



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

% **Pronounced on: 3rd June, 2022**

+ CRL.M.C. 2463/2020, CRL.M.A. 17388/2020
PAWANJIT SINGH BAWAPetitioner
Through: Mr. Giriraj Subramaniam and Mr. Simarpal Singh Sawhney, Advocates

Versus
STATE OF NCT OF DELHI& ANR.Respondents
Through: Ms. Manjeet Arya, APP for the State with SI Gurish Baalyan Mr. Davinder N. Grover, Mr. Flarsh Gupta, Mr. Anmol Saini, Advocates for R-2

AND

+ CRL.M.C. 1325/2021
SMT. ASHA RANIPetitioner
Through: Ms. Gita Dhingra, Advoeate

Versus
THE STATE & ORS.Respondents
Through: Ms. Manjeet Arya, APP for the State with SI Gurish Baalyan Mr. Davinder N. Grover, Mr. Harsh Gupta, Mr. Anmol Saini, Advocates for R-2

AND

+ CRL.M.C. 489/2021, CRL.M.A. 2527/2021
PAWANJIT SINGH BAWAPetitioner
Through: Mr. Giriraj Subramaniam and Mr. Simarpal Singh Sawhney, Advocates

Versus
STATE. OF NCT OF DELHI & ANR.Respondents
Through: Ms. Manjeet Arya, APP for the State with SI Gurish Baalyan



Mr. Davinder N. Grover, Mr. Harsh Gupta, Mr. Anmol Saini, Advocates for R-2

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. The three petitions are being disposed of by this common order since CRL.M.C. 489/2021 and CRL.M.C. 1325/2021 have been filed seeking quashing of FIR No.328/2020 registered under Sections 420/468/471 read with 34 IPC at PS Paharganj and CRL.M.C. 2463/2020 challenges order dated 26th November, 2020 on the basis of which this FIR was registered by the police.

2. To give a brief background of the dispute between the parties, six plots of land in Chuna Mandi of various dimensions, including property bearing No.2527/61 Nalwa Street, ground floor, opposite Mother Dairy, Chuna Mandir Paharganj, New Delhi – 55, the bone of contention between the petitioners and respondent No.2/Gurvinder Singh, (“suit property” for short) was owned by Shri Jagjit Singh Bawa, father of the petitioner/Pawanjit Singh Bawa by virtue of the registered sale deed dated 21st September, 1952 executed in his favour. Jagjit Singh Bawa died on 17th November, 2009 and thereafter his son Pawanjit inherited the estate through registered will dated 7th April, 2009 which was executed in his favour by his father Jagjit Singh Bawa. The properties were mutated in his name vide order dated 9th June, 2010 issued by the Assistant Collector, First Class, DDA.



3. Subsequently, petitioner Pawanjit sold 39.17% undivided/unspecified share i.e., 360 square yards/301.10 sq. mtrs., to the petitioner Asha Rani vide two registered Sale Deeds both dated 27th July, 2010. This share included the suit property.

4. It is the case of the petitioners that there was a tenant in a portion of the ground floor of the suit property by the name of Kishan Singh. Upon his death, his son Achhar Singh inherited the tenancy. On the demise of Achhar Singh in the year 2013, his legal heirs, namely, respondent No.2/Gurvinder and his brother (Bhirjit) inherited the tenancy. It appears that the dispute commenced when attornment notices were issued to the occupants by the new purchasers and the petitioner Asha Rani who also issued demand notices on 27th January, 2014 and 18.08.2018 to the respondent No.2 claiming user charges at the market rate of rent. She also submitted complaints dated 18th January, 2013 and 16th January, 2016 to the NDMC for initiating action against Gurvinder Singh, the respondent No.2 for misusing the residential premises for commercial activity.

5. The respondent No.2 in turn filed a police complaint before the SHO PS: Paharganj on 16 December 2018 and the Commissioner of Police on 23rd January, 2019 alleging that the petitioner Pawanjit had committed cheating, forgery and had used forged documents for the purposes of transferring the suit property. He himself claimed to be the owner of the property on the basis of his father's ownership of the suit property.

6. The petitioner Pawanjit also submitted a written complaint to the SHO Paharganj on 2th April, 2019. The petitioner Asha Rani filed a police complaint before the Police Station Paharganj on 11th April, 2019 alleging that it was respondent No.2 who was trying to usurp her property through



forged documents.

