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

%   **Pronounced on: 6th May, 2022**

\+   **CRL.M.C. 594/2020**

AKEEL AHMAD ..... Petitioner

Through Mr. Ankit Singh, Advocate

versus

STATE & ORS. ..... Respondents

Through Ms. Manjeet Arya, APP for the State with SI Rahul Kumar

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

JUDGMENT

1. This petition under Section 482 Cr.P.C has been filed by the complainant before the learned Trial Court, being aggrieved by the order dated 14th March, 2019 passed by the Additional Sessions Judge, Shahdara, Karkardooma Courts in the revision petition CR No.13/17 filed by the petitioner against the order dated 26th July, 2017 of dismissal of his complainant under Section 203 Cr.P.C., passed by the learned ACMM (Shahdara).

2. The petitioner had filed a complaint case alongwith an application under Section 156(3) Cr.P.C. before the Metropolitan Magistrate Shahdara. An FIR was directed to be registered and FIR No. 230/2006 under Sections

417/419/420/465/466/467/468/120B IPC, PS Anand Vihar was registered. But the investigating agency filed a Cancellation Report as the investigations did not reveal the commission of any offence. However, the petitioner being dissatisfied, sought the revival of his complaint, which was allowed on 4th December, 2007. The petitioner examined seven witnesses in support of the complaint, the CW-7 being himself.

3. After considering all these materials, the learned ACMM vide the order dated 26th July, 2017 considered there was no material upon which to summon the proposed accused persons. Thus, it dismissed the complaint. A revision petition was filed before the learned Additional Sessions Judge who, vide the impugned order dated 14th March, 2019, concluded that the Revision Petition was bereft of any merit and dismissed the same.

4. Before this court, it has been urged by Mr. Ankit Singh, learned counsel for the petitioner that the learned courts below had not properly applied their minds and had, therefore, passed erroneous orders.

5. It may be noted that while dealing with a petition under Section 482 Cr.P.C., this Court does not exercise an appellate jurisdiction. The petitioner is required to point out the errors that have been committed by the courts below which has resulted in miscarriage of justice. It appears that the petitioner has been unsuccessful in this attempt.

6. Learned counsel for the petitioner submitted that the learned courts below had overlooked the documentary evidence which clearly showed that the respondents No.2 and 3 had impersonated the original allottee being Ms. Swarn Lata, D/o Mr. Harish Chand, to illegally sell the property being Plot No.184 measuring 355.50 sq. yards in the area now known as Saini Enclave at Vikas Marg, Delhi. It was submitted by the learned

counsel that the original perpetual Lease Deed 6th November, 1975, registered with the Sub-Registrar Office, Delhi. was executed by the DDA in favor of Saini Co-operative Building Society. The sub-lease of Plot No.184 was executed in favour of Ms. Swarn Lata, D/o Harish Chand vide perpetual Sub-Lease Deed dated 3rd April, 1976 which was also duly registered before the Sub-Registrar on 15th June, 1976.

7. Learned counsel drew attention to the details in the stamp affixed on the document to submit that the fabrication of the document took place when instead of writing Ms. Swarn Lata, D/o Harish Chand, the name of Smt. Swarn Lata, wife of S.R. Saini, got recorded. It is the contention of the learned counsel that in separate civil proceedings being Civil Suit No.357/08 titled Ms. Swarn Lata Vs. Amit Modi, an Intermediate Exam Certificate was filed by the respondent No. 2 to establish her identity, but the witness who had come from the University of Rajasthan had clearly deposed that the Roll Number on this Intermediate Certificate belonged to Ms. Usha Kashyap.

8. Thus, in order to defraud the petitioner who had purchased the plot through an Agreement to Sell for a consideration of Rs. 10,00,000/- from Ms. Swarn Lata, D/o Harish Chand, documents had been created by the respondents. Hence, it was submitted that the dismissal of his complaint was unjustified. It was, therefore, prayed that the complaint be restored and the respondents be summoned to face trial.

9. Ms. Manjeet Arya, learned APP for the State contended that all investigations had revealed that the allegations made by the petitioner were false. It was submitted that the petitioner had failed to produce the Ms. Swarn Lata, D/o Harish Chand, who he claims was the true owner. It is

further submitted that the documents were very old and the stamp of the Sub-Registrar clearly disclosed that the sub-lessee, though the daughter of Harish Chand, was married to S.R Saini and no fraud appears to have been committed nor any document fabricated or forged. It was submitted that the complaint was rightly dismissed by the learned ACMM and rightly upheld by the learned Sessions Court.

10. The learned counsel for the petitioner has relied on the judgements of the Supreme Court in ***Shivjee Singh v. Nagendra Tiwary***, (2010) 7 SCC 578 and ***Bhushan Kumar v. State (NCT of Delhi),*** (2012) 5 SCC 424, and the decision of a Coordinate Bench of this court in ***Niti Munjal v. State***, 2007 SCC OnLine Del 641, to submit that the non-examination of one witness could not be fatal to the complaint and that while passing an order on summoning, the courts were not called upon to meticulously weigh and examine the material brought on record. Thus, the learned MM in doing so had misdirected itself.

11. I have heard the counsel and have carefully perused the record as well as the cited judgments.

12. In ***Neeti Munjal*** (supra), it was held that while issuing summons, extraneous material ought not to be considered. But what is to be noted in the present case is that the conclusions of the courts below are founded on the evidence that had been led by the petitioner himself. Therefore, it cannot be said that the Trial Court had considered extraneous material to dismiss the complaint.

