

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Decided on: 19th November, 2018

+

CRL. L.P. 757/2018

SH. K.C. ARORA

..... Petitioner

Through: Mr. Vinod K. Gandhi, Advocate

Versus

SH. SATISH CHAND ARORA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CRL. L.P. 757/2018 & CM Nos. 47526/2018

1. This Criminal Leave Petition under section 378(4) read with Section 482 of the Code of Criminal Procedure, 1973 is against the impugned judgment dated 07.09.2018 passed by the learned Metropolitan Magistrate, thereby acquitting the accused for offences punishable under sections 467, 468 and 471 of the Indian Penal Code, 1860.

2. The Trial Court held that the Civil Court merely observed that the accused failed to prove the Will in his favour and also that there is no finding regarding the forgery of the disputed Wills. It further held that for convicting the accused for offences punishable under sections 467/468 IPC,

the court needs evidence demonstrating that the accused himself had made the false Wills.

3. The petitioner submits that the accused no 1-Satish Chandra Arora filed a probate petition on the basis of a Will dated 14.01.1990 allegedly executed in his favour by late Sh. Bihari Lal in respect of property bearing no. G1A, Kalkaji, New Delhi; Accused no 2- Subhash Chandra also filed a probate petition on the basis of another will dated 22.02.1990 allegedly executed in his favour by late Sh. Bihari Lal in respect of the same property. He further submits that both the probate petitions were dismissed by the ADJ on the basis of which the petitioner/complainant approached the Trial Court and subsequently the accused persons were summoned for the offences punishable under sections 467/468/471 IPC. During the course of trial, accused no-2 Subhash Chandra expired and proceedings against him were abated by order dated 16.07.2018.

4. The petitioner contends that the accused had forged and fabricated the Will dated 14.01.1990; he had committed an offence punishable under sections 467/468/471 IPC; the accused had sought probate of the said Will, claiming it to be genuine, but it was held not to be so; that the accused was the only beneficiary of the forged Will.

5. Sections 467, 468 and 471 IPC are as under:

*Section 467. Forgery of valuable security, will, etc.—
Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money,*

movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 468. Forgery for purpose of cheating.—Whoever commits forgery, intending that the [document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 471. Using as genuine a forged [document or electronic record].—

Whoever fraudulently or dishonestly uses as genuine any [document or electronic record] which he knows or has reason to believe to be a forged [document or electronic record], shall be punished in the same manner as if he had forged such [document or electronic record].

6. This Court finds that neither there is any report of a handwriting expert nor the judgment of the Civil Court contains any findings to the effect that the accused himself had forged the Wills, thus due to lack of any evidence on the record, the accused could not be held liable for offenses punishable under the aforementioned sections. The observation made by the Civil Court is clear apropos the fact that the accused persons failed to prove the execution of the Wills as per law. There is no observation by the Court against the accused persons regarding forgery and fabrication of the said Wills. Also, the two witnesses examined by the complainant/petitioner i.e.

CW2 and CW3 who deposed in his favour are neither eye witnesses to the execution of the Wills nor are they handwriting experts. Besides the judgment of the Civil Court the petitioner/complainant has failed to bring on record any evidence or sufficient material to prove the that the said forgery and fabrication was done by the accused.

7. In view of the above, no sufficient ground is made out for grant of leave to appeal. The petition is accordingly dismissed.

NAJMI WAZIRI, J.

NOVEMBER 19, 2018



न्यायमेव जयते