

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

% **Judgment delivered on: 19th March, 2018**

+ **CRL.M.C.3521/2014 and CRL.M.A. 12167/2014**

Dharmender Choudhary

...Petitioner

Through: Mr. K.K. Manan, Sr. Advocate
with Mr. Ankush Narang, Ms.
Shivani Kant & Mr. Bhavya
Chauhan, Advocates.

versus

Govt. of NCT of Delhi.
Jasmine Ahuja.
Alok Ahuja.

...Respondent No.1
...Respondent No.2
...Respondent No.3

Through: Mr. Izhar Ahmad, APP for State
with SI Deepak, PS Lajpat
Nagar. Mr. Jayant K. Sud,
Senior Advocate with Ms.
Vaishali Soni & Mr. Honey
Khanna, Advocates.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. The petitioner Dharmender Choudhary is invoking the jurisdiction under Section 482 Cr.P.C. read with Article 227 of the Constitution of India, 1950 against the impugned order dated 23.05.2014 passed by the

learned ASJ in Criminal Appeal No. 20/2011 title as *Dharmender Choudhary v. State & Ors.* wherein the learned ASJ has dismissed the appeal of the petitioner.

2. The brief facts stated are that an FIR No.700/97 under Sections 420/448/341/120-B IPC was registered on 01.07.1997 on the instance of Bhupender Choudhary and Dharmender Choudhary sons of Mr. M.S. Choudhary at police Station Lajpat Nagar, New Delhi alleging therein that on 14.05.1997 Mr. M.P.G. Singh had sold the property bearing No.C-111 East of Kailash, New Delhi to him i.e. Mr. Bhupender Choudhary and Dharmender Choudhary . As per the sale deed a part of aforesaid property was delivered to them on same day but the possession of the remaining portion could not be taken as it was in the possession of Alok Ahuja (Respondent No.3) who is the husband of the niece of M.P.G. Singh. On the same date i.e. 14.05.1997 petitioner's family friend Ashwani Chugh shifted in the aforesaid portion and kept his personal belonging in said bedroom. When he returned in the evening after taking meals he was restrained to enter the premises by the security guard, Mrs. Jasmine Ahuja and Mr. Alok Ahuja. Thereafter, the petitioner was informed by Ashwani Chugh that they did not allow him to enter the premises in question. Mr. Ashwani Chugh's statement was recorded on 26.4.1999 under Section 161 Cr.P.C. and he stated that his goods were removed from the said bedroom.
3. During investigation, it was found that the property in question was on lease from DDA, in favour of Mrs. S.P. Singh, w/o Mr. M.P.G. Singh and the same was mutated in his name on 12.02.93. Thereafter, Mr. M.P.G. Singh entered into a collaboration agreement with M/s. Bawa

Developers, in respect of plot No.C-111, East of Kailash, New Delhi. After that the building was constructed by the builder. Mr. M.P.G Singh became the owner of the entire ground floor/entire basement with 50% undivided share in the land. He also became the owner of the entire basement, consisting of a big hall. The remaining portion i.e. first floor and second floor was in share of the builder. One Sh. Rajiv Garg, Advocate was appointed by the learned Additional District Judge as a local commissioner who inspected the spot on 27.05.1997 and found Mrs. Jasmine Ahuja, Mr. Alok Ahuja, i.e. Respondent No.2, 3 and M.P.G. Singh in exclusive possession of the property. The signature of M.P.G. Singh was obtained and was sent to CFSL. On investigation both Jasmine and Alok Ahuja denied any kind of knowledge regarding sale and transaction of any money between the petitioner/complainant i.e. Dharmender Choudhary and M.P.G. Singh. No recovery could be affected from the possession of the accused as Jasmine and Alok Ahuja were not arrested. On 04.05.1999 M.P.G. Singh was arrested and in his statement to police he deposed that he does not know about goods of Ashwani Chugh only his neice Jasmine Ahuja and her husband knew about the goods of Ashwani Chugh. Jasmine and Alok Ahuja got anticipatory bail in this case. Though Ashwani Chugh produced a key to the police but it did not match with the lock of the doors of the premises, which were old one. In the absence of direct evidence against Alok Ahuja and Jasmine Ahuja their names were placed in column No.2.

