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

+ W.P.(CRL) 2582/2016

T R ANAND & ANR.

..... Petitioner

Through: Mr. Sandeep Kapur, Mr. N.K. Aggarwal & Mr. Rajat Soni, Advocates for and along with petitioner No.2 in person.

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondent

Through: Ms. Richa Kapoor, ASC for the State Insp. Lalit Kumar & SI Naubat Ram, PS Mandir Marg
Insp. Balram, Crime Branch & Insp. A.K. Gunjan, PS South Campus
Insp. Pankaj Malik, SI Paramjit Singh, PS Connaught Place

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

25.10.2016

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1. A further status report has been filed by Insp. A.K. Gunjan, SHO South Campus in relation to the alleged trespass in property bearing no.1/5, Shanti Niketan. As per the status report, the police has registered a case FIR No.333/2016 dated 24.10.2016 under Section 451/506/120B IPC at PS South Campus after taking approval of senior officers and investigation of

the case has been taken up. The status report sets out the inquiry carried out prior to registration of the FIR. In view of the aforesaid, the SHO PS South Campus is directed to assess the threat perceived by the petitioner and to grant adequate protection to the petitioner from any harm that she may apprehend from the accused in the said case. The SHO shall also ensure maintenance of peace and order and prevention of any trespass in the said property by the accused or any other person at their instance.

2. At this stage, learned counsel for the petitioner has pointed out that as per the aforesaid status report, on inquiry, it is found that Satish had stayed in the house i.e. 1/5, Shanti Niketan between 29.08.2016 and 02.09.2016 on the direction of Pathan and Sachin Malhotra and left the said house when he heard the news of death of Sh. T.R. Anand. Learned counsel submits that the aspect of the involvement of Satish in the death of Sh. T.R. Anand should be examined by the police. It is directed accordingly.

3. A further status report has been filed by the SHO PS Connaught Place. As per the status report, in terms of the order dated 05.10.2016, after giving prior notice of one week, the petitioner has entered the property and taken full control of the properties, namely, part of the ground floor of D-74, Regal Building and at Hotel Continental, Regal Building, Connaught Place, and the same are under lock and key of the petitioner. The status report discloses that on 15.10.2016, respondent no.2 Sachin Malhotra made a PCR call for breaking of his locks in Hotel Continental vide DD No.15A. However, when SI Paramjit Singh reached the spot, Sachin Malhotra, who was present there, apart from claiming that the said property belongs to him, and that Smt. Prem Lata Anand had trespassed into the property, did not give any written statement to the SI in this regard despite request.

4. Counsel for respondent No.2 states that the purport of para 4 of the order dated 05.10.2016 is to entitle the petitioner to deal with the property in any manner that she deems fit and appropriate. However, the said empowerment of the petitioner infringes the rights of respondent No.2 who has stake in the property on the basis of a will. It goes without saying that the rights in the said property shall be governed by any orders that may be passed by a competent civil court.

5. At this stage, counsel for respondent No.2 states that E-FIR being NDDCP001199 dated 16.01.2016 at E-Police Station has been got registered in relation to the trespass of the property bearing no.D-74, Regal Building and Hotel Continental by the petitioner. The petitioner has also filed a separate E-FIR being NDDCP001249 alleging theft by respondent No.2 in the same premises.

6. Considering the fact that the FIR in relation to other properties wherein the same parties are involved have already been transferred to the PS Crime Branch vide order dated 05.10.2016, I consider it appropriate to transfer all the pending FIRs in relation to the aforesaid properties situated at PS Connaught Place, also to PS Crime Branch for further investigation and action. It is ordered accordingly.

7. A status report has also been filed in relation to the cases which were initiated at PS Mandir Marg in relation to a portion of property at 1, Doctors Lane, Gole Market, New Delhi. In relation to the disputes pertaining to the said portion, this Court had made the following observation in the order dated 05.10.2016:

5. The second status report is in relation to property No.1, Doctor's Lane, Gole Market, New Delhi. It is, inter alia, stated

