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

Reserved on: 9th August, 2018
Pronounced on: 24th August, 2018

+ CRL.M.C. 1171/2015 and Crl.M.A.4299/2015

PRADEEP KUMAR Petitioner

Through: Mr. Rajat Aneja, Advocate with
Ms. Chandrika Gupta, &
Ms. Nisha Sharma, Advocates

versus

STATE & ORS Respondents

Through: Mr. Ravi Nayak, APP for the State
Mr. J.P. Sengh, Senior Advocate with
Mr. C. Prakash, Mr. Manmohan
Singh, Ms. Manisha Mehta,
Ms. Mrigna Shekhar, &
Mr. Akash Mishra, Advocates for R-2.
Mr. N.K. Agrawal, Advocate with
Mr. Y.K. Solanki, Advocate for R-3.
Mr. Kanwar Kochhar, Advocate for
R-4.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

J U D G M E N T

1. The petitioner had instituted a criminal complaint (CC No.173/1) on 10.03.2006 impleading second to sixth respondents as prospective accused alleging they having committed offences punishable under Sections 423/463/468/471/120-B/34 of Indian Penal Code, 1860 (IPC), making a prayer to the Metropolitan Magistrate

(MM) for them to be summoned, tried and punished, along with an application under Section 156(3) of the Code of Criminal Procedure, 1973 (Cr.P.C.) seeking direction to the police for investigation. The prayer for investigation by the police was declined by order dated 24.03.2006 and instead inquiry embarked upon under Section 200 Cr.P.C. The petitioner examined eight witnesses during the said preliminary inquiry. The said evidence was considered by the MM, by order dated 10.03.2014, holding that there were no sufficient grounds for proceeding against the said respondents, the complaint consequently having been dismissed under Section 203 Cr.P.C.

2. The petitioner approached the court of Sessions invoking its revisional jurisdiction by criminal revision petition No.14/2014. By the said revision petition while insisting that a case had been properly made out for the respondents to be summoned, the petitioner also prayed for an opportunity to lead further evidence, referring in this context to Section 391 Cr.P.C. The said prayer was rejected and the revisional court found no merit in the submissions upholding the order of the Magistrate. The revision petition was dismissed by order dated 09.01.2015.

3. The petition at hand was filed invoking inherent power of this court under Section 482 Cr.P.C. to bring a challenge to the view taken by the two courts below.

4. The petition at hand has been resisted by the private party respondents, *inter alia*, on the grounds that another revisional challenge or scrutiny under the cover of jurisdiction of this court under

Section 482 Cr.P.C. should not be permitted placing reliance in this context on the rulings of the Supreme Court reported as *Krishnan & Ors. vs. Krishnaveni & Ors.*, (1997) 4 SCC 241; *Rajinder Prasad vs. Bashir & Ors.*, (2001) 8 SCC 522; and *Kailash Verma vs. Punjab State Civil Supplies Corporation & Ors.*, (2005) 2 SCC 57; and also decision to such effect of this court in *Vinish Gupta vs. State (Govt. of NCT of Delhi)*, CrI.M.C. 4487/2016, decided on 31.07.2018.

5. While the objection to the permissibility of another layer of scrutiny against the backdrop of fact that the revisional court has upheld the order of the Metropolitan Magistrate is not without substance, this court has nonetheless examined the contentions of the petitioner on merits of the case to find if there has been any miscarriage of justice by dismissal of the criminal complaint under Section 203 Cr.P.C.

6. The background facts of the case have been succinctly noted by the Metropolitan Magistrate in the order dated 10.03.2014. The dispute revolves around agricultural lands, admeasuring 9 bighas and 12 biswas in village Bakoli, Delhi, statedly forming part of khasra No.51/8 (4-16) and 51/9 (4-16), the consolidation proceedings after 1997 having statedly resulted in lands forming part of khasra Nos.45/16 (0-15), 46/20 (1-17), 46/13 (0-08), 48/10 (1-00), 14/18(4-08) and 13 min (1-00) being allotted in lieu thereof. It has been the petitioner's case that the said land was purchased by his father Bhanwar Singh, for consideration, from erstwhile owner Mahabir Singh by Sale Deed executed on 06.11.1997. It is his case that

Bhanwar Singh died on 09.09.1998, whereupon the right to the said land had devolved upon his three sons including the petitioner and his two brothers Pradeep Kumar and Sandeep Kumar. He also refers to the mutation having accordingly been made on 28.01.1999.

