

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on :30th November, 2017

Date of decision :12th June, 2018

CRL.M.C. 5247/2015

SUDHIR SEHGAL

..... Petitioner

Through Mr. APS Ahluwalia, Sr.
Advocate along with Mr. S.S.
Ahluwalia, Advocate.

versus

STATE

..... Respondent

Through: Mr. Maninder Jeet Singh,
Advocate for Intervenor.
SI Navee, PS Subzi Mandi.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. Vide the present petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, the petitioner assails the impugned order dated 14.09.2015 of the learned Additional Sessions Judge-I, Central, Tis Hazari Courts, Delhi in Criminal Revision No. 02/2014 whereby the order dated 16.12.2013 of the learned Chief Metropolitan Magistrate, Central, Tis Hazari Courts, Delhi in the Criminal Complaint No. 315/1 was upheld whereby a prima facie case was held to be made out against the

petitioner herein as the accused no. 2 in the Criminal Complaint No. 315/1 qua the alleged commission of the offences punishable under Sections 467/471/120B of the Indian Penal Code, 1860 with it also having been observed vide the said order that a prima facie case was also made out against the said accused no. 2 i.e. the petitioner herein qua the alleged commission of the offences punishable under Sections 467/471 read with Section 120B of the Indian Penal Code, 1860 against the petitioner herein along with the co-accused no. 1.

2. Submissions have been addressed on behalf of the petitioner and on behalf of the State and the complainant.

3. The proceedings before the Trial Court in the Criminal Complaint No. 315/1 were stayed vide order dated 05.01.2016 of this Court, which is still in operation.

4. The complaint in the instant case was submitted by the learned Additional Sessions Judge-05, West District, Tis Hazari Courts, Delhi in his official capacity as a 'public servant' within the meaning of Section 21 of the Indian Penal Code, 1860 setting forth the facts to the effect that Smt. Agyawati Sehgal widow of the deceased Sh. Maya Ram Sehgal and Sh. Sanjeev Kakkar and deceased Sh. Maya Ram Sehgal had no issue and had adopted Sh. Surinder Kumar Sehgal, Smt. Asha Sehgal, the wife of Sh. Surinder Kumar Sehgal and the mother of the petitioner herein Sh. Sudhir Sehgal and Ms. Archana Sehgal, the daughter of Sh. Surender Kumar Sehgal had filed a petition bearing Probate Case No. 317/1994 (134/93) for grant of Letters of Administration in the Court of District Judge on 04.05.1993 on the basis of the Will left by the deceased Sh. Maya Ram Sehgal dated

15.04.1968, which was contested by Smt. Agyawati Sehgal (the respondent no. 2) and the wife of the deceased Sh. Maya Ram Sehgal and Sh. Sanjeev Kakkar (the respondent no. 3) and the accused persons had examined three witnesses i.e. PW1 Sh. Amrik Chand Sehgal, PW2 Sh. Baldev Kumar Talwar and PW3 Smt. Asha Sehgal (the accused no. 1) and during trial, PW1 Sh. Amrik Chand Sehgal expired before his cross examination could be recorded. The then learned ADJ vide judgment dated 02.12.1998 whilst dismissing the petition filed by the accused persons arrayed as the accused persons to the Criminal Complaint No. 315/1, held that **the Will was forged and fabricated and for forgery of the Will and or giving false evidence before the Court,** the petitioners and the witnesses be prosecuted after the judgment attains finality in as much as the copy of the judgment dated 02-12-1998 was attached as Annexure-A to be read as part and parcel of this complaint and thereafter after the dismissal of their petition, an appeal bearing FAO No. 139/1999 titled as Asha Sehgal Vs. State was filed by these three accused persons before this Court, which was dismissed on 19.03.2008, copy of the judgment of this Court dated 19.03.2008 confirming the order of the trial Court dated 02.12.1998 was annexed as Annexure-B and thereafter the Special Leave Petition (Civil) No. 5719/2009 filed by the accused against this judgment dated 19.03.2008 was dismissed on 14.05.2009 by the Hon'ble Supreme Court and thus the judgment dated 02-12-1998 had become final with the way for the prosecution of the accused persons having become clear.

5. As per the complaint, the application bearing M. No. 49/2009 in

Probate Case No. 317/1994 (134/93) under Section 340 of the Code of Criminal Procedure, 1973 was moved on behalf of the legal representative of the respondent no. 2 late Smt. Agyawati Sehgal for initiating prosecution proceedings against the accused, which was allowed on 11.06.2009 and thus the Criminal Complaint No. 315/1 was filed to comply with the judgment dated 02.12.1998, it was stated in the said complaint further that the petitioners and the other witnesses be prosecuted. The two witnesses PW1 Sh. Amrik Chand Sehgal and PW2 Sh. Baldev Kumar Talwar had already expired as stated in the application under Section 340 of the Code of Criminal Procedure, 1973 and thus only the petitioners of the Probate Case No.317/1994 (134/1993) were being prosecuted through the complaint. The complainant i.e. the then learned Additional Sessions Judge-05, West District, Tis Hazari Courts, Delhi thus requested that the appropriate criminal proceedings against Smt. Asha Sehgal wife of Sh. Surinder Kumar Sehgal and the mother of the petitioner herein, Sh. Sudhir Sehgal, **the petitioner herein** and Ms. Archana Sehgal sister of the petitioner herein, be initiated for forgery of the Will of Sh. Maya Ram Sehgal dated 15.04.1968 and the accused no. 1 Smt. Asha Sehgal be also prosecuted for perjury or giving false evidence in the Court on oath.

