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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 27th November, 2018

+ CRL.M.C. 5940/2018 and Crl.M.A.48033-48036/2018

SMT. SHASHI GUPTA & ORS. Petitioners

Through: Mr. Shesh Datt Sharma, Adv.

Versus

STATE & ORS.

Respondents

Through: Mr. K.S. Ahuja, APP for the
State

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On the criminal complaint (CC No.58769/16) of the second respondent (complainant) the metropolitan magistrate held pre-summoning inquiry in the course of which several witnesses were examined including the complainant appearing as CW-1. The metropolitan magistrate, by her order dated 16.11.2017, short shrifted the issue by observing that the dispute was civil in nature and no cognizable offence had been disclosed, thereby dismissing the complaint.

2. The second respondent (complainant) challenged the said order in the court of sessions invoking its revisional jurisdiction by petition (Crl.Rev.No.2/2018). The revisional court allowed the petition, by its order dated 19.03.2018, and found that sufficient evidence had been

adduced in the pre-summoning inquiry to proceed against the petitioners herein and the third respondent in these proceedings, for they to be summoned as accused for offences punishable under Sections 468/471 read with Section 120-B of the Indian Penal Code, 1860 (IPC). The revisional court, by its order dated 19.03.2018, thus, directed the metropolitan magistrate to proceed further in light of the said observations, in accordance with law.

3. The present petition has been filed invoking section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) to bring a challenge to the order of the revisional court.

4. The prime allegations of the complainant in the aforementioned case, as supported by the evidence which was led in the pre-summoning inquiry have been taken note of by the revisional court in the impugned order as under:-

“6. On perusal of complaint and testimony of CW-1, I find that the fact related to death of husband of petitioner/complainant has been established, though, there is some discrepancy regarding his exact date of death. In the complaint, date of death is mentioned as 18.02.2013. Though, in the testimony, it was mentioned as 18.02.2014. On the other hand, death certificate proved by complainant as CW-1/1 mentions date of death of her husband as 19.02.2013. However, these discrepancies not so material, so as to go into roots of the case. The material fact is that husband of petitioner i.e. Satish Jain expired either on 18 or 19.02.2013. Petitioner also placed photocopy of agreement with Mr. Bakey Lal and this agreement shows that it was executed between Bakey Lal and complainant on or after 13.07.2013. On the other hand, copy of NOC shown to be

executed by Mr. Satish Jain i.e. Mark C, shows that it was prepared on E-stamp paper purchased on 12.05.2014. In this stamp paper, name of Mr. Satish Jain was shown as first party and name of Sashi (accused no.1) was shown as second party. CW-4 had produced record from BSES. He proved copy of bill in the name of accused no.1 and other documents of the same file (22 pages) as CW-5/1. The other documents in the file were in the nature of application form to obtain electricity connection with supporting documents and the supporting documents included NOC on E-stamp paper dated 12.05.2014, purportedly given by Mr. Satish Jain. It is also worth to see that there is another document on E-stamp paper i.e. an indemnity bond furnished by accused no.1 and this E-stamp paper was also taken on 12.05.2014 with a gap of two minutes only from the time when E-stamp paper for NOC was purchased. Thus, it is well apparent that the NOC purportedly issued by Mr. Satish Jain (deceased husband of complainant/petitioner) was prepared on 12.05.2014, when apparently, Mr. Satish Jain was not alive or this NOC was at least shown to be executed on 12.05.2014, in order to furnish the same to BSES for the purpose of obtaining electricity connection in the name of accused no.1. In these circumstances, I do find that a very strong prima facie circumstance appears to show that this NOC was forged, so as to be shown to be executed by Mr. Satish Jain on 12.05.2014.

7. Apparently, this document was used for the purpose of obtaining electricity connection, which is a valuable property. With such act of obtaining electricity connection on the basis of alleged NOC, a right/interest was also shown to be created in favour of accused no.1 as against the right/interest/title of complainant. Thus, besides BSES, even complainant was at the suffering end. Apparently, there was a deception against officials of BSES to show that NOC was genuine and to show that accused had fulfilled all criteria to obtain electricity connection for 2nd floor of this property. The consequent

loss was to be suffered by complainant (as mentioned herein above). Therefore, I do find that ingredients of offence u/s. 468 and 471 IPC are prima facie established on the record.

8. *Now the question is that whether accused no.1 to accused no.4 are connected with such offence. Accused no.1 is apparently beneficiary of such electricity connection, as the connection was obtained in her name. Accused no.2 to accused no.4 are sons of accused no.1 and they are also indirectly beneficiary of this connection. In the background of such circumstance, the allegations made by complainant become material, wherein she alleged that accused no.1 to accused no.4 assured the complainant to get her house vacated from Keshav, Deepak, Manjeet and Sanjeev and later on, on 06.03.2016, all four of them extended threat to the complainant claiming that the flat occupied by Keshav, Deepak, Manjeet and Sanjeev belonged to them and if she demanded to vacate the same, then she alongwith her family members would be eliminated. Thus, accused no.1 to accused no.4 had been claiming their title over 2nd floor of this property. Somewhere aforesaid circumstance indicate knowledge on the part of accused no.2 to accused no.4 regarding the electricity connection being taken in the name of accused no.1. Such knowledge gives rise to a suspicion against them being involved in this conspiracy to use forged NOC to obtain electricity connection.”*

5. The revisional court had issued notice to the petitioners and to the third respondent herein while entertaining the petition of the complainant challenging the order dated 16.11.2017. The arguments, raised on their behalf, as noted above, were rejected by the revisional court with observation that the same were in the nature of defence plea that will have to be considered at the trial. The fact that the NOC was

apparently forged, it bearing a date on which the executant Satish Jain was not alive, it having been used for and on behalf of the petitioners to obtain an electricity connection for the subject premises, the allegations of the complainant call for criminal action, sufficient grounds having been found on record to proceed against the petitioners and the third respondent.

6. There is no error or infirmity in the view taken by the revision court. The petition is, thus, dismissed *in limine*.

7. Pending applications also stand disposed of.

R.K.GAUBA, J.

NOVEMBER 27, 2018

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