



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

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

+ **CRL.M.C. 2524/2020, CRL.M.A. 17856/2020 (for stay)**

VIKRAMJEET BALHARA Petitioner

Through: Ms. Anu Narula and Mr. Aman
Usman, Advocates

versus

STATE & ANR. Respondents

Through: Ms. Manjeet Arya, APP for the State
Mr. Gaurav Chauhan, Advocate for
respondent No.2

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. This petition has been filed under Section 482 Cr.P.C. for quashing of the order dated 27th November, 2019 passed by the learned ASJ-02, (South), Saket Court, Delhi, dismissing the criminal revision petition No. 221/2019, filed by the petitioner against the common order dated 3rd May, 2019 passed by the learned MM-03(South), dismissing the application filed by the petitioner/accused under Section 91 Cr.P.C. and allowing the application under Section 302 Cr.P.C. moved by the complainant. The matter relates to FIR No.52/2016 registered under Sections 420/448/468/471/34 IPC at PS Neb Sarai.

2. The petitioner is an accused in the said FIR which is pending before the learned MM. The allegations against him are that he, along with the co-accused had forged documents being a Relinquishment Deed and a GPA in



respect of property bearing No. E-29, Neb Valley, Sainik Farms, Delhi and on the basis of such documents had sought variation in the entries in the revenue records and had also cheated the complainant in order to grab her property. The chargesheet has been filed. At the time of hearing on charge, the petitioner filed an application under Section 91 Cr.P.C seeking directions to the Investigating Officer (I.O.) to produce replies dated 19th April, 2016 and 19th July, 2016 along with supporting documents which had been filed by the petitioner before the I.O.. Further directions were sought to take these replies and supportive documents on the record and make it part of the challan/chargesheet filed by the I.O..

3. Ms. Anu Narula, learned counsel for the petitioner has submitted that the I.O. has mala fide withheld those documents from the court as they had not been filed along with the chargesheet. It is submitted that the learned MM in its order dated 3rd May, 2019, very perfunctorily observed that the documents were not of sterling quality and the non-production of which would have a crucial bearing on the issue of framing of charge. According to the learned counsel for the petitioner, referring to the application, it was urged that the documents sought to be brought on record were indeed of sterling quality as reflected from the contents of the replies dated 19th April, 2016 and 19th July, 2016, namely, proceedings in the civil suits including appeal, contempt notice etc. as also documents such as the Relinquishment Deed, revenue records, court orders, etc., i.e. a set of 10 documents.

4. As regards the impugned order of the learned ASJ dated 27th November, 2019, the learned counsel for the petitioner submitted that it



was wrongly observed in Para No.6 of the impugned order that only copies of pleadings in civil suits and the appeal were sought to be filed by the petitioner whereas the written reply of the petitioner refers to ten documents and each of them ought to have been discussed by the learned Sessions Court to come to a conclusion about the sterling quality of those records. Thus, it was submitted that the impugned order be set aside.

5. Mr. Gaurav Chauhan, learned counsel for the respondent No.2/complainant, on the other hand, submitted that there was no error in the orders on facts as well as in law, as the documents relied upon by the petitioner could not be considered at the stage of framing of charge. Reliance in this regard has been placed on the judgements of the Supreme Court in *State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568 and in *Nitya Dharmananda v. Gopal Sheelum Reddy*, (2018) 2 SCC 93. It was submitted that unless the court was satisfied that the material sought to be summoned was of sterling quality, the defence had no right to invoke Section 91 Cr.P.C.

6. It was further submitted that there were many loose ends that cast suspicion on the documents on which the petitioner seeks to rely. In the first place, the name of the petitioner's grandfather is claimed to be Shobha Singh or Sobha Ram and the documents relied to compare signatures related to one, Sh. Shobha Singh Balhara. It was contended that there was nothing to indicate the identity of the person, i.e., it was the same person with these two different names.

7. It was pointed out that though the claim of the petitioner was that the original owners of the property were Mangtu and Shobha Singh and in



1965, only Mangtu had sold his share to Tek Chand, in the revenue records, apart from Tek Chand, Sobha Ram's name was never recorded. The land was also acquired and in the proceedings relating to the acquisition, the sole owner's name was Tek Chand. Sobha Ram never seemed to have objected to the revenue records remaining in the name of Tek Chand, which he would have done, had it been an incorrect entry. Thus, the learned Trial Court and the learned ASJ had rightly declined the relief.

