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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 160/2020 & CRL.M.A. 682-683/2020**
SUMAN BUDHIRAJA Petitioner
Through: Mr. MN Dudeja, Adv.

versus

STATE Respondent
Through: Mr. Kewal Singh Ahuja, APP for
State with SI Jagdeep Malik, PS Jagat
Puri.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **15.01.2020**

CRL.M.A. 682/2020 (Exemption)

Exemption allowed, subject to just exceptions.

CRL.M.C. 160/2020 & CRL.M.A. 683/2020

The petitioner vide the present petition seeks the setting aside of the impugned order dated 21.10.2019 of the learned ASJ-05, Shahdara, KKD Courts in relation to the FIR No.73/2009, PS Jagat Puri and seeks restoration of the order dated 16.09.2015 of the learned ACMM, Shahdara.

Vide order dated 16.09.2015 of the learned ACMM, Shahdara in relation to the FIR No.73/2009, PS Jagat Puri which was registered pursuant to a complaint filed under Section 156 (3) of the Cr.PC, 1973, which police report having been filed under Section 173 of the Cr.PC, 1973 for alleged commission of offences punishable under Section 420/468/471/120B/174/34 of the Indian Penal Code, 1860, was in relation to the aspect of one Mr. RD Vidyarthi having represented himself being owner of the property in

question and on the basis of a GPA executed in his favour by his father, pursuant to which, the property is stated to have been purchased by the present petitioner. The present petitioner is stated to have sold the said property further to Shri Subodh Vidyarthi and Smt. Sandhya Vidyarthi who are son and daughter-in-law of Shri RD Vidyarthi.

The complainants in the instant case namely Shri Raghuver Dayal and Shri Ram Kishan both sons of Shri Badhey Singh had filed the complaint alleging to the effect that their brother Shri RD Vidyarthi was claiming that their father Shri Badhey Singh being registered owner of the plot measuring 200 sq. yds situated at 34, South Anarkali Extension, Khureji Khas, Illaka Shahdara, Delhi, which he had purchased from M/s Jagatram & Company vide a registered sale dated 05.01.1967, had allegedly executed a GPA during his life time in favour of Shri RD Vidyarthi but the complainants alleged through their complaint to the effect that their father Shri Badhey Singh expired on 28.09.2001 whereafter they have made various requests to Shri RD Vidyarthi, their brother that the property be distributed amongst three brothers which Shri RD Vidyarthi ignored and Shri RD Vidyarthi had previously already taken possession of the property in question having been allowed by his father to reside in the said property. The complainants had further submitted through their complaints that they learnt on 20.01.2009 that Shri RD Vidyarthi had sold the entire property to one Smt. Suman Budhiraja i.e. the present petitioner on 19.01.2009 on the basis of a GPA allegedly executed by his father late Shri Badhey Singh on 15.02.1993, which apparently was sold after the death of the father of the complainants who is also the father of Shri RD Vidyarthi on the basis of a GPA allegedly

executed during this life time which came to an end on his death.

During the course of the proceedings after the filing of the police report under Section 173 of the Cr.PC, 1973, Shri RD Vidyarthi expired and thus proceedings against him abated on 16.01.2014.

The learned trial Court of the ACMM, Shahdara vide order dated 16.09.2015 discharged the present petitioner observing to the effect that the property in question had only been inherited by the complainants from the deceased/accused Shri RD Vidyarthi and that the same had been sold by the deceased Shri RD Vidyarthi to Smt. Suman Budhiraja i.e. the present petitioner who later on returned the said property to Shri RD Vidyarthi by executing two sale deeds in favour of accused nos.2 & 3 who are now enjoying the property. It was observed vide order dated 16.09.2015 that since Smt. Suman Budhiraja, the present petitioner had made no wrongful gain out of the said property, she was discharged, though a prima facie case for framing of the charge was held to be made out vide order dated 16.09.2015 qua the other accused. It has also been observed vide the said order dated 16.09.2015 that Smt. Suman Budhiraja submitted that she did not make any wrongful gain after the said transaction rather Shri RD Vidyarthi having represented himself to be the owner of the property in question on the basis of a GPA executed in his favour by his father having failed to produce the original GPA, she had agreed to return the said property on the same sale consideration and on the request of Shri RD Vidyarthi, she executed two sale deeds of 100 sq. yards each in favour of Mr. Subodh Vidyarthi and Mrs. Sandhya Vidyarthi, the son and daughter-in-law of Shri RD Vidyarthi but made no wrongful gain out of the said

transaction and rather suffered a loss of Rs.66,000/- spent by her on the stamp duty and she had submitted the same fact in her reply to notice under Section 160 of the Cr.PC, 1973. She also claimed that the complainant Raghuver Dayal was an ASI in the Delhi Police and used influence to implicate her as an accused.

Though vide order dated 16.09.2015, charges were directed to be framed against the other accused persons as rightly observed by the learned Revisional Court of the ASJ-05 vide order dated 21.10.2019, the learned trial Court had failed to clarify in the impugned order as to what charges were to be framed against each of the individual/accused.