4. Consequently, on 30.10.1999 the charge sheet was filed against accused M.P.G. Singh under Sections 420/447/341/120-B IPC and

respondents No.2 and 3 were arrayed in column No.2.

5. On 13.09.2000 the learned Metropolitan Magistrate took cognizance of offence against accused M.P.G. Singh.
6. Thereafter, on 24.12.2001 the learned Metropolitan Magistrate issued summons against the respondent No. 2 and 3 under Section 319 Cr.P.C.
7. Against the summoning order dated 24.12.2001 the respondents filed a revision petition No.27/02 before the Additional Sessions Judge, New Delhi, which got dismissed on 07.09.2002.
8. On 23.10.2002, the learned Metropolitan Magistrate framed charges against the accused persons Jasmine Ahuja i.e. Respondent No.2 and Alok Ahuja i.e. Respondent No.3 for offences under Sections 420/448/341/120-B IPC in their absence.
9. Against the order dated 23.10.2002, the accused persons preferred a revision and vide order dated 04.12.2003, the charge was set aside with the direction to the learned Trial Court to give proper hearing to the accused persons and to comply with the provision of sub section (2) of Section 240 Cr.P.C.
10. On 01.06.2004 the learned Trial Court framed the charges under Sections 448/34 IPC against Jasmine Ahuja and Alok Ahuja to which they pleaded not guilty and claimed trial. Accused M.P.G. Singh expired during pendency of trial and the proceedings against him stood abated.
11. The accused persons preferred a revision against the order of framing of charge. The learned Additional Sessions Judge vide order dated 13.07.2005 dismissed their revision on the ground that the order of framing of charge is only a prima facie stage and that there is sufficient

material to have framed charge against the accused persons.

12. Thereafter, the matter was fixed for the prosecution evidence for 25.10.2005 and on 28.02.2007 the learned Metropolitan Magistrate acquitted the accused persons after closing the evidence of the prosecution on the ground that the case pertained to 1997 and the IO was unable to trace out the public witnesses and passed the acquittal order in favour of the respondent No.2 and 3.
13. The petitioner challenged the impugned order dated 28.02.2007 passed by the learned Metropolitan Magistrate before the Hon'ble High Court of Delhi and the same was allowed on 22.04.2009 with directions to the learned Metropolitan Magistrate to allow the petitioner to examine only two witnesses namely M.S. Choudhary and Ashwani Chugh. The Criminal Revision Petition No.588/07 of the petitioner was remanded back and disposed off. The parties to the petition were directed to appear before the learned Metropolitan Magistrate on 21.07.2007.
14. Subsequently, on 20.10.2009 both the accused persons i.e. Mr. Alok Ahuja and Mrs. Jasmine Ahuja were acquitted by the learned Metropolitan Magistrate, New Delhi and the application under Section 311 Cr.P.C was dismissed since the Hon'ble High Court had directed the examination of only two witnesses namely M.S. Choudhary and Sh. Ashwani Chug.
15. Thereafter, the petitioner challenged the impugned order dated 20.10.2009 passed by the learned Metropolitan Magistrate before the learned Additional Sessions Judge, Saket Courts, New Delhi.
16. The learned Additional Sessions Judge on 23.05.2014 dismissed the appeal of the petitioner stating therein that the testimonies of the two

prosecution witnesses are full of contradictions as pointed out by learned Trial Court and benefit of doubt has rightly been given to the accused persons.

