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

Decided on:- 18th July, 2018

+ CRL. M.C. 3737/2015

SHRIMATI KRISHNA DEVI SANGWAN Petitioner

Through: Mr. Devraj Singh, Adv.

versus

STATE (GOVT. OF NCT OF DELHI) & ORS..... Respondents

Through: Mr. Ravi Nayak, APP for
State.

Mr. Sunil Chauhan, Adv. for R-
1 & 2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The second respondent is alleged to have sold to the petitioner 608 square yards of land forming part of Khasra No. 568 situate in Revenue Estate of village Hiran Kudna, Delhi by executing documents in the nature of general power of attorney (GPA), agreement to sell, affidavit and receipt statedly executed on 29.12.1989 for valuable consideration of Rs. 1,70,000/-, the third respondent (husband of the second respondent) having signed the said documents as attesting witness, the petitioner having been put in possession of the property thus sold. It is a claim of the petitioner that after purchase she had

constructed building on the said property which she occupied using it as residence and for running a school in the name and style of Krishna Public School. It is alleged by her that in 2007 she was served with a notice from Debts Recovery Tribunal in RC 137/1999 titled Punjab National Bank vs. M/s Devta Paper Mills requiring her to appear on 06.11.2007 to show cause as to why the said property be not attached for purposes of recovery of the debt outstanding against the said M/s Devta Paper Mills, the proceedings taken out being under Section 83 of the Second Schedule of the Income-Tax Act 1961 read with Section 25-28 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993. It is her allegation that the later inquiries revealed that the private party respondents having sold the property to her had subsequently fraudulently mortgaged it with Punjab National Bank in the capacity of guarantor for loan taken in the name of M/s Devta Paper Industries and further that in order to frustrate the recovery proceedings, the property had been shown to have been transferred by the respondents by sale deed dated 04.06.1997 in the name of their close relatives, M/s Devta Paper Industries company, being an entity which was non-existent, the loan taken being by playing of fraud against the bank.

2. On the complaint of the petitioner, the FIR No. 93/2008 was registered in police station Nangloi for offences under Section 420 IPC. It appears that on account of there being no effective action, the petitioner moved a criminal complaint (No. 66/2003) in the court of Metropolitan Magistrate on 17.10.2008 alleging offences punishable under Sections 420/506/120B/34 IPC having been committed. The

investigating police filed a cancellation report in the court of Metropolitan Magistrate on 22.05.2009. The criminal complaint (no. 66/03) which was then pending was clubbed with the said cancellation report. The petitioner filed objections to the said cancellation report and also filed another complaint (CC no. 298/3) in December, 2010 alleging offences under Sections 420/468/471/120B IPC. By order dated 17.11.2011, the Metropolitan Magistrate directed further investigation. Pursuant to this, further reports were filed. The said reports were considered by the Metropolitan Magistrate by order dated 04.06.2014. The Magistrate has opined that the documents in the nature of GPA, Agreement to Sell etc. could not have conferred title of the property in question on the petitioner and, on the basis of this view, he held that the complaints and the report under Section 173 Cr.P.C. did not call for any further action.

3. The petitioner feeling aggrieved approached the Court of Sessions invoking its revisional jurisdiction by CrI.Rev. No. 79/2013 which was dismissed by order dated 17.07.2015 whereby the above-mentioned view of the Magistrate was upheld.

4. Feeling aggrieved with the above-mentioned orders of the Magistrate and of the Sessions Court, the present petition has been filed seeking intervention by this Court in exercise of its inherent power under Section 482 Cr.P.C.

5. The petition is resisted by second to fifth respondents who have filed reply.

6. The State has taken a non-committed stand by simply submitting status report setting out the background facts and summarizing the process that has been undertaken so far.

7. The core issue which needs to be addressed by this Court is one of procedure. On the facts and circumstances, it cannot be said that the complaint lodged with the court of Magistrate did not disclose cognizable offences. The petitioner had come up with criminal complaint even while the investigative process into the FIR was underway. At that stage, on account of inhibition in Section 210 Cr.P.C., no inquiry into her complaint could be held by the Magistrate. But, the investigative process having come to an end, the police having concluded that no case was made out and having filed cancellation reports, the bar under Section 210 Cr.P.C. came to be lifted. The complaint which had been filed prior to filing of the cancellation report was still pending before the Metropolitan Magistrate. It had been followed by another complaint with the allegations of certain additional offences. It was incumbent against this backdrop on the part of Metropolitan Magistrate, in the given facts and circumstances of the case, for opportunity to be given to the petitioner to lead evidence for inquiry in terms of Sections 200/202 Cr.P.C. The Magistrate did not apply his mind to the requirement of such procedure to be conducted and instead short-shrified the whole process. This renders the order dated 04.06.2014, closing the proceedings on the complaint case vitiated.

8. For above reasons, the petition is allowed. The impugned orders dismissing the criminal complaint of the petitioner without

inquiry are set aside. The Metropolitan Magistrate is called upon to hold a proper inquiry in terms of Sections 200/202 of Code of Criminal Procedure, 1973. For such purposes, the petitioner shall present herself before the concerned Metropolitan Magistrate on 7th August, 2018.

9. The petition is disposed of in above terms.

R.K.GAUBA, J.

JULY18, 2018

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