

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

% Decided on: 24th July, 2018

+ **CRL.L.P. 651/2016**

BRIJESH KUMAR MAURYA Petitioner
Represented by: Mr. Ramlal, Advocate.

versus

STATE (GOVT. OF NCT OF DELHI) & ANR. Respondents
Represented by: Ms. Meenakshi Dahiya, APP
for State with SI Omveer
Singh, PS Nand Nagri.
Mr. I.A. Khan, Advocate for
respondent No.2.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Receipt of cost paid by the petitioner has been handed over, which is taken on record.
2. Petitioner filed a complaint case against the respondent No. 2 Jogeshwari Devi and Anr. bearing CC No. 178/03/2013 under Sections 420/468/471/474/374/34 IPC. Vide the impugned judgment dated 4th July, 2016, the learned Metropolitan Magistrate convicted Jogeshwari Devi for offences punishable under Sections 417/471/468 IPC and vide order on Sentence dated 27th August, 2016 awarded sentence of simple imprisonment for two years for offences punishable under Sections 468 and 471 IPC and simple imprisonment for six months for offence punishable under Section 417 IPC. Jogeshwari Devi was also directed to pay compensation of

₹50,000/- to the complainant in default whereof to undergo further simple imprisonment for three months.

3. On an appeal filed by Jogeshwari Devi vide the impugned judgment dated 28th October, 2016 she was acquitted of all the charges. Hence the present leave to appeal by the complainant.

4. Allegations of the complainant in the complaint against Jogeshwari Devi and four other persons including her husband were that one Bechhu Lal was owner of plot No. E-1/255, Nand Nagri, Delhi which was allotted to him by DDA under resettlement scheme in the year 1976. Bechhu Lal had constructed over the property for residential purpose and remained in possession of the plot till he sold the same to the complainant on 2nd September, 2002. It is the case of the complainant that when Jogeshwari Devi and her husband came to know that Bechhu Lal was going to sell this plot to complainant they removed the possession slip from the house of Bechhu Lal with dishonest intention for which he lodged NCR at PS Nand Nagri vide DD No. 53-B on 27th August, 2002 and also made a complaint to DDA regarding missing possession slip on 29th August, 2002. It is the case of the complainant that Bechhu Lal executed registered Power of Attorney, Will, Receipt, etc. in favour of the complainant who started living in the house No. E-1/255. The complainant got water connection in his name as owner and also got prepared ration card at the address.

5. Complainant alleges that Jogeshwari Devi and her husband in connivance with accused Nos. 3 and 4 got executed forged documents in their favour by affixing purported thumb impression of Bechhu Lal, though he never executed such documents in their favour and in January, 2003 on the strength of photocopies of such forged documents Jogeshwari Devi filed

a civil suit. In civil suit husband of Jogeshwari Devi used to appear on her behalf.

6. Contentions of Jogeshwari Devi before the learned Appellate Court were that the Trial Court came to the conclusion that thumb impression and signatures of Bechhu Lal were forged merely on the statement of Bechhu Lal without there being any opinion of an expert and without sending the documents and specimen thumb impression for expert opinion. Further the NCR which was marked as Mark-A alleged to be bearing the signature of Bechhu Lal could not be by Bechhu Lal for the reason he was admittedly illiterate person and did not know how to sign. The evidence of the complainant was based on hearsay and not admissible.

7. Further the complainant himself stated that he allowed his sister to reside in the disputed property to look after the same. Further Bechhu Lal did not produce any document to show that he was in possession of disputed property since 1980.

8. The learned Appellate Court held that neither Bechhu Lal nor Brijesh Kumar, CW-3 state about any dealing with the Jogeshwari Devi or her husband and hence there could be no deception by the Jogeshwari Devi on the complainant. Thus the basic element of cheating was missing and the Jogeshwari Devi thus could not be convicted for offence punishable under Section 417 IPC. By filing a civil suit for injunction, Jogeshwari Devi or her husband cannot be said to have caused any deception to Bechhu Lal or the complainant.

9. In respect of the offences punishable under Sections 468 and 471 IPC, the learned Appellate Court held that though the complainant alleges that the documents were forged, however, this fact has not been proved beyond

reasonable doubt. Neither the complainant nor the Trial Court took any steps for the purpose of comparison of the thumb impression and signatures appearing in documents Ex. CW-1/8 to Ex. CW-1/11. Sole evidence before the Trial Court was of Bechhu Lal who stated that he had not sold the disputed plot to any person but to complainant. Learned Appellate Court held that the same was not sufficient to assume that documents Ex. CW-1/8 to Ex. CW-1/11 did not bear his thumb impression or signatures. The prosecution having not discharged its primary burden, onus did not shift to the accused.

10. As noted above the learned Appellate Court rightly held that there was neither any deception on the part of Jogeshwari Devi to the complainant or Bechhu Lal nor was any evidence led to show that she forged the documents Ex. CW-1/8 to Ex. CW-1/11 nor were the documents proved to be forged document beyond reasonable doubt. There being no error in the impugned judgment of the Appellate Court acquitting the respondent No. 2 for offences punishable under Sections 468 and 471 IPC, the same warrants no interference.

11. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

JULY 24, 2018
‘yo’