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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 16th August, 2018

+ CRL. M.C. 3242/2015

SUNITA RANI

..... Petitioner

Through: Mr. Mukesh Gupta & Mr. P.S.
Rana, Advs.

versus

RAVINDER KUMAR & ORS.

..... Respondents

Through: Mr. Sumit Choudhary & Ms.
Aakansha Bansal, Advs. for R-1
& 2.

Mr. Mukesh Kumar, APP for
the State with SI Karamvir, PS
Narela.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. By order dated 22.07.2013, the Metropolitan Magistrate brought the curtain down on the criminal case initiated by the petitioner. The said order was challenged before the court of Sessions invoking its revisional jurisdiction by filing petition (CR.No.07/2014) but having been upheld by order dated 01.12.2014. The petitioner consequently has come up to this Court praying for exercise of its inherent power under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) and Article 227 of the Constitution of India for setting the said orders at naught and reviving the proceedings before the courts below.

2. The trial court record was called for in terms of the directions in the previous order. The private party respondents, against whom the criminal action is sought, were duly noticed and have appeared through counsel.

3. On perusal of the record of the criminal case, it is found that the Metropolitan Magistrate has not approached the proceedings arising out of the criminal complaint of the petitioner properly or in accordance with law. This would need interference by this Court. The reasons may be elaborated hereinafter.

4. The petitioner had filed the criminal complaint on 30.04.2007 alleging offences punishable under Sections 420/415/467/468/471/474/506 read with Sections 120 B and 34 of Indian Penal Code, 1860 (IPC) having been committed by the private party respondents qua the land in respect of which the petitioner (complainant) claims to be the owner on the strength of Sale deed dated 08.12.1999 duly registered and executed by Radhey Shyam. The complainant had prayed primarily for directions to the police to investigate in terms of Section 156 (3) Cr.P.C. and, in the alternative, for the Magistrate to take cognizance, hold inquiry and issue summons. The complaint was registered as criminal case 688/1/2007. The prayer under Section 156 (3) Cr.P.C, was considered and, by order dated 26.05.2007, the Metropolitan Magistrate recorded the view that it would be appropriate that an action taken report (ATR) be called for from the station house officer (SHO) of police station Narela with regard to the complaint dated 16.05.2006 that had statedly been earlier submitted by the complainant with the police. The ATR

was submitted and considered. Finally, by order dated 23.10.2007, the Metropolitan Magistrate directed the first information report (FIR) to be registered and directed the SHO to carry out the investigation. Pursuant to the said order, FIR No. 618/2007 was registered in police station Narela on 29.11.2007 for investigation into offences punishable under Sections 420/468/469/471 IPC.

5. Having directed the police to register the FIR and carry out investigation on the criminal complaint, the role of the court of Metropolitan Magistrate at that stage was over. There was no occasion for the criminal complaint to be kept alive or for periodic reports of the investigation to be called for. It appears, the Metropolitan Magistrate forgot the letter and spirit of the provision contained in Section 210 Cr.P.C. in terms of which any action on his part on the criminal complaint was inhibited so long as investigation by the police was in progress. Even otherwise, it is trite that once the FIR had been registered under Section 154 Cr.P.C., the Metropolitan Magistrate ordinarily had no occasion to interfere in investigation unless a special case for this was made out. His role would recommence once the investigation was complete and report under Section 173 Cr.P.C. – whatever shape it takes – was submitted.

6. Be that as it may, a report dated 12.05.2009 under Section 173 Cr.P.C. was submitted by SHO police station Narela before the Magistrate seeking cancellation of the case. Though the report had been prepared in May, 2009, it was actually presented on 19.05.2011, that too after duress processes had been issued against the

investigating officer by the Metropolitan Magistrate who had continued to insist on status reports to be submitted.

7. On the day, the cancellation report was filed the complainant was represented through counsel. He filed protest petition against the cancellation report on 27.11.2011.

8. The cancellation report in light of the protest petition came up for consideration on 19.01.2012. The Metropolitan Magistrate passed a detailed order recording dis-satisfaction with the investigation that had been carried out, opining that the matter required “further investigation”. He delineated some of the grounds which required to be covered in such further investigation. By the order dated 19.01.2012 while directing further investigation, the concerned Deputy Commissioner of Police was called upon to depute an investigating officer for such purposes. Thereafter, once again the matter arising out of the criminal complaint was kept alive, the Magistrate insisting on compliance report(s).

9. Some status reports were filed eventually leading to report dated 31.05.2013 having been submitted by Inspector (ATO) of police station Narela through Additional Deputy Commissioner of Police (Outer District). This report dated 31.05.2013 only narrated very cryptically, and in brief, certain facts that had been found out upon inquiry, this with reference to the directions in the order dated 01.05.2013. The investigating agency in this report dated 31.05.2013 did not even indicate what was its final view in the matter vis-a-vis the allegations made by the complainant against the private party respondents.

10. Concededly no fresh report under Section 173 Cr.P.C. was submitted. The Metropolitan Magistrate also failed to remember that upon the previous cancellation report having been rejected by the order dated 19.01.2012, there was no fresh report under Section 173 Cr.P.C. brought before him for fresh consideration. Thus, in effect, he proceeded to re-consider the previous report described as “cancellation report” and accepted the same by the impugned order dated 22.07.2013 it having later merged in the order of the revisional court dated 01.12.2014.

11. The procedural lapses which are vivid in the above approach to the matter by the courts below vitiate the entire process after the order dated 19.01.2012. Consequently, the impugned order dated 22.07.2013 of the Metropolitan Magistrate and dated 01.12.2014 of the revisional court are hereby set aside.

12. Given the lackadaisical approach of the local police to the investigative process in the case at hand, this court deems it appropriate to direct the Commissioner of Police to entrust the “further investigation”, as had been ordered by the Metropolitan Magistrate on 19.01.2012, to a superior investigating agency. Given the fact that the process of further investigation has not been completed in accordance with law, there would be no occasion to keep the criminal complaint alive. Yet, given the delay which has occasioned, it would be necessary that the investigative process does not suffer from any further laxity hereafter. The Commissioner of Police, consequently, is further directed to ensure that the investigation by the superior agency to which he chooses to entrust the

matter in terms of these orders completes the process at the earliest, preferably within six months of this order.

13. The report of further investigation when presented, shall be considered by the concerned magisterial court after due notice to the petitioner (complainant).

14. With these directions, the petition is disposed of.

15. *Dasti* under the signatures of Court Master.

R.K.GAUBA, J.

AUGUST 16, 2018

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