that as per the inquiry, Mr. T.R. Anand was found to be in possession of the built-up area since 2011, who had put his locks. In this regard, reference has been made to the statements of a few persons in the neighbourhood, who have been examined. It is stated that FIR No.416/2015 under Section 406/ 454/ 380 IPC at Police Station – Mandir Marg was registered against Abhishek Gupta and his company M/s Abhishek Buildcon Pvt. Ltd. and investigation taken up. Copies of the agreements dated 12.08.2009, 19.10.2010 and 26.07.2011 held between the complainant and the said persons were collected. As per the said documents, it appears that property No.1, Doctor's Lane, Gole Market, New Delhi, was acquired by Mr. T.R. Anand in exchange for 26 properties valued at Rs.26,40,80,950/- only. As per the status report, M/s Abhishek Buildcon Pvt. Ltd and the directors of the said company, after signing the said agreement, are denying the same. Further investigation has shown that an amount of approximately Rs.5.39 Crores has already been paid to the three sister companies, allegedly of M/s Abhishek Buildcon Pvt. Ltd., namely M/s Ganpati Buildtech Pvt. Ltd., M/s Fine Properties Pvt. Ltd., M/s Udai Estates Pvt. Ltd. The bank statements of the complainant Mr. T.R. Anand reflect transfer of the funds to these companies. As per the status report, an agreement was entered into on 26.07.2011, whereunder the accused agreed to transfer 5800 shares of M/s Abhishek Buildcon Pvt. Ltd. to the complainant T.R. Anand.

6. The status report also mentions that the petitioner Smt. Prem Lata Anand got registered e-FIR No.52/2016 dated 06.09.2016 under Section 380 IPC at Police Station – e-Police Station, Crime Branch, Delhi. In the said complaint, she complained of theft having been committed at her property, i.e. property No.1, Doctor's Lane, Gole Market, New Delhi, after the death of her husband Mr. T.R. Anand. She disclosed the tempo number and the mobile phone number of the Kabadi, who transported the goods and also that the same had been kept at 64 Khambha, Opposite Mata Sundari Gurudwara, Near MAMC, Delhi. She alleged that the theft had been committed by Mr. Sachin Malhotra and his associate Pawan Malhotra @

Pathan and Satish. During investigation in this case, all the articles/ furniture allegedly stolen were seized on 09.09.2016 and the alleged transporter Mr. Sunil, s/o Heeralal, r/o 65, Goodwill Apptt, Sector 13, Rohini, Delhi as well as Mr. Abdul Nawab, s/o Abdul Gaffar, r/o H.No.1746, Hauz Suiwalan, Darya Ganj, Delhi and Mohd. Rizwan, s/o Mohd. Rafiq, r/o C-58/211, Mata Sundri Road, New Delhi were examined. During investigation, it has come to light that the said articles, i.e. old furniture/ wooden scrap was sold to them by Mr. Sachin Malhotra for Rs.20,000/-, and Rs.2,000/- was, admittedly, paid for transportation of the wooden scrap.

7. Despite the aforesaid being the position, the SHO, Police Station – Mandir Marg does not appear to have taken any further proceedings to apprehend the accused or interrogate him.

8. Ms. Kapoor submits that the reason for the same is the registration of the e-FIR No.52/2016 dated 06.09.2016 under Section 380/ 437 IPC at Police Station – e-Police Station, Crime Branch, Delhi by Mr. Sachin Malhotra against Smt. Shikha Pahuja, d/o late Sh.T.R. Anand, Smt. Prem Lata Anand, Mr. R.S. Pathania, s/o Sh. D.S. Pathania, Sh. Parwana and Sh.Amit Parmar, who allegedly came in a car and one tempo.

9. As per the status report, Mr. Sachin Malhotra has stated that he was occupant of the property No.1, Doctor's Lane, Gole Market, New Delhi, under receipt-cum-agreement to sell dated 15.09.2015 allegedly executed by Mr. T.R. Anand. He claimed that he shifted the goods, including the old furniture at the said premises. He stated that he only removed his own articles/ scrap which was useless.

10. Mr. Sharma, learned senior counsel, who represents Mr.Sachin Malhotra has shown to the Court the receipt-cum-agreement to sell allegedly executed by Mr. T.R. Anand, wherein it is claimed that Mr. T.R. Anand received and acknowledged receipt of Rs.6 Crores in cash as part payment from Sachin Malhotra out of the total agreed consideration of

Rs.32 Crores towards sale of property No.1, Doctor's Lane, Gole Market, New Delhi, admeasuring 1875 sq. yards. Under this alleged receipt-cum-agreement to sell, he also claimed to have taken vacant physical possession of the ground floor of the said property from Mr. T.R. Anand in part performance. At this stage, I may observe that the petitioner and her counsel have raised a strong objection to Mr. K.K. Sharma appearing for Mr. Sachin Malhotra, particularly when he is seeking to set up a contesting claim in respect of the property held by late Sh. T.R. Anand. It is pointed out that Mr. K.K. Sharma, Sr. Advocate was, till recently, representing late Sh. T.R. Anand in litigations pending in this Court in respect of the properties of late Sh. T.R. Anand. This aspect is left open to be examined later.

