

\$~3.

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

+ W.P.(CRL) 299/2016

DEVENDER ANAND

..... Petitioner

Through: Mr. Dilpreet Singh, Mr. Yogesh Kumar Gupta & Mr. Harinder Singh, Advocates along with petitioner in person.

versus

THE COMMISSIONER OF POLICE & ORS

..... Respondents

Through: Ms. Kamna Vohra, ASC along with respondent No.5/ SI Yogender Kumar, PS – Karol Bagh, in person, for the State.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

13.01.2017

%

1. The petitioner has preferred the present writ petition to seek several reliefs. Vide order dated 29.01.2016, the Court issued notice to the official respondents in respect of prayer clauses 1, 2, 4 & 5 in the first instances. The said prayers read as follows:

“1. Pass appropriate writ/order/direction thereby ordering appropriate action to be taken against the erring police officers, including but not limiting respondents No. 2 to 5, who are responsible for non-registration of the FIR in spite of a

preliminary enquiry dated 20.5.2015 clearly submitting a finding that a cognizable offence under section 420/34 of IPC was made out against respondents no.6 and 7.

2. Pass appropriate writ/order/direction thereby quashing and declaring to be null and void the so-called second/subsequent undated report of preliminary enquiry, and the subsequent endorsements of the SHO, PS Karol Bagh dated 16 July 2015, the undated endorsement of the ACP (Karol Bagh Sub-Division) and the endorsement of DCP (Central) dated 7 August 2015 as the same are without any legal sanctity and have been created and brought into existence against the settled provisions of law and without following due process of law and in contravention of the procedure laid down by the Hon'ble Supreme Court in its judgment 'Lalita Kumari Vs. Govt. of UP.'

3. x x x x x x x x x

4. Pass appropriate writ/order/direction thereby calling upon the office of the Commissioner of Police, New Delhi, to submit a report with respect to the relevant provisions of law under which his office has empowered the area ACP and DCP to approve registration of FIR, and upon submission of such a report, the vires and legality of the same be scrutinised as the same is in violation of the provisions of The Code of Criminal Procedure and the procedural guidelines laid down by the Hon'ble Supreme Court in the case 'Lalita Kumari Vs. Govt. of UP.'

5. Pass appropriate writ/order/direction thereby directing the respondent no.1 to hold an appropriate enquiry/investigation into the said circumstances under which the illegal and uncalled for second line of preliminary enquiry was initiated and carried out by the same officers, on the same facts and he may further be directed to submit a report of the said enquiry before this Hon'ble court and take appropriate action by way of registration of cases, if required, and take all other necessary and proper actions in the matter against the officials found guilty in the matter."

2. In response to the petition, a status report and a counter-affidavit has been filed by the State.
3. The background in which the petitioner has preferred this petition may be noted.
4. The case of the petitioner is that the petitioner entered into an agreement to sell in respect of house situated at WZ-1179, Plot No.11, Rani Bagh, Shakur Basti, Delhi with Smt. Ritu Vijan Kapoor, w/o Sh. Vippi Kapoor and Sh. Vippi Kapoor, s/o Sh. R.P. Kapoor for a consideration of Rs.54 Lakhs. The agreement to sell, general power of attorney, etc. were executed on the said date and the entire consideration of Rs.54 Lakhs was paid in one go to the agreement sellers.
5. Subsequently on 31.07.2013, the petitioner learnt that the said property had been mortgaged to Andhra Bank when a notice issued by the said bank was affixed on the property. Since the petitioner had by then been trapped by the said agreement sellers, the petitioner – so as to acquire an unencumbered title to the property, had to settle the claim of Andhra Bank to the tune of Rs.16,93,059/- for release of the mortgaged documents. The petitioner also paid the registration charges of Rs.7,81,941/- for registration of the sale deed in his favour.
6. Consequently, the petitioner made his complaint to seek registration of a case against the agreement sellers, i.e. Smt. Ritu Vijan Kapoor and Sh. Vippi Kapoor. It appears that on the said complaint, preliminary inquiry was conducted by respondent No.5/ Yogender Kumar, Sub-Inspector, Delhi Police, posted at PS – Karol Bagh. On 20.05.2015, he submitted his report

that a prima facie offence under Section 420/ 34 IPC is made out. He sought permission to register a case under Section 420/ 34 IPC for proper investigation. The petitioner has placed on record the office notings made in the record by the police in this regard. The office notings show that the SHO concurred with the aforesaid conclusion in his noting dated 21.05.2015 and put up the matter before the ACP concerned. The ACP also concurred with the said conclusion in his noting dated 25.05.2015.

7. The submission of learned counsel for the petitioner is that despite aforesaid, the FIR was not registered and the same Sub-Inspector Yogender Kumar, PS – Karol Bagh started a fresh process of preliminary inquiry on the same set of facts. On this occasion, he concluded that since the complainant/ petitioner had given his consent to the registration of the sale deed and discharge of the liability of the bank, even though the said mortgage was revealed to him on 31.07.2013, therefore, no police action is required. It is pointed out that there was no change in the factual background and no new fact has been discovered for the sudden change of opinion by SI Yogender Kumar.

