

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

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Reserved on: 16th January, 2017

Decided on: 19th May, 2017

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CRL.M.C. 99/2012

PAVINDER AHLUWALIA

..... Petitioner

Represented by: In person.

versus

STATE & ANR.

..... Respondents

Represented by: Ms. Meenakshi Chauhan, APP
with SI Madhurendra Kumar,
PS EOW.

Mr. Kirti Uppal, Sr. Adv. with
Mr. Y.R. Sharma, Adv. for R-2.
Mr. S.P. Singh Chaudhary,
Adv. for R-3 and 4.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Pavinder Ahluwalia, the petitioner S/o late Brig. Ajit Singh Ahluwalia and Smt. Charanjeet Ahluwalia on 2nd January, 1998 lodged FIR No.10/1998 at PS Defence Colony for offences punishable under Sections 420/467/468/471/120B IPC. After investigation, a charge sheet was filed whereafter on hearing the accused and the State vide the order dated 23rd April, 2004 learned Metropolitan Magistrate discharged all the seven accused i.e. Ashok Bhaduria, Prashant Bhaduria, R.C. Goel, Nand Kishore Bindra, R.L. Kapoor, Lt. Col. (Retd.) T.M. Singh and Shyam Sunder Singh, advocate. A revision petition was preferred by the State challenging the order dated 23rd April, 2004 before learned Additional Sessions Judge being Criminal Revision No.31/2004 which was allowed by the learned Additional

Sessions Judge vide order dated 22nd April, 2006 remanding the matter back to the learned Trial Court for framing of charge and proceeding with the trial. Order dated 22nd April, 2006 passed by the learned Additional Sessions Judge was challenged by the private respondents before this Court in Crl.M.C. Nos.3189-95/2006. Since no stay was granted by this Court, in the meantime, learned Trial Court framed charge against the private respondents. The order framing charge was also challenged before this Court by filing Crl.Rev. Petition Nos.59/2007 and 107/2007. This Court set aside the order dated 22nd April, 2006 passed by the learned Additional Sessions Judge and consequential order dated 9th October, 2006 passed by the learned Metropolitan Magistrate framing charge against the private respondents. Crl.Rev.P. 31/2004 was restored before the learned Additional Sessions Judge for consideration on merits after taking into consideration all the contentions raised by the parties and pass a fresh order in accordance with law, which was dismissed vide the impugned order dated 28th April, 2011. Hence the present petition.

2. In the FIR, the petitioner alleged that property No.D-4, Defence Colony (in short 'the property') was part of HUF property of Brig. Ajit Singh Ahluwalia as the karta. On 1st January, 1985 the property was partitioned vide a deed and pursuant thereto the annexe block consisting of ground floor came to the share of the petitioner and first and second floor of the main block went to the share of his father. Ground floor of the main block came to the share of his mother Smt. Charanjeet Ahluwalia. Brig. Ahluwalia passed away on 25th July, 1987 after being admitted in the Army Hospital for treatment. It is thus alleged that the Will dated 19th July, 1987 purportedly executed by Brig. Ahluwalia on the basis of which Smt.

Charanjeet Ahluwalia claimed ownership of the property was a forged document having been executed, six days prior to the death of the Executor when he was admitted in ICU. Since Smt. Charanjeet Ahluwalia was intending to sell the main house, the petitioner and his sister filed a civil suit for permanent injunction being Suit No.192/1995 in the Court of Civil Judge, Tis Hazari Courts wherein an exparte injunction was granted on 21st August, 1995. After coming to know about the said order dated 21st August, 1995, the respondents purchased stamp papers on 1st September, 1995 and executed ante dated agreements to sell dated 14th August, 1995 to avoid the effect of the said order. Purported to act on the Will dated 19th July, 1987, Smt. Charanjeet Ahluwalia executed three Wills in the office of Sub-Registrar and later on it was revealed that the signatures on the Wills dated 5th October, 1995 did not match with the specimen signatures of Smt. Charanjeet Ahluwalia as per the FSL report. Thus, Smt. Charanjeet Ahluwalia passed away without executing any Will and therefore the respondents committed the offences as alleged above.

