

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

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Reserved on: 22.08.2017

Delivered on: 14.09.2017

**+ CRL.A.1342/2015**

VINOD KAUSHIK

..... Appellant

versus

MADAN LAL ARORA & ORS

..... Respondents

**Advocates who appeared in this case:**

For the Appellant : Mr.A.K.Padhy.

For the Respondents Nos.1-3 : Mr.S.K.Sharma.

**CORAM:-**

**HON'BLE MR JUSTICE ASHUTOSH KUMAR**

**JUDGMENT**

**ASHUTOSH KUMAR, J**

1. The appellant has preferred the present appeal against the order dated 21.08.2015 passed by the Special Judge, P.C Act, CBI-03, Rohini Courts, New Delhi in an application filed by him under Section 340 of the Cr.P.C. alleging that deliberately wrong statement was made by the respondents in Crl.Rev.10/2015, whereby the application was rejected and the appellant was saddled with a cost of Rs.20,000/-, which was required to be deposited before the Trial Court within one week from the date of passing of the order failing which the Trial Court was directed to recover the same from the appellant as fine under the provisions of the Cr.P.C.

2. The respondents had filed a revision petition vide

Crl.Rev.10/2015 against the order dated 15.01.2013 passed by the learned Metropolitan Magistrate, Rohini Courts, Delhi in Complaint Case No.791/1/20/9/2010 whereby they were summoned for trial for offences under Sections 384 and 506(1) read with Section 34 of the IPC whereas another co-accused namely SI Sunil Kumar was summoned for trial for offence under Section 384 read with Section 107 IPC and Section 506(1) IPC.

3. In the complaint referred to above lodged by the appellant, it was alleged that the respondents committed trespass in his property and thereafter committed theft of the original property documents from property bearing No.WZ-472/343, Srinagar, Shakur Basti. It was also alleged by the appellant that FIR No.82/2008 (P.S.Saraswati Vihar) was registered on his complaint. During the course of investigation of the aforesaid FIR, the appellant was called by the IO of the case namely SI Sunil Kumar at Saraswati Vihar police station for submitting certain documents. There, it has been alleged, the appellant was forced to enter into a settlement with the respondents under the veiled threat that if he did not settle the dispute, he would be arrested in connection with FIR No.68/2008 in which he was made accused at the instance of the respondents. Out of fear, the appellant is said to have signed the compromise deed and his son was forced to give six postdated cheques to the respondents, who later encashed one of those cheques. The appellant alleged that he was forced to surrender his passport to the respondents as security.

4. On the aforesaid complaint, cognizance was taken against the respondent Nos.1 & 2 and SI Sunil Kumar and they were summoned

to face trial.

5. As against the aforesaid order of summons dated 15.01.2013 referred to above, the respondents preferred a revision petition vide CrI.Rev.10/2015 as stated earlier. The respondents contended before the Revisional Court that they were the lawful owners of the property in question namely WZ-472, Srinagar, Shakur Basti, New Delhi-110034 admeasuring 200 sq.yards, which they had purchased from one Smt.Kamlesh vide sale deed dated 23.12.2005. On 30.04.2007, the respondents received a notice from Bank of Baroda, Badli branch regarding attachment of the property in question. On enquiry, it was revealed to the respondents that the appellant had fraudulently mortgaged the above property with Bank of Baroda, Badli branch as a collateral security for the purposes of obtaining loan. When the loan was not repaid, proceedings were initiated under the SARFAESI Act. The respondent No.1, in order to save his property from being attached, had to pay a substantial amount towards repayment of the loan.

6. Aggrieved by the aforesaid act of the appellant, FIR No.68/2008 was registered on 15.01.2008. It was in this context that the appellant approached respondent No.1 on 27.04.2008 and acknowledged his liability to compensate him. A compromise deed was entered into between the parties and six postdated cheques were issued in favour of respondent No.1. One such cheque was encashed after the son of the appellant deposited the corresponding amount in his bank account.

7. It appears that SI Sunil Kumar who was investigating FIR No.68/2008 and who was made an accused in the present complaint

lodged by the appellant filed a revision petition before the Sessions Court against the order of summons and the Sessions Court vide order dated 09.06.2014 allowed the revision petition and set aside the order impugned qua him.

8. The learned Trial Court after taking into account the aforesaid facts, set aside the order of summons as against the respondents. While deciding the aforesaid revision petition, the learned Court below took note of the fact that on 04.08.2014, the MM had ordered for issuance of summons against the respondents for 17.12.2014. The respondents were served with the summon on 29.11.2014 for their appearance on 17.12.2014. On 17.12.2014, the appellant was directed by the Court to supply copy of the entire paper book to the respondents and the matter was adjourned for 15.05.2015 for pre charge evidence. The respondents received a copy of the paper book from the appellant on 05.01.2015. The copy which was served upon them did not contain the impugned order. Thus the file of the Court was inspected on 23.01.2015 and the contents of the order were noted down. The certified copy of the order was received by the respondents on 16.02.2015. Thus taking into account that the complete set of paper book was supplied to the respondents on 05.01.2015, the revision petition which was filed on 07.03.2015 was opined to be within time and not time barred.

9. The learned Trial Court was of the view that the compromise deed which was challenged by the appellant, was voluntarily entered into on 27.04.2008 but the complaint was lodged on 17.09.2010 i.e. after more than 2½ years of the occurrence. It was also not in dispute

that one of the cheques given by the son of the appellant in favour of the respondent No.1 was encashed in terms of the compromise deed dated 27.04.2008. Thus the Court was of the view that since no steps were taken by the appellant to stop the payment of the aforesaid cheque and that the circumstances do not reveal that the appellant was forced to enter into alleged compromise deed, set aside the order of summons against the respondents. The Trial Court categorically held that in fact the conduct of the appellant was deplorable in as much as he agreed to settle the dispute on 27.04.2008 for fear of being arrested in FIR No.68/2008 lodged by the respondents but once such fear was over, chose to unsettle the agreement arrived at.

10. No application under Section 340 of the Cr.P.C was filed by the appellant during the pendency of the Revision Petition No.10/2015.

11. It was only when the revision was dismissed that the application under Section 340 of the Cr.P.C was filed alleging that a wrong statement was made by the respondents regarding the revision petition having been filed within time.

12. The Trial Court, on such an application, applied its mind and came to the conclusion that there was no wrong statement made by the respondents with respect to their having received the summons on 29.11.2014. Since the entire document was supplied to the respondents by the appellant on 05.01.2015, the period of limitation began to run from the said date as that was the date of the knowledge to the respondents. The Trial Court was of the view that the application under Section 340 of the Cr.P.C has been filed with an oblique motive. Hence the application under Section 340 of the Cr.P.C was dismissed.

13. No good ground has been shown by the appellant for interference by this Court.

14. Assuming for the sake of argument that there was some mistake with respect to the date provided in the revision petition for having received the summons in order to overcome the objection of the period of limitation for filing revision, that would, by itself not warrant any Court action under Section 340 of the Cr.P.C. There has not been any tampering of record which was *Custodia Legis*.

15. The order impugned including the imposition of cost is justified.

16. The appeal is thus dismissed.

**ASHUTOSH KUMAR, J**

**SEPTEMBER 14, 2017**

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