



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

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+ **CRL.M.C. 3194/2016**

Reserved on : 09.05.2023

Pronounced on : 25.07.2023

VIJAY PAL SHARMA

.....Petitioner

Through: Mr. Dinesh Kumar, Advocate with
petitioner in person.

versus

STATE OF NCT OF DELHI & ANR.

.... Respondents

Through: Mr. Amit Ahlawat, APP for the State
with SI Rahul Kumar, PS New Ashok
Nagar.

Mr. Sujeet Divedi, Advocate for R-2
(*through video conferencing.*)

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present petition U/s 482 Cr.P.C. has been filed by the petitioner with the following prayers:

“(a) set-aside the impugned order dated 15.07.2016 passed by the Hon'ble Court of Sh. Sanjay Bansal, Ld. ASJ-03 (East), Karkardooma Courts, Delhi in Criminal Revision No. 09 of 2015;

(b) grant any other relief which this Hon'ble Court deems fit and proper in the facts and circumstances of the case, in the interest of justice including quashing of directions to register FIR against the

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petitioner/complainant himself which was passed by the Ld. Trial Magistrate by his order dated 27.10.2014.”

2. In brief, the facts of the case are that Vishal Gupta (respondent No. 2 herein) had induced the complainant Vijay Pal Sharma (petitioner herein) to purchase a plot bearing No. C-56 B, area measuring 50 sq. yards in Khasra No. 279, Village Saroda Banger, C-Block, New Ashok Nagar, Delhi. Complainant/petitioner agreed to purchase the said plot for Rs. 7,80,000/- and advanced a sum of Rs. 1,00,000/- to the respondent No. 2 as earnest money.

3. Further, on 08.05.2006, petitioner/complainant paid the remaining amount of Rs. 6,80,000/- to the respondent No. 2 and respondent No. 2 executed irrevocable GPA in favour of the petitioner/complainant which was duly registered. It was alleged by the petitioner/complainant that possession of the plot was not immediately handed over but respondent No. 2 agreed to hand over the same on demand of the petitioner/complainant. Later on, when petitioner/complainant demanded possession of the plot, respondent No. 2 refused the same.

4. On 01.08.2012, when petitioner/complainant visited the said plot, he found that possession of the same was with another person. Petitioner/complainant contacted the respondent No. 2 but he refused to hand over the possession of the said plot to the petitioner/complainant. Thereafter in January, 2013 petitioner/complainant again went to the house of the respondent No. 2 and demanded possession of the plot or return of his money to which respondent No. 2 allegedly threatened the complainant.



Subsequently, case FIR No. 404/2013 U/s 420/406/506 IPC was registered against the respondent No. 2 on 25.08.2013 at PS New Ashok Nagar, Delhi and consequently, charge sheet was filed. The magistrate after going through the charge sheet framed charges U/s 420/467/468/471 IPC against respondent No. 2.

5. It is averred in the petition that the trial magistrate without any allegations or without any application/complaint of any person, directed the police to register FIR against the petitioner while he was directing to frame charges against respondent No. 2 for offences U/s 420/468/467/471 IPC.

6. Thereafter respondent No. 2 challenged the order on charge dated 27.10.2014 by filing a revision petition. It is averred in the present petition that without giving any opportunity to the petitioner, the Ld. Revisional Court decided the revision petition vide its order dated 02.03.2015, whereby charges U/s 467/468/471 IPC were deleted. It is further averred that Ld. Revisional Court bypassed the mandate of Section 401 (2) R/w Section 399 (2) Cr.P.C. and also bypassed the procedure of alteration of charge as contained U/s 216 Cr.P.C.

7. The petitioner thereafter preferred a Crl. M.C. 3015/2015 before this Court and this Court vide its order dated 18.05.2016 set aside the order dated 02.03.2015 passed by the Ld. Revisional Court and the case was remanded back to the Revisional Court to hear it a fresh after affording an opportunity of hearing to the petitioner.



8. It is further averred in the petition that the matter was taken up by the revisional court of Sessions on 15.07.2016, and again without giving an opportunity of hearing to the petitioner/complainant the Ld. Revisional Court passed the impugned order dated 15.07.2016.

9. In the present petition, the petitioner has challenged the impugned order dated 15.07.2016 on the various grounds interalia contending that the impugned order has been passed in haste again without giving any opportunity of hearing to the petitioner; that the Revisional Court has bypassed the provisions of Section 216 Cr.P.C.; that the Ld. Revisional Court has not considered the statement of Yaroo Khan contained in the charge-sheet which indicts respondent No. 2 for the alleged offences as defined U/s 467/468/471 IPC; that the Ld. Revisional Court has not considered the Status Report filed by the police against respondent No. 2 while passing the impugned order.

