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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 10th July, 2018

+ CRL. M.C.3224/2015

NARESH GOYAL

..... Petitioner

Through: Mr. Ramesh Gupta, Sr. Adv.
with Mr. Lalit Choudhary, Adv.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Ravi Nayak, APP for the
State with SI Janak Singh, PS
New Friends Colony.
Mr. Vikas Pahwa, Sr. Adv. with
Ms. Sima Gulati, Ms.
Yashasvika Sharma, Mr.
Anurag Nasir & Mr. Sachin
Choudhary, Advs. For R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The first information report (FIR) no. 190/2011 was registered by police station New Friends Colony at the instance of the petitioner. The case involved offences punishable under Sections 465 and 471 of Indian Penal Code, 1860 (IPC) allegedly having been committed by the second respondent. On the report under Section 173 of the code of Criminal Procedure, 1973 (Cr.P.C) submitted by the investigating agency, the Metropolitan Magistrate took cognizance and summoned the second respondent as accused. It appears that on the complaint of

the second respondent, the police had registered another case vide FIR No. 221/2011 under Section 420 IPC in the same police station. Charge-sheet in that case was also filed and the Court of Magistrate which took cognizance summoning the petitioner herein as accused, the said case being a cross case.

2. While in the criminal case arising out of FIR No. 221/2011, charge has been framed against the petitioner to put him on trial for the offence under Section 420 IPC, the Additional Chief Metropolitan Magistrate, South-East District, by his order dated 24.01.2014, found the allegations made in the criminal case initiated by the petitioner through FIR No. 190/2011 to be groundless and, thus, discharged the second respondent.

3. The petitioner, feeling aggrieved, had assailed the aforesaid order before the Court of Sessions invoking its revisional jurisdiction (CR 23/2014) which was dismissed by order dated 29.04.2015. It is the said orders which are assailed by the petition at hand with the prayer that this Court, in exercise of its inherent power under Section 482 Cr.P.C., must intervene to secure the ends of justice, the view taken by the courts below being perverse, against the evidence on record and in the nature of abuse of the process of the Court.

4. Needless to add, the second respondent resists the petition on the ground that the view taken by the Metropolitan Magistrate, as confirmed by the Court of Sessions in revision, is correct and, therefore, the petition is without substance. The first respondent/State, however, joins the petitioner in raising the grievance that there was no occasion for the proceedings to be brought to an end by directing

discharge of the second respondent, there being sufficient material to show that the second respondent had used the document which was *per se* forged.

5. The background facts of the case to which the present proceedings relate, as also of the cross case arising out of FIR No. 221/2011, are more or less common and, succinctly put, are to the effect that Mrs. Sheela Devi, mother of the second respondent had sold property described as bearing no. A-271, New Friends Colony, Delhi for consideration in favour of Gayatri Goyal, wife of the petitioner herein, the registered sale deed executed on 15.12.2009 indicating the total sale consideration to be Rs. 61 lakhs. Indisputably, on the same date, i.e. 15.12.2009, another document was executed named and styled as “memorandum of understanding”(MOU) between the said Gayatri Goyal and a firm described as M/s Kapil Builders, represented by the second respondent, referring, *inter alia*, to the purchase of the said property by Gayatri Goyal and in terms of which certain works in the nature of renovation had been entrusted to said M/s Kapil Builders against total payment required to be made in the sum of Rs. 1,14,38,000/-.

6. Some disputes had arisen between the parties to the above-said MOU in the wake of which the second respondent had filed a civil suit for injunction – prohibitory and mandatory – against the petitioner and his wife. In the course of proceedings arising out of the said civil suit, photocopy of the MOU - purportedly executed on 15.12.2009, running into two sheets, the first prepared and executed on stamp paper of Rs. 50, it bearing no. T-701126 – was filed in the civil court (copy filed

with the petition as annexure 'F'). The petitioner and his wife, defendants of the civil suit, questioned the genuineness of the said document and lodged criminal complaint in the court of Metropolitan Magistrate and pursuant to directions of the Magistrate under Section 156 (3) Cr.P.C. the FIR No. 190/2011 was registered by police station New Friends Colony. During the investigation evidence was gathered to the effect that stamp paper bearing no. T-701126 of the denomination of Rs. 50/- had been issued by stamp vendor Ramesh Batra on 26.04.2010. The verification of the register of the stamp vendor was found to contain certain illegible entries. The investigating agency was unable to trace the original MOU.

7. Noticeably, the second respondent took the position that the original of the MOU had been retained by the petitioner and its photocopy only had been given to him (the second respondent). He also claimed that in the context of the dispute that had arisen between the parties, the second respondent had contacted the petitioner herein and in the said meeting it was the petitioner herein who had changed the first sheet of the MOU, the second respondent being unaware at the time of filing of the civil suit of such replacement of the first sheet.

8. The second respondent had also applied for a loan from Oriental Bank of Commerce through its branch at Narwana, Haryana. It appears that copy of the MOU had been submitted with the application for loan and, on the basis of photocopy of the said document (the one submitted with the bank for loan), the cross case FIR No. 221/2011 was lodged with the allegations that the petitioner had committed the offence of cheating by substituting the first sheet of the photocopy.

Both the documents i.e. the one submitted by the second respondent with the civil suit and the other submitted with the FIR No. 221/2011 were sent to Central Forensic Laboratory (CFSL). It is claimed that the report of the CFSL confirmed the signatures appearing on both the photocopies were of the wife of the petitioner.