6. As per the judgment dated 02.12.1998 of the learned Additional Sessions Judge-I, Central, Tis Hazari Courts, Delhi in Probate Case No. 317/1994 (134/93), the petitioners of the said Probate Case No. 317/1994 (134/93) i.e. the three accused arrayed to the complaint of whom the petitioner herein was the accused no. 2, had sought that they

be granted Letters of Administration vide the petition under Section 276 of the Indian Succession Act in respect of the estate of late Sh. Maya Ram Sehgal, who expired on 11.10.1968 and on the date of the death of Sh. Maya Ram Sehgal, Smt. Agyawati Sehgal his wife was alive. The petitioner no. 1 was the wife of the grandson of the testator's real brother and the petitioners no. 2 & 3 are the children of the petitioner no. 1.

7. As per the judgment dated 02.12.1998, the Probate Case No. 317/1994 (134/93) was filed on 01.05.1993 i.e. after about 25 years after the death of the deceased Sh. Maya Ram Sehgal and the petitioners therein i.e. three accused sought the Letters of Administration to be issued in respect of the estate of the deceased Sh. Maya Ram Sehgal under the capacity of residuary legatees under the Will stating that the estate in respect of which the Letters of Administration was sought by the petitioners was the house bearing No. B-1//19, Rajouri Garden, New Delhi. The said Probate Case was filed against the said Smt. Agyawati Sehgal, widow of the deceased Sh. Maya Ram Sehgal (the respondent no. 2) and Sh. Sanjeev Kakkar (the respondent no. 3) in the Probate Case No. 317/1994 (134/93) of whom Shri Sanjeev Kakkar was a bonafide purchaser of the Ground Floor portion of the property in respect of which the Letters of Administration was sought by the petitioners and he had purchased the Ground Floor portion from the respondent no. 2 i.e. Smt. Agyawati Sehgal widow of deceased Sh. Maya Ram Sehgal vide a duly registered Sale Deed dated 23.05.1991 i.e. about two years prior to the Probate Case No. 317/1994 (134/93) having been filed.

8. Objections were filed by Smt. Agyawati Sehgal widow of deceased Sh. Maya Ram Sehgal (the petitioner no. 2) and also by Sh. Sanjeev Kakkar (the petitioner no. 3), who however stopped appearing after submission of the objections. The respondent no. 1 i.e. the State also did not appear to oppose valuation of the estate of the deceased given by the petitioners in the particulars annexed to the petition. Smt. Agyawati Sehgal widow of deceased Sh. Maya Ram Sehgal in the course of the Probate proceedings denied the existence, execution and validity of Will dated 15.04.1968 allegedly executed by the deceased and claimed that the Will in question was forged and fabricated and was never executed by her deceased husband during his lifetime and she rather claimed that her deceased husband Sh. Maya Ram Sehgal had executed a Will dated 10.01.1965 in her favour and that she had got the property bequeathed under the Will mutated her name in the Municipal Records after the death of her husband in 1968-69 itself. She further claimed that Sh. Surender Kumar Sehgal, the husband of the petitioner no. 1 Smt. Asha Sehgal had merely got a license in respect of the portion on the first floor of the property in question at a monthly license fee of Rs.2,000/-. She further claimed that the petitioner no. 1 i.e. the petitioner of the Probate Case had lived in the premises only as a licensee till 03.09.1988 and that the license fees had not been paid and rather the petitioners of the said petition had maltreated and misbehaved with the respondent no. 1 and had been threatening to kill Smt. Agyawati Sehgal, the widow of deceased Sh. Maya Ram Sehgal and the respondent no. 2 had been lodging reports with the PS Kirti Nagar from time to time and that the petitioners also

inserted a public notice in the Delhi Edition of the Hindustan Times in May, 1991 and misled the public by claiming the property in question as against the absolute ownership of the respondent no. 2 and thereafter filed a suit for permanent injunction alleging that the petitioners were being dispossessed by the respondent no. 2 from the property in question and that thereafter the petitioners in connivance with certain persons who were inimical towards the respondent no. 2 including Sh. Amrik Chand Sehgal entered into a conspiracy in October / November, 1991 and forged and fabricated the Will in question dated 15.04.1968 and tried to introduce the same in the suit for permanent injunction by way of amendment of the plaint but the Court dealing with the said suit doubted the intentions of the petitioners as also the genuineness of the said Will being produced after a lapse of 24 years of the death of the testator Sh. Maya Ram Sehgal. Thereafter, the petitioners filed a suit for declaration on the basis of the Will in question dated 15.04.1968 in this Court and during the pendency of the suit, the counsel for the respondent no. 2 had served a notice on the petitioners for the production of the original Will which the petitioners and their counsel never produced for inspection and rather instituted the proceedings for getting the Letters of Administration of the Will in question. The suit for declaration which was instituted initially by the petitioners in this Court was transferred to the District Court for want of jurisdiction. The respondent no. 2 also filed a suit for possession and recovery of arrears of license fees / mesne profits against the petitioners which was also pending adjudication at the time when the order dated

02.12.1998 in the Probate Case was pronounced. The respondent no. 2 Smt. Agyawati Sehgal widow of deceased Sh. Maya Ram Sehgal through her objections submitted that the falsehood of the case of the petitioners i.e. the accused herein was borne out from the fact that it does not require a period of 25 years to produce the genuine document after the demise of the testator which rather drove one to an irresistible conclusion that the document propounded as the will of the deceased testator had been prepared, forged and fabricated to fit into the case of the petitioners.