8. The file notings placed on record show that the SHO concurred with this diametrically opposite view taken by SI Yogender Kumar, in his noting dated 16.07.2015. Interestingly, even the ACP sang a different tune and concurred that only a dispute of civil nature has arisen, and that the complaint be filed, vide his noting dated 01.08.2015. It appears that the matter was further placed before the Additional DCP, who also concurred with the subsequent view that no case is made out against the accused vide his noting dated 07.08.2015. The file notings show that this view was

carried by the DCP/ C and JCP/ CR as well.

9. Learned counsel for the petitioner points out that the earlier opinion that a prima facie case under Section 420/ 34 IPC is made out was never carried up to the DCP concerned and that earlier view was not placed before him when the subsequent view – that no case is made out for registration of FIR, was concurred by him. The submission of learned counsel for the petitioner is that, evidently, the agreement sellers, namely respondents No.6 and 7 had managed to pull strings and that is what led to the sudden change of heart within the hierarchy of police.

10. Learned counsel further submits that the offence was complete on 31.05.2013 when respondents No.6 & 7 deliberately and knowingly represented that the property is unencumbered and on that premise received huge consideration of Rs.54 Lakhs from the petitioner for sale of the said property, even though – to their knowledge, it was unencumbered with Andhra Bank. Merely because the petitioner with a view to perfect his title and remove the encumbrance had settled the claim of Andhra Bank and got the sale deed registered, it did not tantamount to petitioner's prior knowledge or acquiescence in the matter.

11. On the other hand, Ms. Vohra submits that when the petitioner learnt of the encumbrance on 31.07.2013, he did not make any complaint. Instead, he cleared the encumbrance by making payment of Rs.16,93,059/- to the Andhra Bank for release of the property documents and also got the sale deed registered by paying the stamp duty and registration charges. Moreover, it is unlikely that the petitioner was not aware of the mortgage

since a prudent person would not purchase the property without securing the original title deeds from the vendor. The original title deeds were pledged with the bank.

12. She further submits that the petitioner had preferred an application under Section 156(3) Cr.P.C., which has been rejected by the learned Magistrate vide order dated 27.03.2015. That order has not been assailed by the petitioner and his private complaint under Section 200 Cr.P.C. is now pending before the Magistrate.

13. Having heard learned counsel for the petitioner and Ms. Vohra, I am of the view that the petitioner's grievance is justified. As to whether, or not, the offence was committed would have to be decided on the date of the transaction, i.e. 31.05.2013. Even according to the file notings, the petitioner is alleged to have learnt of the mortgage on 31.07.2013, i.e. two months after the date of the transaction when he parted with Rs. 54 Lakhs towards sale consideration to the agreement sellers. As an agreement purchaser, the petitioner may not have been inclined to rescind the transaction on account of the alleged cheating perpetrated upon him and may have still opted to perfect his title. He may have settled the claim of the bank and got the transfer registered in his name by paying the registration and stamp duty charges. That does not take away from the alleged offence that may have been perpetrated by the agreement sellers. As to whether, or not, the petitioner was aware of the mortgage on or before 31.05.2013 would be a matter of trial and that may be a defence available to the accused. But it cannot be predicated at this stage that the petitioner was aware of the same when the transaction was entered into on 31.05.2013. Thus, there is a

fundamental flaw in the reasoning adopted in the subsequent opinion of respondent No.5 which found favour with the higher officers, including the DCP and Joint C.P.

14. There is absolutely no explanation as to why the earlier opinion – which had been approved right up to the ACP level, was not acted upon by either obtaining the sanction of the DCP concerned, or registering the FIR. It is not clear as to what led to a second line of opinion being recorded – diametrically opposite and contrary to the earlier view, when no new facts had been discovered in the preliminary inquiry. The case clearly reveals a change of track by the police, and the reasons for the same are anybody's guess. It is not unknown that the police authorities lend themselves to such machinations and become a tool in the hands of those alleged to have committed offences.

15. Accordingly, the writ petition is allowed.

16. Let the case file be placed before the Commissioner of Police along with this order for taking appropriate action against respondents No.5, respondent No.4 and the Assistant Commissioner of Police/ respondent No.3 concerned. It is these police officers who, despite being aware of their earlier opinions turned turtle and recorded a diametrically opposite view without reference to the earlier view taken by them, and without there being any cause therefor.

17. Since there is nothing on record to show that the case had earlier been put up before the DCP/ respondent No.2, it cannot be said that he had changed his view from one earlier taken by him. His noting reveals that he

was dished out with the view different from the earlier one favouring registration of the FIR.

18. The Commissioner of Police would be well-advised to resort to course correction by directing that the earlier preliminary inquiry be taken to its logical conclusion. Steps in this regard be taken within two weeks of the present order being placed before him. The petitioner shall also be entitled to costs quantified at Rs.25,000/- to be paid by the State.

19. Dasti under the signatures of the Court Master.

VIPIN SANGHI, J

JANUARY 13, 2017

B.S. Rohella