

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

% Decided on: 9th January, 2019

+ **CRL.L.P. 668/2016**

HARISH CHANDER VERMA

..... Petitioner

Represented by: Mr.J.K. Sharma & Shubham
Shivam, Advocates with
Petitioner in Person.

versus

MOHINDER KUMAR VERMA

..... Respondent

Represented by: Respondent in person with Ms.
Sulenna Verma.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Aggrieved by the judgment dated 20th October, 2016 whereby the learned Metropolitan Magistrate acquitted the respondent Mohinder Kumar Verma for the offence punishable under Section 468/471 IPC, the Petitioner has preferred the present leave petition.

2. Briefly stated, facts of the present case are that the petitioner and respondent are real brothers who are involved in a dispute relating to property bearing number 719, measuring 300 square yards, situated in the Revenue Estate of Mundka, Delhi. The respondent had filed a suit for permanent injunction bearing Suit No. 29/97 in 1997 in capacity of attorney of his mother Ms. Kalawati, claiming that she was the owner in possession of the suit property. To support his case, the respondent had filed a photocopy of the Power of Attorney dated 03rd January, 1997 purportedly

executed by his mother Ms. Kalawati by which he was authorized to file the said suit. He also filed Sale Agreement and Will dated 25th October, 1992 in support of ownership of his mother. The Petitioner put his appearance in the said suit and claimed ownership right in the suit property on the basis of some documents executed in his favour by one Bharat Singh on 17th November, 1982. The court directed the respondent to produce Ms. Kalawati in person in Court to ascertain whether she had authorized him to file the said suit. The respondent however did not produce her in the Court and opted to withdraw the suit by filing an application. The Court did not permit him to withdraw the said suit. When the respondent stopped appearing, the suit was dismissed with cost of ₹2000/- on 10th March, 1999.

3. Subsequently, the respondent filed another Suit No.316/98 for partition claiming that the suit property was owned by his late father Ramanand. He also impleaded Ms. Kalawati as a defendant in this suit. In the joint written statement filed on 22nd September, 1998 it was averred that the Petitioner was the owner of the property. Ms. Kalawati also did not mention anything about execution of any power of attorney in favour of the respondent.

4. Allegations of the petitioner/complainant in the complaint were that the respondent in Civil Suit bearing No.29/97 claimed himself to be the General Power of Attorney holder of his mother. Contrary to the contention raised in the earlier suit, in the subsequent suit filed by the respondent, Ms. Kalawati was also impleaded as a party and the respondent claimed that his father was the owner of the suit property and being his legal heir, he was entitled to a share in the said property. Thus, the respondent by taking two contradictory stands in two different suits, on the basis of different sets of

documents demonstrated that he had filed forged and fabricated documents before the Court.

5. Petitioner/complainant alleges that in the subsequent suit filed by the respondent, Ms. Kalawati did not claim that the Power of Attorney was executed by her in favour of the respondent.

6. The contentions of the respondent/accused before the Trial Court were that the original of the documents that is Power of Attorney, Agreement to Sell, Will and receipt dated 25th October, 1982 were never produced by the Petitioner. Besides the oral submissions there was nothing on record to support the allegations that the documents were forged and fabricated. Moreover, the documents were not sent for obtaining the opinion of any handwriting expert. The execution of the Power of Attorney was never challenged by Ms. Kalawati before any criminal court or any other authority.

7. The learned Trial Court held that though the Petitioner alleges that the documents were forged and that he was the owner of the property in question, however, these facts have not been proved beyond reasonable doubt. The Petitioner was required to summon Bharat Singh, who had allegedly sold the property to him but he was not produced as a witness to prove the sale document. Mere non-production of original documents or of Ms. Kalawati in Court would not lead to a proof beyond reasonable doubt of the alleged forgery. The Petitioner was bound to obtain the opinion of the handwriting expert or the oral evidence of at least one attesting witness in order to challenge the authenticity of the document. Even though the petitioner stated that he had obtained the opinion of the handwriting expert on the disputed documents no report was placed on record.

8. Taking two contradictory stands in two separate suits regarding ownership of the same property does raise a presumption that the averments in one of the suits are false but, mere presumption is not sufficient for convicting the respondent for an offence of forgery.

9. As noted above the learned Trial Court rightly held that the petitioner did not lead any evidence to show that the documents placed on record by the respondent were forged. The conviction of the respondent could not be based solely on the basis of the oral statement of the petitioner. There being no error in the impugned judgment of the Trial Court acquitting the respondent for offences punishable under Sections 468/471 IPC, the same warrants no interference.

10. Leave to appeal petition is dismissed.

11. TCR be returned.

(MUKTA GUPTA)
JUDGE

JANUARY 9, 2019
'vj'

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