

\$~5

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 6th December, 2018

+ CRL. M.C. 3299/2015 & Crl. M.A. 11736/2015

ASHOK SARIN

..... Petitioner

Through: Mr. Ravi Bakshi, Mr. Ankit
Jain & Mr. Ashish Verma,
Advs.

versus

STATE

..... Respondent

Through: Mr. K.S. Ahuja, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner was the plaintiff in the court of Civil Judge in two civil suits – suit no. 358/2002 and suit no. 359/2002 – the first directed against Mangat Ram and the other against Dharam Pal, both arising out of same transaction and background facts giving rise to common facts and raising common question of law and consequently clubbed together so that evidence was commonly led. The common issues including the core one as to whether agreement dated 18.12.1987 entered upon by the petitioner (the plaintiff) with the said set of defendants had been “breached” by them (i.e. the defendants) so as to give rise to cause of action in his favour to seek refund of the money which had been paid thereunder. The suits were decided by

the Civil Judge by common judgment dated 03.07.2003, the aforementioned core issue (issue no.3) particularly, having been answered against him, the finding returned eventually being that the cases presented were “false”. Concededly, the said judgment was not appealed against and has attained finality.

2. Be that as it may, on the basis of findings returned and the conclusion reached in the said common judgment dated 03.07.2003, the Civil Judge presented a complaint – styled as an application addressed to the Chief Metropolitan Magistrate dated 03.07.2003 making a request for cognizance to be taken and criminal proceedings to be initiated against the petitioner (plaintiff of the suits) for offences allegedly committed under Sections 181 (false statement on oath), 193 (punishment for false evidence) 209 (dishonestly making false claim in the Court) of Indian Penal Code (IPC).

3. The Chief Metropolitan Magistrate, by his order dated 07.12.2013, in the case (CC no. 181/2002) arising out of the said application found no material available on record which gave rise to grave suspicion to put the petitioner on trial and, consequently, ordered him to be discharged. The said order was challenged by the State in the Court of Sessions invoking its revisional jurisdiction (by criminal revision no. 01/2014) which was allowed by the said Court, by its order dated 28.01.2015, holding that there was some material available on which the case could proceed further, the Chief Metropolitan Magistrate, in the opinion of the revisional court, having fallen in error by minutely appreciating the whole evidence in the civil suit which was impermissible.

4. Aggrieved by the said order of the revisional court by which the criminal prosecution stood revived on the file of the Metropolitan Magistrate, the present petition was filed invoking the inherent power and jurisdiction of this Court under Section 482 Cr.P.C., it being argued that the same would be an abuse of the process of law inasmuch as there is no evidence worth the name, as was held by the Chief Metropolitan Magistrate, showing any dishonest intention on the part of the petitioner in launching the said civil suits, the conclusions reached with reference to document in the nature of agreement to sell dated 06.11.1987, introduced through the mouthpiece of a witness, not being sufficient inasmuch as the said document was not even a bone of contention between the parties, there being neither the slightest reference thereto in the pleadings of either side nor any reliance thereupon having been placed by the defendants.

5. Having heard both sides and having gone through the record, this Court finds that apart from the above submissions made by the petitioner there is one prime reason why the criminal prosecution on the basis of afore-mentioned application of the Civil Judge cannot be permitted to continue. There is no evidence that the petitioner was signatory, or party, to the document dated 06.11.1987. There is no observation recorded, not even remotely so expressed, that it was expedient or in the interest of justice for such criminal case to be launched by the civil court in exercise of its power and jurisdiction under Section 340 Cr.P.C. read with Section 195 Cr.P.C. In absence of such conclusion, the prosecution cannot be permitted to proceed.

6. Thus, the petition is allowed. The impugned order of the revisional court is set aside. The proceedings against the petitioner in the aforementioned case shall stand quashed.

R.K.GAUBA, J.

DECEMBER 06, 2018

nk

