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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 16.04.2024***+ **CRL.M.C. 2974/2024**

INDER GOEL

..... Petitioner

Through: Mr.Davinder N Grover,
Mr.Harsh Gupta, Ms.Pragati
Keshri, Advs.

versus

THE STATE & ANR.

..... Respondents

Through: Ms.Priyanka Dalal, APP
Mr. Parveen Kumar Aggarwal,
Abhishek Grover Advs. for R-2**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)****CRL.M.A. 11386/2024 (Exemption)**

1. Allowed, subject to all just exceptions.

CRL.M.C. 2974/2024

2. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), challenging the Order dated 19.03.2024 (hereinafter referred to as the 'Impugned Order') passed by the learned Additional Sessions Judge/Special Judge, NDPS, New Delhi District, Patiala House Courts, New Delhi (hereinafter referred to as the 'ASJ') in Criminal Revision no.619/2023, titled *Inder Goel v. State & Anr.*, dismissing the said Revision Petition.



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3. The said Revision Petition had been filed by the petitioner herein, challenging the Order dated 02.08.2023 passed by the learned Chief Metropolitan Magistrate, New Delhi District, Patiala House Courts, New Delhi (hereinafter referred to as the 'Trial Court') in Ct. No.676/2023, titled ***Inder Goel v. Ashok Goel***, dismissing the application filed by the petitioner herein under Section 156(3) of the Cr.P.C., while taking cognizance on the complaint filed under Section 200 of the Cr.P.C..

4. The abovementioned complaint, that is Ct. No. 676/2023, has been filed by the petitioner alleging therein that the petitioner and the respondent no.2, along with five sisters, are the children of late Sh.Ram Avtar Goel, who expired on 16.02.2010. It is further stated that their father had purchased a shop, being shop no.64-A, Khan Market, New Delhi-110001 (hereinafter referred to as the 'said shop') from one Smt.Savitri Devi, and started a business of cloth in the name of 'National Cloth House', which was a joint family business, along with the respondent no.2. It is further stated that after the death of the father, the business was mainly handled by the respondent no.2, while the backside portion of the same was stated to be in possession of the petitioner, which he claims to have given on rent.

5. In the complaint, the petitioner further alleges that the said shop was a leasehold property and had not been converted into freehold. It is alleged that in December, 2021, the petitioner came to know that the shop had been converted into freehold 2-3 years back in the name of the respondent no.2 singly, on the basis of some documents produced by the respondent no. 2 to the NDMC Authority. When the petitioner



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tried to check the same with his brother, that is, the respondent no.2, the respondent no.2 did not tell anything to him. It is stated that the petitioner later on checked the said fact from the NDMC, and the officials at the NDMC also refused to provide any information regarding the same. It is stated that it is only with a great difficulty that the petitioner came to know that the said shop had been converted into freehold and a Conveyance Deed had been issued by the NDMC on 30.01.2018, registered on 05.02.2018, on the basis of some documents in favour of the respondent no.2, despite the fact that there were other legal heirs of late Sh.Ram Avtar Goel and they were not aware of illegal transfer having taken place without their knowledge and consent.

6. It was alleged that the respondent no.2 has either got the substitution of the property done on the basis of forged documents or on the basis of a false declaration, and in connivance with the NDMC officials.

7. The petitioner further stated that in the year 2007, his father was not well and the respondent no.2 had tried to get some documents signed by him in Court but the father told them that he did not execute any document.

8. The petitioner claimed that he called upon the NDMC officials to provide a copy of the application form, documents/annexures filed along with it by the respondent no.2 for applying for the conversion of the said shop from leasehold to freehold, and the file noting, including the decision taken by the NDMC based thereon, etc.. However, the officials at the NDMC did not co-operate with the petitioner in the



same.

9. The petitioner claimed that as per the NDMC Rules, the substitution in the event of death of a person, is either on the basis of a Will or all the legal heirs giving their respective No Objection Certificate in favour of one of the legal heirs, or in the joint name of all the legal heirs. It is further stated that a transfer on the basis of the Sale Deed or a Gift Deed cannot be registered without the permission of the NDMC. The petitioner claimed that their father was alive till 2010, hence the said shop could not have been mutated in favour of the respondent no.2 during his lifetime.

