



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

% **Pronounced on: 26th May, 2022**

+ **CRL.REV.P. 199/2022 and CRL.M.A. 6421/2022 (for stay)**

VIJAY KUMAR JAIN

.....Petitioner

Through: Mr. Sandeep Kumar and Mr. Sachin
Kumar, Advocates

Versus

STATE

..... Respondent

Through: Mr. G.M. Farooqui, APP for the
State with Inspector Pankaj Kumar

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. This petition has been filed under Sections 397, 401 read with Section 482 of the Code of Criminal Procedure, 1973 (for short, “**Cr.P.C.**”) seeking the quashing of orders dated 6th August, 2020 and 11th March, 2022, passed by the learned Chief Metropolitan Magistrate, Saket District Court, Delhi (for short, “**learned Trial Court**”), in the case relating to FIR No.422/2001, registered at Police Station New Friends Colony, Delhi under Sections 201/406/420/448/467/471/34 of the Indian Penal Code, 1860 (for short, “**IPC**”).

2. The FIR was registered by Naresh Kumar Pandey against the accused persons, being V.K. Jain and his sons, namely, Saurab Jain, Gaurav Jain and Manav Jain, the MCD officials, namely, Om Dutt Sharma



and MMS Bhatnagar. Though the FIR had been also registered against K.C. Pandey, who was the brother of the complainant, charge-sheet was not filed against him as he expired on 15th February, 2003.

3. The allegations are that the property situated at 104/5, Ring Road, Maharani Bagh, New Delhi belonged to the father of the complainant, having received it on the basis of a compromise decree dated 10th August, 1992. After the father expired, the property was divided amongst the legal heirs on the basis of a Settlement and partitioned in the following manner:-

1. Ramesh Anand Pandey : 850 Sq. Yds.
2. Vijay Kumar Pandey : 1100 Sq. Yds.
3. Kamlesh Chand Pandey : 550 Sq. Yds.
4. Naresh Kumar Pandey : 650 Sq. Yds.
5. Rajesh Kumar Pandey : 850 Sq. Yds.

On 10th August, 1992, out of this share of 850 Sq. Yds., Rajesh Kumar Pandey transferred to his mother Smt. Kanti Devi, 300 Sq. Yds.. The criminal case is in respect of this 300 Sq. Yds..

4. Apparently, on 17th May, 1993, K.C. Pandey availed of a credit facility from the Bank of Madura Ltd. (now, 'ICICI Bank') for his company, M/s. Mega Marketing, for Rs.10 lakhs by mortgaging the property. His mother became guarantor and had pledged her share for this loan. The original documents are with the Bank. Certain DRT proceedings have already been commenced in respect of that loan by the Bank, which are still pending.



5. According to the complainant, the accused persons had forged the *Will* and the Receipt purporting it to be of Smt. Kanti Devi. On the basis of these documents, the mutation was carried out in the MCD records by the MCD officials, despite an objection that had been filed by the complainant. After conclusion of the investigations, the charge-sheet was filed against all these accused persons, as noticed above, for the said offences.

6. The impugned order dated 6th August, 2020 directed framing of charge against accused Om Dutt Sharma, Rajesh Pandey, V.K. Jain (the petitioner herein), Gauran Jain, Saurab Jain and Manav Jain, for the offences under Sections 120-B/420 read with Section 120-B, Section 467 read with Section 120B IPC. Thereafter, on 11th March, 2022, charge was framed against these accused persons under Section 120B IPC; Section 420 read with Section 120B IPC and Section 467 read with Section 120B IPC.

7. Mr. Sandeep Kumar, learned counsel for the petitioner, relying on the judgment of the Supreme Court in *Sheila Sebastian v. R Jawaharaj and Anr.*, (2018) 7 SCC 581, contended that when there was no forgery, no charge under Section 467 IPC could be framed. Relying on the judgment of the Supreme Court in *Hira Lal Hari Lal Bhagwati v. CBI, New Delhi*, (2003) 5 SCC 257, it was also contended that there could be no vicarious liability and so no charge under Section 120B IPC could be framed against the petitioner. According to the learned counsel, there was no allegation against the petitioner to show that he was the one who had made the documents. It was also urged that there was no overt act ascribed to the petitioner and therefore, no offence under Section 420 IPC was made



out. It was further submitted that the petitioner being 81 years of age ought not to be subjected to vexatious criminal prosecution on such vague pleas.

8. Mr. G.M. Farooqui, learned APP for respondent No.3/State, on the other hand, submitted that the charge-sheet itself disclosed the role played by the petitioner in duping the original owner Smt. Kanti Devi, into parting with the possession of her property, and after the death of Smt. Kanti Devi, refusing to vacate the property. Rather, soon thereafter, the petitioner got the property mutated in the names of his sons on the basis of a forged *Will* and Receipt, purporting to be for consideration of Rs.13.5 lakhs, allegedly paid to Smt. Kanti Devi. It was submitted that the MCD officials did not follow the right procedure of notifying all the legal heirs of the application for mutation and despite the objections of the complainant, who was one of the legal heirs of Smt. Kanti Devi, on the basis of photocopies of affidavits on which the signatures of the LRs too were forged, conveniently mutated the property in the name of the sons of the petitioner, who are also arrayed as accused in this case. Thus, there was a criminal conspiracy and the FSL report has clearly concluded that the signatures on the *Will* and the Receipt were not affixed by Smt. Kanti Devi, thus establishing that forgery had occurred. Since there were several accused in this matter, merely because the FSL report has not actually ascribed the forgery to the petitioner would be no reason to discharge him of the offences under Sections 420 and 467 IPC read with Section 120B IPC.

