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

Reserved on: 19th July, 2018

Pronounced on: 24th August, 2018

+ CRL.M.C. 4651/2015 and Crl. M.A. 19937/2017

KAPIL GAUR @ KAPIL & ANR. Petitioners

Through: Mr. Kirti Uppal, Sr. Advocate with
Mr. S.P. Chaudhary and Mr. Abhimanyu,
Advocates

versus

DINESH KUMAR SHARMA & ANR. Respondents

Through: R-1 in person
Mr. Mukesh Kumar, APP for the State

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

1. The petitioners had been summoned as accused in the criminal complaint (CC Nos.2869/2005 – 328 RBT/13) of the first respondent (complainant) by order dated 11.04.2007 of the Metropolitan Magistrate on allegations of they having committed offences punishable under Sections 465, 468, 506, 34 of Indian Penal Code, 1860 (IPC). The complainant then led pre-charge evidence upon conclusion of which the Metropolitan Magistrate considered the material and, by order dated 19.09.2013, found no case made out for putting the petitioners (the accused persons) on trial, thereby directing

their discharge. The said order was challenged by the complainant in the court of Sessions invoking its revisional jurisdiction by filing a petition (Crl. Rev. 54/2014) which was allowed, by order dated 24.04.2015, setting aside the order of discharge and instead directing the Metropolitan Magistrate to frame charges for offences punishable under Sections 120B and 419, 420, 468, 471 IPC read with Section 34 and 120B IPC.

2. The present petition has been filed invoking the inherent jurisdiction of this court under Section 482 of the Code of Criminal Procedure, 1973 (Cr. PC) to assail the correctness, propriety and legality of the order of the revisional court, the prime contention being that the continuation of the proceedings before the trial court would be an abuse of process of law, the revisional court having exceeded its jurisdiction by directing charges to be framed for offences which have been specified, reliance in this context being placed on decisions of the Supreme Court reported as *Gangula Ashok and Anr. Vs. State of A.P.*, (2000) 2 SCC 504 and *Maikaal Fibres Ltd. and Anr. Vs. ICICI Bank Ltd. and ors.*, (2005) 12 SCC 229.

3. Having heard the learned counsel on both sides and having carefully gone through the record, this court finds no merit in the petition at hand. The reasons are set out hereinafter.

4. It appears from the averments in the present matter and also from the pleadings in the civil litigation in which the parties had been earlier engaged that they are related to each other. The dispute revolves around the estate of late Smt. Bohti Devi, it statedly including the share in lands comprised in Khasra nos.156, 157, 158

Min., 159, 219, 220, 271, 276, 277, 282, 290, 295, 299 and 300 situated at Village-Ibrahimpur, Delhi i.e. 54 Bighas, 15 Biswas recorded in revenue record vide Khata No.9/8 and in Khasra No.17/1/2 (1-10), 2/2 (2-0), 3/2(0-5), 9/2 (3-10) total measuring 07 Bighas 13 Biswas, situated at Village Burari, Delhi (hereinafter referred to as “the property”). The complainant is described as adopted son of Smt. Bohti Devi. It appears that after her death, he had moved an application before Sub-Divisional Magistrate (SDM) for mutation of the lands in his name. His application was dismissed by the SDM on 22.07.1991. This led to litigation before the revenue authorities, the case having been contested by Mr. Surender Kumar, father of the petitioners. Eventually, in terms of order dated 22.05.1995 of the Financial Commissioner, the mutation was recorded in the name of the complainant. A challenge was brought to the said order by Surinder Kumar by writ petition [WP(C) 222/1995] before this court but the same having been later withdrawn.