8. I have heard the submissions of both counsel and have perused the record.

9. The claim of the petitioner is that the original owners of the 2 Bighas of land comprised in Khasra No.234/2, Village Neb Sarai, New Delhi were Mangtu and Shobha Singh. In 1965, Mangtu sold his 1/2 share in the said land i.e., 1 Bigha, to Tek Chand and two Khasra numbers were assigned as 234/2/1 and 234/2/2. But due to some oversight the revenue records continued to record the Khasra number as 234/2, which no longer existed after the sale. Shobha Singh @ Sobha Ram never sold his share. But, since he had no occasion to do so, he raised no objection to the recording of only Tek Chand's name in the Khatoni.

10. This is the line of defence of the petitioner. It is his version, which he has to prove. But, the petitioner wants to avoid the onus upon him and so moved the application under Section 91 Cr.P.C. to bring on record two letters dated 19th April, 2016 and 19th July, 2016 and supporting documents, through directions to the I.O..



11. Let us consider the two letters. The first thing that stands out is that the letter dated 19th April, 2016 is addressed to the Sub-Inspector referring to some directions given to the accused/petitioner, possibly for production of the copies of the pending cases. The letter forwards a copy of the civil suit No.1105/2014, copy of the civil suit No.1027/2014 and copy of the appeal filed before the D.C. (South). The learned courts below rightly observed that these are documents that relate to pleadings. There is no judgment which is relied upon by the petitioner to show that these cases have been decided in his favour. Assuming that these three documents were handed over and seized by the I.O. during investigations, these are documents very much in the petitioner's possession. That apart, these copies of pleadings appear to have no evident relevance, except possibly to support some defence that the petitioner may like to raise. Therefore, they need not be summoned under Section 91 Cr.P.C. and that too at the stage of framing of charge.

12. As regards the other letter, it is not dated and is in fact a "written synopsis" that was submitted to SI Inderjit Singh, I.O., for consideration. It has been received on 19th July, 2016. Such a letter/written synopsis with copies of documents relied upon by an accused of his own, cannot form a part of the charge-sheet as if these were seized by the I.O. during investigation.

13. Clearly, it is the defence of the petitioner that has been spelt out in this written synopsis. The documents referred to in this synopsis are supportive of his version, as claimed by him. But the documents have yet to be proved in accordance with law. The allegation against the petitioner



in the FIR is that these very documents, namely, the Relinquishment Deed and the changes in the revenue records were forged. As rightly pointed out by Ms. Manjeet Arya, learned APP for the State, since both sides are accusing each other of having forged documents, the appropriate stage for production of these documents will be the stage of trial. At that stage, the petitioner would have ample opportunity to produce whatever documents he requires to establish his defence and to prove them as per law.

14. This Court cannot agree with the contention of the learned counsel for the petitioner that while dealing with an application under Section 91 Cr.P.C, the Trial Court would have to assess the quality of the documents submitted by the petitioner, whether it was of sterling quality or not by assessing each document separately. There can be no such mini trial before the charge is framed. In fact, when an application under Section 91 Cr.P.C. is sought to be moved, then ex-facie the documents should disclose “sterling quality”, as even while framing charge, the material produced by the prosecution is considered only to determine whether prima facie, a charge is made out against the accused. Evaluation is only after trial and cannot precede it.

15. As noticed above, since the documents are in the possession of the petitioner, the application under Section 91 Cr.P.C. is misplaced as there is no occasion to summon the accused to produce the documents in his custody under Section 91 Cr.P.C.. The decision in *State of Orissa* (supra), bars the court from looking into the documents in the possession of the accused at the stage of framing of charge.



16. As has been observed by the Supreme Court in numerous decisions, including in *Krishnan v. Krishnaveni*, (1997) 4 SCC 241 and *Kailash Verma v. Punjab State Civil Supplies Corpn.*, (2005) 2 SCC 571, the powers under Section 482 Cr.P.C, after the petitioner has already availed of the right to file a revision, would have to be exercised in a very narrow compass, only to the extent to see whether the conclusions drawn by the courts below have been clouded by perversity on the face of it or have resulted in grave miscarriage of justice. Neither situation is present in the present case, calling for this Court to exercise its powers under Section 482 Cr.P.C.

17. The petition is accordingly dismissed, along with the pending application.

18. Nothing contained in this order will be an expression on the merits of the case.

19. The order be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

JUNE 03, 2022

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