10. I have heard the Ld. counsel for the petitioner, Ld. APP for the State, Ld. counsel for the respondent No. 2., perused the Status Report and also perused the records of this case.

11. It is submitted by the Ld. counsel for the petitioner that the Ld. ACMM had correctly framed the charges U/s 420/467/468/471 IPC. He further submitted that the Ld. ASJ before whom the revision petition was preferred reduced the charges only to Section 420 IPC contrary to the settled law that at the stage of charge, the Court has no power and jurisdiction to scrutinize the evidence and the material on record. He further submitted that from the report of the Sub-Registrar and the police authorities, it was

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informed that the GPA has been fabricated by the respondent No. 2 to the extent that the respondent No. 2 is the owner of the plot in terms of GPA executed in his favour by one Sh. Yaroo Khan and as per the report of the Sub-Registrar, no such GPA was executed in favour of the respondent No. 2 by alleged Yaroo Khan. He further submitted that the respondent No. 2 does not have clean past antecedents.

12. Ld. APP for the State has argued on the lines of the Status Report. He further argued that FIR No. 404/13 dated 25.08.2013 U/s 420/406/506 IPC was registered against the respondent No. 2 on the directions of Ld. ACMM Karkardooma Courts. He further submitted that the I.G.P.A. executed between petitioner and respondent No. 2 from the office of Sub-Registrar was found to be duly registered there.

13. On the other hand, it is submitted by the Ld. counsel for the respondent No. 2 that the petitioner was afforded due opportunity at the time of hearing of the arguments by the Ld. Revisional Court. He further submitted that the Ld. Revisional Court has rightly relied upon the Judgment of Hon'ble Supreme Court in ***Md. Ibrahim & Ors. Vs. State of Bihar and Ors. (2009) 8 SCC 751***, while dropping the sections 467/468/471 IPC.

14. It is trite law that at the stage of framing of charge, the Court is not to delve deeply with the evidence brought forth, but the same does not mean that the Court should ignore gaping holes apparent on the face of the record, in the case of the prosecution, and the court cannot act as a mouthpiece of the prosecution. In the case of ***Union of India v. Prafulla Kumar Samal***



MANU/SC/0414/1978 : (1979) 3 SCC 4, the Hon'ble Apex Court laid broad contours on the point of framing of charge:

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

15. It is well settled law that at the stage of framing of charge, the court has power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima-facie case against accused has been made out. It is held that when the material placed before the court discloses great





suspicion against the accused which has not been properly explained, the court will be justified in framing charge. The judge should not make a roving inquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. If on the basis of materials on record a court could come to the conclusion that commission of the offence is a provable consequence, a case of framing of charge exists.

16. To put it differently, if the courts were to think that the accused might have committed the offence it can frame a charge, though for conviction the conclusion is required to be that accused has committed the offence. At the stage of framing of a charge, probative value of the materials on records cannot be gone into, the material brought on record by the prosecution has to be accepted as true at that stage. The truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the provable defence of the accused. It is not obligatory for the judge at that stage of the trial to consider in any detail and weight in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not.

17. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at this stage of deciding the matter under Section 227 or under Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. But at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for



presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. While deciding the question of framing of charge in a criminal case, the court is not to apply exactly the standard and test which it finally applies for determining the guilt or otherwise. This being the initial stage of the trial, the court is not supposed to decide whether the materials collected by the Investigating Agency provides sufficient ground for conviction of the accused or whether the trial is sure to culminate in his conviction.

18. What is required to be seen is whether there is strong suspicion which may lead the court to think that there is ground for presuming that the accused has committed an offence. The above proposition is supported with law laid down by the Hon'ble Apex Court and Hon'ble High Court reported as ***“Union of India vs Prafulla Kumar”***, AIR 1979 Supreme Court 366, ***“State of Maharashtra and others vs Som Nath Thapa and other”*** JT 1996 (4) SC 615, ***“State of Bihar vs Ramesh Singh”***, AIR 1997 SC 2018: (1997 CRI LJ 1606), ***“Umar Amdula Sakoor Sorathia vs. Intelligence Officer Narcotic Control Bureau”*** JT 1999 (5) SC 394, ***“Kalu Mal Gupta vs. State”*** 2000 I AD Delhi 107.

19. The other contention of the Ld. counsel for the petitioner is that the petitioner was not given opportunity to address the arguments. This contention is belied by the impugned order dated 15.07.2016 wherein in para 2 of the order it has been recorded as under:

"2. I have heard Sh. Navin Singla, ld. counsel for petitioner. Sh. D.K. Singh, ld. Addl. PP for the R-1 and Sh. Vijay Pal Sharma, complainant/R-2. I have also perused the record."