7. All three of them approached the court and moved applications under Section 156 (3) Cr.P.C. which were listed before the learned ACMM, Central. CC.No.2690/2019 was preferred by the respondent No.2 Gurvinder Singh. This was dismissed by the learned ACMM vide order dated 10th October, 2019. The application moved by the petitioner Asha Rani being CC No.4930/2019 was allowed and directions were issued for registration of FIR against respondent No.2 Gurvinder Singh. The application filed by petitioner Pawanjit Bawa being CC No.4257/2019 was disposed of as calling for no further orders since FIR had already been directed in CC No.4930/2019 moved by the petitioner Asha Rani. All three orders were passed on 10th October, 2019.

8. Aggrieved by all three orders passed on 10th October, 2019, the respondent No.2 preferred two revision petitions before the learned Additional Sessions Judge-04, Central District, Tis Hazari Court. Criminal Revision Petition bearing No. 668/2019 was against the directions for registration of the FIR, whereas Criminal revision Petition bearing No.678/2019 was against the dismissal of his own application. Vide the impugned order dated 26th November, 2020, learned Additional Sessions Judge, upheld the order of the learned ACMM directing the registration of FIR against the respondent No.2 Gurvinder Singh, but at the same time, allowed the other revision petition bearing No. 678/2019 directing the registration of FIR against the petitioners Asha Rani and Pawanjit Singh Bawa.

9. It may be mentioned that vide the orders of the learned ACMM dated 10th October, 2019, the FIR No. 292/2019 was registered under



Section 420/468/471/34 IPC against respondent No.2 Gurvinder and pursuant to the orders of the learned Additional Sessions Judge dated 26th November, 2020 FIR No.328/2020 was registered under Sections 420/468/471/34 IPC against the petitioners Pawanjit and Asha Rani. It is in these circumstances, that the petitions at hand have been filed.

10. Mr. Giriraj Subramaniam, the learned counsel for the petitioner submitted that there was enough material on record which showed that the father of the respondent No.2/Gurvinder Singh had actually admitted even till 2009 that he was only a tenant in the suit property. Not only was this pleaded but it was also stated so before the court on oath by Achhar Singh/father of Gurvinder Singh, which cannot be easily overlooked. If in the year 2009, the father of the respondent No.2 was only a tenant, there was no way that he could claim to have become the owner on the demise of his father in 2013.

11. Therefore, the documents he was relying upon namely GPA, Letter of Possession, Affidavit, Will in the year 1998 could not have been executed by the father of the petitioner Pawanjit Singh in 1998 as claimed. Had the father been in possession of these documents, then, in the litigation at his instance, he would neither have pleaded nor stated on oath that he was only a tenant. Nothing prevented him from claiming ownership. Furthermore, it was submitted that the respondent No.2 had initiated a civil suit against the petitioners seeking declaration of title on the basis of his documents, which was still pending. Therefore, there was no occasion for initiation of criminal proceedings pending determination by the civil court.



12. Reliance has been placed on the judgment of the Supreme Court in *Sardool Singh v. Nasib Kaur*, 1987 Supp SCC 146. Relying on other judgments of *Ramesh Dutt v. State of Punjab*, (2009) 15 SCC 429, *Devendra v. State of U.P.*, (2009) 7 SCC 495, *Priyanka Srivastava v. State of U.P.*, (2015) 6 SCC 287 and *Subhkaran Luharuka v. State*, 2010 SCC OnLine Del 2324 it was submitted that merely because the respondent No.2 was seeking to challenge the title of the petitioners would be no reason to permit registration of an FIR for forgery, cheating and use of forged documents, as none of the ingredients of the said offences were made out on the very face of the allegations of the respondent No.2. It was the contention of the learned counsel for the petitioners that once the civil court determined the question in the pending civil suits, the respondent No.2 would have the option of filing criminal cases against the petitioners, if their claim was found to be on the basis of fabricated documents. Hence, it was prayed that the FIR be quashed and the impugned order be set aside.

13. Mr. Davinder N. Grover, learned counsel for the respondent No.2 on the other hand contended that in exercise of the powers under Section 482 Cr.P.C, this Court ought not to enter into the determination of facts. It was submitted that the Police were well placed to make all inquiries into the question of forgery and fabrication of documents and an illegal transfer of property and if nothing wrong was found, they could always submit a Closure Report. He submitted that criminal cases could have civil elements but that would not mean that both proceedings cannot go on together. It is the submission of the learned counsel for respondent No.2 that the fraud was on account of the fact, that in the Sale Deeds executed by the petitioner Pawanjit in the favour of petitioner Ms. Asha Rani, the portion



sold has not been delineated. It is also admitted that the documents relied upon by the respondent No.2 have also no description of the property.

