

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

RESERVED ON : 3rd DECEMBER, 2015

DECIDED ON : 17th FEBRUARY, 2016

+ **CRL.REV.P.736/2014**

HARISH CHANDER VERMA

..... Petitioner

Through : Mr.J.K.Sharma, Advocate with
petitioner in person.

versus

MOHINDER KUMAR VERMA

..... Respondent

Through : Mr.Rajender Chhabra, Advocate
with respondent in person.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The instant Revision Petition has been preferred by the petitioner to challenge the legality and correctness of an order dated 16.10.2014 of learned Special Judge CBI / Addl. Sessions Judge, in CR No.25/2014 by which order dated 25.06.2014 of learned Metropolitan Magistrate to frame charge under Sections 468/471 IPC against the respondent was set-aside. Revision petition is contested by the respondent.

2. I have heard the learned counsel for the parties and have examined the file. The facts are not in dispute. Both the petitioner and the

respondent who are real brothers are involved in dispute over a property bearing No.719, measuring 300 sq.yards (in short 'suit property') situated in the Revenue Estate of Mundaka, Delhi. The respondent – Mohinder Kumar Verma had filed a civil suit for permanent injunction bearing Suit No.29/1997 in 1997 acting as 'attorney' of his mother Smt.Kalawati claiming that she was owner-in-possession of the 'suit property'. The respondent had filed a photocopy of the general power of attorney dated 03.01.1997 purportedly executed by his mother Smt.Kalawati by which he was authorized to file the said suit. He also placed on record photocopies of few documents which included Sale Agreement, Will and Receipts, etc. dated 25.10.1982 in support of ownership of his mother Smt.Kalawati. The petitioner – Harish Chander Verma put appearance in the said suit and relying on certain documents claimed to have purchased the suit property on 17.11.1982. The learned Civil Judge thereupon directed the respondent to produce Smt.Kalawati in person in the Court to ascertain whether she had authorised him to file the said suit. The respondent, however, did not produce her in the Court and opted to withdraw the suit by filing an application. It is informed that the Trial Court did not permit him to withdraw the suit. The respondent stopped appearing and finally the suit was dismissed with costs ₹2,000/- on 10.03.1999.

3. It is also not denied that on 05.09.1998, the respondent filed another suit bearing No.316/1998 for partition claiming that the suit property was owned by his late father Sh.Ramanand. It is relevant to note that Smt.Kalawati was impleaded as defendant No.3 in the said suit. The defendants therein contested the suit. In a joint written statement dated 22.09.1998, it was averred that the petitioner – Harish Chander Verma was the owner of the property. Kalawati did not mention about execution of any power of attorney either on 03.01.1997 or any other date in favour of the respondent.

4. The petitioner's application under Section 340 Cr.P.C. to initiate proceedings against the respondent was dismissed by the Trial Court observing that since forgery had been committed prior to the institution of the proceedings and only photocopies of the forged documents were used, private complaint in that regard was not barred. The petitioner thereafter, filed a private complaint for commission of offences punishable under Sections 181/182/193/196/199/200/468/471 IPC. Vide order dated 29.07.2000, the learned Metropolitan Magistrate took cognizance of the offences under Sections 468/471 IPC only. Cognizance for other offences was not taken for want of complaint under Section 195 Cr.P.C. The petitioner then filed review petition before the

Civil Court in Suit No.29/1997 under Order 47 Rule 1 CPC read with Section 151 CPC which was allowed and vide order dated 14.03.2001, Civil Court made a complaint against the respondent for commission of offences under Sections 181/182/193/196/199/200 IPC. It is still pending for disposal. In the private complaint in which the respondent was summoned under Sections 468/471 IPC, pre-charge evidence was produced. Vide order dated 25.06.2014, the learned Metropolitan Magistrate ordered to frame charges under Sections 468/471 IPC. The order was challenged in the revision where the said order was set aside. Being aggrieved and dissatisfied, the instant revision petition has been filed.

5. Learned counsel for the petitioner urged that there was sufficient material to frame charge against the accused for commission of offences under Sections 468/471 IPC and the Revisional Court committed grave error to discharge him. The Trial Court did not bother to examine the evidence led by the petitioner in pre-charge evidence. There was documentary evidence in the form of the written statement of Smt.Kalawati along with other evidence which clearly demonstrated commission of offence of forgery and perjury by the respondent. Smt.Kalawati never claimed herself to be the owner of the property in

dispute. She did not claim that the power of attorney relied upon by the petitioner in the Civil Suit No. 29/1997 was ever executed by her. The respondent had filed two different civil suits taking contradictory pleas and misled the Courts by forging GPA dated 03.01.1997.