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20. Further in para 7 of the impugned order dated 15.07.2016 it has been recorded as under:

"7. The entire emphasis of the R-2/complainant is on the aspect that charges under Sec. 468/467/471 IPC were illegally deleted vide earlier order. He continuously stressed that petitioner has cheated him by forging the GPA. He also submitted that in an earlier civil suit filed by him, the petitioner had been proceeded ex parte which should be considered against the petitioner."

21. The above mentioned paras of the impugned order clearly shows that the petitioner was afforded due opportunity to address the arguments.

22. Now it is to be seen whether there is any infirmity in the impugned order or not by virtue of which the Ld. Revisional Court has dropped the charges U/s 467/468/471 IPC. For the said purpose the relevant Sections are reproduced herein below:-

23. Sections 467, 468 and 471 of IPC reads as follows:

467. Forgery of valuable security, will, etc.—Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

468. Forgery for purpose of cheating.—Whoever commits forgery, intending that the 1[document or electronic record forged] shall be





used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

471. Using as genuine a forged I[document or electronic record].—Whoever fraudulently or dishonestly uses as genuine any I[document or electronic record] which he knows or has reason to believe to be a forged I[document or electronic record], shall be punished in the same manner as if he had forged such I[document or electronic record].

24. In ***Mir Nagvi Askari vs. Central Bureau of Investigation, Criminal Appeal No. 1477 of 2004***, decided by the Hon'ble Supreme Court on 07.08.2009, it was observed and held as under:

"A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else.

The second criteria of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore in our opinion the second criteria of the said section is also not applicable to the present case.

The third and final condition of Section 464 deals with a document, signed by a person who due to his mental capacity does not know the contents of the documents which were made i.e because of intoxication or unsoundness of mind etc. Such is also not the case before us. Indisputably therefore the accused before us could not have been convicted with the making of a false document."





25. In *Md. Ibrahim & Ors. vs. State of Bihar & Anr., Criminal Appeal No. 1695 of 2009 (Arising out of SLP (CRL) No. 6211 of 2007)*, decided by the Hon'ble Supreme Court on 04.09.2009, it was observed and held as under:

" 11. In short, a person is said to have made a 'false document', if

(i) he made or executed a document claiming to be someone else or authorised by someone else; or

(ii) he altered or tampered a document; or

(iii) he obtained a document by practicing deception, or from a person not in control of his senses.

12. The sale deeds executed by first appellant, clearly and obviously do not fall under the second and third categories of 'false documents'. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant's land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under section 464 of the Code. If





what is executed is not a false document, there is no forgery. If there is no forgery, then neither section 467 nor section 471 of the Code are attracted."

26. In ***Sheila Sebastian vs. R. Jawaharaj & Anr., Criminal Appeal Nos. 359-360 of 2010***, decided by the Hon'ble Supreme Court on 11.05.2018, it was observed and held as under:

"25. Keeping in view the strict interpretation of penal statute i.e., referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.

26. 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."





27. In the light of the principles laid down by the Hon'ble Supreme Court, it is evident that to attract the offence of forgery, the accused must be the maker of the forged document.

28. In the instant case, perusal of the order on charge dated 27.10.2014 shows that there is no finding recorded by the Trial Court that the accused-respondent no. 2 had created a false document or part of the document or record in order to execute the General Power of Attorney (GPA) on the pretext of using the said false document. Therefore, in my considered opinion, as the charge of forgery cannot be imposed on a person who is not the maker of the forged document, the Revisional Court has rightly deleted the charges framed against the respondent no. 2 under Sections 467, 468 and 471 IPC from the original charges framed by the Trial Court under Sections 420, 467, 468 and 471 IPC, based on the settled legal position and I find no reason to interfere with the same.

29. Petitioner has also sought quashing of direction to register FIR against the petitioner/complainant by the Order on Charge dated 27.10.2014. In this regard, the petitioner has neither addressed any arguments nor the petitioner has placed on record any document regarding status of the FIR directed to be registered against him. Even the FIR No. has not been mentioned and the said FIR has also not been placed on record. In the written submissions filed by the counsel for the petitioner in this Court, the submissions made by him are limited only to prayer (a) of the petition and nothing has been stated about prayer (b). As already stated hereinabove, no arguments have been



addressed in this regard. In these circumstances, no relief can be granted as far as prayer (b) is concerned at this stage.

30. Accordingly, the impugned order dated 15.07.2016 passed by the Ld. Revisional Court, is upheld. Consequently, the present petition is dismissed. Pending applications (if any) are disposed of. Trial Court Record be sent back forthwith alongwith a certified copy of this judgment.

RAJNISH BHATNAGAR, J

JULY 25, 2023

Sumant

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