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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 13th February, 2018

+ CM(M) 810/2010 and CM APPL.10961/2018 (stay)

SATISH CHAND

..... Petitioner

Through: Mr. Rohit Agarwal, Advocate
with petitioner in person.

versus

RAKESH KUMAR & ORS.

..... Respondents

Through: Mr. Febin M. Varghese,
Advocate for R-15.
Mr. Jasbir Bidhuri, Adv. for
R-17 & R-18.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The petition at hand assails the judgment dated 03.05.2010 of the court of Additional District Judge in appeal (RCA No.86/2009/07) that was instituted by the first respondent on 02.07.2007 whereby the judgment and decree dated 31.08.2004 passed by Civil Judge in civil suit (198/1985) of the predecessor-in-interest of the petitioner herein was challenged. The civil suit (No.198/1985) had been instituted by Smt. Shanti Devi, wife of Late Shri Ram Nath Gupta seeking the relief of permanent injunction. It is stated that, on his application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (CPC), the first respondent Rakesh Kumar was impleaded as fourth defendant. The

property bearing Nos.807 & 808, Katra Hiddu, Farash Khana, Delhi was the subject-matter of the said suit.

2. In the course of the proceedings in the afore-said suit whereby relief of permanent injunction had been sought against Delhi Telephones, the petitioner herein is stated to have then claimed that he was a tenant in the portion of the property in which the said first respondent (fourth defendant in the suit) was claiming certain interest. Against such background, the plaintiff of the case moved an application under Section 340 of the Code of Criminal Procedure, 1973 (Cr.P.C.) on 30.04.1987, *inter alia*, alleging that the first respondent (fourth defendant in the suit) had used certain false and fabricated documents in the nature of ration card, for claiming ownership of property bearing No.807 and thereby obtaining installation of a telephone connection.

3. The suit was decided by judgment dated 31.08.2004 of the Civil Judge also disposing of the said application under Section 340 Cr.P.C. While the suit was decreed to the effect that the defendants (which included General Manager Delhi Telephones) were restrained from allotting or installing a telephone connection in the suit property in favour of the said first respondent (fourth defendant in the suit), the application under Section 340 Cr.P.C. was also allowed on the basis of finding that the documents in question were forged.

4. The Civil Judge, in the wake of his aforesaid decision, lodged a complaint in terms of Section 340 Cr.P.C. on 31.08.2004 and presented it before the Chief Metropolitan Magistrate (CMM), Delhi.

The record would show that on the basis of further directions passed by the Chief Metropolitan Magistrate, first information report (FIR) No.381/2004 came to be registered by police station S. Mandi and taken up for investigation into the offences punishable under Sections 420, 468 and 471 of Indian Penal Code, 1860 (IPC). It may further be noted that investigation was carried out into the said FIR and upon conclusion of such investigation the report under Section 173 Cr.P.C. dated 25.05.2007 was submitted before the CMM making a request for the said first respondent Rakesh Kumar to be summoned and tried for offences under Sections 420, 468 and 471 IPC. The documents on record further reveal that on the basis of said report under Section 173 Cr.P.C. (charge sheet), the CMM, by his order dated 06.08.2008, found charge made out for all the said offences which were accordingly framed and the said Rakesh Kumar put on trial, the case having been adjourned for prosecution evidence to be adduced. A perusal of the charges framed on 06.08.2008, a copy whereof has been submitted with the paper book reveals that the gravamen of the charge of the offence of cheating under Section 420 IPC was that the said Rakesh Kumar had produced, around January, 1980, photocopy of ration card, submitting it to the officials of Mahanagar Telephone Nigam Limited (MTNL) after tampering with the same in order to obtain a telephone connection in his name, this also being the sum and substance of the accusations leading to the charges being framed under Sections 468/471 IPC.

5. The first respondent preferred appeal (RCA No.86/2009/07) on 02.07.2007, almost three years after the judgment and decree dated 31.08.2004 had been passed. It appears he made submissions to the effect before the first appellate court (the court of Additional District Judge) that he was not pressing for any relief qua the operative part of the judgment and decree on the civil suit which had been instituted by Shanti Devi, restricting his prayer for relief under Section 340 Cr.P.C. In this view of the matter, the appeal in question would be an appeal under Section 341 Cr.P.C.

6. The said appeal restricted to the prayer *qua* the order under Section 340 Cr.P.C. was allowed by the Additional District Judge by judgment dated 03.05.2010 setting aside the order of the Civil Judge in the judgment and decree dated 31.08.2004 and quashing the criminal proceedings arising therefrom. Noticeably, the appeal had been resisted by the petitioner on the ground of delay. The first appellate Court accepted that such appeal could have been filed only within the period of thirty days after the judgment and decree of the civil Judge. Yet, he observed that such a layperson as the first respondent could not be presumed to be aware of the period of limitation which was a question of law he having acted *bona fide* “*on wrong legal advice*”. Noticeably, there was no formal application made before the first appellate court seeking to explain or praying for condonation of delay.

7. In the considered view of this court, the impugned judgment of the first appellate court cannot be upheld for several reasons. In

absence of any prayer in the formal application explaining the delay, it was not proper on the part of the first appellate court to proceed on assumptions. The presumption that the first respondent had acted *bona fide* on wrong legal advice is unfounded. The delay, in these circumstances, had not been properly explained and, thus, could not have been condoned.

8. Further, this is not a matter where the criminal court had proceeded with the case only on the basis of a court complaint under Section 340 Cr.P.C. Having found that cognizable offences had been committed, it resorted to the procedure under Section 154 Cr.P.C. by calling upon the police to register an FIR and investigate.

9. The case before the criminal court, therefore, was not a case arising out of a court complaint under Section 340 Cr.P.C. It instead had taken the shape of a police case in which a report under Section 173 Cr.P.C. eventually came to be submitted. Since the Court of Magistrate took cognizance on the police report, having found sufficient grounds to proceed against the first respondent, by a later order it even having found charges to be made out, it was beyond the scope of the appeal under Section 341 Cr.P.C. for the order to be disturbed. A case of such nature could not have been quashed by the first appellate court in the manner done.

10. Thus, the petition is allowed. The impugned order dated 03.05.2010 of the first appellate court passed in RCA No.86/2009/2007 is hereby set aside.

11. It is clarified that the proceedings arising out of report under Section 173 Cr.P.C. (charge sheet) submitted in the court of Chief Metropolitan Magistrate on which charges were framed on 06.08.2008 would continue and be liable to be taken to the logical end in accordance with law.

12. The petition and the applications filed therewith stand disposed of in above terms.

R.K.GAUBA, J

FEBRUARY 13, 2018

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