

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

Date of Order: May 07, 2019

+ **CRL.M.C. 1620/2017**

SHOBHA DUBE

..... Petitioner

Through: Mr. Pramod K. Dubey, Mr. Shiv
Chopra & Mr. Kushank Sindhu,
Advocates

Versus

STATE AND ANR.

.....Respondents

Through: Ms. Neelam Sharma, Additional
Public Prosecutor for respondent
No.1-State with SI Mukesh Khata
Mr. S.K. Rai, Advocate for
Respondent Nos. 2 to 4

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

ORDER
(ORAL)

In FIR No. 53/2008, registered at police station Barakhamba Road, New Delhi, charge-sheet has been filed for the offence under Section 420 IPC against respondent No.2 herein on 7th December, 2009 while concluding as under:-

“Keeping in view the above facts it is submitted that Mr. Aditya dube mentioned above has sold out his portion 1/8ths share of said property knowing fully well that he has relinquished the same in the year 2002 to Mr. Sharafat Debe. It was sold to Mr. M C Gupta against consideration of Rs. 29

lacs causing wrongful loss to Mr. Sharal due and wrongful gain to himself. There are sufficient evidences on file accused Aditya Prasad Dube moved the Hon'ble Court of sessions, New Delhi and has been granted anticipatory bail considering the age and family dispute of property on 30/7/2009, as complainant has made submissions in his letter dated 08/01/2009 which was submitted to SHO/BKR and same is placed on file. He has been formerly arrested on 4/8/2009 and released on bail as directed by the court. In regard to Sh. Meher Chand Gupta no evidence has been found to charge sheet him. However his act and intention was to use pressure tactics to force the complainant for sale of their share for which he paid Rs.180000/- to Aditya P Dube but Mr. Aditya Dube returned the said amount. No evidence has come on record to prove section 341 IPC or 420 against Mr. Mehar Chand Gupta, he is placed in para 12 in this report."

Trial court vide order of 19th September, 2016 had referred subject matter of this FIR to mediation while negating petitioner's objection, who is legal heir of Sharad Dubey, by observing that legal heirs of a witness cannot stop reference of the case to mediation. The aforesaid order has been upheld by the Revisional Court vide impugned order of 30th March, 2017.

Petitioner's counsel assails the impugned order while submitting that petitioner has locus to oppose the mediation because there is no settlement with witness- Sharad Dube or his legal heir i.e. petitioner. Attention of this Court is drawn to sub section 4 (b) of Section 320 Cr.P.C. to submit that a legal representative of a person competent to compound the offence can go ahead with the compounding of the offence in question with the consent of the Court. However, it is submitted that no reference to mediation has been infact made but the second respondent is

now insisting for reference of the subject matter of this FIR to mediation on the strength of impugned order.

On the contrary, learned counsel for respondent Nos. 2 to 4 supports the impugned order and submits that the subject matter of this FIR has been already settled with third party i.e. M.C.Gupta, as the sale consideration has been returned to him and the possession of the property in question has been restored to petitioner. So, it is submitted that there is no justification to proceed with the FIR in question on merits.

Upon hearing and on perusal of impugned order and sub section 4 (b) of Section 320 Cr.P.C., I find that petitioner is aggrieved party and the reference of the disputes in question qua petitioner to mediation without her consent cannot be done.

Accordingly, impugned orders are clarified to the extent that without consent of petitioner, proceedings pertaining to petitioner arising out of FIR in question be not brought to an end on the basis of any mediated settlement.

With aforesaid clarification, this petition is disposed of, while not commenting on merits of the case.

(SUNIL GAUR)
JUDGE

MAY 07, 2019

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