13. As regards the decisions in ***Shivjee Singh***(supra) and ***Bhushan Kumar***(supra), they deal with different aspects, inasmuch as, in both cases, it was held that summoning requires no explicit reasoning. But in the

present case, the complaint was dismissed and therefore the learned Trial Court had to justify and give reasons for the dismissal. While giving those reasons, reference has been made to the evidence led by the petitioner. Therefore, it is not a case of a mini trial having been held or the defence of the proposed accused having been considered.

14. It is clear from the record that the learned ACMM and the learned ASJ have only focused on what was brought by the petitioner by way of evidence, to conclude that there was no merit in the complaint. Rather, both the courts below had concluded that it was the petitioner who was attempting to play a fraud by relying on fictitious documents.

15. The learned Sessions Court has correctly evaluated the orders of the learned ACMM to conclude that the best evidence had been withheld by the petitioner. The person by the name Ms. Swarn Lata, D/o Harish Chand also described in the registration as Ms. Swarn Lata, wife of S.R. Saini, appears to be the respondent No.2, but the petitioner, in order to create a spurious character, has claimed that the allottee was an unmarried lady and had remained so throughout her life. Despite the record in the Cancellation Report that no such person had been brought forward by the petitioner, he never made any effort to produce Ms. Swarn Lata to be examined before the learned MM. Both the courts below found this to be a telling fact and drew an inference against the petitioner. This court finds no error in the inferences so drawn. This is not a case, like the case of ***Neeti Munjal***(supra), as the most vital witness was not produced by the complainant.

16. It is to be also noted that the original documents were registered in the year 1976, when on one page Ms. Swarn Lata is described as the

daughter of Harish Chand, and on the other page, as wife of S.R. Saini There is absolutely no material that has been brought on record by the petitioner which would substantiate his allegation that the Lease Deed bearing the name of Ms. Swarn Lata, wife of S.R. Saini, was a fabricated document. The petitioner's/complainant's own case is that he entered into an Agreement to Sell dated 28th June, 1994. It is impossible to believe that in the year 1976, Ms. Swarn Lata was scheming to somehow cheat the petitioner and thus prepared these documents. The CW-2 Ms. Savitri Kashyap who had signed the perpetual sub-lease, herself deposed that these documents were executed on 3rd April, 1976.

17. While repeatedly, since 2006, when the evidence was being recorded, the petitioner was unable to produce the person to whom he had supposedly paid a sum of Rs.10 lakhs, as he claims that he paid the money and had entered into an Agreement with Ms. Swarn Lata, D/o Harish Chand who was an unmarried lady, now, it is claimed that the lady has died on 17th August, 2015 in Bulandshahr. It is also suspicious that so long as she was alive, the petitioner was unable to trace the whereabouts of the said Ms. Swarn Lata, but as soon as she had allegedly passed away, he was able to produce a certificate, that too from District Bulandshahr. These are documents and pleas that do not inspire any confidence.

18. The petitioner has relied on the testimony of witness CW-3, being the record clerk from the Sub-Registrar Office, Hatin District, Palwal, who testified in respect of a GPA executed on 18th May, 1991, where the executor is described as Smt. Swarn Lata, D/o of Harish Chand and witnessed by S.R. Saini, to submit that this was also a forged document. But the copy of the General Power of Attorney placed on the record as

CW-3/A actually describes the executor as Smt. Swarn Lata, daughter of Harish Chand and stated wife of S.R. Saini. The Sub-Registrar in the stamping has misdescribed her as daughter of Harish Chand and the execution is witnessed by S.R. Saini. In fact, in the next document i.e., a General Power of Attorney which bears a photograph and stated to be executed at Hatin on 18th May, 1991, the description of the executor is clear as Smt. Swarn Lata, D/o of Harish Chand and wife of S.R. Saini. In other words, it is clear that at least the respondent No.2, alongwith respondent No.3, or the other respondents, has not impersonated any person nor has she fabricated any document. The documents of the petitioner rather create a doubt as he has not been able to point out to the figure with whom he had entered into the Agreement to Sell for a sum of Rs.10 lakhs.

19. Coming to the Intermediate Certificate, the CW-5 Rama Shankar Bhagwat was examined from the University of Rajasthan, Jaipur. What is to be noted here is another clever mix up that has been attempted by the petitioner. The comparison of the names has been made with the Roll Number in the Supplementary Examination of Smt, Swarn Lata, D/o of Harish Chand and the Roll number for the Main Exams which was in the name of Ms. Usha Kashyap, D/o Kanta Prasad Kashyap. This witness has clearly testified that the original roll number for the Main Exam allotted to Smt. Swarn Lata was 1346 and for the Supplementary Exam, the roll number was 186. Therefore, if the roll No.186 in the Intermediate Art Examination (Mains) held in March 1954 was allotted to Ms. Usha Kashyap, nothing turns on it, as for that exam, the roll No. of Smt. Swarn Lata was 1346. Thus, there too, there is nothing to substantiate the

allegations of the petitioner.

20. In the light of the foregoing discussion, the petition is found to be completely devoid of any merits. The petitioner is straining to somehow place his hands on valuable property by hook or by crook. His attempt to create confusion as to the person who is the original allottee of the Plot No.184 measuring 355.50 sq. yards in the area now known as Saini Enclave at Vikas Marg, Delhi, has failed completely. The learned ACMM rightly dismissed the complaint and the learned ASJ rightly declined to interfere with the dismissal.

21. The petition is accordingly dismissed with cost of Rs.25,000/- to be deposited with the Delhi High Court Lawyers Welfare Trust. The receipt thereof be filed within a week, failing which, the Registry may initiate action for recovery.

22. The order be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

MAY 06, 2022/ak