3. Before this Court reiterating his contentions the petitioner who appears in person states that during the course of investigation, it has been found out that the Wills and GPAs were all forged. The signatures of his mother late Smt. Charanjeet Ahluwalia did not match with the specimen signatures collected from the bank. Further the Notary Public has stated that the stamp papers were issued by him only on 1st September, 1995 thus agreement to sell could not have been executed on 14th August, 1995 and ante dated documents were prepared to escape the stay order dated 21st August, 1995. Further signatures of Smt. Charanjeet Ahluwalia on the three Wills dated 5th October, 1995 have been found to be forged and fabricated as

per FSL opinion. The father of the petitioner being seriously ill at the time of execution of the alleged Will dated 19th July, 1987 the purported Will in favour of Smt. Charanjeet Ahluwalia was a fabricated document. Not being absolute owner of the property Smt. Charanjeet Ahluwalia could not have entered into agreement to sell dated 14th August, 1995 and three Wills dated 5th October, 1995. Further the reliance of the private respondents on the application under Order IX Rule 7 CPC purportedly filed by Smt. Charanjeet Ahluwalia is misconceived as she did not appear before the Court and the signatures on the application under Order IX Rule 7 CPC and written statement have not matched with the admitted signatures. Thus, no case for discharge of the private respondents for the offences alleged was made out.

4. Learned counsel for the private respondents on the other hand contends that the above noted FIR was got registered only on 2nd January, 1998 after the death of Smt. Charanjeet Ahluwalia on 15th January, 1997. The petitioner though had knowledge of the agreements to sell dated 14th August, 1995 however kept quite till her death. Moreover, in her life time, in the suit for permanent injunction filed by the petitioner, Smt. Charanjeet Ahluwalia filed an application under Order IX Rule 7 CPC for vacating the ex parte injunction granted wherein she stated that she had already sold the property vide agreements to sell dated 14th August, 1995. Similar facts were stated in the written statement filed by Smt. Charanjeet Ahluwalia. These being admissions cannot be lightly dealt with and in the wake of these admissions of Smt. Charanjeet Ahluwalia, no case for offences alleged is made out against the respondents.

5. It is not in dispute that against the order granting ex-parte injunction, an application under Order IX Rule 7 read with Section 151 CPC was filed

in the Court by Smt. Charanjeet Ahluwalia and an affidavit dated 1st February, 1996 annexed with the application. In the said application, she stated that on 14th August, 1995 she had entered into agreements to sell of the respective portions detailed in the earlier paragraphs and thus the ex-parte order dated 21st August, 1995 be vacated. In reply to the said application of Smt. Charanjeet Ahluwalia under Order IX Rule 7 CPC, it was not the case of the petitioner that the application under Order IX Rule 7 CPC and the affidavit along with it were not signed by Smt. Charanjeet Ahluwalia. His entire case was that she was not competent to execute the agreements to sell and to avoid ex-parte injunction in favour of the petitioner, ante-dated agreements to sell were executed. Further Smt. Charanjeet Ahluwalia also filed a written statement as defendant No.1 in Civil Suit No.192/1995 wherein she categorically stated that the suit had become infructuous since she had already entered into agreements to sell in respect of various portions of the property. Though the petitioner disputed that there are certain additions in handwriting in para 5 which have not been initialed by Smt. Charanjeet Ahluwalia, however there is no denial of the fact that in the body of the written statement to the plaint in para 5, Smt. Charanjeet Ahluwalia reiterated that she had already entered into agreements to sell and handed over possession of the property. She had also stated that the plaintiff knew that he had no right to the property and has filed a frivolous suit against her and other defendants.

6. The issue before the learned Trial Court or before the learned Additional Sessions Judge was not ante-dating of agreements to sell by Smt. Charanjeet Ahluwalia, mother of the petitioner as she had passed away but whether there was any prima facie case against the respondents herein

namely Ashok Bhaduria, Prashant Bhaduria, R.C. Goel, Nand Kishore Bindra, R.L. Kapoor, Lt. Col. (Retd.) T.M. Singh and Shyam Sunder Singh, Advocate justifying framing of charge against them for offences as noted above.