10. As noted hereinabove, the application filed by the petitioner herein under Section 156(3) of the Cr.P.C. has been dismissed by the learned Trial Court vide its Order dated 02.08.2023. The learned Trial Court in its Order, while dismissing the said application, has observed as under:

“20. From the present application, documents placed on record by the complainant and the status report filed by the IO concerned, I am of the view that in the instant case the complainant/applicant has all the evidence available with him and same can be adduced in evidence by summoning the witnesses. There is no such evidence which requires to be unearthed by the Police through investigation. The plea of the counsel for the complainant that the documentary evidence that needs to be adduced by him cannot be recovered without the help of the police is without any merit as this record being known to the complainant can be summoned and got produced in evidence by the complainant. Thus, the prayer for directing the SHO concerned to register FIR and conduct investigation under Section



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156 (3) CrPC is dismissed.

21. However, a complaint U/Sec.200 Cr.P.C. is already filed and one opportunity is granted to the complainant to prove its case. Considering the overall fact situation, cognizance of the offences mentioned in the complaint is taken.”

11. Aggrieved of the above Order of the learned Trial Court, the petitioner challenged the same by way of Criminal Revision, which has been dismissed by the learned ASJ by way of the Impugned Order dated 19.03.2024, observing as under:

“10. Ld. CMM has relied upon the judgments of Subhakaran Loharuka & Anr. Vs. State (Govt. of NCT of Delhi) & Anr, 170 (2010) DLT 516, Meenakshi Anand Sootha Vs. State, 2007 (4) JCC 3230 Delhi, Minu Kumari Another Vs. State of Bihar and Ors (2006), 4 SC 359 and M/s Skipper Beverages Pvt. Ltd. Vs. State 2001 IVAD Delhi 625. The abovesaid Judgments reiterate test u/s 156 (3) CrPC and the same is whether the matter requires investigation for collection of the evidence, the complainant is not in a position to collect and produce evidence in court or the custodial interrogation of accused appeals necessary. In the present case, the gift deed was executed by the father of revisionist in the name of his son/respondent no. 2 and on the basis of that gift deed, the property was transferred to respondent no. 2 and was later converted to free hold. It has been alleged that there is violation of NDMC rules in the said transfer. For that, the revisionist has separate remedy before the civil court and revisionist is aware of the all facts of the case, all the evidence is documentary which can be summoned from NDMC and there is no requirement of investigation for collection of evidence as all the evidence is within reach of the complainant, Ld. CMM also dismissed the



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application u/s 156 (3) CrPC on the same ground, undersigned is unable to find any illegality in the order of Ld. CMM dated 02.08.2023, accordingly, the revision petition is dismissed.”

12. The learned ASJ has also taken detailed note of the Action Taken Report (in short, ‘ATR’) filed by the police before it, which is reproduced herein below:

“The complainant alleged that his brother Mr. Ashok Goel had obtained substitution in his name in 2007 with forged documents. During the course of enquiry, letters were sent to NDMC, Sub Registrar and other agency and their reply received. As per NDMC rules, the substitution is on the basis of death of the person or on the basis of WILL or by all legal heirs giving NOC in favour of one person or applying for joint name substitution, whereas transfer is on the basis of some registered document like sale deed or gift deed, which cannot be registered without the permission of NDMC since it was a lease hold property and it is a condition in which permission has to be applied to NDMC in prescribed format for applying for permission. The freehold document executed in 2018 is showing that in 2007 one mutation in the name of his father was approved and in the same year one substitution in the name of his brother was approved. During the course of enquiry, Sub-Registrar-VII, Vikas Sadan, INA, New Delhi gave the report that the PIQ Shop No. 64-A, Khan Market, New Delhi is registered in the name of Sh. Ashok Goel through Conveyance Deed vide Book No. 1, Volume No. 6612, Registration number 1544, Pages 67-73 dated 01.02.2018. Further, during the course of enquiry, NDMC replied that Sh. Ram Avtar Goel had gifted the property Shop No. 64-A, Khan Market, New Delhi to his son Sh. Ashok Goel, who later on got substituted the said