9. In the said probate petition, the issues were framed to the effect:-

“(i) Whether the Will dated 15.4.1968 propounded by the petitioners is the last Will and testament of late Sh. Maya Ram Sehgal and if so whether the said will is genuine and valid in law.”

(ii) Relief.”

10. The petitioners of the Probate Petition i.e. the three accused in the complaint in which the impugned order dated 16.12.2013 of the learned Chief Metropolitan Magistrate, Central, Tis Hazari Courts, Delhi in the Criminal Complaint No. 315/1 examined three witnesses i.e. PW1 Shri Amrik Chand Sehgal, who had expired before his cross examination could be done, PW2 Sh. Baldev Kumar Talwar, who was the husband of the real elder sister of the petitioner no. 1 i.e. Smt. Asha Sehgal and PW3 examined was Smt. Asha Sehgal, the petitioner no. 2 herself.

11. The respondent no. 2 to the said petition also examined two

witnesses i.e. RW1 Smt. Agyawati Sehgal, who stated that she was the widow of the deceased Sh. Maya Ram Sehgal and she is the objector herself and RW2 Sh. Rajender Kuamr Sehgal is the real younger brother of the husband of the petitioner no. 1.

12. Vide judgment dated 02.12.1968, the issue no. 1 was decided to the effect : -

“Taking stock of all the facts and circumstances of the case discussed hereinabove, I have no manner of doubt left in my mind except to hold that the petitioners have miserably failed to prove the due execution and attestation of the Will in question and they have also failed to remove the suspicious circumstances surrounding the said Will. This issue is accordingly decided against the petitioners.”

13. Vide para 19, qua issue no. 2, it was observed to the effect : -

“In view of the findings on the aforesaid issue the present petition is hereby dismissed with costs quantified at Rs.5,000/-. Before parting with this judgment, I would like to note that this Court would like to initiate perjury proceedings against the petitioners as well as their witnesses, for having forged the Will in question and also for giving false evidence before the Court after this judgment would attain finality. Present petition stands disposed of accordingly. File be consigned to R.R.”

14. Significantly the Will propounded by the accused persons i.e. the petitioners in the Probate Case was scribed and is a handwritten Will of which the true English translation was stated to be to the effect: -

“WILL

I Mayaram Sehgal son of late Anand Ram Sehgal, am

resident of B-10/19, Rajouri Garden, New Delhi. My wife Agyawati is alive. I do not have any child of my own but I have kept with me dear Surinder Kumar son of Sh. Tirath Ram Sehgal as my own child. I own a double storey house which bears No. B-10/19. I had constructed the said house after purchasing the said plot which is my personal house. I make this my last Will to the effect that as long as I am alive, I shall be the owner of the said house and of cash etc. After my death, my wife Agyawati and Surinder Kumar both shall be the owner of this house. If I am able to get Surinder Kumar married in my life time I shall do it otherwise my wife shall get him married. I direct dear Surinder Kumar that he should lookafter and serve Agyawati for her life. Agyawati and Surinder Kumar shall have no right to sell the house in their life time. This shall be the right of the wife and children of Surinder Kumar. This is my last Will and I have got it written in my full senses and sound mind and my supervision on this 15th day of April, 1968 in the presence of witnesses (emphasis added).

*Sd/- Mayaram Sahgal in his
own pen.*

Witnesses :

*Ch. Ram Sharma, Executant
B-10/12A, Rajouri Garden, Maya Ram Sahgal
New Delhi – 27*

Witnesses:

Sd/-

*Amrik Chand Sehgal,
House No. 9047, Gali No. 1,
Multani Dhande, P. Ganj, Delhi.*

I, J.R. Geol, do declare that I read and perfectly understand the language and character of the original will and that the above is a true and accurate translation thereof.

Sd/- J.R. Geol. 3.6.1993

15. Vide para 11 of the said verdict dated 02.12.1998 in the Probate Case, it was observed to the effect : -

“11. The case of the petitioners is that since the testator Sh. Maya Ram Sehgal had no child of his own he had kept Surinder Kumar Sehgal, grand son of his real brother and brought him up as his own son and out of love and affection for him he had made a will of his property jointly in favour of his widow respondent no. 2 and Sh. Surinder Kumar Sehgal by creating a life interest in his property in their favour and gave ultimate power to sell and transfer of the property bequeathed under the Will in favour of the Wife and children of Sh. Surinder Kumar Sehgal whom he had brought up as his own son during his life time. The respondent no. 2 who is widow of the testator has denied the adoption of Sh. Surinder Kumar Sehgal was brought up by them as their own son as alleged by the petitioners. The will in question was allegedly made by the deceased testator on 16.04.1968. The marriage of the petitioner no. 1 with Sh. Surinder Kumar Sehgal took place on 26.11.1969. A reference to the contents of the Will reproduced hereinabove shows that the bequest has been made in such a manner as to make the petitioners real beneficiaries of the said Will. The petitioners had not become the members of the family either of the testator or of his real brother, with whose grand son petitioner no. 1 was later on married, on the date the will was allegedly made and therefore, the bequest contained under the Will to the effect that the wife and the children of Sh. Surinder Kumar Sehgal alone would be entitled to sell or transfer the property of the

testator after his death appears to be most unnatural. This raises a strong suspicion on the genuineness of the Will in question.”

