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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 16th April, 2019

+ CRL.M.C. 1906/2016

SYED MAN MEER & ORS. Petitioners

Through: Mr. Ashok Gurnani, Adv.

versus

STATE & ANR. Respondents

Through: Mr. Raghuvinder Varma, APP
for the State.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On the basis of averments in criminal complaint (CC No. 55/1/2012) of the second respondent (the complainant) and the evidence led in support in the pre-summoning inquiry under Sections 200 and 202 of the Code of Criminal Procedure, 1973 (Cr.P.C.), the petitioners and their father Syed Daud Meer, along with third and fourth respondents herein, were summoned by the Metropolitan Magistrate, by order dated 17.02.2016, to appear as accused persons and face proceedings on the accusations of involvement in offences punishable under Sections 420/467/468/471 and 120 B of Indian Penal Code, 1860 (IPC).

2. It is stated that Syed Daud Meer, father of the petitioners, he being the first accused in the criminal complaint case of the second

respondent, died on 30.06.2013, which fact is fairly conceded to be correct by the counsel representing the second respondent. The allegations against the petitioners and their late father Syed Daud Meer are distinct from the allegations against the third and fourth respondents, and, thus, the grievances of the petitioners against the summoning order would have no bearing, and shall not be construed as reflective of opinion, on the case of the complainant against third and fourth respondents.

3. Syed Daud Meer, the late father of the petitioners, had instituted a civil suit no. 347/1998 seeking a decree of specific performance of contract and for perpetual injunction *vis-à-vis* property no. 745, Fatak Dhobian, Farash Khana, Delhi, on the strength of a document which he described as an agreement of purchase of the said property executed by the complainant, she purportedly having received from him an amount of Rs. 50,000/- as earnest money. The suit was contested by the complainant claiming, *inter alia*, the said document dated 10.07.1997 to be forged and fabricated. It appears that in the said civil suit, copy of the said document styled as “receipt” was brought in evidence as Ex.PW-1/1, its copy having been presented during the pre-summoning inquiry into the criminal complaint as Ex.CW-1/B.

4. A copy of the judgment dated 22.01.2002 rendered by the court of Additional District Judge on the said suit of Syed Daud Meer has been submitted and was relied upon in the pre-summoning inquiry by the complainant. Upon perusal, it is noted that the civil court was not satisfied with the contentions based on the said document about any

agreement of sale of the said property or about the complainant having received any such amount as earnest money. The suit was dismissed on the basis of findings to such effect being recorded. The plaintiff Syed Daud Meer challenged the said judgment of the court of Additional District Judge, by regular first appeal (RFA no. 394/2003) before this Court, which was dismissed in default and for non-prosecution by order dated 06.01.2012. It is not disputed that the said decision dated 06.01.2012 eventually attained finality as no application was moved for the proceedings therein being revived or re-opened nor it was challenged by any further petition.

5. Against the above backdrop, the criminal complaint was filed alleging the afore-mentioned offences having been committed by the petitioners and their late father Syed Daud Meer, averments qua third and fourth respondents being that they had “also committed” similar offences by compelling the complainant to execute the sale deed in their name without paying full consideration and get the sale deed executed in their name for a sum of Rs. 40,000/- only.

6. It is conceded on behalf of the complainant that in the pre-summoning inquiry, she led evidence by examining only herself (as CW-1) and her daughter Farheen Israil (as CW-2), the evidence of both the said witnesses (CW-1 and CW-2) primarily meant to bring on record the above-mentioned documents. Noticeably, neither in the averments nor in the pre-summoning evidence, there is even a whisper of allegation qua the petitioners herein as to their involvement in any specific act of commission or omission in concert or collusion with Syed Daud Meer, their late father.

7. The allegations in the complaint lodged by the second respondent insofar as they are directed against the petitioners were vague. They have been clubbed with the late father without any specific role being attributable to them. They have been wrongly accused of having filed the afore-mentioned civil suit or having presented forged or fabricated document in the civil suit. There is no evidence worth the name in the pre-summoning inquiry on the basis of which it could be inferred that either of the four petitioners had any role to play in the fabrication of the receipt in question.

8. In the above facts and circumstances, there is not the least doubt that the allegations in the criminal complaint against the petitioners are wholly unfounded, no shred of evidence having been presented in the pre-summoning inquiry in support of the same. The summoning order passed against the petitioners is found to be an order mechanically passed without due application of mind. The proceedings in its wake against the petitioners cannot be allowed to continue inasmuch as the same would be an abuse of the process of law.

9. For the foregoing reasons, the petition is allowed. The proceedings against the petitioners in the criminal complaint case (CC No. 55/1/2012), pending on the file of the Metropolitan Magistrate, pursuant to the summoning order dated 17.02.2016, are hereby quashed.

R.K.GAUBA, J.

APRIL 16, 2019

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