7. It is alleged by the petitioner that on 01.02.2003, he had learnt about the claim of the second respondent as to the title in the land vesting in him on the basis of Sale Deed executed on 22.07.1998 by the second respondent on the strength of a General Power of Attorney (GPA) dated 22.07.1998 allegedly executed by late Shri Bhanwar Singh, (*i.e.*, father of the petitioner). It is his case that the document shown as GPA dated 22.07.1998 was a forged and fabricated document purportedly bearing signatures of fourth and fifth respondents as attesting witnesses. It is his allegation that the attestation by Notary Public on the said document was fraudulent since the Notary Public (K.M. Bhatnagar) was not even registered as such on the date the said document was statedly executed. The Sale Deed dated 22.07.1998 is said to have indicated the payment of consideration in the sum of Rupees one lac by cheque drawn on State Bank of Mysore, Delhi and to No Objection Certificate (NOC) issued by the *Tehsildar*. It is the petitioner's case that no credit against the said cheque was received in the bank account of late Shri Bhanwar Singh and that the application for issuance of NOC had been submitted under his forged signatures wherein second to sixth respondents had acted fraudulently and dishonestly. It is also his grievance that mutation of the said land in favour of the second

respondent was allowed on 28.04.1999 without any notice to him. Reference is also made to an agreement to sell entered upon by the fourth respondent, allegedly at the instance of the second respondent, with the petitioner on 24.02.1999, the said transaction having fallen through, the earnest money received by the petitioner (and his brothers) having been forfeited because the fourth respondent had failed to perform his part of the contract.

8. As mentioned earlier, during the pre-summoning inquiry under Sections 200 and 202 Cr.P.C. the petitioner examined eight witnesses. Copies of the testimony of the said witnesses as recorded during the inquiry have been submitted with the petition. The said witnesses included Head Constable Naresh Kumar (CW1) of Police Station Alipur, who proved complaints dated 10.02.2004, 25.09.2005 and 03.01.2006 that had been submitted by the petitioner prior to approaching the court of Metropolitan Magistrate; O.P. Sayal (CW2), *Bailiff* in the office of Tehsildar, Narela who produced the office record pertaining to Sale Deed dated 22.07.1998 and GPA dated 22.07.1998; S.C. Munjal (CW3), the incharge of the record room of the District North-West, who proved certain records in respect of consolidation and mutation proceedings; S.K. Vashishtha (CW4), *Kanungo* from the office of Sub-Divisional Magistrate, Kanjhawala, who made statement about the mutation proceedings, *inter alia*, confirming no notice having been sent to late Shri Bhanwar Singh or his sons; Rakesh Kumar (CW5), an official from Kendriya Vidyalaya, Pitam Pura, where late Shri Bhanwar Singh was employed as a

teacher, the objective being to prove his full particulars, nature of employment and attendance (on 22.07.1998); Satyender Prakash (CW6), an official from department of Law and Justice of Govt. of NCT of Delhi to prove that Mr. K.M. Bhatnagar was not registered as a Notary Public on 22.07.1998; S.K. Vashisht (CW7) *Kanungo* from the office of Deputy Commissioner, North-West, Kanjhawala again referring to the mutation record, mentioned earlier; and Kanwar Pal Singh (CW8), an official from Delhi State Co-operative Bank, Bawana Delhi to prove that no credit against cheque dated 22.07.1998 had been received in the bank account of late Shri Bhanwar Singh so long as it remained operational till 03.03.1999.

9. Crucially, neither the petitioner (as the complainant) nor any of his brothers nor, for that matter, any other witness was called in or examined to prove that the GPA dated 22.07.1998 did not bear the signatures of late Shri Bhanwar Singh, or, to put it simply, that the signatures appearing on the said document had been forged or fabricated.

10. The Metropolitan Magistrate and the revisional court have observed in the impugned orders that the allegations to the effect that the GPA dated 22.07.1998 was forged goes to the root of the matter and no evidence in that regard having been adduced, the complaint could not be taken up further, no case for proceeding against any of the respondents having been brought out.

