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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 9th August, 2018

+ CRL.M.C. 2144/2015

PRAKASH KAUR

..... Petitioner

Through: Mr. Vijay Kumar Aggarwal,
Adv. with Ms. Hemlata
Kharayat, Mr. Shekhar Pathak,
Ms. Barkha Rastogi &
Mr. Shailesh Pandey,
Advocates

versus

STATE

..... Respondent

Through: Ms. Meenakshi Dahiya, APP
for the State

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner has approached this court invoking the inherent power and jurisdiction under Section 482 of the Code of the Criminal Procedure, 1973 (Cr.P.C.) to assail the order dated 16.03.2015 of the Court of Sessions, dismissing her appeal (Criminal Appeal No.01/15) under Section 341 Cr.P.C. which had been taken out against the order dated 05.12.2014 of the Metropolitan Magistrate whereby his application under Section 340 Cr.P.C. had been dismissed, such application having been filed by her (the complainant) in the course of the proceedings arising out of criminal case (CC No.14/1/2012) initiated against the private party respondents on 22.09.2000.

2. The criminal complaint case in which the application under Section 340 Cr.P.C. read with Section 195(1)(b) Cr.P.C. was submitted by the petitioner alleging offences punishable under Sections 193/195/196/199/202/209/211 of the Indian Penal Code, 1860 (IPC) had, in turn, been initiated in the year 2000 with allegations of offences punishable under Sections 197/198/420/467/468/471/474 IPC. A perusal of the said original criminal complaint dated 22.09.2000 would show that the parties have been locked in litigation since 1989, civil suit [CS(OS) No.82/1989] having been presented in this court in respect of property described as Flat No.606, “to be” built at sixth floor in the proposed building called Resham Towers at Prabha Devi, Bombay (now, Mumbai).

3. The petitioner, as the complainant, of the afore-mentioned criminal complaint case had moved an application on 08.09.2011 seeking direction to “*partners/officer in charge/person of M/s. Everest Construction Company who is/are in possession of the said forged agreement dated 30.07.1981 purportedly entered into by the accused with Mr. Sukhbinder Singh s/o Amar Singh R/o Govind Sagar Building, Room No.30, 176, CST Road, Kalina, Bombay 400098 to produce the same*” before the court, though captioning the said application, misleadingly as one “*for issuance of summons to the accused (to produce the said document)*” invoking the power and jurisdiction of the criminal court under Section 91 read with Section 311 Cr.P.C. The justification for the said prayer was set out in the

second para of the application in the following words (page 64 of the paper book):-

“That the said document in original is required as the copy of the same was filed by the accused along with the written statement in a suit filed by the complainant for specific performance before the Hon’ble High Court of Delhi and was purportedly entered into by the accused with Mr. Sukhbinder Singh s/o Amar Singh R/o Govind Sagar Building, Room No.30, 176, CST Road, Kalina, Bombay 400098. Original of the alleged purported agreement dt. 30.07.81 has not been filed even in Tees Hazari Court... (illegible)... ”

4. Reply was submitted on behalf of the accused persons, *inter alia*, taking the position that partners/officers incharge/person of M/s. Everest Construction Company were “*not in possession*” of the document and, thus, could not be directed to bring the same in original before the court, averments in reply of para 2 of the application being as under:-

“2. Averments of para No.2 are wrong and denied as stated. It is denied that the said document in original is required. However, it is not denied that the copy of the said document was filed by the accused along with the written statement in a suit filed by the complainant for specific performance before the Hon’ble High Court of Delhi or that the said agreement was entered into by M/s. Everest Constructions Co. with Mr. Sukhbinder Singh S/o Amar Singh R/o Govind Sagar Building, Room No.30, 176, CST Road, Kalina, Bombay-400098. It is denied that original of the alleged purported agreement dated 30.07.1981 has not been filed even in Tis Hazari Courts saying/contending same is required in Patiala House Court.”

5. It is the above reply which resulted in the application under Section 340 Cr.P.C. being moved by the petitioner referring in this context to an order passed on 17.02.2004 in the aforementioned suit wherein, certain submissions attributed to the counsel for the defendant were recorded by the court about copy of the document having been filed and she also being in possession of the agreement for sale dated 30.07.1981, photocopy whereof was also on record.

6. The application of the petitioner under Section 340 Cr.P.C. was dismissed by the Metropolitan Magistrate by a detailed order dated 05.12.2014. The petitioner preferred an appeal under Section 341 Cr.P.C. against the said order on 04.02.2015. The court of Sessions found it to be time barred and thus, declined to entertain it.

7. Though the ground on which the first appellate court has declined to entertain the appeal is of limitation, having heard the counsel for the petitioner and having gone through the record, this court is of the opinion that the complaint under Section 340 Cr.P.C. read with Section 195 Cr.P.C., even otherwise is wholly uncalled for, frivolous and one that should not have been even entertained by the criminal court. The criminal complaint which was presented on 22.09.2000 has continued to linger on for over eighteen years. If a copy of the document in question had been relied upon in the civil suit, and if the contention of the petitioner is correct that it is a forged and fabricated document, all that the petitioner needs to do is to have the record of the said civil suit summoned. After all, his anxiety and objective is to bring on record copy of the document in evidence. The

respondent while resisting her application under Section 91 read with Section 311 Cr.P.C. took a position that it was not in possession of the said document. There is nothing available on which it can be inferred that this position adopted by the said party *per se* is false. There were more than one defendants in the civil suit. It is not clarified as to counsel for which of the defendants had referred to the document in the proceedings on which reliance is placed. Nothing stops the petitioner to have the said counsel summoned to seek clarity about the existence or present status of the document in question. Rush to create yet another criminal case out of an existing criminal case is not only improper but seemingly unholy.

8. In the above facts and circumstances, this court finds it to be a case where the court of Metropolitan Magistrate should even otherwise have deemed it not expedient or in the interest of justice to proceed with the application under Section 340 Cr.P.C. read with Section 195 Cr.P.C.

9. For above reasons, this court declines to interfere.

10. The petition is dismissed.

R.K.GAUBA, J.

AUGUST 09, 2018

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