14. Learned counsel has also placed reliance on some other proceedings to contend that, initially the suit property or a part thereof was transferred to Mr. Jagdish, who thereafter allegedly transferred the property back to Jagjit Singh Bawa, which has then been transferred now by the petitioner Mr. Pawanjit Singh to the petitioner Ms. Asha Rani. Therefore, it was his contention that there were issues that required Police investigations. As regards the admissions by the father of the respondent No.2, the arguments were that there were some typographical errors as the intention was to use the past tense in the statement, viz, 'was a tenant' but it got recorded as 'is a tenant', but that would not detract from the fact that Jagjit Singh Bawa had transferred the property through the documents: GPA, Will, Affidavit etc. in the year 1998 in favour of the father of the respondent No.2. Hence, it was prayed that the petitions be dismissed.

15. The learned MM declined the request of respondent no.2 for directions to the SHO to register an FIR against the petitioners as there were clear admissions made by his father of his status as a tenant in the suit property. Since these had been during proceeding before the Civil Court, the learned MM rightly concluded that the version of respondent no.2 was doubtful.

16. The learned ASJ went off on a tangent, observing that the registration of an FIR did not necessarily mean the arrest of the suspect and that there were sufficient provisions in law which would allow the Police to stop proceedings under proviso (a) and/or (b) of Section 157 Cr.P.C. and that since the decision of the Supreme Court in *Lalita Kumari v. Govt. of*



U.P., (2014) 2 SCC 1, there was no discretion left with the Police to register or not register an FIR when the information was received regarding a cognizable offence and thereafter concluded that the learned MM erred in giving a finding that the information of the respondent No.2 Gurvinder was doubtful, in view of the admissions made by his father, particularly in civil suit No.528/2009 to the effect that he was a tenant. It was on that basis that directions were issued for the registration of an FIR.

15. This view of the learned ASJ is *per se* erroneous. He seems to have overlooked the decision of the Supreme Court in **Sardool Singh (supra)**, **Ramesh Dutt (supra)** and **Devendra (supra)**.

16. One of the most important facts that the learned ASJ seems to have overlooked in upturning the orders of the learned MM, who had observed that the version of the respondent No.2 was less believable, is the fact that admittedly Jagjit Singh Bawa was the owner of the entire property and petitioner Pawanjit Singh Bawa is his son, who has inherited the entire estate through a registered Will. The claim of the respondent No.2 on the basis of certain documents would be subordinate to the legal status of the petitioner Pawanjit Singh. It is in that light that the versions of respondent no.2 is on less sound foundations. As the absolute owner of the properties that constituted the Estate of his late father, petitioner Pawanjit Singh Bawa had the full authority to transfer the property, which he did through registered Sale Deeds to the petitioner Ms. Asha Rani. The registered Will executed by the Late Jagjit Singh cannot be considered to be a forged document. Nor for that matter the sale deeds that are also duly registered.

17. At best, the respondent No.2 is setting up a claim to the property and doing so on the basis of certain documents that he claims have been



executed by the father of Pawanjit Singh i.e., Jagjit Singh, in the favour of late father of the respondent No.2 i.e., Achhar Singh. Achhar Singh had admitted his status as tenant in 2006 when the original owner Jagjit Singh Bawa was alive. This is significant. The petitioners relying on admissions made during court proceedings have alleged that the documents relied upon by the respondent No.2 are forged. This has to be enquired into.

18. Another important factor that the learned ASJ has overlooked is that the respondent No.2 has filed a Civil Suit bearing No. 577/2019 for declaration of his title through these very documents. If the Trial Court finds merit in the claim of the respondent No.2, he would be able to enforce his rights against the both petitioners.

19. In the case of ***State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335**, certain guidelines have been issued for the exercise of powers under Section 482 Cr.P.C. by the Supreme Court which can be reproduced profitably as below:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.



- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*



20. It is thus clear that when a complaint reveals a pure civil dispute and no case is made out against the petitioners, the court should not be hesitant to exercise its powers to nip the criminal proceedings in the bud.

21. In the light of the foregoing discussions, since the complaint of the respondent No.2 reveals a pure civil dispute and since assertion of title by petitioner Pawanjit Singh Bawa resting on the *Will* of his father who was the original owner, and the documents not evidently being fabricated, no criminal offence being disclosed, the FIR cannot stand. The impugned orders directing the registration of the FIR reflects non-application of mind, which has resulted in grave miscarriage of justice qua the petitioners.

22. Thus, the impugned order dated 26th November, 2020 is quashed as also the FIR No. 328/2020 registered under Sections 420/468/471/34 at PS Paharganj and all proceedings emanating therefrom stand quashed.

23. The petitions along with the pending applications stand disposed of.

(ASHA MENON)
JUDGE

JUNE 03, 2022
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