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

% *Date of Judgment: 21ST October, 2020*

+ **CRL.REV.P. 337/2020**

KUNAL JAIN

..... Petitioner

Through: Mr Joydeep Mazumdar and Mr
Debojyoti Bhattacharya,
Advocates.

versus

STATE OF NCT OF DELHI & ORS.

..... Respondent

Through: Ms Meenakshi Chauhan, APP
for State with SI Manish
Kumar, PS Prashant Vihar.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

[Hearing held through video conferencing]

VIBHU BAKHRU, J. (ORAL)

CRL.M.A. 14599/2020

1. This is an application seeking condonation of delay of 189 days in filing the present petition.

2. For the reasons stated in the application, the same is allowed.

CRL.REV.P. 337/2020 & CRL.M.A. 14598/2020 & CRL.M.A. 14600/2020

3. The petitioner has filed the present petition, *inter alia*,

impugning a judgment dated 09.01.2020 passed by the learned Sessions Judge in appeal preferred by the petitioner under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (DV Act), impugning an order dated 15.02.2018 passed by the learned MM (Mahila Court) in CC No.2980/2017 captioned '*Shilpi Jain and Anr. V. Kunal Jain & Ors.*'.

4. By the said order dated 15.02.2018, the learned MM had taken note of the reply filed by the Bank of India along with its affidavit that a document purported to have been issued by the bank, which was filed by respondent no.1 (appellant herein) had not been issued by the bank. It further stated that the signature on the said document was not the signature of any of its officials and the stamp of the Bank used was a stamp, which was kept at the entrance of the Bank for cheques. It was alleged that the same had been used by the respondent (the appellant himself). In view of the above, the learned MM had granted the appellant an opportunity to explain the same and also stated that failing such explanation contempt proceedings would be issued and an FIR would be ordered to be registered for playing a fraud with the court by filing of forged documents.

5. The matter (CC No.2980/2017) was once again taken up by the learned MM on 26.02.2018. However, on that date, the appellant failed to appear before the court or tender any explanation regarding the allegedly false documents filed by him. The learned MM noted that the appellant had filed photocopy of the questionable document along with his application supported by an affidavit on 18.01.2018. He

claimed that the document in question had been issued by the Bank of India and indicated that the said Bank had frozen his accounts. Apparently, the appellant had furnished the said documents in order to explain why he had failed to make payment of school admission fees for his daughter as directed by orders dated 01.11.2017, 21.12.2017 and 11.01.2018.

6. In the aforesaid backdrop the learned MM has issued notice to the Bank to ascertain the reasons why the appellant's account was freezed.

7. The order dated 26.02.2018 passed by the learned MM is set out below:-

“Despite opportunity given respondent no.1 has failed to present himself in the court and explain the forged documents filed by him.

Respondent no.1 filed the said documents in photocopy alongwith his application, affidavit on 18.01.2018 stating that the said documents is issued by “Bank of India” and that they have frozen his accounts. The said contention and document was produced by him when he failed to make payment of school admission fees of his daughter as per order 01.11.2017, 21.12.2017, 11.01.2018. Thereafter vide order dated 24.01.2018 the bank was called as to why the said accounts were freezed.

In reply to the said averment and document Bank of India has filed the affidavit along with application that the same document is not issued by them and is made by respondent/himself.

This shows that respondent no.1 Kunal Jain has filed a fabricated document.

I am satisfied that the present facts of the case require thorough investigation on the point of the preparation of forged bank issued letter/document; regarding the forged initiate of the bank, stamp of the bank.

There is Clear attempt to play fraud with the court by filing forged and fabricated bank document, the issue is very serious. Hence, I direct SHO PS Prasahant Vihar to immediately register an FIR and unearth the conspiracy attempted to play fraud with the court.

At this stage, intimation is sent to I/C PP, Rohini Court and Sandeep PIS No.28093507 appears on his behalf.

Copy of the order is given to Ct. Sandeep, PIS No.28093507 for compliance.

Last opportunity for respondents to appear in failing when they shall be proceeded ex-parte.

Put up on 02.04.2018.”

8. Mr Mazumdar, learned counsel appearing for the petitioner submits that the said order is *ex facie* erroneous and falls foul of the due process of law. He states that although the petitioner has been convicted of a serious offence but neither any charges were framed nor a fair trial was conducted. He submits that the findings arrived at by the learned MM are based on surmises and cannot be sustained.

9. He contended that the Appellate Court (learned Sessions Judge) also failed to appreciate that the petitioner was convicted without a fair trial. He submits that the FIR was directed to be registered however, the findings that the petitioner had played fraud by filing forged and fabricated documents would leave nothing for the

concerned police officials to investigate since a competent court had already returned a finding to the aforesaid effect.

10. This court has heard the counsel for the petitioner.

11. This Court is unable to find any fault with the order dated 22.02.2018 passed by the learned MM or the order dated 09.01.2020 passed by the Appellate Court rejecting the petitioner's appeal against the order passed by the learned MM. A plain reading of the orders dated 15.02.2018 and 26.02.2018 indicates that the learned MM has not returned any final findings regarding the culpability of the appellant. It merely recorded the contentions of the Bank that the document produced by the appellant along with his affidavit was not issued by the Bank of India; the signatures on the said document did not belong to any officials of the Bank of India; and the stamp of the Bank of India used on the said documents was used by respondent no.1 (appellant) and not by any official of the Bank.

12. Admittedly, the document in question had been filed by the appellant and the learned MM was of the view that the matter required to be investigated. The observations that there is an attempt to play fraud with the court by filing forged and fabricated documents are only tentative observations. Undeniably, the learned MM had given reasons for making such observations. The appellant was given fair opportunity to explain the said documents but had chosen not to appear before the learned MM on 26.02.2018.

13. In view of the above, the present petition is dismissed.

However, it is clarified that all observations made by the learned MM/Appellate Court in the orders dated 15.02.2018 and 26.02.2018 are only tentative and the concerned police officials shall conduct a proper investigation uninfluenced by any of the observations made by the learned MM in the orders dated 15.02.2018 and 26.02.2018 or by the Appellate Court in the impugned order dated 09.01.2020.

14. The petition and all pending applications are dismissed with the aforesaid directions.

VIBHU BAKHRU, J

OCTOBER 21, 2020
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