17. Aggrieved from the above said order dated 23.05.2014, the petitioner has preferred the present petition.
18. The learned senior counsel appearing on behalf of the petitioner has submitted that the Court while dealing with the trial have not gone into the intricate question of law under Section 311 Cr.P.C. and dismissed the application without cogent reason. Therefore, the impugned order is bad in law and the present petition be allowed and remanded back to the concerned court with the direction to examine all the material witnesses for re-trial.
19. Per Contra, the learned senior counsel appearing on behalf of the respondents has submitted that the respondents herein were not arrayed as original accused by the Police at the time of filing the charge sheet. The charge sheet filed was under Sections 420/448/341/120-B IPC. The learned senior counsel has further submitted that originally there was only one suspect i.e. M.P.G. Singh and other accused persons were named in column No.2. Later on the Trial Court issued summons and initially Mr. M.P.G. Singh was sent for trial and was summoned on 24th December, 2001. Later Mr. M.P.G. Singh died.
20. Mr. M.P.G. Singh had allegedly sold the property to the complainant and the petitioner has also filed civil suit *qua* the respondents for specific performance and the same was dismissed. The respondent has also filed civil suit *qua* the complainants/petitioners and the same has

been decreed in favour of the respondent and against the petitioners. The learned senior counsel has submitted that since the respondent's suit had been decreed and the petitioner's suit had been dismissed, the respondent is the lawful owner and in possession of the suit property. The initial complaint was filed on 9th June, 1997 at Police Station Lajpat Nagar.

21. The trial went on as per law and on 20th October, 2009 again the learned Metropolitan Magistrate acquitted the accused persons under Section 448/34 IPC. The state has not preferred any appeal *qua* the said acquittal order dated 20th October, 2009.
22. The learned senior counsel has further submitted that against the said acquittal order the petitioner filed revision before the Session Court. The Session Court heard the matter for 4 years and on 23rd May, 2014 appeal was again dismissed. Against the said order the present revision has been filed and it is the misuse of the process of the Law which should not be allowed as on date the respondents are in possession of the property in question and all the rights whatsoever if it may be on behalf of the petitioner, they had been countered and nothing survives in the merit and the same requires to be dismissed.
23. The learned senior counsel has submitted that while dealing with the present petition, it is not the petition on facts because the same has already been looked into and there is no inconsistency in law.
24. On the other hand, the learned Additional Public Prosecutor has submitted that the prosecution has proved its case against the respondents No.2 and 3 for the offence punishable under Sections

448/34 IPC, however, they have been wrongly acquitted by the learned Metropolitan Magistrate.

25. He has further submitted that the respondents no.2 and 3 are not entitled to benefit of doubt given by the Trial Court because PW1 has fully supported his case and the respondents cannot take advantage of faulty investigation. In support of his arguments the learned Additional Public Prosecutor has relied upon the following judgments:-

(i) ***Grasim Industries Limited and another v. Aggarwal Steel, VIII (2009) SLT 15.***

(ii) ***Ashok Kumar v. State, 2014 (3) JCC 1869.***

26. I have given my thoughtful consideration to the submissions made by learned senior counsels for both the parties and have also perused the material on record.

27. The available documents on record indicates that a complaint No.403.T dated 09.06.1997 by Dharmender Choudhary and Bhupender Choudhary was made to DCP, South District Hauz Khas, New Delhi which is reproduced hereunder: -

*"The D.C.P. Sahib
South District
Hauz Khas,
New Delhi*

*Subject: Trespass into property bearing C-111
ground floor, East of Kailash, New Delhi.*

*Sir,
This is to further to our earlier complaint dated*

27.05.1997 and 30.05.1997 and personal visit to SHO/Addl. SHO on 1.06.97 and 3.06.97 against the M.P.G. Singh and Mrs. and Mr. Alok Ahuja. By a registered sale deed dt. 14.05.97 duly registered with sub-registrar V New Delhi Sh. M.P.G. Singh sold the entire ground floor and half terrace, one servant quarter on top terrace and car parking in the drive way alongwith 30% undivided ownership right in the land of property bearing No. C-111, East of Kailash, New Delhi.