9. I have heard the contentions of the learned counsel for the petitioner and the learned APP for the State and I have considered the judgements relied upon by the learned counsel for the petitioners. At the outset, it



requires to be noticed that *Sheila Sebastian (supra)* was an appeal against a judgment, whereas the present is a petition questioning the framing of charge. In the said case, it was on account of the finding recorded by the Trial Court that there was no evidence establishing the making of forged documents, that the appeal was dismissed and the acquittal upheld. It may be useful to quote para No.26 of the said judgment, as that would give context to the observation in para No.25 thereof, which is to the effect that strict interpretation must be adopted while interpreting a penal statute and that a “charge of forgery cannot be imposed on a person who is not the maker of the same”. Para No.26 is reproduced hereinbelow for ready reference:-

“The definition of “false document” is a part of the definition of “forgery”. Both must be read together. ‘Forgery’ and ‘Fraud’ are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no finding recorded by the trial Court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that ‘false document’. Hence, neither respondent no.1 nor respondent no.2 can be held as makers of the forged documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event the trial court as well as appellate court misguided themselves by convicting the accused. Therefore, the High Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same.” (emphasis added)



10. It is clear from the above extraction that ‘forgery’ and ‘fraud’ are essentially matters of evidence, which could be proved as a fact. That stage has not yet come in the present case. It is after the evidence is recorded that the learned Trial Court would render the finding as to whether forged documents had been made and if so, by which accused and therefore, who would be liable therefor. The judgment of the Supreme Court in ***Sheila Sebastian (supra)*** cannot aid the petitioner to seek discharge.

11. As regards the decision in ***Hira Lal (supra)***, that case has no application to the facts of the present case as it was under the Customs Act, 1962, which did not prescribe vicarious liability. Rather, the observations in para No.32 is apposite, where it was observed that to bring home the charge of conspiracy within the ambit of Section 120B IPC, it was necessary to establish that there was an agreement between the parties for doing an unlawful act and that “*conspiracy may not be established by direct evidence*”. Once again it is reiterated that, that stage has not yet reached in the present matter. The judgment in ***S.K.Pandit v. Chandraprakash D. Deo and Another*** 2019 SCC OnLine Ker 1748, relied upon by learned counsel for the petitioner, only follows the judgment in ***Sheila Sebastian (supra)***, which we have already discussed hereinabove.

12. Coming to the facts of the present case, the charge-sheet sets out the role played by the deceased accused K.C. Pandey. On 17th May, 1993, K.C. Pandey had obtained the loan from the Bank of Madura (now, ‘ICICI Bank’), shortly before the demise of his mother on 26th June, 1993. The mother, Smt. Kanti Devi had mortgaged her property of 300 Sq.Yds. at 104/5, Ring Road, Maharani Bagh, New Delhi, and had also become the



guarantor for the credit facility. On the very next day i.e., 18th May, 1993, purportedly, Smt. Kanti Devi executed the Agreement to Sell, *Will* and an Affidavit in favour of one T.R. Anand for Rs.57 lakhs and it was K.C. Pandey, who had allegedly accepted Rs.47 lakhs in cash, with the understanding that Rs.10 lakhs would be held by the party i.e., T.R. Anand, to repay the Bank loan. According to the charge-sheet, another FIR has been registered in respect of this transaction as T.R. Anand had thereafter, transferred the property to one Ajay Kochar, who got FIR No.368/1997 registered at P.S. Sarojini Nagar, Delhi, against the said T.R. Anand and which is pending trial.

13. However, as per the charge-sheet in the present case, on 23rd May, 1993 i.e., a few days later, Smt. Kanti Devi allegedly executed the *Will* and Receipt pertaining to the same property, which was witnessed by K.C. Pandey and Rajesh Pandey and one cousin S.C. Pandey. Rajesh Pandey is the co-accused and K.C. Pandey has not been charge-sheeted because he has expired. Furthermore, the charge-sheet records that V.K. Jain had taken possession of the property from late Smt. Kanti Devi by misrepresenting that their *Gurujī* was to come and needed some open space to hold a *Pooja*. Thus, the possession has been obtained by V.K. Jain through misrepresentation and subsequently, the property was got mutated by him in the names of his sons, with the aid and assistance of MCD officials on the basis of forged documents, namely, the *Will*, Receipt and photocopies of affidavits of the LRs of Smt. Kanti Devi.

14. Thus, it is not as if no role has been ascribed to the petitioner. The prosecution and complainant are entitled to an opportunity to establish the



culpability of the accused, including the petitioner, by leading evidence in this regard and the role of each accused, performed in furtherance of the conspiracy of knocking away valuable property, which belonged to the complainant and his other siblings.

15. This is not a case where no document has been shown to be forged, as the FSL report is to the effect that the Receipt and the *Will* do not bear the signatures of the alleged executor, namely, Smt. Kanti Devi. K.C. Pandey (now deceased) and Rajesh Pandey had signed on these documents. On the basis of these documents, the petitioner and his sons got the property mutated in the names of the sons of the petitioner. The possession was obtained on misrepresentation by the petitioner. Thus, everyone seems to have acted in concert and this is not a case of vicarious liability but one of conspiracy and common intention.

16. There is no error in the conclusions drawn by the learned Trial Court in its order dated 6th August, 2020 nor has the charge been wrongly framed vide order dated 11th March, 2022 against the petitioner.

17. The petition being absolutely devoid of merits is dismissed, along with the pending application. It is made clear that nothing contained in this judgment shall be construed as an expression on merits of this case.

18. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

MAY 26, 2022/s