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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.224 OF 2017
IN
CRIMINAL APPLICATION NO.634 OF 2016

Ashish Madanlal Jain	... Applicant
Vs.	
The State of Maharashtra and Anr.	... Respondents

Mr. Umesh R. Mankapure for the Applicant.
Mr. N.B. Patil, APP for the Respondent No.1.
Mr. Amar Sir i/by Lex Services for the Respondent No.2.

**CORAM : A.S. OKA &
ANUJA PRABHUDESSAI, JJ.**

DATE : 21st MARCH, 2017

P.C.

1 Heard the learned counsel appearing for the applicant. The prayer is for recall of judgment and order dated 9th February, 2017 passed by this Court by which the application made by the applicant for quashing the First Information Report on the ground of settlement was not entertained. It will be necessary to make a reference to paragraph nos.2 to 7 of the said judgment and order which read thus :-

2. In support of the said averment, the applicant has relied upon a photocopy of the settlement, annexed at page 25 of this application. Page 25 appears to be a photocopy of an alleged the photocopy of the original attested by a Notary Public on 18th February, 2016.

3. In response to the legal notice issued by the second respondent to the applicant, he has come out with the case of settlement in paragraph 4 of the reply which reads thus:

“ That in reply to para no.4 of the legal notice it is submitted that your client has approached to Kiryana Committee, Delhi (Regd.) and after going through the facts the President of the said Committee, Sh. Suresh Chandra Mittal and Sh. Ashok Tulsian have settled the matter finally as full and final settlement as there was some dues upon your client towards my client in respect of said transaction. The said mutual agreement was duly signed by your client and my client without any kind of pressure, force, fear and coercion in the presence of witness Sh. Ramesh Chand and Sh. Subhash Aggarwal. It is further submitted that in pursuance of the Mutual Agreement dated 23.07.2014 my client had paid the settled amount to your client which was specifically admitted by your client in your notice under reply. It is further submitted that now your client has become greedy that is why he is adopting such types of practice by sending the false and frivolous notice to my client to extort money from my client”.

4. As there was a serious dispute raised by the learned Counsel appearing for the second respondent as regards the genuineness of the document on page 25, on the last date, we had called upon the applicant to produce the original of the document on page 25. Today, for the first time, the learned Counsel appearing for the applicant has come out with the case that the original of the said document is with the Kirana Committee, Delhi. He has submitted that due to the ongoing litigation in the form of a suit pending in the Court of Samar Vishal-Civil Judge-10 (Central)/Delhi, the Kirana Committee is not willing to part with the original. On instructions, he states that a sum of Rs. 81 Lakhs was deposited by the applicant with the said Kirana Committee and the second respondent has taken the said amount from the said Committee.

5. In the present application, there is no assertion that the original of the document on page 25 is with the said Kirana Committee. Secondly, today it is contended that the certified copy of the original was given to the applicant by the Kirana Committee. However, page 25 shows that the same is not certified by the Kirana Committee. As stated earlier, it is a photocopy of the attested photocopy signed by a Notary Public.

6. In the reply dated 3rd November, 2014 issued by the Advocate for the applicant to the advocate for the second respondent. It is stated that as per the agreement dated 23rd July, 2014, the applicant has paid the settlement amount to the second respondent. Paragraph 4 of the said Advocates' letter is already quoted above. The amount paid by the applicant is not mentioned in the said paragraph 4.

7. The entire petition is founded on the alleged settlement, a copy of which is annexed at page 25. Now, only by way of an afterthought, a case is sought to be made out that the applicant is not in possession of the original. That is not the case pleaded in the application.”

2 The present application is founded on an averment that the original settlement, a copy of which was annexed at page 25 of the application for quashing has been now obtained by the applicant. The learned counsel appearing for the applicant produced the so called original for the perusal of the Court. Perusal of the judgment and order dated 9th February, 2017 shows that the application made by applicant was dismissed not only on the ground that original document was not produced but on the ground that at the time of filing of the application

and any time thereafter, the applicant did not disclose that he was not in possession of the original settlement document. We must note here that as there was a serious dispute raised by the contesting respondents about the genuineness of the document on page 25, this Court passed an order directing the applicant to produce original. Only after the said order was passed that the applicant came out with the case that the original of the said document was in possession of Kirana Committee in Delhi. Secondly, a factually incorrect statement was made that the copy annexed at page 25 was a certified copy issued by the Kirana Committee. The main reason for rejecting the application for quashing was that only after genuineness of the document was disputed by the second respondent and only after this Court called upon the applicant to produce the original that by way of an afterthought, the applicant came out with the case that the original was not available with him.

3 We have carefully perused the averments in this application. There is a vague averment in paragraph 5 of the application that the original document was handed over to the applicant by the Kirana Committee at Delhi. Even the date on which the original was handed over is not mentioned. It is not the case of the applicant that a particular officer of Kirana Committee at appropriate place handed over the original to him. All these aspects will have to be appreciated in the

light of the fact that the second respondent had specifically contended that the said document is not genuine.

4 Hence, no case is made out for recall of the judgment and order dated 9th February, 2017. Application is rejected.

(ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)