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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 17.05.2024***+ **W.P.(CRL) 568/2024 & CRL.M.A. 5221/2024****ANIL KUMAR JAIN**

..... Petitioner

Through: Mr.S.K. Bhaduri and
Ms.Snehlata Jha, Advs. along
with petitioner in person.

versus

STATE & ANR.

..... Respondents

Through: Mr.Yasir Rauf Ansari, ASC
(Crl.) with Mr.Alok Sharma
and Mr.Vasu Agarwal, Advs.
with SI Deepak Kumar.
Respondent no.2 in person
(through VC)**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') praying for quashing of FIR No. 0584/2023 dated 29.10.2023 registered at Police Station: Subzi Mandi, Delhi under Sections 420/467/468/471/34 of the Indian Penal Code, 1860 (in short, 'IPC'); and the Order dated 25.10.2023 passed by the learned Metropolitan Magistrate-07, Central District, Tis Hazari Courts, Delhi in CT Case No.720/2023, titled ***Rishabh Jain v.***

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State, NCT of Delhi.

Case of the petitioner:

2. The petitioner asserts that his mother late Smt. Prabha Devi Jain had filed a suit titled ***Smt. Prabha Devi Jain v. Nanak Chand Jain & Ors.*** in respect of property No.209, Vivekanand Puri, Delhi-110007.
3. The said suit was, however, dismissed by the learned Additional District Judge, vide Judgment dated 13.04.2018.
4. Smt. Prabha Devi Jain preferred an appeal against the order dismissing the suit, being RFA No.718/2018, before this Court, wherein, this court by its order dated 29.08.2018, had directed the parties to maintain *status quo* with respect to the possession and title of the suit property.
5. During the pendency of the said appeal, unfortunately, Smt. Prabha Devi Jain expired on 30.12.2022, leaving behind 11 sons and 4 daughters. She also left behind a Will dated 22.07.2021, bequeathing all her movable and immovable properties in favour of the petitioner herein. The petitioner, therefore, on the strength of the said Will, moved an application under Order XXII Rule 3 of the Code of Civil Procedure, 1908, being CM No. 8659/2023, seeking substitution of the petitioner in place of the deceased Smt. Prabha Devi Jain in the appeal pending before this Court. As the respondent no.2 had violated the terms of *interim* orders passed in the said appeal, a contempt petition was also filed against him and his mother in the said appeal.
6. The petitioner claims that out of *malafide* intent and as a counter blast, the respondent no.2 filed the complaint before the Court



of the learned Metropolitan Magistrate, alleging therein that the Will was a forged document.

7. The learned Metropolitan Magistrate, vide Order dated 25.10.2023 passed in the said Complaint Case, that is, CT Case No.720/2023, observed and directed as under:

“Prima facie, it appears that the alleged accused persons has not joined the the inquiry. It also appears that the stamp alleged to be used by the Notary Mithilesh Aggarwal is also different from Notary Rules, 1956. Further CDR location of the alleged accused persons also revealed that they were not present together on the date the alleged Will is purported to be made. In the present matter, the original Will is stated to be in possession of alleged accused persons and the complainant is not in a position to bring it on the record. The present matter is required to be investigated by the police as some documents are to be required and the alleged accused persons are to be joined in the investigation.

6. Accordingly, SHO Subzi Mandi is directed to file an FIR against the alleged accused person within seven days. The copy of this order be sent to DCP North and SHO Subzi Mandi for necessary compliance.”

8. Based thereon, the impugned FIR No.584/2023 has been registered at Police Station: Subzi Mandi, North District under Sections 420/467/ 468/471/34 of the IPC.

Submissions of the learned Counsel for the Petitioner

9. The learned counsel for the petitioner submits that the dispute is primarily civil in nature and is pending adjudication before this Court



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in the appeal filed by late Smt. Prabha Devi Jain. Placing reliance on the judgments of the Supreme Court in *Hridaya Ranjan Pd. Verma & Ors. v. State of Bihar & Anr.*, 2000 SCC OnLine SC 636; *Murari Lal Gupta v. Gopi Singh*, (2005) 13 SCC 699; *Md. Ibrahim & Ors. v. State of Bihar & Anr.*, 2009 SCC OnLine SC 1594; and, *Mitesh Kumar J. Sha v. The State of Karnataka & Ors.*, 2021 SCC OnLine SC 976, he submits that where a dispute which is primarily civil in nature is sought to be given a criminal angle only out of *malafide* intent, the consequent FIR and the proceedings emanating therefrom are liable to be quashed.