As per the sale deed vacant physical possession of one-bedroom drawing/dinning and servant quarter and half terrace was delivered to the under-signed on 14.5.97, who are the purchaser under the sale deed. Rest of the portion sold could not be taken possession by the undersigned as it was in the possession of Shri.Alok Ahuja, who is stated to be husband of the niece of the seller Shri. M.P.G. Singh had sold the undersigned that after the death of his wife, he had allowed his niece and her husband to live with him. But they had started ill-treating him and that is why he wanted to sell the property and give the possession of the bed room drawing, dining and bath room, half terrace and servant quarter to the undersigned, which were in his possession leaving the undersigned to take possession of the rest from Shri and Smt.Alok Ahuja by negotiation or through the court, law.

The same day 14.5.97, our family friend Ashwani Chug shifted to the above said portion and put his personal belongings in the bedroom on our instructions.

On 14.5.97 when Ashwani Chug returned in the evening after having his meals, he was not allowed to enter by the security guards and Mrs. And Mr Alok Ahuja (Son in law of M.P.G. Singh) Next morning 15.5.97 when the undersigned were

informed by the Ashwani Chug, we alongwith Shri. Chug went to C-111, East of Kailash, New Delhi. The security guard did not allow us to enter. Then they called Mrs. And Mr. Alok Ahuja who also did not allow us to enter and asked for the documents, proof of buying the property i.e. sale deed etc.

Since the documents were submitted in the sub registrar office after hectic efforts for many days, we were able to get the original registered sale deed, from the registrar office but despite best efforts, Alok Ahuja knowingly did not meet us to see the documents.

Therefore, finding no other alternative we lodged compliant in Police Station, Lajpat Nagar, on 27.5.97, 30.5.97 and met personally SHO/ Lajpat Nagar, apprising them with all the facts and documents. But no action was taken so far.

It is therefore requesting the necessary legal action may kindly be taken against M.P.G. Singh and his son in law Alok Ahuja and his niece who have dispossessed us and forcibly taken possession of our portion in our absence. The possession may kindly be restored please. The undersigned has now seen Shri M.P.G. Singh, Mr and Mrs. Alok Ahuja move about together. They have obviously entered into a criminal conspiracy to cheat the undersigned.

Thanking you.

Yours faithfully

*(DharmenderChoudhry) (Bhupender Choudhry)
76, Uday Park, New Delhi."*

28. On the basis of the complaint, an FIR No.700/97 was registered under Sections 420/448/341/120-B IPC on 01.07.1997 and charge sheet *qua* deceased M.P.G. Singh in column No.1 and respondents 2 and 3 in column No.2 was filed. Later M.P.G. Singh expired. The learned

Metropolitan Magistrate issued summons to respondent no. 2 and 3 vide order dated 24.12.2001 and charge under Sections 420/448/341/120-B IPC was framed against the respondents 2 and 3 on 23.10.2002. Against the said order the respondents preferred a revision before the learned Additional Sessions Judge and vide order dated 04.12.2003 the charge was set aside with the direction to the learned Trial Court to give proper hearing to the accused persons and to comply with the provision of sub section (2) of Section 240 Cr.P.C. The relevant paragraph of the said order is reproduced hereunder for ready reference:

*"IN THE COURT OF SHRI LAL SINGH: ADDL.
SESSIONS JUDGE: NEW DELHI
C.R.NO.1/03*

*1.Alok Ahuja
2. Mrs. Jasmine Ahuja
Both r/o C-111,
East of Kailash,N.D.Petitioners.
Vs.
StateRespondent.*

3.....The impugned order is set aside with the direction to ld.trial court to give hearing to the accused persons and comply the provisions of sub section 2 of Sec.240 Cr.P.C. in letter and spirit and proceed to decide the matter as per law. "

