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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 26th July, 2019

+ CrI.M.C. 1998/2019 & CrI.M.A. 7901/2019

CHET RAM GUPTA (NOW DECEASED)

THROUGH SUBSTITUTED COMPLAINANT Petitioner

Through: Mr. Vaibhav Mahajan, Adv.

versus

S.P. GUPTA

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The father of the petitioner had instituted a criminal complaint (CC no. 616570/2016) on 07.02.1992, *inter alia*, against the respondent alleging offences punishable under Sections 420 and 120 B of Indian Penal Code, 1860 (IPC) having been committed. On the basis of pre-summoning evidence, the respondent was summoned as accused. Since the case arose out of a private complaint, it involving an offence triable as a warrant case, pre-charge evidence was led. On conclusion of the said exercise, the Metropolitan Magistrate considered as to whether charge was made out on the evidence that had been adduced. By order dated 06.11.2017, the Metropolitan Magistrate answered the said issue in the negative and, thus, dismissed the complaint discharging the respondent under Section 245 (1) of the Code of Criminal Procedure, 1973 (Cr.P.C.).

2. The abovesaid order was challenged without success in the court of Sessions, the criminal revision no. 01/2018 having been dismissed by order dated 12.02.2019.

3. It may be mentioned here that the original complainant Chet Ram Gupta died during the pendency of the proceedings before the trial court, the petitioner being his son and legal heir, having continued with its prosecution thereafter.

4. By the petition at hand, invoking the inherent powers and jurisdiction of this Court under section 482 Cr.P.C., further challenge is brought to the two consistent orders of the courts below.

5. The learned counsel for the petitioner has been heard at length and the record has been perused with his assistance. This Court, however, is not impressed with the contentions raised here and finds no error, impropriety or illegality in the view taken by the Metropolitan Magistrate, as affirmed by the revisional court. The brief reasons may be set out hereinafter.

6. The controversy before the court through the above-mentioned criminal complaint essentially pertained to a property described as municipal no.W-73, Greater Kailash, Part II, New Delhi. The property, it appears, was held in the name of Motian Devi Lamba, she having gone abroad and settled in London (U.K.). It appears that the petitioner's father (the complainant) was interested in purchasing the said property and had come across the respondent in such context, he (the respondent) having offered to arrange the sale of the property by Motian Devi Lamba (the owner). It appears that the respondent had

acted upon some authorization in his favour by the owner of the property. He entered into certain transaction wherein an amount of Rs. 12 lakhs was paid to him by the complainant in four instalments three by cheques and one by bank draft. A receipt-cum-agreement was executed, (copy whereof has been filed as Annexure A-5), it having been adduced in the evidence before the inquiry magistrate. As per the said document, the property was to be formally transferred by a regular sale deed to be executed by Motian Devi Lamba, possibly through her attorney, subject to certain clearances being arranged. The document does not make it clear as to whose responsibility it was to arrange such clearances.

7. Be that as it may, the complaint narrated at length, the sequence of events wherein the complainant had even accompanied the respondent to London where he had a direct talk with the owner of the property in September, 1986, the said owner having handed over to him, a general power of attorney (GPA) executed by her on 30.09.1986. The original of the said GPA has not been shown the light of the day, a copy having been submitted, there being some explanation that the original had been lost in an incident that occurred on 08.01.1987, when the complainant was intercepted and subjected to robbery of a bag containing the said papers at gun point, this becoming the subject matter of a police report.

8. It is clear from the averments made in the complaint, and the petition at hand, as also the oral submissions that the petitioner's father felt constrained to institute a civil suit to seek specific

performance of contract of the agreement to sell as had been entered upon by the respondent. It appears that the said litigation is still pending, the respondent having taken certain defences including, as explained by the counsel for the petitioner, at the hearing, taking the plea that the property had been passed on to him as a gift.

9. As has been noted by the courts below, the possession of the property in question was taken over by the complainant at the time of impugned transaction with the respondent. The question as to whether such handing over of the possession pursuant to such transactions would have passed on the right, title or interest need not be answered by this Court in these proceedings. Broadly speaking, the above facts would give rise to a civil dispute.

10. But then, criminality was attributed to the subject transaction by the complainant stating, *inter alia*, that the respondent had falsely represented to him at the time of taking over the money and executing the afore-mentioned receipt, that Motian Devi Lamba was the exclusive owner. It is stated that later inquiries had revealed that the property had been acquired from funds by HUF, the husband of the said owner being its *karta*, he along with their six sons being the beneficiaries.

11. Crucially, as has been noted in the impugned orders, there is no evidence of any false representation being made by the respondent at the time of alleged transactions. It is precisely on this account that the Magistrate was not satisfied with the evidence that had been led, the

view which has been affirmed by the revisional court and justifiably so.

12. This court finds no good grounds to entertain the petition inasmuch as no error, illegality or impropriety can be noticed.

13. The petition and the application filed therewith are dismissed.

R.K.GAUBA, J.

JULY 26, 2019

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