10. He further submits that the impugned order dated 25.10.2023 has been passed by the learned Metropolitan Magistrate primarily on the submission of the respondent no. 2 that the Notary Public, namely late Ms. Mithilesh Aggarwal, had died in the month of June, 2021, while the Will in question is dated 22.07.2021. The learned counsel for the petitioner submits that the said submission of the respondent no. 2 was incorrect as the Notary Public had, in fact, died on 03.08.2022, and the said fact has now been verified by the Investigating Officer as well.

11. He submits that therefore, false pleas are being taken for supporting the registration of the FIR. He submits that this alone is a sufficient ground for quashing of the FIR and the consequent proceedings.

12. He further submits that above appeal had been filed by late Smt. Prabha Devi Jain against her family members, including against the father of the respondent no.2, that is, Sh.Manak Chand Jain. He



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further submits that, therefore, in any case, the respondent no.2 is not entitled to challenge the Will.

Submissions of the Respondent no.2

13. On the other hand, the respondent no.2, who appears virtually, submits that apart from the discrepancy in the date of the death of the Notary Public, there are other circumstances which have also been taken note of by the learned Metropolitan Magistrate while directing the registration of the FIR. He submits that the CDR locations of the alleged witnesses would show that they were not present at the same place when the Will was purportedly made. He submits that there is also a serious doubt on the authenticity of the stamp of the Notary Public on the Will, as also on the signatures of the testator. He submits that these matters can, at best, be investigated into by the police and for that purpose, the learned Metropolitan Magistrate has rightly directed registration of the FIR. He submits that merely because the underlying dispute is also civil in nature, it cannot imply that the FIR deserves to be quashed.

Submissions of the learned Additional Standing Counsel

14. The learned Additional Standing Counsel submits that while the date of death of the Notary Public has been verified by the police and the same has been found to be subsequent to the date of the execution of the purported Will, the Will has to be sent to the FSL for opining on the signatures appearing thereon. He submits that the original Will has been handed over by the petitioner for such purpose. He further



submits that upon investigation, if nothing is found to be amiss, the FIR would automatically be closed and appropriate action in that regard shall be taken.

Analysis and Findings

15. I have considered the submissions made by the learned counsels for the parties.

16. The learned Metropolitan Magistrate, in its Order dated 25.10.2023, has given cogent reasons for directing the registration of the FIR. The respondent no. 2 has pointed out certain discrepancies in the execution of the Will, like the Notary Stamp and the CDRs, which need to be investigated by the police. Merely because a dispute may also have a civil angle, it cannot mean that the FIR deserves to be quashed at the initial stage itself. As held by the Supreme Court repeatedly, the jurisdiction to quash an FIR at an initial/nascent stage is to be exercised sparingly and only in the rarest of rare cases. It has also been emphasised that merely because a dispute may also have some civil angle, it does not *ipso facto* imply that the criminal prosecution cannot lie. I may refer to the judgment of the Supreme Court in ***R. Kalyani v. Janak C. Mehta and Ors.***, (2009) 1 SCC 516, wherein the Supreme Court after analysing precedents on the issue, formulated the following propositions of law governing the exercise of power under Section 482 Cr.P.C. for quashing the FIR:

“15. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations



contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

16. It is furthermore well known that no hard-and-fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint."

(emphasis supplied)

17. In ***K. Jagadish v. Udaya Kumar G.S. & Anr.***, (2020) 14 SCC 552, the Supreme Court reiterated that in certain cases, very same set of facts may give rise to remedies in civil as well as in criminal proceedings, and even if civil remedy is availed by party, he is not precluded from setting in motion proceedings in criminal law.



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18. While there can be no dispute that in a given case where the court finds that a civil dispute is being given a colour of criminal prosecution with a *malafide* intent, the Courts should not hesitate in exercising its powers under Section 482 of the Cr.P.C. to quash such criminal prosecution, however, in the facts of the present case, I do not find such a case to be made out by the petitioner. As noted hereinabove, the respondent no. 2 has raised certain issues which cast a doubt on the Will propounded by the petitioner and such issues would require investigation. Merely because the petitioner is also to prove the Will in the civil dispute, cannot be a reason to quash the FIR at the nascent stage.

19. I, therefore, find no merit in the petition.

20. The petition is accordingly dismissed. The pending application also stands disposed of.

21. It is made clear that any observation made in this order shall not prejudice either the investigation or any of the parties.

NAVIN CHAWLA, J

MAY 17, 2024/ns/am

[Click here to check corrigendum, if any](#)