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

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Date of decision: 23.02.2024

+ CRL.M.C. 155/2021, CRL.M.A. 791/2021

DHARAMBIR SINGH & ANR.

..... Petitioners

Through: Mr. Amit Chauhan, Adv.

versus

STATE & ANR.

..... Respondents

Through: Mr. Ajay Vikram Singh, APP for
State with SI Naresh Kumar, PS Baba
Haridas Nagar.Mr. Vikramajeet Singh, Adv. for R-2
with R-2 in person.**CORAM:****HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

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J U D G M E N T**ANOOP KUMAR MENDIRATTA, J (ORAL)**

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioners for quashing of judgment dated 25.01.2020 passed by learned Additional Sessions Judge (SFTC), District South-West, Dwarka Courts, Delhi in CR No.193/2019 (Kali Ram vs. State & Ors.) whereby the order dated 30.01.2019 passed by learned M.M. directing registration of an FIR on an application preferred by the petitioners was set aside. It may also be noticed that vide impugned judgment, learned ASJ granted liberty to petitioners to lead evidence in the complaint case.
2. In brief, petitioners (complainants in complaint case before learned M.M.) claimed that their father Puran Chand, who expired on 06.10.2017,



was the owner of 1/6th share of land situated in Village Dichaun Kalan, Delhi. When the respondent no. 2 applied for mutation of his share before the SDM/Tehsildar alongwith supporting documents, they came to know that respondent no. 2 who is their uncle (Chacha) had applied for mutation on the basis of forged and fabricated Will and GPA dated 07.06.1994 alleged to be executed by Puran Chand. It is further the case of the petitioners that in a family meeting between the parties, respondent no.2 Kali Ram had provided them with a notarized copy of GPA, agreement to sell, affidavit and receipt of Rs.45,000/- executed by their father late Puran Chand. Further, another copy of notarized affidavit of Dharambir Singh and Vinod Kumar dated 07.06.1994 was provided. Also, copy of notarized affidavit dated 02.03.1994 executed by late Puran Chand and attested by Notary Public on 04/14.03.1994 along with copy of receipt for consideration of Rs.30,000/- dated 02.03.1994 signed and executed by late Puran Chand was provided.

3. In the Action Taken Report called by the learned M.M. from concerned PS, it was submitted that the driving licence of Puran Chand and DTC I-card, bears his signatures in English while GPA and Will had signatures in Hindi. It was also pointed out that Notary Public Mahavir Singh was notified as Notary Public only till 17.05.1994 though the documents were notarized on 07.06.1994.

4. Learned M.M. held that since the matter required further investigation, for which police assistance is required and signatures of Puran Chand need to be examined by some expert, an FIR be registered under appropriate sections. In view of aforesaid directions vide order dated 30.01.2019, FIR No.62/2019 was registered by police under Sections



420/467/468/471/474/120B/34 IPC.

5. The directions issued by learned M.M. for registration of FIR vide order dated 30.01.2019 was challenged by respondent No.2 in Revision Petition (CR 193/2019) before learned ASJ, wherein it was pointed out on behalf of respondent No.2 that late Puran Chand had executed a 'GPA' and 'Will' in his favour, which was duly registered in the office of Sub-Registrar on 07.06.1994. Also, the possession of the property was handed over by late Puran Chand during his lifetime. The aforesaid documents though were signed in Hindi by Puran Chand but also bear photograph of Puran Chand at the time of registration. As such, there could not be any *iota* of doubt as to the authenticity of the aforesaid documents which stood verified from the office of Sub-Registrar.

6. Learned ASJ vide impugned order observed that application under Section 156(3) Cr.P.C. was only filed in the year 2018, while the aforesaid documents pertain to the year 1994. It was further noticed that the learned M.M. merely proceeded on the basis that the Driving Licence of late Puran Chand and his DTC identity card were bearing the signatures in English, which raised a doubt as to the authenticity of the documents executed in favour of respondent No.2 (Kali Ram), without considering the fact that the GPA and Will were duly registered. The order directing registration of FIR was accordingly set aside.

7. The contentions raised before the learned Revisional Court have been reiterated on behalf of the petitioner as well as respondent No.2. Respondent No.2 further submitted that merely because affidavit, receipt and agreement to sell were notarized on 07.06.1994, the documents could not be presumed to be fabricated, on the basis of which the registration of



FIR had been directed.

8. It may be observed that power to investigate under Section 156(3) Cr.P.C. on one end intends to check arbitrariness by the police authorities to not to carry out investigation in cases where it is warranted and on the other end to ensure that the same is not invoked at the whims and fancies of the complainant. Merely alleging disclosure of cognizable offence, may not be sufficient to issue directions under Section 156(3) Cr.P.C. if on the face of record the information lacks credibility and is not supported by documentary evidence relied by the parties. The delay in approaching the Court to report the commission of an offence after a considerable period of time also needs to be kept in perspective, along with the fact, if any civil proceedings are pending between the parties.

9. Admittedly, the practice of getting the GPA along with Will has been prevalent and the remaining documents necessary for purpose of transfer of property are notarized. The authenticity of GPA as well as Will cannot be doubted as they were duly registered on 07.06.1994 in the office of Sub-Registrar and also the photograph of late Puran Chand was affixed thereon. Only because the documents were signed in Hindi by Puran Chand at the relevant time does not lead to an inference that the documents are forged.

10. Further, merely because the tenure of the Notary Public was valid till 17.05.1994 but the documents were attested by him on 07.06.1994 cannot lead to a conclusion that the notarized documents are forged by respondent No.2. If the Notary Public continues the process of registration post expiry of his licence, the document itself does not become forged, unless evidence comes on record that documents were not notarized by him or on his behalf and said fact was known to respondent No.2. It cannot be ignored that the



Notary Public generally apply for renewal of licence, before the expiry of licence but in the meantime continue the process of registration of documents under an expectation that the same would be renewed. The non-extension of the licence of Notary Public makes the process of notarization on any document post his licencing period irregular but the same does not automatically lead to an inference that the document is forged by the executors. The fact that the GPA and Will executed by late Puran Chand were found to be duly registered on verification from the office of Sub-Registrar, cannot be overlooked.

11. In the facts and circumstances, it cannot be *prima facie* inferred that act of respondent No.2 was marked with fraudulent or dishonest intention, since the GPA and Will executed by late Puran Chand are duly registered. As such, the directions could not have been issued by learned M.M. for registration of FIR merely on suspicion or merely because the signatures are required to be compared through an expert on the disputed documents. The dispute primarily appears to be civil in nature and civil proceedings are also pending in this regard.

12. For the foregoing reasons, this Court is of the considered opinion that impugned order passed by the learned Revisional Court does not require any interference. The petition is accordingly dismissed. Pending applications, if any, also stand disposed of.

A copy of this judgment be forwarded to the learned M.M. as well as Revisional Court for information.

(ANOOP KUMAR MENDIRATTA)
JUDGE

FEBRUARY 23, 2024/akc/sd