7. Investigation reveals that sums of ₹19,00,000/- from R.C. Goel, ₹10,10,000/- from Ashok Bhaduria and ₹6,10,000/- from Prashant Bhaduria were credited into the account No.9092, Bank of India, Saket Branch of Smt. Charanjeet Ahluwalia. On the strength of Will of her deceased husband in her favour, Smt. Charanjeet Ahluwalia executed three different Wills on 9th October, 1995 before the Sub-Registrar, Vikas Sadan in favour of R.C. Goel, Ashok Bhaduria and Prashant Bhaduria in respect of ground floor, first floor and second floor of the property in question respectively. Azizuddin Ahmed, Sub-Registrar was examined during the course of investigation who stated that the signature of the executant was taken by the peon. Further S.S. Singh, Advocate, respondent No.8 herein was present in the office of the Sub-Registrar when the Wills were registered. The Wills were having photograph of Smt. Charanjeet Ahluwalia. During the investigation it was found out that Lt. Col.(Retd.) T.M. Singh and Shyam Sunder Singh signed as witnesses.

8. Smt. Charanjeet Ahluwalia in her application dated 1st February, 1996 under Order IX Rule 7 read with Section 151 CPC filed in Suit No.192/1995 before the learned Civil Judge, Tis Hazari Courts titled Parvinder Ahluwalia Vs. Smt. Charanjeet Ahluwalia stated as under:-

“In fact the applicant entered into an agreement for sale of ground floor portion of property with R.C. Goel, 1st floor portion to Sh. Ashok Bhaduria & Second Floor to Prashant Bhaduria. The ground floor & the first floor portions were earlier let out by the

applicant to the earlier tenant in May 1995 on account of the fact that Pravinder Singh Ahluwalia and his wife started treating the applicant with cruelty. She had prayed to set aside the ex-parte order dated 21.08.1995”

9. Further Smt. Charanjeet Ahluwalia in her written statement dated 11th September, 1996 filed in Suit No.192/1995 in para No.5 had admitted that by virtue of the Will executed by Brig. A.S. Ahluwalia, his share had fallen to her share and she had already entered into agreements to sell and handed over the possession.

10. The petitioner who appears in person has laid great emphasis on the ex-parte injunction granted in Suit No.192/1995 on 21st August, 1995. Admittedly, respondents No. 2 to 8 were not parties to the said suit and the injunction did not bind them. If any ante-dating has been done, the same is by Smt. Charanjeet Ahluwalia who has since passed away. Further the complaint was not filed by the petitioner during the life time of Smt. Charanjeet Ahluwalia and filed only after her death. In the application under Order IX Rule 7 CPC Smt. Charanjeet Ahluwalia admitted having received the consideration and delivering the possession in respect of portions of the property in question. Even in the written Statement Smt. Charanjeet Ahluwalia reiterated the factum of sale of property in question to respondents 2 to 4 herein and receipt of consideration. Along with the charge sheet, copy of the partition suit bearing No.550/1998 filed by the petitioner against his sister was also filed which reiterated the sale of three portions of the property and receipt of the consideration. Even assuming that Smt. Charanjeet Ahluwalia ante dated the said documents, as noted above, Smt. Charanjeet Ahluwalia has since passed away and the issue

before this Court is whether charge against respondent Nos. 2 to 8 is liable to be framed or not. Further, if the grievance of the petitioner was ante-dating of agreements to sell by her mother, the complaint ought to have been filed before her death on 15th January, 1997 and not thereafter.

11. The finding of the learned Additional Sessions Judge that there is no material on record to show strong suspicion that respondent Nos. 2 to 8 committed the offence alleged cannot be faulted with.

12. Consequently, upholding the impugned order, the present petition is dismissed.

13. Trial Court record be sent back.

(MUKTA GUPTA)
JUDGE

MAY 19, 2017
‘v mittal’