11. In the considered opinion of this court, on the available material, the view taken by the two courts below is the only correct

view that could possibly have been taken. The evidence respecting attendance of late Shri Bhanwar Singh at his work place (school) on 22.07.1998 may give rise to some suspicion as to whether he could possibly have been present elsewhere for executing the GPA. But then, there is nothing on record to show that GPA was executed during the hours when he was supposed to be on duty at school. The non-payment of credit against the cheque on the strength of which the payment of consideration leading to the Sale Deed is sought to be indicated, at the most, gives rise to a cause of action for civil suit to be instituted. That, in itself, cannot lead to inference that the signatures on GPA, a different document, had been fabricated. It may be that while entertaining the request of second respondent for mutation, the concerned revenue authorities did not issue notice to late Shri Bhanwar Singh or his sons. But, this is a lapse which again cannot be a ground for criminal action against the private party respondents, particularly as there is no allegation of revenue authorities also having acted in concert with them.

12. It was requisite against the above backdrop that the petitioner adduced some evidence to support his case that the signatures on GPA dated 22.07.1998 had not been made by his father late Shri Bhanwar Singh or that the same had been forged or fabricated by someone. There is not a shred of evidence adduced to such effect. In absence of such evidence, the criminal complaint could not result in any order other than the one of dismissal under Section 203 Cr.P.C.

13. The petitioner had made a prayer before the revisional court for an opportunity to lead additional evidence referring in this context to the powers and jurisdiction under Section 391 Cr.P.C. The revisional court declined to give any opportunity for further evidence to be adduced observing that the jurisdiction to do so under Section 391 Cr.P.C. vested only with the appellate court. This view, strictly speaking, may not be correct. The circumspection within which the revisional power is to be exercised is delineated by the provision contained in Section 397 Cr.P.C. which reads as under:-

“397. Calling for records to exercise powers of revision.—

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself; as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record.

Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions

Judge, no further application by the same person shall be entertained by the other of them.”

14. Noticeably, the revisional jurisdiction vests both in this court and in the court of Sessions. But, as is clarified by sub-Section (3) of Section 397, quoted above, recourse to such revisional jurisdiction can be exercised before either of them and not both of them simultaneously or one after the other.

15. The provision contained in sub-Section (1) of Section 401 has a bearing on the subject. It, to the extent necessary, reads thus:-

“401. High Court's powers of revision.—

(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307, and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.”

16. Noticeably, the afore-mentioned clause of Section 401 Cr.P.C. permits the High Court to exercise, in its discretion, even while in the revisional jurisdiction, the power conferred on a court of appeal, *inter alia*, by Section 391 Cr.P.C. Section 399 (1) Cr.P.C. extends such power of the High Court in revisional jurisdiction to the court of Sessions by providing as under:-

“399. Sessions Judge's powers of revision.—

(1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise

all or any of the powers which may be exercised by the High Court under sub-section (1) of section 401.”

17. Section 391 Cr.P.C. falls in Chapter XXIX and ordinarily relates to appeals. It reads thus:-

391. Appellate Court may take further evidence or direct it to be taken.—

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.”

18. Thus, there should not have been any doubt as to the power and jurisdiction of the revisional court to consider if the matter required further evidence to be called for or permitted. But the crucial question remains as to whether the petitioner had made out a case for he to be allowed to adduce further or additional evidence at the stage of revisional court's scrutiny. Such opportunity under Section 391 Cr.P.C., in the considered view of this court, cannot be available just for the asking or, not the least, to fill in lacuna or deficiency. The party asking for such opportunity for further evidence to be adduced

must not only plead but also show to the satisfaction of the concerned court, particularly in a situation like the one at hand as to why it could not or did not adduce such evidence when opportunity was available earlier.

19. In the present case, the petitioner made no endeavour to even offer any explanation as to why no evidence was presented earlier during inquiry under Section 200/202 Cr.P.C. before the Metropolitan Magistrate in support of the allegations made that the signatures of the late Shri Bhanwar Singh on the GPA dated 22.07.1998 were forged or fabricated. Without such explanation being given, the prayer for opportunity for additional evidence under Section 391 Cr.P.C. did not deserve to be granted. In the foregoing facts and circumstances, no case is made out for re-opening of the inquiry under Section 200/202 Cr.P.C. by grant of opportunity for additional evidence to be adduced under Section 391 Cr.P.C.

20. The overall view taken on the complaint by the court of Metropolitan Magistrate and the revisional forum cannot be faulted. There is, thus, no case made out for any interference by this court under Section 482 Cr.P.C.

21. The petition is dismissed.

22. The pending application also stands disposed of.

(R.K. GAUBA)
JUDGE

AUGUST 24, 2018/vk