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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 18th July, 2018

+ CRL.M.C. 1448/2017 and Crl. M.A. 5961/2017, 8373/2017 and 9413/2018

KANWALJIT SINGH LUTHRA & ANR Petitioners
Through: Mr. G.S. Narula and Mr. M.
Sarwar, Advocates

versus

STATE NCT OF DELHI & ORS. Respondents
Through: Mr. Akshai Malik, APP for the
State with SI Laxman Chaudhary, PS GK-1
Mr. Peeyoosh Kalra and Mr. Vishal
Aggarwal, Advocates for R-2
Mr. Aman Vachher, Mr. Asutosh Dubey,
Mr. Abhishek Chauhan and Mr. Arun Nagar,
Advocates for R-3

+ CRL.M.C. 1449/2017 and Crl. M.A. 5963/2017

KANWALJIT SINGH LUTHRA & ANR. Petitioners
Through: Mr. G.S. Narula and Mr. M.
Sarwar, Advocates

versus

THE STATE NCT OF DELHI & ORS. Respondents
Through: Mr. Akshai Malik, APP for the
State with SI Laxman Chaudhary, PS GK-1
Mr. Peeyoosh Kalra and Mr. Vishal
Aggarwal, Advocates for R-2
Mr. Aman Vachher, Mr. Asutosh Dubey,
Mr. Abhishek Chauhan and Mr. Arun Nagar,
Advocates for R-3

+ CRL.M.C. 7/2017 and Crl. M.A. 27/2017

MOLLY KAPOOR & ANR Petitioners
Through: Mr. Aman Vachher, Mr. Asutosh
Dubey, Mr. Abhishek Chauhan and Mr.
Arun Nagar, Advocates

versus

STATE (NCT OF DELHI) & ORS Respondents
Through: Mr. Ashish Dutta, APP for the
State with SI Laxman Chaudhary, PS GK-1
Mr. G.S. Narula and Mr. M. Sarwar,
Advocates for R-2 & 3

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. During the course of investigation into first information report (FIR) 349/2014 involving offences punishable under Sections 420, 467, 468, 471, 120B Indian Penal Code, 1860 (IPC) of police station Greater Kailash, the investigation agency required the presence of Molly Kapoor, third respondent in first two captioned petitions and the first petitioner in the third captioned petition. It appears that allegations of her involvement in the crime have been levelled which were under investigation with the police at the relevant point of time. Since her presence could not be secured by the investigating officer, he had moved an application before the Metropolitan Magistrate seeking duress process to be issued in aid and assistance of the investigation. The duress process issued by the Metropolitan

Magistrate also did not result in Molly Kapoor presenting herself, she seemingly evading the process. Eventually, at the instance of the investigating agency, non-bailable warrants were issued, which were followed by proclamation under Section 82 of the Code of the Criminal Procedure, 1973 (Cr.P.C) and attachment warrant under Section 83 Cr. PC.

2. It appears that after the proclamation under Section 82 Cr. PC had been published during the course of proceedings on the attachment warrants under Section 83 Cr. PC, property bearing no.E-406, Second Floor, Greater Kailash, Part-1, New Delhi, which is stated to have been in possession of Molly Kapoor at the relevant point of time was attached and sealed. While the said Molly Kapoor was declared proclaimed offender, the investigation into the said FIR is stated to have since been concluded and a report under Section 173 Cr. PC filed seeking her prosecution, also involving another accused with her in the aforementioned offence, it having been presented on 14.07.2016, on which cognizance has been taken. Molly Kapoor and co-accused Anuradha Kapoor (daughters of former) who are the petitioners in the third captioned petition have failed to appear before the concerned court till date. Their petition (Crl. MC 4669/2015) assailing the processes under Sections 82 and 83 Cr. PC has been dismissed by a separate order passed today.

3. It appears that Kanwaljit Singh Luthra and Anil Narang, petitioners in the first two captioned petitions, had instituted a civil suit on the original side of this court, it being CS (OS) 275/2015 against Molly Kapoor (respondent) seeking decree in the nature of

specific performance on the basis of an agreement to sell dated 28.03.2014 of the aforementioned premises. It appears the petitioner Anil Narang in the first captioned petitioner had also instituted a suit for recovery against Molly Kapoor, it being CS (OS) 1967/2015. In the proceedings arising out of the first said suit, the parties were referred to the process of mediation. The parties entered into the settlement agreement dated 29.10.2015, in terms of which the claims in the said suits were to be resolved, it also having been agreed by the parties that they would obtain the order for “desealing” of the premises, which had been attached pursuant to the process (under Section 83 Cr. PC) of the criminal court in the aforementioned FIR, and to move for quashing of the said FIR, the complainant (plaintiffs of the case) agreeing to cooperate with Molly Kapoor in such endeavour. It is submitted that the two suits were disposed on the basis of said settlement through mediation.

4. On 28.10.2016, applications moved by Kanwaljit Singh Luthra and Anil Narang “for desealing” of the aforementioned property were taken up by the Metropolitan Magistrate. She allowed the prayer in the said applications and directed the property to be desealed and peaceful possession handed over to the said persons i.e. the petitioners in the first two captioned petitions, taking note, *inter alia*, of the fact that the aforementioned civil dispute had been resolved and the civil suits had been disposed of on the basis of settlement agreement. The Metropolitan Magistrate, pertinent to note, also mentioned in the said order that after the settlement agreement had been executed, the accused persons i.e. Molly Kapoor and Anuradha Kapoor had

absconded, apparently referring to proceedings leading to they being declared proclaimed offenders. As mentioned earlier, the said persons have not appeared before the criminal court in the corresponding criminal case till date.