5. It is admitted case of the complainant that on the request of Surinder Kumar, he had later executed two documents both dated 30.09.2000, one being General Power of Attorney (GPA) and the other being Special Power of Attorney (SPA). The said documents having been brought on record during pre-charge evidence and formally proved as exhibits CW1/7 and CW1/8 respectively. By both these documents, the complainant appointed and constituted the second petitioner Sudhir Kumar as his attorney – general attorney to manage, control, look after and supervise the lands in question and take various steps including for sale or transfer or executing proper

deeds and documents to present them for registration and handover possession, etc. and special attorney for applying for mutation, paying the mutation charges to get the records (in his own name) in the office of various authorities. It does not seem to be disputed that on the strength of said GPA, the second petitioner had executed document described as relinquishment Deed dated 15.03.2001 (Ex. CW1/9) in favour of his father Surinder Kumar in respect of the lands in question relinquishing the rights of the principal (complainant) in favour of the latter.

6. According to the complainant's case, knowledge about the relinquishment deed dated 15.03.2001 executed against consideration of Rs.3 Lakh in favour of Surinder Kumar had been gained in February 2005 when the first petitioner took certain steps to sell part of the property on that basis. The complainant claims to have lodged a protest, amongst others, with the SDM making a request against issuance of no objection certificate (NOC) and the later enquiries revealed that the lands in question had been got mutated in favour of Surinder Kumar, *inter alia*, on the basis of the relinquishment deed. Broadly, on the basis of these facts, he filed a criminal complaint, and on the basis of pre-summoning inquiry thereupon, the petitioners stood summoned to face prosecution for offences under Sections 465, 468, 34, 508 IPC, the gravamen of the first two said offences essentially being that the relinquishment deed was a forged and fabricated document, the other substantive offence under Section 506 IPC having been added with reference to allegations about criminal intimidation.

7. At the stage of pre-charge evidence, the complainant examined himself (CW-1) and nine other witnesses, they including an official named Harender Mohan (CW-9) from the office of the SDM. This part of the evidence, it has been noted by the revisional court in the impugned order, included documents relating to the file of the case titled *Surinder Vs. Satish* (Ex.CW9/A) and the documents relating to the file of another case titled *Sudhir Kumar & Ors. Vs. Surinder* (Ex.CW9/B).

8. The above-mentioned former set of documents (Ex.CW9/A) include application dated 16.05.2001 purportedly made by Surinder Kumar, father of the petitioners seeking mutation of the property in question in his favour, *inter alia*, on the basis of the relinquishment deed. The proceedings pertaining to the said case reveal that on 30.08.2001, statements of three persons were recorded before the inquiring authority (ACO), they including the petitioners and a person described as Surinder Kumar, father of the petitioners. It has been noted by the revisional court that the evidence on record unequivocally brings out the position that Surinder Kumar had already died on 27.03.2001. The factum of death of Surinder Kumar on 27.03.2001 not having been disputed, it naturally follows that he could not conceivably have moved the application on 16.05.2001 and, therefore, there has been impersonation in moving application and in giving statement both fraudulently in his name and after his death. Questions do arise as to who possibly could have impersonated him to move an application for mutation on the basis of the relinquishment deed, such a request having been submitted in the office of revenue

authority on 16.05.2001, or to have even appeared as witness on 30.08.2001. No clear answer to these moot questions has come up during the pre-charge evidence.

9. Generally speaking, when a criminal complaint is filed, the complainant is expected to bring home all the allegations made therein and, for such purposes, he is called upon to lead evidence, the onus, after all, being his to discharge. Once, on the basis of pre-summoning evidence, accused persons are summoned, generally speaking again, they are expected to account for and explain the acts of commission or omission attributed to them in the complaint as filed at the inception and as supported by the evidence led by the complainant. But then, situations do arise, as has happened in the present case, where further proceedings result in such incriminating evidence being brought to light as takes the case beyond the one originally set out in the complaint on basis of which the process had begun. It is not correct to suggest that in such eventuality, the criminal court must ignore the additional incriminating material and restrict its scrutiny to the evidence that was indicated in the averments in the complaint.

