter-se Raju Chetri and Narendera Khetwani. Narendera Khetwani admits that the agreement to sell which he executed with Hema Devi on October 24, 2008 was in sum of ₹22.5 lacs and he claims that Raju Chetri had removed the second page of the agreement to sell and replaced the same after forging Hema Devi's signatures. He also claims that Raju Chetri and Satyadev handed over to him two receipts purportedly signed by Hema Devi. Thus, as regards Hema Devi, her claim is fortified by what Narendera Khetwani states, but whether Narendera Khetwani pleads so to shift the blame on Raju Chetri or was he hand in glove with Raju Chetri can only be fathomed at a trial.

15. Thus, there would be no merit in CrI.M.C.No.4834/2014 which is dismissed. As regards CrI.M.C.No.3923/2013 no case is made out to quash the order summoning Narendera Khetwani but case is made out to set aside the order dated July 03, 2013 to the extent the learned Metropolitan Magistrate has not taken cognizance of the complaint and has not summoned Raju Chetri to face trial for offences punishable under Section 467/468/471 IPC. Thus, CrI.M.C.No.3923/2013 is disposed of directing summons to be issued to Raju Chetri who is named as accused No.2 in the criminal

complaint filed by Hema Devi and her husband.

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 21, 2016

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