



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

% **Pronounced on: 17th August, 2022**

+ **CRL.M.C. 2275/2020, CRL.M.As.16139/2020, 5065/2021,
12659/2021 & 19973/2021**

KIRAN ABNASHI CHAWLA

..... Petitioner

Through: Mr. Abhishek Kumar Rao and Mr.
Shailesh Suman, Advocates with
petitioner in person

Versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr. Ritesh Kumar Bahri, APP for
the State with SI Ashwani
Ms. Deepti Gupta, Advocate for R-2
Mr. Vishal Gosain and Mr. Pravir
Singh, Advocates for R-3
Mr. P. Piyush, Advocate for R-4
Mr. Nikhil Borwankar, Mr. Anvesh
Verma and Mr. Manish Sharma,
Advocates for Intervener

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. The petition has been filed under Section 482 Cr.P.C. for quashing of the order dated 1st February, 2020 passed by the learned Metropolitan Magistrate, South-East District (for short, **“learned MM”**) in case No.8641/2018 directing further investigation in FIR No.255/2016, Police Station Greater Kailash (South East), Delhi.
2. The petitioner has been arraigned as an accused in the FIR No.255/2016 registered under Sections 420/468/471/120B of the IPC. The



respondent No.1 is the State, respondent No.2 is the complainant, respondents No.3,4,5, 6 and 7 are other persons accused in the FIR. The police submitted a Closure Report to the learned MM, who vide the impugned order, did not accept it and directed investigations in respect of what it felt were lacunae in the investigations carried out thus far by the police.

3. It may be noted that initially the petition was filed only against the State. However, subsequent to the directions issued on 14th January, 2021, the amended memo of parties was filed. When the case had come up for hearing for the first time on 23rd November, 2020, the proceedings before the learned MM were stayed. These interim orders have continued till now.

4. At this juncture, and before proceeding further, it would be appropriate to consider the application filed on behalf of Sh. Vineet Tiwari (Cr.M.A.5065/2021) seeking to intervene in the matter. The claim of the intervenor is that in 1993, the sister of Mrs. Raj Chawla Sahni, who had allegedly been bequeathed the entire ground floor of the property bearing No. N-258, Greater Kailash-I by the said Mrs. Raj Chawla Sahni, sold it to the present Applicant vide registered sale deed dated 27.12.1993. It was claimed that the settlement arrived at between the complainant and the accused/petitioner in a case of alleged forgery of the Will could not be accepted. It was claimed by the Applicant/intervenor that in case the Will was found to be false he would be entitled to possession. It is thus contended that the petition be not allowed so that the controversy regarding whether the testator genuinely stated his final wishes in the Will could be settled. But, the present petition which is under Section 482 Cr.P.C. cannot be converted into a civil proceeding for determination of third-party rights.



The application is accordingly dismissed, being completely misplaced.

5. Mr. Abhishek Kumar Rao learned counsel for the petitioner has submitted, which submissions have been supported by the respondent No.3 as well as the respondents No.4 to 6, that the police had submitted a Closure Report after fully investigating the complaint, which ought to have been accepted by the learned MM on 1st February, 2020. The Closure Report was premised on (i) the Settlement that had been arrived at between the complainant and the accused, particularly the petitioner, the copy of which has been placed on record as Annexure P-4; (ii) the investigations did not reveal the commission of any offences; (iii) there was no forgery inasmuch as the Will propounded by the petitioner was found to bear the true signatures of the late Shri HPS Chawla; (iv) there would be no purpose in continuing with the investigation. The learned MM, therefore, erred in directing further investigation into a matter that required no further action.

6. It may be mentioned here, that when notice was issued to respondent No.2, she appeared through counsel and while not disputing that such a Settlement had been arrived at between the petitioner and herself, raised and took objections to the present petition on the ground that the Settlement has not been acted upon fully. When such submissions were made, this Court directed that affidavits be filed as to the division of the properties as per the Schedule to the Settlement. The affidavits have been filed by both sides. This Court, however, does not find it necessary to discuss the contents of these affidavits for the disposal of the present petition. There were civil litigations pending between the petitioner and the respondent No.2 and the matter was settled before the Single Judge of this



court. The affidavits relate to the execution of the Settlement, which need not detain us.

