

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

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Reserved on: 30th July, 2018

Decided on: 20th August, 2018

+ **W.P.(CRL) 3046/2015 and Crl. M.A. No.18714/2015 (Stay)**

HARADHAN BHOWMIK

..... Petitioner

Represented by: Mr. Raghav Bansal and Mr.
Shashwat Bansal, Advocates.

versus

THE STATE GOVT OF NCT DELHI

..... Respondent

Represented by: Mr. Piyush Singhal, Advocate
for Mr. Ashish Aggarwal,
Additional Standing Counsel
for State with SI Manish
Kumar, EOW.

+ **W.P.(CRL) 2333/2016 and Crl. M.A. No.12196/2016 (Stay)**

BIJANENDU BHOWMIK

..... Petitioner

Represented by: Mr. Raghav Bansal and
Mr. Shashwat Bansal,
Advocates.

versus

STATE (GOVT OF NCT) DELHI & ANR

..... Respondents

Represented by: Mr. Rahul Mehra, Standing
Counsel for State, Mr.
Chaitanya Gosain and Mr.
Jamal Akhtar, Advocates with
SI Manish Kumar, EOW.

+ **W.P.(CRL) 2340/2016 and Crl. M.A. No.12214/2016 (Stay)**

TAPAN BHOWMIK

..... Petitioner

Represented by: Mr. Raghav Bansal and
Mr. Shashwat Bansal,
Advocates.

versus

THE STATE & ANR

..... Respondents

Represented by: Mr. Rahul Mehra, Standing
Counsel for State, Mr.
Chaitanya Gosain and Mr.
Jamal Akhtar, Advocates with
SI Manish Kumar, EOW.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By these three petitions, the petitioners who are brothers seek quashing of FIR No. 157/2015 under Sections 406/420/120B IPC registered at PS Economic Offences Wing on the complaint of respondent No.2.
2. Seeking quashing of the above noted FIR and the proceeding pursuant thereto learned counsel for the petitioner contends that even on the face of the allegations in the FIR only a civil dispute is made out, hence no FIR could be registered on the allegations. Further rights of the parties have already been decided in civil proceedings wherein a finding has been arrived at that the petitioners are the registered owners of property No. B-295, Chitranjan Park, New Delhi. Before registering the FIR the investigating agency failed to notice that an application under Section 156 (3) Cr.P.C. filed by the complainant had already been dismissed by the learned Trial Court on 11th May, 2015 and the complainant was directed to lead evidence qua the criminal complaint under Section 200 Cr.P.C. which the complainant failed to do despite eight adjournments. Further the alleged complainant Ms. Bani Kar filed a civil suit being CS No.420/2014 titled as *Bani Kar Bhowmik vs. Tapan Bhowmik* claiming her share in the property

which suit was dismissed as withdrawn vide order dated 4th March, 2015. The FIR demonstrates incorrect facts as alleged by the complainant. Further the petitioner Tapan Bhowmik has not been named in the FIR and there is no owner/brother named as Bakul Bhowmik as alleged in the FIR. Ms. Bani Kar is not entitled to the share in the property as the petitioners and their father had severed relations with her. Reliance is placed on the decisions reported as AIR 1992 SC 604 State of Haryana & Ors. vs. Ch. Bhajan Lal & Ors., 2015 (1) SCC 513 Rajib Ranjan & Ors. vs. R. Vijay Kumar, Ram Dilawri & Anr. vs. State of NCT of Delhi in Crl. M.C. No.3115/2011 decided on 29th June, 2015, C.Selvaraju & Ors. vs. State, represented by Special Sub-Inspector of Police decided 4th February, 2015, 2011 (13) SCC 412 Thermax Ltd. & Ors. vs. K.M. Johny & Ors. and 2016 (2) SCC 36 Prakash & Ors. vs. Phulavati & Ors.