9. Though the allegations had been made in the FIR No. 190/2011 of the offence of cheating also committed by the second respondent, the investigating agency pressed the charge-sheet for his trial for offences punishable under Sections 465/471 IPC for which he was summoned. Undoubtedly, there is no evidence showing the second respondent to be the author of any forgery. The photocopy of the MOU (Annexure 'F') which was submitted in the civil suit, at the same time, concededly, is not a genuine document, the stamp paper on which the first sheet purports to have been prepared having been sold by the stamp vendor only on 26.04.2010. *Prima facie*, such document could not have come into being on 15.12.2009 as purports to be the date of its execution. The other photocopy of the same MOU, which was submitted in the context of the cross case, purports to have been prepared on stamp paper being no. F 635829. Without doubt, evidence has been gathered confirming that the said stamp paper had been issued in the name of the wife of the petitioner herein.

10. The Metropolitan Magistrate found no *prima facie* case for putting the second respondent on trial, *inter alia*, for the reason that he could not conceivably have an intention to file a forged MOU since he was in possession of the other photocopy that had been submitted with the loan application in the bank.

11. In the opinion of the Metropolitan Magistrate, the CFSL report showing the copy of the MOU filed with the civil suit also bearing the signatures of the wife of the petitioner, no case for the second respondent to be put on trial was made out only on the basis of oral evidence. This view has been affirmed by the revisional court.

12. The learned senior counsel for the second respondent placed reliance on *Mohammed Ibrahim vs. State* (2009) 8 SCC 751; *Parminder Kaur vs. State of UP* (2010) 1 SCC 322; *Radha Pisharassiar Amma vs. State* (2007) 13 SCC 410; *Dr. Vimla vs. Delhi Admin* (1963) Suppl. 2 SCR 585 and *Shiela Sebastian vs. R. Jawaharaj & Anr. & etc.* 2018 SCC Online SC 522 to argue that mere preparation of false document with dishonest or fraudulent intention is not sufficient and that to bring charge of the offence of forgery and use of a forged document, it must also be shown that the intent was that the document caused to be believed to have been made or executed by or under the authority of a person by whom or by whose authority the accused knew it not to have been made or executed.

13. In *Sajjan Kumar vs. CBI*, (2010) 9 SCC 368, the Supreme Court has summarized the law on the subject of charge as under:-

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal”.

14. In the considered view of this Court, the approach of both the courts below at the stage of charge has been misdirected resulting in miscarriage of justice, necessitating this Court to step in and make the necessary amends.

15. The copy of the FSL report dated 15.07.2013 on which the impression was gained by the courts below that the first sheet of the MOU as per the copy submitted with the civil suit (annexure 'F') was also signed by the wife of the petitioner, *prima facie*, was not a correct conclusion. The hand writing expert clearly stated in his report that in the absence of the original document it had not been possible for him to give any opinion as to whether the questioned signatures were the result of super-imposition or otherwise with any of the signatures. Both the photocopies of the MOU, one filed with the civil suit and the other statedly procured from the bank and submitted with the FIR of the cross case have come from the possession of the second respondent. It is, thus, he who alone has to account for the genuineness or otherwise of the document (annexure 'F') filed with the civil suit, the first sheet whereof is of suspect origin. *Prima facie*, it cannot be a genuine document inasmuch as, at the cost of repetition, it could not have been prepared on a stamp paper which had been issued after the date it purports to have been executed.

16. It may be that no evidence has come forth showing that the second respondent is the author of the forgery. But there can be no escape from prosecution on the charge of use of forged document as genuine as is punishable under Section 471 IPC. *Prima facie*, forged copy of the MOU having been submitted with the civil suit, the second

respondent intended that the said document be accepted, believed and acted upon as copy of a document that had been executed by the wife of the petitioner herein. It has to be remembered that there is also no evidence confirming that the wife of the petitioner herein had signed the first sheet of the original of the questioned copy of the MOU, the original whereof has not been shown the light of the day. It is, *prima facie*, not believable that the original of the said MOU would have been left in the custody of the wife of the petitioner and only its copy having been given to the second respondent inasmuch as the obligation to pay for the works to be carried out in the property in question had been undertaken by the wife of the petitioner and not by the second respondent. The original document of such nature would ordinarily be kept by the creditor and not the debtor.

17. In above facts and circumstances, *prima facie* charge for offence under Section 465 read with Section 471 IPC was made out against the second respondent for which he ought to have been put to trial.

18. In above context, it must also be added that the trial court, as indeed the revisional court, should have borne in mind that the cross case had also been brought the version of the two parties involved in the case being based essentially on oral word of one against the other. There was no occasion for the oral explanation of the second respondent to be treated as the complete truth and the version of the petitioner and his wife on the other hand being rejected without it being tested at trial. The basic precaution that cross cases had to be tried simultaneously and decided on the basis of evidence at the same

time seems to have been ignored. [*Sudhir vs. State of M.P.* 2001 (2) SCC 688].

19. For the foregoing reasons, the petition is allowed. The impugned orders are set aside.

20. The respondent no.2 is directed to appear before the concerned Metropolitan Magistrate on 26th July, 2018 when charge under Section 465 read with Section 471 IPC shall be framed against him for further proceedings in accordance with law.

R.K.GAUBA, J.

JULY 10, 2018

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