7. The question before this Court is whether the learned MM was justified in rejecting the Closure Report and directing further investigation. From the submissions made before this Court, it is clear that respondent No.2 does not deny having arrived at the Settlement dated 3rd March, 2018. She also does not dispute that in fact, the properties had been divided as per the Schedule and the Will in question propounded by the petitioner was not acted upon, in order to arrive at the Settlement. Thus, the property in the Schedule was divided in equal shares between the petitioner and the respondent No.2. Today, the grievance of the respondent No.2 appears to be that due to her having disposed off her share before leaving India for the US, she had to suffer losses as the person to whom she had transferred the property subsequently sold the same to the petitioner at a higher price. Therefore the argument, that the Settlement has not been properly acted upon.

8. It is clear that such an argument is far-fetched. The parties having acted upon the Settlement and the respondent No.2 having benefited from it by receiving property, cannot be permitted to wriggle out of the same. The courts have consistently taken the view that once there was a settlement particularly in family matters and the parties have acted upon the same, no party having benefitted can renege from the settlement. [See *Aditya Chandershekhar Pandit & Ors. v. State of NCT of Delhi & Anr.* 2012 SCC OnLine Del 4025, *Mohd. Shamim and Others v. Nahid Begum (Smt) and Another* (2005) 3 SCC 302, *Purshotam Gupta & Ors. v. State & Anr.* [Order dated 23.01.2008 in CRL.M.C. 3230-32/2006], *Ruchi*



Agarwal v. Amit Kumar Agrawal & Others (2005) 3 SCC 299, ***Bakshi Ram and Others v. Brij Lal*** 1994 Supp (3) SCC 198.]

9. The respondent No.2 having taken a decision prioritizing her departure from this country over financial benefits that some patience could have resulted in, cannot now transfer her perceived losses on to the petitioner to get out of her obligations under the Settlement. As observed in ***Bakshi Ram (supra)*** in equity a person drawing benefit from a transaction cannot be permitted to escape from his disadvantage, if any, flowing from it. As per the Settlement, the petitioner and the respondent no 2 were given equal shares. What they did with their respective shares were their own business and they have to accept the consequences of whatever decisions they took in respect of their shares. The respondent no 2 is fully bound by the terms of the Settlement and she had rightly informed the police of it and of her decision not to proceed with the F.I.R.

10. Reliance has been placed on the decision of the Supreme Court in ***State of Madhya Pradesh v. Lakshmi Narayanand Others*** (2019) 5 SCC 688 by the learned counsel for the petitioner to submit that on the basis of a settlement, even non-compoundable offences could be quashed when the allegations also disclosed a dispute pre-dominantly civil in character, in order to prevent the abuse of the process of the court or to meet the ends of justice. Settlement was considered to be a crucial factor while deciding the question of quashing. The observations of the Supreme Court may be quoted with benefit below:

“29.7 While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is



arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

11. We may turn to the facts in the present case. Both, the petitioner as well as the respondent No.2, claimed status as the wife of the late Shri HPS Chawla. After his death, the petitioner propounded a Will which was challenged by the respondent No.2. The respondent No.2 filed a civil suit



for possession against the petitioner whereas the petitioner filed a probate petition qua the Will dated 3rd November, 2013. It was during the pendency of the probate petition filed on 21st August, 2014, and the suit under Section 6 of the Specific Relief Act, 1963 filed by the respondent No.2 claiming possession of the property situated at N-258, Greater Kailash-I, New Delhi in September, 2014, that she filed a complaint case along with an application under Section 156(3) Cr.P.C. on 20th May, 2015. Though initially, the Police submitted a report to the learned MM on 5th August, 2015 that a probate matter was pending and, therefore, the Police had not lodged an FIR, on 4th August, 2016, the learned MM directed the registration of the instant FIR by allowing the application under Section 156 (3) Cr.P.C.

12. CrI.M.C. No.3163/2016 was filed for quashing of this order and in those proceedings a request was made by the petitioner for forensic examination of the Will. Since the court allowed the prayer, CrI.M.C.No.3163/2016 was disposed of as not pressed. Subsequently, on 29th December, 2017, the FSL gave a report to the ACP, DIU that the signatures on the Will were genuine and matched with the admitted signature of late Shri HPS Chawla. Apparently, it was thereafter, with the intervention of the sister of late Shri HPS Chawla, that the Settlement was arrived at on 3rd March, 2018. In the background of these facts, the impugned order may be considered.