11. The submission of learned counsel for the petitioner is that the police has conveniently swallowed the submission of Sachin Malhotra, which itself, to say the least, is fantastic. He claims to have paid Rs.6 Crores in cash to Mr. T.R. Anand out of a total consideration of Rs.32 Cores for sale of the said property and obtained possession. The police has not even bothered to investigate whether Mr. Sachin Malhotra even had the liquidity to make payment in cash of such a huge amount on 15.09.2015 – the date when the alleged receipt-cum-agreement to sell is claimed to have been executed.

12. The manner in which the SHO, Police Station – Mandir Marg has proceeded to deal with the e-FIR No.52/2016 dated 06.09.2016 under Section 380 IPC at Police Station – e-Police Station, Crime Branch, Delhi is, to say the least, most unsatisfactory. Even according to the status report, on 09.09.2016 itself the investigation had revealed that the accused in the said FIR had indeed removed the old furniture and scrap from the property No.1, Doctor's Lane, Gole Market, New Delhi, and sold the same to a scrap dealer for Rs.20,000/- apart from paying Rs.2,000/- towards transportation of the same. Yet no concrete steps were taken in the matter and the bald statement of the accused Sachin Malhotra has been accepted without any further investigation.

13. *In view of the aforesaid, this Court is of the view that the investigation in the said FIR and the counter e-FIR No.52/2016 dated 06.09.2016 under Section 380 IPC at Police Station – e-Police Station, Crime Branch, Delhi cannot be left in the hands of the SHO, Police Station – Mandir Marg. This Court has reason to doubt that fair and unbiased investigation shall be undertaken by the SHO P.S. Mandir Marg in the said cases. The investigation in these two FIRs is, therefore, transferred to the Crime Branch of Delhi Police. It goes without saying that the aforesaid observations have been made to record the reasons why this Court has considered it necessary to transfer investigation, and for no other purpose.*

8. The status report states that in terms of the said order, the further investigation in the then pending FIRs have been transferred to the Crime Branch, Delhi on 19.10.2016 and the same have been entrusted to SER, Crime Branch in accordance with order dated 21.10.2015. The status report discloses that further FIRs have been got registered by the petitioner Smt. Prem Lata Anand on 18.10.2016 being E-FIR No.72/2016 under Section 380/454 IPC at PS E-Police Station Crime Branch, Delhi, which reiterates the allegations as made in the earlier E-FIR No.52/2016. The status report states that as per the directions of this court, status quo has been maintained with regard to the property in question and investigation of FIR No.72/2016 has been endorsed to PS Mandir Marg in a routine manner. The same has also been transferred to the Crime Branch, Delhi in view of the order dated 05.10.2016 passed by this court.

9. Counsel for respondent No.2 states that he has also made a counter complaint and has also preferred a complaint before the Magistrate in relation to the said property for lodging of a FIR.

10. The submission of learned counsel for the petitioner is that despite the

order dated 05.10.2016 transferring the pending FIR in relation to the aforesaid property to the Crime Branch, respondent No.2 sought to again trespass into the property with a view to overreach the orders passed by this court.

11. Ms. Kapoor states that in a civil suit preferred by Abhishek Buildcon Pvt. Ltd. being CS(OS) No. 2919/2015, wherein Sh. T.R. Anand, late husband of the petitioner was impleaded as defendant no.1, on 03.11.2015, this court directed maintenance of status quo in respect of title and possession of the suit property.

12. Learned counsel for the petitioner states that the SHO is a party to the said suit and is aware of the orders passed by the court. It is also pointed out that in that suit, the plaintiff Abhishek Buildcon Pvt. Ltd. acknowledged the fact that Sh. T.R. Anand was in possession of the said property on the date when the order dated 03.11.2015 was passed.

13. Respondent No.2 was not a party to these proceedings. However, prima facie, this Court has found the claim of respondent No.2 to be fantastic in the order dated 05.10.2016 in relation to the said property.

14. In these circumstances, with a view to ensure maintenance of peace and order in the locality and to prevent filing of further FIRS and cross FIRs by the petitioner on the one hand and the respondent No.2 on the other hand, I direct that respondent No.2 shall not enter the property bearing no.1, Doctors Lane, Gole Market, New Delhi, until after obtaining orders from the civil court by staking his claim. The FIR lodged by the petitioner being FIR No.72/2016 also stands transferred to the Crime Branch.

15. It is made clear that this court has not made any final determination of the civil or criminal rights / obligations of the parties and the

arrangement has been worked out with a view to maintain peace and order in the area. The same shall, obviously, be subject to further orders that a competent civil court may pass after examining the rival claims of the parties.

16. The orders passed in these proceedings qua the petitioners protection shall continue to remain in force. The Delhi Police shall make an assessment of threat to the petitioner from time to time and take appropriate action.

17. The petition and all the pending applications stand disposed of.

18. Dasti.

VIPIN SANGHI, J

OCTOBER 25, 2016

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