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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 08.01.2018

Judgment delivered on: 12.01.2018

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W.P.(CRL) 955/2016

BABU RAM & ORS

..... Petitioners

Through: Mr Pankaj Kumar, Adv

versus

THE STATE & ANR

..... Respondents

Through: Mr Sanjay Lao, ASC with Insp Manoj
Kumar Ahuja
Mr Rajiv Kumar Mishra and
Ms Shruti Sharma, Advs for R-2

CORAM:

HON'BLE MS. JUSTICEINDERMEET KAUR

INDERMEET KAUR, J.

1 The petitioners seek a quashing of the present FIR. Submission is that this FIR which has been registered on 11.12.2015 is a counterblast to the dismissal of the suit pending inter-se the parties which suit had been dismissed by the Competent Court on 09.10.2015. Submission is that the present FIR No.1349/2015 registered under Sections 420/467/468/471/506 read with Section 34 of the IPC on 11.12.2015 is nothing but an abuse of the process of the Court as the complainant having failed to get the benefit of

any order from the Civil Court has filed this complaint (pursuant to which the present FIR has been registered) at a very belated stage. No case is made out. Learned counsel for the petitioners in support of his submission has placed reliance upon a judgment of the Apex Court in 2015 (2) ACR 2094 Savitri Pandey & Others Vs. State of U.P. and Others.

2 The complainant has been heard. Submission of the complainant is that the petitioner has played a fraud upon the complainant and the petitioner in connivance with the co-accused Ran Singh has generated fraudulent documents which is evident from the FSL report dated 18.10.2017 (copy of which has been placed on record). It is pointed out that the agreement to sell purportedly executed by Jaswant Singh Dilawari and Sudershan Kaur relied upon by the petitioner is a document which has been fudged upon and this is evident from the report of the FSL which has opined that the khasra numbers in the said document have been changed; this is in active connivance of the petitioners with the co-accused Ran Singh.

3 Learned ASC for the State points out that investigation almost having culminated to a large extent, this is a fit case where the FIR should not be quashed and since the investigation is now in progress and presuming that no

evidence is collected against the petitioners, the said petitioners would be discharged. However, a case of quashing of the FIR is not made out.

4 Record shows that the dispute is centred around a 1000 square yard of plot of land located at situated in Village Karawal Nagar, Shahdara, Delhi (hereinafter referred to as the suit property) which had allegedly been sold in the year 1982 to Jaswant Singh Dilawari and Sudershan Kaur. A General Power of Attorney dated 16.06.1983 was executed by Jaswant Singh Dilawari and Sudershan Kaur transferring this property to Rajbir Singh and Naval Singh (Petitioners No. 2 & 4). Vacant possession of the plot was also handed over to the aforementioned petitioners. On 21.05.1999, petitioners No.2 & 4 vide a registered sale deed transferred this property to petitioner No. 3 who had been in exclusive possession of this property since 1999 to December, 2015 when he was forcibly and illegally dispossessed from the suit property by the complainant Bheem Sain.

5 The contention of the complainant is that one Ran Singh in the year 2005 had sold this property to the complainant. Thereafter with the connivance of the present petitioners and Ran Singh, certain interpolations/changes were made in the khasra number of the property i.e. in the agreement to sell executed by Jaswant Singh Dilawari and Sudershan

Kaur dated 16.06.1983. Additional submission being that these documents which contained the questioned interpolations and specimen signatures of Ran Singh and his son were sent to the FSL who on examination found that these interpolations were done by the same person; meaning thereby that Ran Singh and his son had committed this fraud. Submission being reiterated that this was in connivance with the present petitioners.

6 Record further shows that in the year 2005, a suit was filed by Ran Singh against the present petitioners as also the complainant. The four petitioners before this Court had been arrayed as defendants No. 1 to 4. The complainant was arrayed as defendant No.5. This was a suit for permanent injunction. The contention of Ran Singh was that he is the owner of the disputed land and is in possession of the same. He had apprehension that the defendants would grab his land and dis-locate him. However the suit was dismissed on a preliminary issue. The Court was of the view that since the subject matter of the land required an adjudication on title, the suit was dismissed on 09.10.2015 giving opportunity to the petitioner therein (Ran Singh) to file a comprehensive suit for declaration of title qua the suit property. This suit was dismissed on 09.10.2015. Present FIR was registered on 11.12.2015 i.e. two months after the date of dismissal of the suit.

7 Learned counsel for the petitioners points out that this FIR has been got registered by the complainant as a counterblast to the dismissal of the suit. The complainant in his written statement in the Trial Court has never agitated the documents which are now the subject matter of the present complaint. The petitioners are the owners of this property on the strength of an agreement to sell executed by Jaswant Singh Dilawari and Sudershan Kaur in June, 1983. This document was never challenged at any stage. Present petitioners have no role and no connivance with Ran Singh.

8 This Court notes that the present FIR has been registered against the five persons of whom only four persons are before this Court. The 5th person Ran Singh/his son is prima facie culpable in view of the report of the FSL dated 18.10.2017 which had examined the specimen signatures of Ran Singh and the questioned documents which were the interpolations in the agreement to sell executed by Jaswant Singh Dilawari and Sudershan Kaur which documents are the strength of present petitioners. The fact that these documents have been interpolated upon is thus no longer an issue. Whether the petitioners had connived with Ran Singh to interpolate these documents or whether this was the act of Ran Singh alone would require trial and this Court is of the view that at this stage it may not be possible to quash the FIR.

9 The statement of learned ASC for the State is taken on record which is to the effect that if no evidence surfaced qua the present petitioners in the course of investigation is brought out the conspiracy of the petitioners along with Ran Singh is not made out, a cancellation report will be filed against the petitioners.

10 The Courts have time and again held that powers of the High Court under Section 482 of the Cr.PC although wide have to be exercised with great caution and should be exercised sparingly and in exceptional circumstances. Whether an offence has been disclosed or not would depend upon the facts of each particular case. At the same time, the allegations made in the FIR have to be taken on their face value.

11 At this stage, it cannot be said that the FIR registered against the petitioners has only a civil connotation. The suit No.264/05/2012 dismissed in October, 2015 was on the preliminary issue i.e. on its maintainability; dispute was never decided on merits. Moreover, even as per the complainant, this interpolation in the agreement to sell dated 16.06.1983 has been done later on. The fact that the petitioners were in possession of this disputed land up to the year 2015 and thereafter they have been dispossessed is also a fact which is not in dispute. This is the case of the petitioners themselves.

12 In this background, at this stage, this Court is not inclined to grant the prayer made in the petition. Petition is dismissed.

INDERMEET KAUR, J

JANUARY 12, 2018

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