13. The learned MM noted the contents of the complaint and the investigations that were referred to in the Closure Report. It also recorded that the respondent No.2 had submitted in writing to the Police that she did not wish to pursue the FIR since the parties had settled the matter. Despite



noting these facts, the learned MM went on to observe that the FIR had not been quashed and therefore, the investigation not being complete ought to continue to “bring up the truth” and to fix the criminal liability of offences ‘apparently committed’. The further investigations were directed under the personal supervision of a senior officer. Clearly, the learned MM has misdirected himself. The continuation of the investigations would in the facts of the present case, be an abuse of the law and would result in miscarriage of justice.

14. The FIR which included allegations of forgery and cheating were premised on the Will dated 3rd November, 2013 being a forged document. The FSL Report does not support this allegation that the signatures on the Will have been forged. Therefore, the question of forgery and cheating are not made out on the material that has been collected during investigation. The learned MM seemed concerned with the status of health of the executant of the Will and observed that the investigation conducted by the Police was completely silent on the physical and mental capacity of the late Shri HPS Chawla at the time of execution of the Will. The learned MM was of the view that this was faulty investigation as no material, report or opinion had been collected during the investigation to show that the executant was competent to execute the Will.

15. Clearly, the learned MM ought not to have entered that arena precisely because the testamentary case was pending before a court having jurisdiction to consider these aspects. But more importantly, the complainant had received a half share of the testator’s estate *de hors* the Will, rendering the need to prove the validity of the Will unnecessary even before the jurisdictional court. The petitioner, who was propounding the



Will has given up her claim based on the said Will and has in the course of the Settlement agreed to take a lesser share, that is a half share in the property. Thus, when neither the beneficiary under the Will nor the objector to the Will had any further grievance qua the Will to what purpose is the investigation directed by the learned MM is difficult to fathom.

16. A further query has arisen in the mind of the learned MM as to the basis on which the petitioner had claimed herself to be the wife of the late Shri HPS Chawla and what was her motive. Investigation was ordered to ascertain these facts. In the light of the Settlement arrived at between the parties and the mutual rights of the parties have been resolved amicably there was no cause nor justification for an investigation into the marital status of the petitioner.

17. Thus, the impugned order being perverse is required to be and is set aside.

18. The F.I.R. is a result of the claim of one party to a larger share in the property of the deceased who had a close relationship with both, the petitioner as well as the respondent no.2. It is the efforts of the sister of the deceased that has resolved the disputes. Such a Settlement deserves recognition even by the courts. In fact the civil litigation has come to an end on the basis of the Settlement. Fairly, the respondent no.2 informed the police of the Settlement and her desire to withdraw her complaint. She had done so in writing, and does not deny the act even before this Court. Her grievance of perceived loss, as noted above, has no meaning given the fact that the Settlement has been acted upon to her benefit. In the light of the Settlement arrived at between the parties, there is no purpose left in continuing with the investigations or any further proceedings qua the FIR



No.255/2016.

19. The petition is allowed. Accordingly, the FIR No.255/2016, registered under Sections 420/468/471/120B of the IPC at Police Station Greater Kailash (South East), Delhi and all proceedings arising therefrom, including further investigations, are quashed.

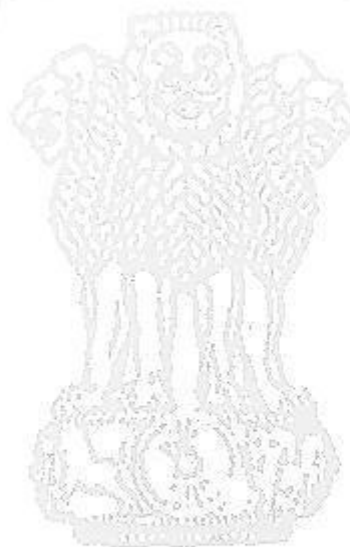
20. The petition is accordingly disposed of, along with the pending applications.

21. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

AUGUST 17, 2022

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