

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

% Decided on: 9th May, 2017

+ **CRL.M.C. 3821/2012**

S. PIRTHI PAL SINGH & ORS

..... Petitioner

Represented by: Mr. Ajay Burman, Sr. Adv.
with Mr. Harshit Khurana, Ms.
Tanya Harnal, Advs.

versus

STATE & ANR

..... Respondent

Represented by: Mr. Amit Ahlawat, APP with SI
Hemant PS Sarojini Nagar.
Mr. K.G. Chhokar, Adv. for
R-2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. A complaint was filed under Section 156(3) Cr.P.C. by respondent No.2/ Chattar Singh S/o Jai Ram R/o 71, Village Hamayun Pur, New Delhi who has since passed away and is now represented by his two legal heirs i.e. Smt. Krishna and his wife and Smt. Risala his mother. In the complaint filed in the year 2003 Chattar Singh alleged that his grand-father Shri Gopal was the recorded owner of land bearing Khasra No.42 measuring 6 Bighas and 4 Biswas within the revenue estate of village Hamayun Pur in the year 1950-51. Shri Gopal died on 1st December, 1953 leaving behind two sons namely Jai Ram and Sohan Lal. Jai Ram and Sohan Lal also died on 5th June, 1965 and 9th November, 1992 respectively. Chattar Singh claiming himself to be the legal heir of Jai Ram alleges that on 11th May, 2004 he came to know that

the accused persons i.e. the three petitioners herein Prithi Pal Singh, Bhupinder Paul Singh and Jagjit Paul Singh all S/o late Pratap Singh filed some civil suit about the land noted above in the year 1979 claiming themselves to be rightful owner and claimants of all benefits of the said property. It is alleged that the petitioners prepared a forged sale deed in the year 1951 and got incorporated the mutations of the land in their favour. It was the claim of Chattar Singh that the petitioners never remained in possession of the land in question and the thumb impression of his grandfather on the alleged sale deed was forged and fabricated.

2. On the directions of the Court under Section 156(3) Cr.P.C. FIR No.551/2005 under Section 420/467/468/471/120B/34 IPC was registered at PS Sarojini Nagar. Pursuant to the investigation conducted a cancellation report was filed which was challenged by Chattar Singh by filing a protest petition. After hearing parties on the cancellation report, protest petition and with due notice to Chattar Singh/ the complainant, the learned Metropolitan Magistrate on 22nd November, 2010 passed the following impugned order taking cognizance against the petitioners:

“22.11.2010

*Present: Ld. APP for State
IO Inspector Mahabir Prasad in person
Complainant with counsel Sh. K.G. Chokar*

Arguments on cancellation report heard. The IO and the learned APP has argued that before filing the cancellation report dated 14.09.2008, notice was issued to the complainant for providing any documents for comparison of thumb impression of grand father of complainant. Sh. Gopal with his purported thumb impression upon the sale deed in the name of Sh. Preet Pal Singh and others, however the complainant did not appear in response to the notice and did not produce any

documents for comparison, hence there was no record for sending the documents to FSL for verification of thumb impressions and after investigation, collection of evidence from Delhi Archives about the old sale documents (registered on 26.10.1951) and after submission of replies by complainant and attorney of accused, the present cancellation report was filed in the Court, on the ground that sale deed had been executed by grand father of complainant in favour of accused persons way back in 1951 and mutation in revenue record had already been done in favour of accused persons.

The counsel for complainant has vehemently argued that the purported signatures of witness Sohan Lal on the sale documents could have been compared with his signatures on his Will dated 02.08.1989 and another sale deed dated 19.06.1963. The IO states that the complainant had not filed either the originals or the copies of these documents along with his reply, hence there was no opportunity for verification of signatures of witness or the executants of the sale deed dated 26.10.1951.

After hearing arguments on both the sides and after perusal of record, this Court is of the opinion that cognizance shall be taken in this case and complainant shall be given an opportunity to bring evidence on record for just decision of the case.

Hence, I take cognizance of the offences mentioned in the FIR dated 21.10.2005 and in complaint dated 05.10.2005 as well as in protest petition dated 10.06.2010. All the accused persons be summoned on filing PF within 7 days. Fix for appearance of both the parties on 19.01.2011.”

3. As noted above, the investigating agency when filed the cancellation report got no specimen thumb impression of the grand-father of the complainant which could be tallied from the purported sale deed to come to the conclusion that the same was a forged and fabricated sale deed. In the protest petition and during the course of argument, case of Chattar Singh was

that the signature of the witness Sohan Lal on the sale deed could have been compared with his signature on the Will dated 2nd August, 1989 and the other sale deeds. Despite noting these facts and there being no evidence which was collected by further investigation, the learned Metropolitan Magistrate erred in taking cognizance of the offence because it had only a bald statement of Chattar Singh to prove the offence alleged, which would not have been sufficient to prove the offences alleged beyond reasonable doubt.

4. The learned Trial Court while passing the impugned order failed to notice the documents collected by the investigating officer and whether any further investigation was required thereon and simply took cognizance of the offences.

5. Learned counsel for the petitioner submits that besides the fact that there was a presumption in favour of the document being genuine since the complaint itself was filed after a period of 52 years and neither by Gopal nor by his two legal heirs i.e. Jai Ram and Sohan Lal but by the grand-son Chattar Singh, who was not a witness to the sale deed dated 19th October, 1951 and also that two other sale deeds were executed between the parties within a short span i.e. on 26th October, 1951 and 27th October, 1951 with the stamp paper for the three sale deeds being purchased on the same day i.e. 19th October, 1951, which two sale deeds were not challenged by Chattar Singh and there was no allegation in the FIR qua those two sale deeds. It is contended that in the absence of any evidence on record learned Metropolitan Magistrate could not have taken cognizance of the alleged offences.

6. As noted above, the order passed by the learned Metropolitan

Magistrate is bereft of reasoning as to on what material it has taken cognizance of offences alleged against the petitioners. The impugned order dated 22nd November, 2010 is set aside. The learned Metropolitan Magistrate would look into the investigation carried out and the protest petition and see whether it is a case which requires further investigation in view of the material already collected, the presumptions available and whether on the material available cognizance of offences can be taken and thereafter pass appropriate order in accordance with law.

7. Petition is disposed of.

(MUKTA GUPTA)
JUDGE

MAY 09, 2017
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