16. The veracity of the testimonies of the witnesses examined by the petitioners of the probate petition was also held to be not above board vide the said verdict. It has also been observed vide para 13 to the effect :-

“13....It appears from the aforesaid facts that the petitioners came to know about the will in question on or around May, 1992 i.e. after about 24 years of the death of the deceased testator. They filed the present petition for Letters of Administration on 1.5.93 but PW-3 Smt. Asha Sehgal has deposed in her chief that the Will in question was handed over to her by Sh. Amrik Chand Sehgal either in Oct. or Nov. 1993-94. She has repeated the year of her knowledge of the Will in question i.e. 1993-94 at number of places in her statement and it appears from her deposition that the Will in question was never in existence at any point of time and or that reason she could not tell as to when she actually came to know about the alleged Will. How she could come to know about the alleged Will for the first time in Oct/Nov. 1993-94 when she herself had filed an amendment application relying on the Will in question in her injunction suit in May, 1992 and had filed the present present probate case on 1.5.1993 i.e. much prior to Oct/Nov. 1993-94. It will be significant to mention here that the petitioner No. 1 has submitted in her cross-that she was aware about the Will of the deceased Shri Maya Ram Sehgal even prior to her marriage which took place on 26.1.1969. She has deposed that she never made any efforts to find out as to who was having the custody of the Will in question before its custody was given to her by Shri Amrik Chand Sehgal in 1993-94. She has further deposed that Shri Amrik Chand Sehgal who is one of the attesting witnesses of the alleged Will had telephoned her a few days before he handed over the Will in question to her and told her that he was having the custody

of the Will Ex. PW2/1 but could not tell how many days before handing over the custody of the Will he had telephoned her. She visited the house of Shri Amrik Chand Sehgal for getting the Will in question 3/4 times but every time she visited his house he told that he would trace out the Will and would give it to her as and when he would find the same in his house. She has stated on oath that Shri Amrik Chand Sehgal in fact gave the Will Ex. PW2/1 to her when she visited his house sometimes in Oct.1993. She denied the suggestion that the Will Ex. PW2/1 was never given to her by Shri Amrik Chand Sehgal. PW2 Sh. Baldev Kumar Talwar who is the husband of the real elder sister of petitioner No. 1 has deposed in his cross-examination that after the Will Ex. PW2/1 was got signed by the testator from Sh. Ram Sharma its custody was retained by Sh. Maya Ram Sehgal with himself and he could not tell as to what happened with that Will thereafter. If PW2 is to be believed that the custody of the Will in question was retained by the deceased testator Shri Maya Ram Sehgal with himself then how the Will came into custody of Shri Amrik Chand Sehgal who allegedly gave it to petitioner No. 1 in Oct. 1993 has remained totally unexplained and creates a ring of doubt in my mind about very existence of the said Will. It is very significant to note that PW2 Sh. Baldev Kumar Talwar is the husband of the real elder sister of petitioner No. 1 being his sister in law. It is deposed by PW2 that the testator had brought his Will in question to him sometime in April, 1968 and had requested him to accompany him for getting it signed from Chaudhary Ram Sharma which he did at his request. PW2 has further deposed that Ch. Ram Sharma had signed on the alleged Will dt 16.4.1968 at the request of the testator in his presence and it is also deposed by him that he himself had read the contents of the Will Ex. PW2/1 before he accompanied the testator to the shop of Ch. Ram Sharma it is revealed from the deposition of the petitioner No. 1(PW3) and also that of PW2 Sh. Baldev Kumar Talwar that they both were aware about the contents of the Will right from 1968 itself then why petitioner No. 1 did not try to find out as to who was having the custody of the said Will and why PW2 Shri

Baldev Kumar Talwar did not tell about the existence of the said Will and all these questions raise a big question mark on the genuineness of the Will propounded by the petitioners”.

17. For the execution of the Will, due execution and attestation of the Will in question in terms of the Section 63(c) of the Indian Succession Act, 1925 has to be done, which provides to the effect : -

“63(c) The Will shall be attested by two or more witnesses each of whom has seen the testator sign or affix his mark to the will or has been some other person sign the will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or of the signature of such other persons; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary”

18. As already observed hereinabove, the FAO No. 139/1999 titled as Asha Sehgal Vs. State against the judgment dated 02.12.1998 was dismissed by this Court vide which it was held that there was no infirmity in the judgment and order dated 02.12.1998, which were affirmed.

19. The Special Leave Petition (Civil) No. 5719/2009 before the Supreme Court against the verdict of this Court in the FAO No. 139/1999 titled as Asha Sehgal Vs. State was dismissed on 14.05.2009. The findings thus as observed vide the judgment dated 02-12-1998 have rightly been observed to have attained finality as stated in the complaint dated 11.06.2009 of the learned Additional Sessions Judge-05, West District, Tis Hazari Courts, Delhi pursuant to

the application bearing M. No. 49/2009 in Probate Case No. 317/1994 (134/93) under Section 340 of the Code of Criminal Procedure, 1973 seeking initiation of perjury proceeding in terms of the judgment dated 02.12.1998 in PC No.317/94 against the petitioners herein i.e. Smt. Asha Sehgal wife of Sh. Surinder Kumar Sehgal and the mother of the petitioner herein Sh. Sudhir Sehgal, the petitioner herein and Ms. Archana Sehgal daughter of Sh. Surender Kumar Sehgal for the prosecution for the forgery of the Will and also of the petitioner Smt. Asha Sehgal for prosecution for giving false statement on oath.