5. The order dated 28.10.2016 of the Metropolitan Magistrate allowing the possession of the premises in question to be handed over to Kanwaljit Singh Luthra and Anil Narang (petitioners in the first two captioned petitions) was challenged by Sumanjeet Kaur and Pioneer Securities Pvt. Ltd., other two persons described as victims in the aforementioned criminal case, in the court of Session by Criminal Revision petition nos. 204894/2016 and 204895/2016. The said criminal revision petitions were heard together by the Sessions court and by order dated 06.04.2017 they were disposed of, setting aside the order dated 28.10.2016 of the Metropolitan Magistrate observing, *inter alia*, that handing over the possession to the said persons was an order suffering from impropriety.

6. The above said order of revisional court is challenged by the first two captioned petitions, while the third captioned petition brings a challenge to the order of the Metropolitan Magistrate passed on 28.10.2016. The grievance of the petitioners in the first two captioned petitions is that in handing over the premises to the other victims by setting aside the order of the Metropolitan Magistrate, the claim of the petitioners towards the property in terms of the decree of the civil court has been frustrated. On the other hand, the grievance of the petitioners in the third captioned petition is that handing over of the premises, which was in their possession, without inquiry to the victims

of the crime without they establishing their right to the title of the property or establishing their right to hold possession thereof is unjust and unfair.

7. Having heard the learned counsel on all sides and having perused the record, this court is of the view that the Metropolitan Magistrate and the revisional court have actually not followed the procedure in law in dealing with the applications to lay claim over the property, which was subject matter of attachment under Section 83 Cr. PC.

8. The appropriate procedure for dealing with such claims and objections as aforementioned is prescribed in Section 84 of the Code of Criminal Procedure, 1973 which, reads thus :-

“84. Claims and objections to attachment -

(1) If any claim is preferred to, or objection made to the attachment of, any property attached under section 83, within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under section 83, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part: Provided that any claim preferred or objection made within the period allowed by this- sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative.

(2) Claims or objections under sub- section (1) may be preferred or made in the Court by which the order of attachment is issued, or, if the claim or objection is in respect of property attached under an order endorsed under sub- section (2) of section 83, in the Court of the

Chief Judicial Magistrate of the district in which the attachment is made.

(3) Every such claim or objection shall be inquired into by the Court in which it is preferred or made: Provided that, if it is preferred or made in the Court of a Chief Judicial Magistrate, he may make it over for disposal to any Magistrate subordinate to him.

(4) Any person whose claim or objection has been disallowed in whole or in part by an order under subsection (1) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute; but subject to the result of such suit, if any, the order shall be conclusive.”

9. The learned counsel on all sides fairly agree that since the premises in question was in the possession of Molly Kapoor and Anuradha Kapoor on the date it was subjected to attachment under Section 83 Cr. PC, for holding an appropriate inquiry in accordance with law, a notice under Section 84 Cr. PC was required to be issued to them. The impugned order dated 28.10.2016 of the Metropolitan Magistrate reveals that no formal notice was even issued, leave alone it being attempted to be served. It does appear that at that stage of the process, the persons who had been in occupation of the premises i.e. Molly Kapoor and Anuradha Kapoor, were absconding and had already been declared proclaimed offenders when the Magistrate took up the applications styled as “for desealing” on 28.10.2016. But, this would not absolve the Magistrate the responsibility to at least formally issue a show cause notice and then make an attempt to serve the same

before holding an inquiry. At the same time, the objection of the other victims is correct. They also had, if one may use the expression, stake in the premises in as much as they also claim to have been cheated by the aforementioned persons, the allegations leveled by them being subject matter of investigation into the same FIR. It appears the said other victims, who were also before the civil court, at the relevant point of time, in case CS (OS) 3312/2015.

10. The non compliance with the procedure prescribed by law has led to a mess being created, which will have to be sorted out. Since Molly Kapoor and Anuradha Kapoor seem to have now surfaced by approaching this court by filing not only Crl. MC 7/2017 but also Crl. MC 4669/2015, a proper inquiry can be held on the prayer of the petitioners in the first two captioned petitions in terms of Section 84 Cr. PC.

11. Thus, the impugned orders dated 28.10.2016 of the Metropolitan Magistrate and dated 06.04.2017 of the revisional court are set aside. The matter arising out of the applications of the petitioners in the first two captioned petitions, for “desealing”, treated as applications under Section 84 Cr. PC, are remitted to the Metropolitan Magistrate for proper inquiry. Molly Kapoor and Anuradha Kapoor, who have thus far been evading the process before the criminal court are put to notice on the said applications and are called upon to present themselves before the Metropolitan Magistrate, *inter alia*, for purposes of the inquiry under Section 84 Cr. PC. The parties are directed to appear before the Metropolitan Magistrate on 08.08.2018. Needless to add, given the fact that the dispute is long

pending, the Metropolitan Magistrate shall make all endeavour to hold an expeditious inquiry and, thereafter, pass order, in accordance with law, preferably within three months of the date of first appearance.

12. It was brought out during the hearing that pursuant to order dated 28.10.2016 of the Metropolitan Magistrate, the possession of the above mentioned premises was handed over to Mr. Kanwaljit Singh Luthra and Anil Narang. The right of the said petitioners to continue to be in possession of the said premises shall be subject to the result of the inquiry under Section 84 Cr. PC, which shall be regulated by necessary orders to be passed by the Metropolitan Magistrate in that regard.

13. These petitions and the applications which are pending stand disposed of in above terms.

R.K.GAUBA, J.

JULY 18, 2018

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