Vide order dated 21.10.2019, the learned Revisional Court has taken into account the submissions that had been made on behalf of the State as reiterated even now to the effect that during the investigation, it was disclosed that the accused RD Vidyarthi (since deceased) had sold the property in question to the petitioner herein through a GPA dated 19.01.2009 for Rs.33 lacs and one day thereafter that was on 21.01.2009, the present petitioner had re-sold the same property to Shri RD Vidyarthi but she executed two sale deeds for 100 sq. yds. each in the name of Subodh Vidyarthi and Sandhya Vidyarthi i.e. the son and daughter-in-law of Shri RD Vidyarthi for the same amount i.e. Rs.33 lacs. It was thus submitted on behalf of the State that it indicated that the accused RD Vidyarthi in conspiracy with the present petitioner had prepared a chain of documents and delivered a clear undisputed title of the property to his son and daughter-in-law but he himself was not having any title. It was also submitted on behalf of the State that Shri RD Vidyarthi sold the property to the present

petitioner on the basis of a GPA allegedly executed by his father in his favour on 15.02.1993 which was never produced by any of the parties and thus it could not be believed that any such GPA was in existence and in any case, even if it was there, it came to an end on 28.09.2001 with the death of Shri Badhey Singh, father of Shri RD Vidyarthi and therefore, he could not have sold the property on the basis of said GPA. It was further submitted on behalf of the State that the document which had been produced by Shri RD Vidyarthi was an un-registered document and it could not have been presumed that the present petitioner came to know about the defect only after the execution of the GPA in her favour and that she had thus not only caused wrongful gain to herself but also wrongful loss to not only the complainants but also to other legal heirs of Late Shri Badhey Singh and that she acted in conspiracy with Shri RD Vidyarthi to cheat the complainants and others to deprive them of the property of their father. It was further submitted on behalf of the petitioner during the course of the proceedings before the learned Revisional Court as has been now submitted to the effect that the petitioner herein was only a bona fide purchaser of the property in question and when she noticed the defect in title, she immediately returned the property to the seller at the same price without making any gain out of it and rather she suffered a loss of about Rs. 66,000/- in paying the stamp duty and that she has thus been rightly discharged by the learned trial Court of the ACMM.

It has also been submitted on behalf of the petitioner that the petitioner could not have been aware of the fraudulent act committed by Shri RD Vidyarthi and that she could not have known of the aspect of demise of

Shri Badhey Singh also and that there is no ground for framing of the charges against her qua the alleged commission of the offence punishable under Section 420 of the Indian Penal Code, 1860. It was also submitted on behalf of the petitioner that there has been no evidence that has been collected by the Investigating Agency nor has any been put forth through the police report under Section 173 of the Cr.PC, 1973 to indicate that the petitioner had acted in any conspiracy with Shri RD Vidyarthi and that the provisions of Section 120B of the Indian Penal Code, 1860 would not apply also.

The learned Revisional Court vide its impugned order as relied upon the observations of the Hon'ble Supreme Court in ***Chaman Lal & Ors. Vs. State of Punjab & Anr. (2010) 1 SCC (Crl.) 159*** wherein it was observed as under:

“Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.”

and has observed to the effect that the records indicated that even the original power of attorney in favour of Mr. RD Vidyarthi had never been shown to the petitioner nor was it produced before the Investigating Officer nor was it on the record and that it had even been informed by Shri RD Vidyarthi that he had destroyed the same and that the present petitioner had purchased the property thus with the knowledge that there was no clear title

of the property.

The observations of the learned Revisional Court to the effect that it is highly unbelievable that a person entering into the purchase of a property for Rs.33 lac, would not even bother to satisfy herself with the title documents of the property in a proper manner and then re-sell the said property to the son and daughter-in-law of the person from whom she purchased the same after knowing of a defect in the title, brings forth contradictory statement of her conduct,- cannot be overlooked presently. It is also essential to observe that the re-sale was thereafter made vide registered sale deeds as observed through para 17 of the order of the learned Revisional Court after bifurcating the property into two equal parts of 100 sq. yds. each, thus attempting to give a perfect title to the said two persons through a chain of documents. The conduct of the petitioner in re-selling the property to the son and daughter-in-law of Shri RD Vidyarthi (the co-accused who has since expired), is undoubtedly questionable and cannot be overlooked at this stage. It has also been observed vide the order of the learned Revisional Court that the contention of the petitioner herein that she suffered a loss of Rs.66,000/-, which she had paid on the stamp duty at the time of re-selling had not been substantiated to show that the said amount had been paid by her nor was the same filed even during the course of the revisional proceedings i.e. a copy of bank account or any other document to show that she has actually paid the same amount and that the possibility of RD Vidyarthi, the co-accused (since expired) having himself paid the said amount could not be ruled out.

No such document has even now sought to be produced despite Court

queries having been put forth by this Court.

In the circumstances, it is apparent that there is no infirmity in the impugned order of the learned ASJ-05 sitting and the order dated 16.09.2015 of the learned trial Court of the ACMM, Shahdara discharging the present petitioner and absolving her from all the charges with directions to proceed against the petitioner for framing of charges against her for the offence punishable under Section 420/120B of the Indian Penal Code, 1860.

The present petition is thus declined.

However, nothing stated hereinabove shall amount to any expression on the merits or demerits of the trial.

ANU MALHOTRA, J

JANUARY 15, 2020
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