20. Vide the order dated 16.12.2013 of the learned Chief Metropolitan Magistrate, Central, Tis Hazari Courts, Delhi in the Criminal Complaint No. 315/1 at the time of consideration of the framing of charge, it was observed to the effect : -

“In view of the findings on issue no. 1 given in the aforesaid judicial proceedings vide judgment dated 02.12.1998, there is sufficient material which raises grave suspicion against the said accused namely Asha Sehgal in respect of offence of perjury as provided u/s 191 r/w 193 IPC. It is ordered accordingly. Although, it has been argued on behalf of prosecution that prima facie case is also made out against all the accused persons in respect of offence of forgery of the Will in question dated 15.04.1968 but there is no direct or indirect evidence available on record which may even prima facie show that either of the accused persons had forged the Will dated 15.04.1968. Hence, I am of the view that none of the accused persons can be charged with the substantive offence of forgery u/s 467 IPC. However, it cannot be overlooked that all the three accused persons herein had propounded the aforesaid Will in the aforesaid judicial proceedings and claimed themselves to be beneficiaries under the said Will. Thus, there is ample material pointing out that the accused were atleast part of the conspiracy hatched by them with other

persons, for the purpose of forgery of the Will dated 15.04.1968. Thus, Court is of the view that prima facie case is made out against accused nos. 1 and 2 in respect of offence u/s 120-B r/w S. 467 IPC. It is also quite evident from the discussion made hereinabove that accused nos. 1 and 2 had in active conspiracy with each other besides the conspiracy with accused no. 3 (who is presently absconding), had used the aforesaid forged Will dated 15.4.1968 in the aforementioned judicial proceedings arising out of PC No. 317/94 (mentioned supra) by claiming it to be a genuine Will having requisite knowledge and/or belief that the said Will was forged one. Therefore, Court is of the view that prima facie case is also made against accused nos. 1 and 2 in respect of offence u/s 471/120-B IPC. It is ordered accordingly.”

21. Significantly it was observed vide this order that none of the accused persons could be charged with the substantive offence of forgery under Section 467 of the Indian Penal Code, 1860, in as much as there was no direct or indirect evidence available on record which may even prima facie show that either of the accused persons had forged the Will dated 15.04.1968. The then learned Chief Metropolitan Magistrate, Central, Tis Hazari Courts, Delhi, however further held that a prima facie case was made out against the accused nos. 1 & 2 i.e. Smt. Asha Sehgal and Sudhir Sehgal in respect of offences under Section 120B read with Section 467 of the Indian Penal Code, 1860 observing to the to the effect that all the three accused persons had propounded the aforesaid Will in the judicial proceedings and claimed themselves to be beneficiaries under the said Will and that there was ample material pointing out that the accused persons were part of the conspiracy hatched by them with other persons for the purposes of forgery of the Will dated 15.04.1968. It

was also observed that the available record brought forth that the accused nos. 1 & 2 had in active conspiracy with each other besides the conspiracy with accused no. 3 (who was absconding), had used the forged Will dated 15.04.1968 in the judicial proceedings arising out of the Probate Case No. 317/1994 (134/93) by claiming it to be a genuine Will having requisite knowledge and / or belief that the said Will was a forged one and that prima facie case was also made against the accused nos. 1 & 2 for the offences punishable under Section 471 read with Section 120B of the Indian Penal Code, 1860.

22. Vide the impugned order dated 14.05.2009 in Crl. Revision No. 02/14, the petitioners' challenge to the order dated 16.12.2013 of the Trial Court was dismissed observing to the effect : -

“10. Now, coming to the sufficiency of material for framing charges, it is noted that complaint is filed by the presiding officer of the Court with the list of witnesses and list of documents relied upon, wherein Ahlmad of the concerned court is cited as one of the witnesses and reliance is placed upon the entire judicial record i.e. PC No. 317/94 (Old No. 134/93) titled Asha Sehgal Vs. State decided on 02.12.1998 and Misc No. 49/09 decided on 11.06.2009. The judgment dated 02.12.1998 passed by the Ld. Civil Court has already attained finality up to Hon'ble Supreme Court of India. The Ld. Trial Court has clearly decided the issues regarding genuinity and authenticity of the will dated 15.04.1968 propounded by the petitioner and has expressed its conclusion that said will was forged and fabricated document and was never executed by Sh. Maya Ram Sehgal. Hon'ble Delhi High Court had observed in FAO No. 139/99 that petitioners made an attempt to illegally Usurp the properties of testator.

11. Under the facts and circumstances, it cannot be said that there was no material or insufficient material for Trial Court

for framing the charges. There is no infirmity or illegality in the order dated 16.12.2013 regarding framing of charges.

12. The revision is without any merit and hereby dismissed. TCR be sent back.

23. The questions raised on behalf of the petitioner through the present petition were to the effect :-

I. Whether any proceedings under Section 195 Cr.P.C. can be initiated against a person who has never appeared as a witness neither ever made any statement on oath nor any finding is returned against him that he ever participated in the alleged fabrication of any document before a learned Court?

II. Whether without there being any evidence or any finding by the Court against a person who is simply made a party in the case the provisions of Section 195 Cr.P.C. can be invoked who has not lowered the majesty of law or of Court in any manner since he never appeared as a witness nor made any statement on oath nor there is any finding of the Court that such a person played any active role in the fabrication of any document which was pressed into service before the Court?