29. The learned Trial Court framed charges under Sections 448/34 IPC *qua* Jasmine Ahuja and Alok Ahuja on 01.06.2004 who have preferred again revision before the learned District and Sessions Judge. The said revision was dismissed vide order dated 13.07.2005. The relevant paragraph of the said order is reproduced hereunder for ready

reference:-

*"IN THE COURT OF SHRI MS. I.K. KOCHAR:
ADDL. SESSIONS JUDGE: NEW DELHI.*

CR NO:42/04

Alok Ahuja Vs. State

JUDGMENT

....in my view, in view of the statement of Ashwani Chug, complaint and the document i.e. the registered sale deed dated 14.5.97 there is prima facie sufficient material to have framed charged against the accused persons. "

30. Thereafter, the matter was fixed for prosecution evidence and on 28.02.2007 the learned Metropolitan Magistrate acquitted the accused persons after closing the evidence of the prosecution on the ground that the case pertained to 1997 and the IO was unable to trace out the public witnesses and passed the acquittal order in favour of the respondent No.2 and 3. The said order is reproduced hereunder for ready reference:

*"IN THE COURT OF SH. JAGDISH KUMAR
METROPOLITAN MAGISTRATE: NEW DELHI*

State Vs. M.P.G. Singh and others

FIR NO.700/97

P.S. Lajpat Nagar

U/S 420/448/341/120B/34 IPC.

Brief fact of the prosecution case are that on 14.05.97 at unknown time at C-111 East of Kailash within the jurisdiction of PS Lajpat Nagar both accused committed house trespass of the portion belonging to complainant Sh. Dharmender and Bhupender Chaudhary which they had purchased vide registered sale deed dated 14.05.97 from one Sh. M.P.G. Singh and thereby committed offence punishable under Section 448/34 IPC. Accused

Sh. M.P.G. Singh expired before filing of charge sheet. On their appearance, after supplying the copies of the charge sheet and hearing arguments, prima facie case is made out and charge framed against accused persons under Section 448/34 IPC.

The matter is listed for prosecution evidence for today. The charges against accused are framed under Section 448/34 IPC. Accused M.P Singh already expired. Summons was issued to witness/complainant. The summons were issued through IO to the witness but IO present in the court today and filed report that all these witnesses are not traceable and whereabouts of these witnesses are not known. Sufficient opportunity has already been granted to the prosecution for adducing evidence. File pertains to the year 1997. In the absence of testimony of complainant person no purpose will be served to examine the police officials. Even after examination of police officials accused cannot be convicted in the absence of testimony of complainant persons. PE is closed vide separate order today itself. Nothing is incriminating on record against the accused persons. The statement of accused dispensed with. Accused persons are discharged /acquitted. BB cancelled. Surety discharged.

Announced in open Court (JAGDISH KUMAR)

On 28.07.2004 Metropolitan Magistrate"

31. The petitioner herein preferred Revision Petition before this Court and the same was allowed on 22.05.2009 and sent back to the Trial Court for examination of two prosecution witnesses namely Mr. M.S.Choudhary and Mr. Ashwani Chugh. The Criminal Revision Petition No.588/2007 of the petitioner was remanded back and disposed off. The parties to the petition were directed to appear before the learned Metropolitan Magistrate on 21.07.2007. The said order is reproduced

hereunder for ready reference:

" 22.05.2009

*Present : - Mr. Sunil Kapoor, adv. For the petitioner.
Mr. Navin Sharma, APP for the State.
Counsel for the respondents.*

Crl.Rev.P.588/2007

In this case the petitioners is aggrieved from the order dated 28.02.2007 whereby the proceeding initiated by the police officials of P.S. Lajpat Nagar vide F.I.R. No. 700/1997 against the respondents came to end because the witnesses could not be traced out by the investigating officer despite several opportunity granted. It is submitted that the petitioners had always been appearing in civil proceedings between the parties and had also been appearing in the trial Court at the stage of charge. The report given by the police officials that the witnesses were not traceable is an intentional wrong statement give by them.