6. Learned counsel for the respondent urged that the revision petition is based on title documents i.e. Attorney dated 03.01.1997, Agreement to Sell, Will and Receipts dated 25.10.1982 and there is no material in support of the averments and allegations of the petitioner that these documents are forged. None of these documents has ever been sent for obtaining expert opinion from FSL. The execution of these documents has never been challenged by the executants before any Criminal Court. The present revision petition is not maintainable.

7. Admittedly, the respondent in a civil suit bearing No. 29/1997 for permanent injunction against the present petitioner claimed himself to be the General Power of Attorney of his mother Smt.Kalawati on the strength of GPA dated 03.01.1997 purportedly executed by her in his favour. This Power of Attorney (annexure 'D') bears photos of both, the respondent – Mohinder Kumar Verma and his mother Smt.Kalawati. It has been duly notarized by the Notary Public, Delhi on 03.01.1997. As per the attorney, Smt.Kalawati claimed herself to be the sole and absolute

owner of the suit property. The respondent was allegedly appointed / nominated as her true and lawful general attorney to do various acts including to manage, supervise, protect, control and sell the said suit land. When the petitioner raised objection about the document to be 'forged', the respondent opted to withdraw the civil suit which was not permitted by the Trial Court. He thereafter, stopped appearing and it was dismissed with costs ₹2,000/- on 10.03.1999. Apparently, the respondent did not take the matter to its logical end and failed to produce his mother to confirm if she had executed any such power of attorney in his favour. Contrary to that, in the subsequent suit filed by him for partition, Kalawati was impleaded as defendant No.3. This time, the respondent claimed that his late father Ramanand was the owner of the suit property and being his legal heir he was entitled to a share in the said property. Defendant No.3, his mother, denied his claim and in the joint written statement averred the petitioner to be the owner of the suit land. Needless to say, the respondent has taken two self contradictory stands in two different suits. The Civil Court has already initiated proceedings under Section 340 Cr.P.C. against the respondent for committing offences under Sections 177/181/182/193/196/199/200 IPC vide order dated 14.03.2001. Since these documents were allegedly forged prior to the institution of the civil

suit and only photocopies were filed on record, the Court did not initiate proceedings under Sections 468/471 IPC against the respondent for which the petitioner filed the private complaint case. The learned Metropolitan Magistrate took cognizance of the offences under Section 468/471 IPC and the said summoning order was never challenged by the respondent. The petitioner produced pre-charge evidence and by a comprehensive order, the respondent was charged under Sections 468/471 IPC.

8. Prima facie the findings recorded by the Revisional Court can't be sustained as photocopies of forged and fabricated documents were filed on judicial record by the respondent in Civil Suit No.29/1997 to claim certain benefits against the petitioner qua the suit property. The respondent in the affidavit in the said proceedings had asserted that on the strength of GPA dated 03.01.1997, he was authorized to file the civil suit on behalf of his mother and was well conversant with the facts of the case. It is for the respondent to explain as to how and under what circumstance, he came across all these documents; whether these documents were genuine; when they were executed and when these were handed over to him by his mother to file the civil suit. In the joint written statement in the subsequent suit Smt.Kalawati did not claim if these documents were ever executed or given by her to the petitioner. Order dated 14.03.2001 in

M18/2000 on the application under Order 47 Rule 1 CPC records that the Court was of the view that the respondent not only forged and fabricated the GPA in his favour in the name of his mother Smt.Kalawati Verma and while stating in the suit for permanent injunction that the property was purchased by Smt.Kalawati Devi by way of number of documents from one Bharat Singh, he was well aware that the said averments were wrong. The respondent was unable to put forth any explanation about the apparent contradictions in respect of the facts stated in the two suits filed by him.

9. In '*Sushil Kumar vs. State of Haryana*', AIR 1988 SC 419, the accused therein had produced copy of partnership deed forged by him, original of the partnership deed was not produced before the Court. It was held that bar under Section 195(1)(b)(ii) of the Code would not apply to frame charges under Sections 471/474 IPC.

10. It is for the respondent to prove whether the Civil Suit No.29/1997 filed by him on the basis of power of attorney allegedly executed by his mother was genuine. He being the petitioner's brother was well aware as to whom the suit property belonged. Soon after the earlier suit, he filed suit of partition claiming that his father and 'not mother' was the owner of the suit land. Apparently, at the time of filing the earlier suit

on the basis of power of attorney, the respondent was aware as to who was the actual owner-in possession of the suit property.

11. In the light of above discussion, this Court finds sufficient prima facie materials against the respondent to proceed under Sections 468/471 Cr.P.C. The Trial Court's order dated 25.06.2014 is based upon fair appraisal of materials on record and can't be faulted. Impugned order of the learned Revisional Court can't be sustained and is set aside.

12. The revision petition stands disposed of. The parties shall appear before the Trial Court on 24th February, 2016. The Trial Court shall proceed as per law.

13. Observations in the order shall have no impact on the merits of the case.

14. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

FEBRUARY 17, 2016 / tr