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

Decided on: 4th May, 2017

+ **W.P. (CRL.) 1161/2017**

DEEPAK KUTHIALA & ORS. Petitioners

Through: Mr. Kirti Uppal, Senior Advocate
Mr. Manjit Singh, Senior Advocate
Mr. Sanjay Kumar Rathee, Adv. &
Mr. Jai Sahai Endlaw, Advocate

versus

STATE (NCT OF DELHI) & ANR. Respondents

Through: Ms. Kamna Vohra, ASC for the State.
Mr. Subodh K. Pathak, Adv.,
Mr. Sanjay Kumar, Adv. for R-2 with
respondent no.2 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The First Information Report (FIR) No.136/2016 was registered at Police Station Barakhamba Road, New Delhi on 20.08.2016 pursuant to directions of the court of Metropolitan Magistrate by order dated 16.08.2016 in criminal complaint case no.4751/1 of 2013 under Section 156(3) of the Code of Criminal Procedure, 1973 (Cr.P.C.) for investigation into the offences under Section 420 read with Section 34 of Indian Penal Code, 1860 (IPC), the said criminal complaint having been instituted before the court of Metropolitan Magistrate by the second respondent. It appears that the second respondent had also

earlier instituted a civil suit with regard to similar background facts, it being CS(OS) No.168/2014 against the parties including the petitioners herein as defendants. The dispute concerns property described as bearing no.40, Babar Road, Bengali Market, New Delhi-110001 (“the property”).

2. The civil suit resulted in an amicable settlement formalized by the parties through memorandum of understanding (MOU) executed on 03.04.2017, to which the petitioners and the second respondent are signatory. The civil suit, in the wake of the said settlement was withdrawn by the second respondent by moving application (IA No.4743/2017) under Order XXIII Rule 1 CPC of the Code of Civil Procedure, 1908 (CPC) which was granted by order dated 20.04.2017.

3. In the wake of the abovesaid resolution, the petitioners have approached this court through the petition at hand invoking Article 226 of the Constitution of India read with Section 482 Cr.P.C. praying for the criminal case and the proceedings arising out of the FIR No.136/2016 of Police Station Barakhamba Road to be quashed. The second respondent has joined in the prayer by submitting the affidavit which was filed with the petition.

4. By order dated 21.04.2017, notices were issued. The State, in response, has filed status report with regard to the facts and circumstances as have been found brought out through the investigation carried out thus far into the above mentioned FIR.

5. The second respondent has also filed his affidavit sworn on 01.05.2017 stating no objection to the prayer made in the petition being granted.

6. When the matter was heard earlier in the morning, the second respondent was present in person with his daughter Ms. Sarita Bhateja. The learned counsel on both sides narrated the background history of the dispute between the parties to the effect that the property was originally purchased in auction by Shri Kewal Krishan Kuthiala, late father of the petitioners during his lifetime, he having died on 14.07.2006. During investigation, it has been brought out that right, title and interest of Late Shri Kewal Krishan Kuthiala in the property devolved on the first petitioner Deepak Kuthiala in terms of a Will that had been left behind by the said Late Shri Kewal Krishan Kuthiala.

7. It appears that the second respondent as the first informant (brother of Late Shri Kewal Krishan Kuthiala) of the FIR, was also claiming interest in the property and having found it (the property) to be in the hands of a third party, lodged the FIR, *inter alia*, stating that the offence of cheating had been committed on the basis of forged and fabricated documents by the petitioners. It is such allegations which were taken up by the police for investigation through the above mentioned FIR.

8. By his affidavits, particularly the fresh affidavit sworn today which has been filed during the course of the day, the second respondent explains that the allegations of forgery and fabrication of the title deeds was made by him on account of some misunderstanding

which, it is clear, he does not want to pursue further. The fact that the dispute has been amicably resolved through the MOU dated 03.04.2017, a copy whereof has been submitted by the affidavit sworn today by the second respondent, and that there is no case of any documents having been forged, has been confirmed by Ms. Sarita Bhateja, the daughter of the second respondent, she also accompanying him, by her own affidavit which has also been now submitted. It may also be added that in the said affidavit Ms. Sarita Bhateja has clarified that she is the only surviving person, who stands in line of succession *vis-à-vis* the second respondent. It was orally explained by her that her mother had earlier passed away.

9. The learned standing counsel for the State confirms that on the basis of investigation of the case carried out thus far no offence other than that of cheating is found made out, this particularly against the backdrop of the fact that the second respondent has now given up the allegations of forgery or fabrication of documents with the explanation that the same were leveled in the FIR on some misunderstanding.

10. The offence under Section 420 IPC is compoundable in terms of Section 320 CR.P.C. But then, the stage for such compounding would come in the ordinary course of criminal justice process after the investigation has been concluded and a report under Section 173 Cr.P.C. has been filed before the court of Metropolitan Magistrate. The case relates to FIR which was registered only on 20.08.2016. The investigating police agency would be taking its own time in carrying out the investigation procedure.

11. Since the parties have now resolved the dispute amicably, a case which would eventually result in compounding on the basis of such amicable resolution, should not be allowed to waste the public resources by insisting on the police to complete the process and then come up with its report so that the parties may compound.

12. Having regard to the principles governing the power of this court in terms of Section 482 Cr.P.C. as explained, *inter alia*, in *Gian Singh vs. State of Punjab*, 2012 (10) SCC 303, the ends of justice demand that the prayer in the present petition be granted.

13. Thus, the petition is allowed. The proceedings arising out of FIR No.136/2016, under Section 420/34 IPC of Police Station Barakhamba Road, New Delhi District, are hereby quashed.

R.K.GAUBA, J.

MAY 04, 2017

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