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

***Decided on:- 27<sup>th</sup> February, 2019***

+ CRL. M.C. 1767/2016

JOHN NAGAR

..... Petitioner

Through: Mr. Ujjwal Jha, Adv.

versus

HANS U NAGAR & ORS.

..... Respondents

Through: Mr. B.S. Joon, Mr. Karan  
Chaudhary & Mr. Neeraj  
Balhara, Advs. for R-1, 2 & 5.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**ORDER (ORAL)**

1. Steps have not been taken for service of third and fourth respondents. The counsel appearing for the petitioner states that since their whereabouts are not known, he is under instructions to submit that the said parties may be dropped from array of parties, the petitioner not pressing any action against them. The names of third and fourth respondents are thus, struck off from the array of parties.

2. The petition at hand challenges the orders dated 12.01.2015 and 16.03.2016 passed by the Metropolitan Magistrate and Additional Sessions Judge in a complaint case (CC no. 174/012012) and Crl. Rev. No. 12/2015, as a result of which the criminal complaint of the petitioner seeking action against the respondents (now surviving

against the first, second and fifth respondents only) was dismissed on the basis of evidence adduced during preliminary inquiry.

3. The dispute between the parties essentially relates to Farmland no. 8, forming part of revenue estate described as 139 Nagar Estate, Gadaipur, New Delhi. The farmland is stated to be one of the nine chunks of lands which together constituted land admeasuring 25 acres owned by Ms. Ida Nagar, the late mother of the petitioner and first respondent. It appears that the two said parties, and their other brother (Ronald Nagar) were involved in a dispute over the share in the said properties, the case of the petitioner being that the late mother, the erstwhile owner during her lifetime, had transferred the right, title and interest in the above-mentioned farmland in his favour by a sale deed executed, for consideration on 02.07.1999. It appears, the civil litigation included two probate cases based on two different Wills and testaments set up by the petitioner on one hand and the first respondent on the other and at least one civil suit [CS (OS) 666/2008].

4. It is the case of the first respondent that on the basis of a Memorandum of Understanding (MOU) executed by the first respondent on one hand and the petitioner on the other; their brother (Ronald Nagar) and certain other members of the family joining in, on 15.09.2011 the dispute was resolved amicably, the said MOU being the basis of the civil suit – CS (OS) 666/2008 being decreed on 12.04.2012. The petitioner relies on the said MOU but the first respondent questions its authenticity, he having filed certain objections in such regard which are pending presently on the civil side of this Court. The petitioner, on the other hand, relies on certain

pleadings in an application under Order 39 Rule 2 A read with section 151 of the Code of Civil Procedure, 1908 (IA no. 12441/2012) filed statedly by the first respondent in CS (OS) 666/2008 in which he purports to have pleaded, *inter alia*, that he had acted in accordance with the spirit of MOU and had handed over the vacant and peaceful possession of farmland no.8, having also demolished certain superstructure including the staff quarters therein and incurred expenditure on that account and also for construction of a new clinic in the adjoining area.

5. The criminal complaint was preferred by the petitioner on 05.06.2012 alleging that the first respondent along with others impleaded as parties had caused wrongful loss to him by cutting down certain number of trees which are standing in that farmland and also carrying out demolition of the existing structure, this according to the petitioner, constituting offences punishable under Sections 379/426 Indian Penal Code, 1860 (IPC). The complaint was dismissed, after preliminary inquiry by the Metropolitan Magistrate, by order dated 12.01.2015, on the grounds that no eye witness had been examined there being no evidence or proof of any debris or cut down trees being found on or removed from the farmland. The petitioner challenged the said order before the revisional court but his revision petition was dismissed by order dated 16.03.2016. It appears, the earlier mentioned application under Order 39 Rule 2 A read with section 151CPC, copy whereof was produced in evidence (Ex.CW-2/C) was not even referred to by the Metropolitan Magistrate. The revisional court declined to act upon the said pleadings observing that statements made

in civil proceedings by way of pleadings could not be a ground to fasten criminal liability.

6. After some hearing, the learned counsel for the respondents fairly conceded that the above reasoning of the revisional court cannot be defended or supported, it reflecting wholly an erroneous approach to the issues raised. At the same time, he submitted that while the petition at hand under Section 482 Cr.P.C. may be allowed, the revision petition may be restored on the file of the court of Sessions so that the issues can be re-argued in light of the evidence adduced in pre-summoning inquiry in entirety and a fresh decision rendered by the said forum.

7. The petition is, thus, allowed. The impugned order dated 16.03.2016 of the court of Sessions in CrI. Rev. No. 12/2015 is set aside. The revision petition shall stand restored and revived on the file of the court of Additional Sessions Judge who shall hear the parties afresh and render a fresh decision.

8. In view of the fact that the third and fourth respondents have been struck off from the array, the revisional court's scrutiny would be restricted to the request for criminal action against the other respondents only. The parties shall appear accordingly before the court of sessions on 27.03. 2019.

9. The petition is disposed of in above terms.

**R.K.GAUBA, J.**

**FEBRUARY 27, 2019**

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