3. Learned Standing Counsel for the State on the other hand contends that the allegations in the FIR clearly constitute the ingredients of offences of cheating and forgery. Thus it cannot be said that the contents of FIR disclose a civil dispute and no cognizable offence is made out. Even after the civil suit filed by the complainant has been dismissed, the complainant is entitled to register a complaint if the allegations disclose commission of cognizable offences. After collection of documents which clearly show that the petitioners misrepresented in the affidavits filed before the L & Do that they were the only three legal heirs and got the property transferred in their name, a charge sheet has already been prepared and is likely to be filed shortly.

4. Though none appears on behalf of respondent No.2 however, an affidavit has been filed on behalf of respondent No.2 as per which the

contents of the complaint filed under Section 200 Cr.P.C. in the Saket Courts along with an application under Section 156 (3) Cr.P.C. are different from the contents of FIR No.157/2015 got registered at PS EOW. In the complaint under Section 200 Cr.P.C. the complainant inter alia alleged regarding the incident dated 2nd September, 2014 when petitioners along with 8-10 muscle men, builders and property dealers, abused, threatened and wrongfully confined respondent No.2 and due to fear respondent No.2 sought protection for himself and his family.

5. FIR No.157/2015 was registered under Sections 420/406/120B/34 IPC on the complaint of one Ravinder Singh, attorney of Smt. Bani Kar, wife of Pradeep Kar. In the FIR, Ravinder Singh stated:

“2. I am permanent resident of House No.A-74, Vishal Enclave, Rajouri Garden, New Delhi 110027. I am the actual constituted ATTORNEY of Smt.Bani Kar w/o Sh.Pradeep Kar 01/02-204 PS Sonar Pur, Kolkata 700150. She has given me her attorney of 1/6 shares of her ancestral property No.B-295, Chittaranjan Park, New Delhi 110027 admeasuring 160 sq. Yards amounting to ₹6 Crores (appx.)

3. Sh.Murari Mohan Bhowmik was original allottee and lessee of Property No.B-295, Chittaranjan Park, New Delhi 110027 admeasuring 160 sq. Yards. The Lease Deed of above property was registered in the office of Sub-Registrar, New Delhi on 12.3.96 vide document No.799 in additional Book No.1, volume No.3644 on page NO.187 to 190, Sh.Murari Mohan Bhowmik and three daughters named Smt.Bani Kar and two others. These six children of Sh.Murari Mohan Bhowmik have equal shares in the ancestral property No.B-295, Chittaranjan Park, New Delhi 110027 and other properties held behind by their father.

4. It is submitted her for your kind information that Sh.Bakul Bhowmik, Bijan Bhowmik and Haradhan Bhowmik

prepared some forged documents executed by their father Late Sh.Murari Mohan Bhowmik in their favour and filed the same forged papers, in L&DO, Nirman Bhawan to get Conveyance Deed in their favour, for which they also submitted some affidavits before of their father. On the basis of these forged documents and the manipulation, L&DO Nirman Bhawan, executed a Conveyance deed in favour of Sh.Bakul Bhowmik, Bijan Bhowmik and Haradhan Bhowmik deleting the names of their three sisters Smt.Bani Kar and two others.

5. It is also intimated that the copies of Affidavit submitted by these three brothers are a matter of record in the office of L&DO, Nirman Bhawan, New Delhi, these three people have also fabricated some documents of their father and submitted to L&DO, Nirman Bhawan to get the Conveyance deed. I have come to know that these three brothers have firstly got the substitution of the property in their favour by filing false informations and documents to L&DO, Nirman Bhawan and thereafter Connivance with their official manipulated the records and got conversion of lease hold to free hold.

6. It is also mentioned here that these three brothers have bribed a huge amount to the official of L&DO, Nirman Bhawan to get the Conveyance deed and lease hold to free hold in their favour by deleting the names of their three sisters Smt.Bani Kar and two others, who are also having equal shares in the property No.B-295, Chittaranjan Park, New Delhi 110027 admeasuring 160 sq. Yards amounting to ₹Six crores (apprx.).

7. After getting forgerly the above property in their names, these three brothers named Sh.Bakul Bhowmik,, Sh.Bijan Bhowmik and Sh.Haradhan Bowmik have sold all the above property to M/s. SY Associates who is constructing a building very fast.