In any event, it is always proper that the matters of this nature are tried on merits. Once the petitioners are available and are ready to depose in support of their case, it would be appropriate to recall the order dated 28.02.2007 and direct the trial Court to complete the trial within two months from the date of the appearance now fixed and examine the two witnesses, namely, Mr. M.S. Choudhary and Mr. Ashwani Chugh who will appear on the very first date of hearing on their own without waiting for any summons from the trial Court. After their statements are recorded, the Magistrate will naturally record the statement of the accused persons under Section 313 Cr.P.C, if any incriminating evidence is disclosed by the witnesses and then proceed in accordance with law.

As prayed by the learned counsel for the respondents, the respondents would not be asked to furnish fresh bail bonds and their earlier bail bonds would stand restored. With these observations the petition is disposed of. Parties to appear before the trial Court on 21.07.2009 before the concerned MM, Lajpat Nagar, New Delhi. TCR be sent back.

Sd/-

MAY 22, 2009

MOOL CHAND GARG, JUDGE"

32. On 20.10.2009 the learned Trial Court after recording the statement of the said witnesses, again acquitted respondents/accused persons Jasmine Ahuja and Alok Ahuja for the offence punishable under Sections 448/34 IPC. The relevant paragraph of the said order is reproduced hereunder for ready reference:

*" IN THE COURT OF SH. SAURABH KULSHRESTHA
METROPOLITAN MAGISTRATE, SOUTH EAST-02,
NEW DELHI*

*State Vs. M.P.G. Singh and others
FIR NO.700/97
U/S 420/448/341/120B/34 IPC.
P.S. Lajpat Nagar*

....47. It is well settled that there is a clear difference in the standard of proof to be adopted in civil proceedings and criminal proceedings. The inevitable conclusion is that the material on record shows that the prosecution has not been able to establish beyond reasonable doubt that the complainants in the morning of 14.05.1997 had acquired de facto possession one bed room with attached bathroom and store, one drawing/dining room, half terrace and servant quarter on the ground floor of premises bearing no.C-111, East of Kailash, New Delhi and they were subsequently dispossessed therefrom by the

accused persons. Since the prosecution has failed to establish that the complainant acquired possession and hence the charge of house trespass inevitably fails. The prosecution must strictly and specifically prove the offence charged and on facts the prosecution has failed to do so. Benefit of doubt necessarily goes to the accused.

48. For the forgoing reasons, I hold that the prosecution has failed to prove its case against the accused persons beyond reasonable doubt. Benefit of doubt is given to the accused persons. The accused persons are accordingly acquitted for the offence punishable u/s 448/34 IPC.

*Announced in open court
on 20.10.2009 "*

SD/-

(emphasis supplied)

33. Thereafter, the petitioner challenged the impugned order dated 20.10.2009 passed by the learned Metropolitan Magistrate before the learned Additional Sessions Judge, Saket Courts, New Delhi and the said appeal was dismissed vide order dated 23.05.2014, stating therein that the testimonies of the two prosecution witnesses were full of contradictions as pointed out by the learned Trial Court and benefit of doubt has rightly been given to the respondents.

34. The whole dispute hinges around whether the respondents Alok Ahuja and Jasmine Ahuja have criminally trespassed into the house bearing no.C-111 East of Kailash, New Delhi?

The answer is **NO**.

35. The allegation *qua* the respondents is that the complainant purchased a

property from M.P.G. Singh bearing No.C-111, ground floor, East of Kailash, New Delhi and a vacant physical possession of one bedroom drawing/dining, servant quarter and half terrace was delivered to the petitioner on 14.05.1997. However, rest of the portion sold could not be taken possession by the petitioner as it was in the possession of respondent Alok Ahuja.

36. The prosecution examined the father of the complainant-M.S.Choudhary as PW1 and Ashwani Chug as PW2. The bare perusal of the complaint *ipso facto* shows that M.P.G. Singh was in possession of the said one bedroom drawing/dining, servant quarter, half terrace and one car parking with 30% undivided share in the property bearing No.C-111, ground floor, East of Kailash, New Delhi prior to the execution of sale deed dated 14.05.1997.
37. PW1 M.S.Choudhary during his cross-examination has also admitted this fact which is reproduced hereunder:

"FIR NO.700/97
PS L.Nagar

PW-1

Sh. M.S. Chaudhary, further called for examination-in-chief.