III. Whether Shri Rajinder Kumar Sehgal alleging himself to be the legal representative of Late Smt. Agyawati Sehgal could file an application under section 340 Cr.P.C. for initiating the prosecution proceedings when, admittedly he was held by the learned Civil Judge not to be a legal representative of Late Smt. Agyawati Sehgal in the judgment dated 13th April, 2007 in suit no. 13/06/03, which fact was suppressed by him from the learned Court?

IV. Whether the Court could take cognizance on the basis of an application filed by a person who has no locus standi nor any right much less any legal right to proceed under section 340 Cr.P.C.?

V. Whether the learned Court was competent and had the jurisdiction without making any preliminary enquiry as contemplated under section 340 Cr.P.C. to proceed against Late Smt. Asha Sehgal and others?

VI. Whether the learned Court acted legally in exercise of its jurisdiction by passing the order dated 11th June, 2009 and filing a complaint under Section 195 Cr.P.C. without initiating any action against the witnesses who deposed before the Court and without considering the fact that the present Petitioner Shri Sudhir Sehgal never made any deposition or appeared as a witness or was involved in the fabrication of any document?

VII. Whether having arrived at a finding that the Accused was not guilty of any forgery could they be proceeded against for having conspired to use the same in judicial proceedings.

24. Reliance has *inter alia* been placed on behalf of the petitioners on the verdict of this Court in ***Gulshan Sethi & Ors. Vs. Government of NCT of Delhi & Ors. W.P. (Crl.) 108 of 2015, decided on 04.08.2015*** to the effect that the exercise of discretion under Section 340 of the Code of Criminal Procedure, 1973 has to be done with great care and caution and should not be invoked for satisfying the private grudge of a litigant. Specific reference was made to the observations in this judgment whilst referring to Section 195 and 340 of the Code of Criminal Procedure, 1973 which are as under : -

“9. For the sake of completeness Section 195 and Section 340 of the Code of Criminal Procedure are being reproduced below:-

"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence-(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), (except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate).

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded. (3) In clause

(b) of sub- section (1), the term" Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub- section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situated:

Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

"340. Procedure in cases mentioned in Section 195 - (1) When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of Sub-Section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-

bailable and the Court thinks it necessary so to do send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

2. The power conferred on a Court by Sub-Section (1) in respect of an offence may, in any case where that Court has neither made a complaint under Sub-Section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of Sub-Section (4) of section

195.

3. A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

4. In this section, "Court" has the same meaning as in section 195."

Section 340 of the Cr.P.C is an exception to the general rule that any person can lodge a complaint of an offence. When the offence is in relation to a court (Section 195(1)(b)), the sanction of the court is required to be obtained first.

10. Since a wide discretion has been given to the court under this Section, the same has to be exercised with great care and caution. One of the objects of this Section is to provide a safeguard against frivolous and vexatious prosecution.

11. The sanction referred to above can be granted only in such cases where perjury appears to be deliberate and conscious and there is every likelihood/possibility of conviction of the wrong doer. If such sanctions as contemplated under Section 195(1)(b) are granted too readily and frequently and on inconclusive materials, the purpose of enacting this section

would be defeated. There must be a strong and prima facie case of deliberate falsehood.

12. The key note in Section 340 is "**any court is of the opinion that it is expedient in the interests of justice that an enquiry should be made**". Section 340 cannot be resorted to on mere allegation or for the purposes of vindicating personal vendetta. This machinery, therefore, can be put into motion only in the interest of justice. **(emphasis supplied)**

13. Thus certain pre conditions are required to be fulfilled for initiation of any proceeding under Section 340 of the Code of Criminal Procedure namely; (a) the offences should be only those which have been listed under Section 195(1)(b); (b) the commission of the offence should be intentional; (c) interest of justice would be subverted if no action is taken and (d) it should not be invoked for satisfying private grudge of a litigant."

25. Reliance was also placed in paras 18 & 19 of this verdict on the observations in the judgment of the Hon'ble Supreme Court in **Sachida Nand Singh vs. State of Bihar, (1998) 2 SCC 493** wherein it was observed to the effect : -

"18. In *Sachida Nand Singh vs. State of Bihar, (1998) 2 SCC 493*, after analysing the relevant provisions, the Supreme Court recorded its conclusions in paras 11,12 and 23 which are being reproduced below:-

"11. The scope of the preliminary enquiry envisaged in Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in court or given in evidence in a proceeding in that Court. In other words, the offence should have been committed during the time when the document was in custodia legis.

12. It would be a strained thinking that any offence involving forgery of a document if committed far outside the precincts of

the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the court records.

23. The sequitur of the above discussion is that the bar contained in Section 195(1)(b)(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a court."

19. The plain reading of Section 195(1)(b)(ii) talks of two interpretations: one being that an offence is committed in respect of a document which is subsequently produced or given in evidence in a proceeding in any Court, a complaint by the Court would be necessary; the other being that when a document has been produced or given in evidence in a proceeding in any court and thereafter an offence is committed in respect thereof, the complaint by the Court would be necessary."

26. Reference was also made to the observations in paras 20 & 21 of the verdict of ***Gulshan Sethi & Ors. Vs. Government of NCT of Delhi & Ors. (supra)*** to the effect : -

"20. In Iqbal Singh Marwah and Another vs. Meenakshi Marwah and Another, (2005) 4 SCC 370, the Supreme Court considered as to which of the two interpretations should be accepted keeping in view the scheme of the Act and the object sought to be achieved.