8. *I, therefore, earnestly request you to kindly look into the matter personally and issue necessary orders for an immediate inquiry/investigation by lodging a FIR against these following persons for their cheating, forgery and criminal intimidations :- 1. Sh.Bakul Bhowmik, S/o Late Sh.Murari Mohan Bhowmik R/o K-2146, Chittaranjan Park, New Delhi 110019. 2. Sh.Bijan Bhowmik S/o Late Sh.Murari Mohan Bhowmik R/o K-2146, Chittaranjan Park, New Delhi 110019. 3. Sh.Haradhan Bhowmik S/o Late Sh.Murari Mohan Bhowmik R/o K-2146, Chittaranjan Park, New Delhi 110019. 4.SY Associates. 5. Officials of land and Development Office, A Wing, Nirman Bhawan, New Delhi who are involved in the processing and verification of documents to get the conversion from lease hold to Free hold in respect of property No.13-295, Chittaranjan Park, New Delhi 110027.”*

6. The case of the complainant is thus that Bakul Bhowmik, Bijan Bhowmik and Haradhan Bhowmik prepared some forged documents purportedly executed by their father late Murari Mohan Bhowmik in their favour and filed the same forged documents along with their affidavits in the L & DO to get the Conveyance Deed in their favour. It is thus alleged that on the strength of the forged documents and manipulation, the L & DO, Nirman Bhawan, executed a Conveyance Deed in favour of Bakul Bhowmik, Bijan Bhowmik and Haradhan Bhowmik deleting the name of their three sisters Smt. Bani Kar and two others and that the copies of the affidavits submitted by the three brothers in the office of the L & DO are a matter of record. It is the case of the complainant that the three brothers firstly got substitution of the property in their favour by filing false information and documents and thereafter in connivance with the officials manipulated the record and got conversion of leasehold to freehold by

deleting the names of three sisters who have equal share in the property No.B-295 admeasuring 160 sq. yards. Thereafter the three brothers sold the above property to M/s S.Y. Associates which is constructing the building on the said plot. Contention of learned counsel for two petitioners that the contents of the FIR only disclose a civil dispute cannot be accepted for the reason forgery of documents affecting rights and title in the property is a cognizable offence and not merely a civil dispute.

7. On a notice being issued a status report has been filed. As per the status report on receipt of the complaint from Ravinder Singh, constituted attorney of Smt. Bani Kar, a preliminary inquiry was conducted whereafter FIR No.157/2017 under Sections 420/406/120B/34 IPC was registered and an investigation taken up. During the course of investigation Smt. Bani Kar was examined under Section 161 Cr.P.C. who stated that Ravinder Singh was a family friend and a constituted attorney as she is residing in Kolkata where she shifted after her husband's posting in 1997. She stated that after the demise of her father Murari Mohan Bhowmik, her brother came to her with their mother to get her signatures on the property documents but she refused to sign. Later her brother Bijan Bhowmik offered her ₹10 lakhs for signing the documents which also she refused and thereafter they created false documents stating that they were the only legal heirs of their late father through affidavit. During the course of investigation original documents such as application by accused persons to L & DO dated 22nd September, 2004, letter dated 14th December, 2004 by L & DO to accused persons regarding substitution of Lease Deed, Original Indemnity Bond by accused persons, affidavit jointly and severally given by the accused persons to L & DO were seized from the office of L & DO. In the aforesaid documents

three petitioners herein have stated that they were the only legal heirs of their deceased father Murari Mohan Bhowmik and mother Smt. Brij Bala Bhowmik. Further Swapam Chakravorty with whom the petitioner entered into a Collaboration Agreement dated 6th May, 2012 was also examined who stated that the three brothers stated that they had a Will executed by their late father in their possession however, the said Will was never shown. Thus the three petitioners sold the ground floor of the property to Swapam Chakravorty vide Sale Deed dated 5th May, 2015 for a total sum of ₹1,76,50,000/- by misrepresenting facts, who in turn sold it to Shri R.N. Singh of M/s B.I.S. (India) Ltd. August, 2015 who is presently occupying the property.