ON S.A.

XXXXX by Sh. Jayant Sud, Ld. Counsel for the accused.

....it is correct that there is civil suit litigation pending between us, wherein M.P.G. Singh filed the suit against me and my children for declaration, injunction and mandatory injunction with regard to the suit property and I had filed one civil suit against M.P.G. Singh for vacation and damages."

38. It is an admitted fact appearing on record that the sale deed as alleged was executed on 14.05.1997 and the seller was M.P.G. Singh. The dispute pertaining to sale of aforesaid suit property has already arisen between the parties in the month of May, 1997. Consequently, M.P.G. Singh filed a suit for declaration and cancellation of sale deed of the suit property.

39. The prosecution has also examined PW2 Ashwani Kumar Chugh alleged to be tenant of M.S.Choudhary who could depose that he remained in a room for 1-2 hours and later the guard objected and subsequently he was called to the police station where he handed over the key to the police.

The said key did not match with the lock of the door of the house.

40. The statement of PW2 Ashwani Kumar Chugh does not inspire confidence as in one breath he claims to be tenant on another breath he does not recognize M.P.G. Singh which is reproduced hereunder:-

*"FIR NO.700/97
PS L.Nagar*

PW-2

Sh. Ashwani Kumar Chugh, called for cross-examination

ON S.S.

XXXX by Jayant Sud, Ld. counsel for the accused.

...In the photograph DX-2 I cannot say whether the person shown at point X is M.P.G. Singh as I have never met him either before 14.05.1997 or thereafter. "

41. PW2 Ashwani Chugh further admits that he did not meet the respondent No.3 Alok Ahuja on 14.05.1997 or thereafter and the said admission is reproduced hereunder:-

"...It is correct that I did not meet with accused Alok on 14.05.1997 or thereafter. "

42. The possession of House No. C-111, ground floor, East of Kailash was with one M.P.G. Singh- the seller, Jasmine and Alok Ahuja prior to the alleged execution of Sale Deed dated 14.05.1997. The evidence led by the complainant, PW1 and PW2 does not bring out the evidence as required under Sections 441 and 448 IPC.

43. The Civil Suit i.e. the suit for declaration and cancellation of sale deed filed by M.P.G. Singh *qua* the complainant- Dharmender Choudhary and others is evident that the possession of aforesaid portion remained with the deceased M.P.G. Singh, Jasmine Ahuja and Alok Ahuja.

44. The dispute arisen between the parties consequent to sale deed is nothing but a civil dispute which is to be determined by the Civil Court only, in absence of criminal intention to commit offence. In this regard, the following observation in the decision of the Hon'ble Supreme Court in **Kanwal Sood v. Nawal Kishore and Another**, AIR 1983 SCC 159, is relevant:

"10.....In order to satisfy the conditions of Section 441 it must be established that the appellant entered in possession over the premises with intent to commit an offence. A bare perusal of the complaint filed by Respondent No.1 makes it abundantly clear that there is absolutely no allegation about the intention of the appellant to commit any offence or to intimidate, insult

or annoy any person in possession. "

45. Moreover, this Court finds no merit in the contentions of the learned senior counsel for the petitioner and the contentions raised by learned Additional Public Prosecutor. Also, the judgments relied upon by the Additional Public Prosecutor is not helpful to the complainant.
46. Therefore, the prosecution fails to prove its case beyond reasonable doubt under Sections 448/34 IPC . Consequently, the present petition is dismissed. As such I find no infirmity in the orders dated 20.10.2009 passed by the learned Metropolitan Magistrate and the impugned order dated 23.05.2014 passed by the learned Additional Sessions Judge affirming the order passed by the learned Metropolitan Magistrate.
47. Let one copy of this judgment be sent to the concerned Court(s). TCR be sent back.
- No order as to costs.



I.S.MEHTA, J.

MARCH 19, 2018

सत्यमेव जयते