21. After discussing various case laws on the subject the Supreme Court in Iqbal Singh Marwah (Supra) at para 25 held as follows:-

25. An enlarged interpretation to Section 195(1)(b)(ii), whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in Court, is capable of great misuse. As pointed out in Sachida Nand Singh [(1998) 2

SCC 493: 1998 SCC (Cri) 660] after preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue Court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the Court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed indefinitely. Such an interpretation would be highly detrimental to the interest of the society at large.”

27. Reliance was also placed on behalf of the petitioner on the verdict of the Hon’ble Supreme Court in ***S.R. Sukumar Vs. S. Sunaad Raghuram, AIR 2015 Supreme Court 2757*** to contend that the taking of cognizance of a Magistrate has to be on the basis of the application of judicial mind in connection with the commission of an offence and not merely to a Magistrate learning that some offence had been committed and it is only upon examination of the complainant, the Magistrate will proceed to apply the judicial mind whether to take cognizance of the offence or not and that under Section 200 of the Code of Criminal Procedure, 1973 when the complainant is examined, the Magistrate cannot be said to have ipso facto taken the cognizance, when the Magistrate was merely gathering the material on the basis of which he will decide whether a prima facie case is made out for taking cognizance of the offence or not. It was thus sought to be contended that the Magistrate has not duly applied his mind at the time of taking of cognizance on the basis of the complaint made by the complainant the learned Additional Sessions Judge-05, West District, Tis Hazari Courts, Delhi.

28. On behalf of the complainant, reliance was placed on the verdict of the Hon'ble Supreme Court in ***Pritish Vs. State of Maharashtra & Ors., Appeal (Crl.) 1188 of 2001*** to contend that Chapter XXVI of the Code of the Criminal Procedure, 1973 contains provisions as to offences affecting the administration of justice and that the reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the Court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed and in order to form such opinion the Court is empowered to hold a preliminary inquiry and that it is not peremptory that such preliminary inquiry should be held and even without such preliminary inquiry the Court can form such an opinion when it appears to the Court that an offence has been committed in relation to a proceeding in that Court. It was thus submitted on behalf of the complainant that the conduct of the preliminary enquiry in terms of Section 340 of the Code of Criminal Procedure, 1973 was not mandatory and specific reference was made to the observations of this Court in the verdict of Hon'ble Supreme Court in ***Pritish Vs. State of Maharashtra & Ors., (supra)*** to ***the effect : -***

“It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of

course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.”

29. It was submitted on behalf of the complainant that in the facts and circumstances of the instant case, it was expedient in the interest of justice that the requisite complaint was made by the Court as was made by the Court of the learned Additional Sessions Judge-05, West District, Tis Hazari Courts, Delhi on the basis of the application bearing M. No. 49/2009 in Probate Case No. 317/1994 (134/93) under Section 340 of the Code of Criminal Procedure, 1973 filed by the applicant Sh. Rajinder Kumar Sehgal, L.R. of late Agyawati Sehgal seeking the commencement of such proceedings.

30. A status report was submitted by the State under the signatures of the SHO PS Subzi Mandi submitting to the effect that the contention of the petitioners that the notice of application under Section 340 of the Code of Criminal Procedure, 1973 was not given to them and that the preliminary inquiry was not conducted by the Court under Section 340 of the Code of Criminal Procedure, 1973 was without merit and that the Trial Court has taken cognizance of the

offence vide order dated 02.02.2010 and that even the said order was not challenged by the petitioners and that on a bare reading of Section 340 of the Code of Criminal Procedure, 1973, it is clear that if the Court is satisfied then it can dispense the preliminary enquiry. It was also submitted by the State that no notice was required under Section 340 of the Code of Criminal Procedure, 1973 to be issued to the respondents for initiating the enquiry under Section 340 of the Cr.PC, 1973 and that the then learned ADJ vide judgment dated 02.12.1998 had observed to the effect that it would like to initiate perjury proceedings against the petitioners as well as their witnesses for having forged the Will in question and also for giving fake evidence in the Court, after the judgment attained finally. It was thus submitted on behalf of the State that there is no illegality in the order dated 16.12.2013 of the learned Chief Metropolitan Magistrate, Central, Tis Hazari Courts, Delhi in the Criminal Complaint No. 315/1 nor in the order dated 14.09.2015 of the learned ASJ.

31. Qua the query put at serial no. I of the petition, it is essential to observe that the petitioner was one of the signatories to the petition in the Probate Case No.317/1994 (old No.134/1993) and thus cannot seek any relief on the contention that he had not appeared.

32. The query no. II is also rejected on similar terms as the query no. I.

33. As regards query no. III, it is essential to observe that the complaint made by the learned Additional Sessions Judge-05, West District, Tis Hazari Courts, Delhi suffices to invoke the initiation of prosecution proceedings against the accused persons.

34. As regards the query no. IV, it is essential to observe that in the instant case vide the order dated 02.12.1998 in Probate Case No. 317/1994 (134/93) upheld in FAO No. 139/1999 titled as Asha Sehgal Vs. State of this Court and upheld by the Hon'ble Supreme Court in Special Leave Petition (Civil) No. 5719/2009 whereby the initiation of the proceedings of perjury against the petitioners of the Probate Case in which the petitioner herein was arrayed as the petitioner no. 2 have already been upheld, thus taking of cognizance on the basis of the application bearing M. No. 49/2009 in Probate Case No. 317/1994 (134/93) under Section 340 of the Code of Criminal Procedure, 1973 filed by the Sh. Rajinder Kumar Sehgal claiming himself to be L.R. of Smt. Agyawati Sehgal widow of deceased Sh. Maya Ram Sehgal cannot be held to be bad.