8. Status report also notes the various notices given to the petitioners to join the investigation which they failed to join on one pretext or the other. As per the status report the affidavit filed by the petitioners before the L & DO for getting the property transferred in their respective names is false for the reason it is claimed that the three petitioners are the only legal heirs of late Murari Mohan Bhowmik whereas besides the three petitioners Murari Mohan Bhowmik had three other legal heirs i.e. the three daughters who also had a valid right, title and interest in the property. Merely because the petitioners and their father severed relations with the sister does not deny her the right to succession in the property in the absence of a valid Will by the deceased father.

9. As noted above the contents of the FIR note that the petitioners on the strength of false affidavits filed in the office of L&DO got the property transferred in their name, the said allegation cannot be said to be a mere civil dispute and amounts to offences of cheating and forgery. Merely because in

the FIR name of one of the petitioners i.e. Bakul Bhowmik has wrongly been noted cannot be a ground for quashing of the FIR in question as it is well settled that a FIR is only to set the criminal law into motion whereafter investigation has to be carried out and even if the accused is not named in the FIR during the course of investigation if the complicity of any accused surfaces he can be arrayed as an accused and charge-sheet filed against him.

10. In Rajib Ranjan (supra) the Supreme Court was dealing with a case where respondent therein who was an unsuccessful bidder, made a complaint alleging that the successful bidder and the officers conspired to disentitle the complainant company and the certificate-cum-report was contrary to the minutes of the meeting. The issue was thus whether minutes of meeting were false and fabricated for which there was no evidence. In the present case as noted above during the course of investigation applications duly signed by the petitioners have been seized from the office of the L & Do wherein they have made false statements that they are the only legal heirs of deceased Murari Mohan Bhowmik and Brij Bala Bhowmik. Even in Thermax Ltd. (supra) the Supreme Court held that for initiation of proceedings under Section 156 (3) Cr.P.C. complaint must disclose essential ingredients for offence alleged. If there is flavour of civil nature, same cannot be agitated in form of criminal proceedings. The allegations of filing false information and obtaining pecuniary advantage thereon cannot be said to be a mere civil dispute as the same constitutes the ingredients of offences punishable under cheating and forgery.

11. Contention of learned counsel for the petitioners that since in a civil suit filed by one of the sisters petitioners have been held to be the owners of the suit property, hence the FIR and the proceedings pursuant thereto are

liable to be quashed, is required to be rejected in view of the decision of the Supreme Court reported as (2010) 8 SCC 775 Kishan Singh Vs. Gurpal Singh wherein it was held:

“18. Thus, in view of the above, the law on the issue stands crystallised to the effect that the findings of fact recorded by the civil court do not have any bearing so far as the criminal case is concerned and vice versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Evidence Act, 1872, dealing with the relevance of previous judgments in subsequent cases may be taken into consideration.”

12. Further contention of learned counsel for the petitioners that the civil suit filed by the complainant was dismissed for non-prosecution and thus no criminal proceedings can continue also deserves to be rejected. The civil suit filed by the de facto complainant was not decided on merits. This Court in the decision reported as (2018) SCC OnLine Del 6563 Babu Ram & Ors. Vs. The State held :

“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.”

13. As noted, the complaint filed by respondent No.2 before the learned Metropolitan Magistrate relates to a different incident. In any case pendency of a complaint before the learned Metropolitan Magistrate does not bar the jurisdiction of the police to register FIR if the contents of the complaint disclose commission of a cognizable offence and if the complaint and FIR relate to the same incident, the course required to be adopted is one under Section 210 Cr.P.C.

14. Considering the nature of allegations in the FIR and the investigation carried out which fortify the allegations of the complainant, this Court finds no ground to quash the FIR No.157/2015 registered at PS Economic Offences Wing or the proceedings pursuant thereto.

15. Petitions and applications are dismissed.

(MUKTA GUPTA)
JUDGE

AUGUST 20, 2018
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