10. The object of judicial process is to reach out to the entire truth. It cannot be constrained in criminal jurisdiction by rules of pleadings as in a civil *lis*. The criminal complaint or the first information report, is only the starting point of probe. It cannot always or invariably be a compendium of all facts. The victim or other person approaching the criminal court with complaint expects the court to gather the facts. That is the purpose of inquiry by the court. Excluding incriminating material that comes up during inquiry only because complainant was

not privy to it (and so had not “pleaded” it) would lead to travesty of justice. On the contrary, the more incriminating circumstances having been brought to light before the court, it is duty bound to take cognizance thereof and further the criminal process as per law

11. The genuineness of the relinquishment deed dated 15.03.2001, was questioned by the complainant through the complaint filed in 2005, he having been taken by surprise on account of the move of the first petitioner to sell off the lands in which he (the complainant) was claiming to have an interest. The challenge to the relinquishment deed was not on a very strong wicket. After all, it had been executed by the second petitioner on the strength of the GPA, and the SPA, which had been executed in his favour by the complainant himself. But then, the suspicion of the complainant stemmed primarily from the fact that Surinder Kumar at the relevant time, to his knowledge, was comatose. Surinder Kumar died on 27.03.2001, within twelve days of the purported execution of the relinquishment deed. If the relinquishment deed had actually been executed on the aforementioned date i.e. 15.03.2001, it being referable to the authorization given by the GPA and the SPA by the complainant himself, no exception thereto could be taken, but for the suspicious circumstances attendant thereto. As has been rightly noted by the revisional court in the impugned order, however, the continued inquiry, particularly the more extensive one made through pre-charge evidence, has brought out further material to *prima facie* show complicity of the petitioners in the offence of criminal conspiracy.

12. Whilst it is true that there is no direct evidence of the petitioners being the author of forgery of the signatures of Surinder Kumar on aforesaid application dated 16.05.2001, the fact that they are, *prima facie*, the direct beneficiaries of the mutation of the lands in the name of their father on its basis, with the aid and assistance of the relinquishment deed dated 15.03.2001, the observations of the revisional court in the impugned order that a case is made out consequently for them to be put on trial on the charge of criminal conspiracy to gain wrongfully by dishonestly defrauding the office of SDM cannot be faulted in view of grave suspicion that arises as to their complicity. For this conclusion, the proceedings relating to the second case file before the SDM (Ex. CW9/B) on the basis of which the lands were mutated in their name on their subsequent application, apparently in continuation of the application, that was moved in the name of their father in May 2001, has been rightly referred to by the revisional court in the impugned order. There is no escape for the petitioners from facing prosecution on such basis.

13. The reliance by the petitioners on the decisions of the Supreme Court in *Gangula Ashok* (supra) and *Maikaal Fibres Ltd.* (supra) is misplaced. Unlike the present case, in *Gangula Ashok*, the High Court had directed, pre-maturely, the Special Court to frame charges against the persons arraigned in that matter. In the present case, the Magistrate had ordered discharge of the petitioners after pre-charge evidence had been led. The revisional court, sitting in judgment over the petition impugning such order of discharge, was duty bound to guide the Metropolitan Magistrate properly. After all, there cannot be

another round of submissions or consideration of the question of charge before the Metropolitan Magistrate. Similarly, *Maikaal Fibres Ltd.* (supra) has no application to the case at hand. The High Court, in that case, had set aside the order of Metropolitan Magistrate dismissing the criminal complaint. The remit of the case for fresh decision on pre-summoning inquiry could not have led to further direction for “trial” to be proceeded with, which was disapproved. That is not the situation at hand.

14. For the foregoing reasons, the petition under Section 482 Cr. PC challenging the direction to the Metropolitan Magistrate to put the petitioners on trial on charge for offences mentioned earlier is found to be devoid of substance and is dismissed.

(R.K. GAUBA)
JUDGE

AUGUST 24, 2018

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