35. Reliance was also placed on behalf of the complainant on the verdict of the Hon'ble Supreme Court in ***Prem Sagar Manocha Vs. State (NCT of Delhi) in Criminal Appeal Nos. 9-10 of 2016*** to the effect : -

“Section 340 of CrPC, prior to amendment in 1973, was Section 479-A in the 1898 Code and it was mandatory under the pre-amended provision to record a finding after the preliminary inquiry regarding the commission of offence; whereas in the 1973 Code, the expression ‘shall’ has been substituted by ‘may’ meaning thereby that under 1973 Code, it is not mandatory that the court should record a finding. What is now required is only recording the finding of the preliminary inquiry which is meant only to form an opinion of the court, and that too, opinion on an offence ‘which appears to have been committed’, as to whether the same should be duly inquired into. We are unable to appreciate the submission made by the learned Senior Counsel that the impugned order is liable to be

quashed on the only ground that there is no finding recorded by the court on the commission of the offence. Reliance placed on Har Gobind v. State of Haryana[1] is of no assistance to the appellant since it was a case falling on the interpretation of the pre-amended provision of the CrPC. A three- Judge Bench of this Court in Pritish v. State of Maharashtra[2] has even gone to the extent of holding that the proceedings under Section 340 of CrPC can be successfully invoked even without a preliminary inquiry since the whole purpose of the inquiry is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.”

36. As regards query no. V that in terms of Section 340 of the Code of Criminal Procedure, 1973, thereof, it is not mandatory for a Court to conduct an preliminary enquiry to record a finding regarding the commission of an offence and all that is required as laid down in ***Pritish Vs. State of Maharashtra & Ors. (supra)*** is that the proceedings under Section 340 of the Code of Criminal Procedure, 1973 can be successfully invoked even without a preliminary inquiry since the whole purpose of the inquiry is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

37. In the instant case, the user of a forged document having been brought forth during the course of judicial proceedings in Probate Case No. 317/1994 (134/93) and the observations made in judgment dated 02-12-1998 having been upheld in FAO No. 139/1999 titled as Asha Sehgal Vs. State and having been upheld by the by the Hon'ble Supreme Court in Special Leave Petition (Civil) No. 5719/2009, it apart from being expedient that the provisions of Section 340 of the

Code of Criminal Procedure, 1973 be invoked, in the interest of justice to conduct proceedings in relation to such forgery in the circumstances of this case and it was in the instant case incumbent upon the Court which was dealing with the application seeking invocation of power under Section 340 of the Code of Criminal Procedure, 1973 to make a complaint vide order dated 11.06.2009 of the learned Additional Sessions Judge-05, West District, Tis Hazari Courts, Delhi to uphold the majesty and dignity of the rule of law.

38. Qua query no. VI, it is essential to observe that two of the witnesses Shri Amrik Chand Sehgal PW-1 and Shri Baldev Kumar Talwar PW-2 who deposed have expired as also detailed in the complaint dated 11.06.2009 and the complaint of the Additional Session Judge-I, Central, Tis Hazari Courts, Delhi, such initiation of appropriate criminal proceedings against Smt. Asha Sehgal PW-3 a witness also for perjury or giving fake evidence in Court and furthermore merely because the petitioner had not made any deposition and did not appear as a witness and was not involved in the fabrication of document, **he having been one of the signatories to the petition seeking issuance of the Letter of Administration in relation to the forged Will.** Thus, there is no illegality in initiation of action in terms of the complaint under Section 195 of the Cr.PC, 1973 against the petitioner Shri Sudhir Sehgal.

39. As regards the query no. VII to the extent that vide order dated 16.12.2013 of the learned Chief Metropolitan Magistrate, Central, Tis Hazari Courts, Delhi in the Criminal Complaint No. 315/1 upheld by the Revisional Court, the petitioner has been charged qua the alleged

commission of offence punishable under Section 467 read with Section 120B of the Indian Penal Code, 1860, it having been observed vide the order dated 16.12.2013 of the learned Chief Metropolitan Magistrate, Central, Tis Hazari Courts, Delhi in the Criminal Complaint No. 315/1 *inter alia* to the effect that the substantive offence of forgery under Section 467 of the Indian Penal Code, 1860 was not made out, in as much as there was no direct or indirect evidence available on record which may have prima facie shown that either of the accused persons had forged the Will dated 15.04.1968, it is apparent that the charges under Section 467 read with Section 120B of the Indian Penal Code, 1860, against the petitioner herein cannot be sustained and thus in the instant case as there is prima facie apparent user of the forged document i.e. forged Will dated 15.04.1968 in the course of the Probate Case No. 317/1994 (134/93) of which petition, the petitioner was a signatory, the order of charge dated 16.12.2013 of the learned Chief Metropolitan Magistrate, Central, Tis Hazari Courts, Delhi in the Criminal Complaint No. 315/1 as upheld to that extent vide order dated 14.09.2015 of the learned Additional Session Judge-I, Central, Tis Hazari Courts, Delhi in Criminal Revision No. 02/2014 is upheld, qua the directions for framing of the charges for alleged commission of the offence punishable under Section 471/120B of the Indian Penal Code, 1860.

40. The charges against the petitioner herein qua the offence punishable under Section 467 read with Section 120B of the Indian Penal Code, 1860, are thus set aside.

41. The petition is disposed of accordingly.

42. Copy of this order be sent to the Trial Court.

ANU MALHOTRA, J

JUNE 12, 2018/mk