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property in his name as per substitution letter no. D/SO(STC/984/SA1) dt. 04.12.2007. Mr. Ashok Goel used application for substitution of title and relied upon the Gift Deed registered on 21.07.2006 and this fact has been clearly mentioned in the substitution form. Complaint of Inder Goel was filed and informed the complainant. During enquiry of that complaint, statements of Sanjeev Kumar Moondhra S/o Sh. Madan Lal Moondhra R/o 3917, Sri Ganesh Bld, Roshanpura, Nai Sarak, Gall Sahawali, Delhi 110006 and Sh. Pyare Lai Singhal S/o Sh. Lala Harbans Mai R/o C-535, Saraswati Vihar, Pitam Pura, Delhi 110034, who are the witness in Gift Deed dated 21.07.2006, were recorded. Mr Sanjeev stated that he knows Mr. Ashok Goel as he used to supply fabric at his shop no. 64-A. Khan Market, New Delhi. This shop was given to Mr. Ashok Goel as Gift Deed in 2006. Further, he stated that he signed the Gift Deed as witness at Registrar office near INA Market. He recognized the Gift Deed and his signature on Gift Deed. Sh Pyare Lal was father-in-law of Ashok Goel, expired in 2012. Further, the complainant filed another complaint at EOW containing almost similar allegations. During enquiry a letter regarding any vigilance enquiry conducted by NDMC officers or not wherein NDMC has replied that there is no vigilance enquiry conducted against the PIQ. The complaint had already been sent to the NDMC necessary action with all documents.”

13. The learned counsel for the petitioner submits that the father of the petitioner had purchased the said shop in the year 1973. In the year 2007, the father of the petitioner applied for mutation of the said shop in his own favour. Within five months thereof, he is purported to have applied for the mutation of the said shop in favour of the respondent no.2. He submits that mutation of the leasehold property is not



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permitted under the relevant Rules of the NDMC.

14. He further submits that the father of the petitioner is now alleged to have executed a Gift Deed which was duly registered with the office of Registrar on 21.07.2006 vide registration no.16208. He submits that as the said shop was a leasehold property, the documents of transfer could not have been registered without the permission of the NDMC.

15. He submits that in any case, cognizance of the said transfer could not have been taken by the NDMC and its officials without due notice to the other legal heirs of late Sh.Ram Avtar Goel. He submits that, in fact, in the Conveyance Deed dated 30.01.2018, there is no mention of the Gift Deed. He submits that all these factors give credence to the belief of the petitioner that the documents have been fabricated by the respondent no.2 and have been acted upon by the NDMC with the connivance of the officials at the office of the SDM and also the officials at the NDMC, to show the transfer of the said shop in favour of the respondent no.2.

16. Placing reliance on the judgment of the Supreme Court in *XYZ v. State of Madhya Pradesh & Ors.* (2023) 9 SCC 705, he submits that these matters can be best unearthed only by an investigation by the police. He submits that the petitioner cannot have the power to collect all the evidence that may throw light on this conspiracy and crime committed by the respondent no.2. He submits that, therefore, the rejection of the application filed by the petitioner under Section 156 (3) of the Cr.P.C., was incorrect.

17. On the other hand, the learned APP and the learned counsel for



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the respondent no.2 submit that in the present case, the petitioner is merely trying to give a criminal colour to a purely civil dispute. They submit that the Gift Deed was executed and registered way back in the year 2006, and has been duly acted upon, and the said shop was mutated in the name of the respondent no.2 in the year 2007, during the lifetime of the father of the parties. They submit that in the year 2018, the said shop was converted from leasehold into freehold and a proper Conveyance Deed was executed in favour of the person in whose name the shop was mutated. They submit that, therefore, no fault can be found in the Impugned Order as also the Order of the learned Trial Court dismissing the application under Section 156(3) of the Cr.P.C. filed by the petitioner herein.

18. The learned counsel for the respondent no.2 further submits that Section 397(3) of the Cr.P.C. provides for a bar on filing of a second revision. He submits that by merely filing a petition under Section 482 of the Cr. P.C., the petitioner cannot by-pass the said bar.

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

20. As is evident from the above narration of facts, and as found in the ATR that was filed by the police before the learned ASJ, the father of the respondent no.2 had executed a registered Gift Deed in favour of the respondent no. 2 transferring the subject shop in favour of the respondent no. 2. The said shop was thereafter duly mutated in favour of the respondent no.2, on 04.12.2007. Whether such mutation was against the Rules of the NDMC or not, and even if it was, the consequence thereof, is a question which can only be decided in the



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trial. The same would not require any police investigation. In my opinion, the same, in any case, may not even involve any criminal offence.

21. The said shop was thereafter converted into freehold and a Conveyance Deed dated 30.01.2018 was executed in favour of the respondent no.2. Till date, the petitioner is not stated to have filed any Civil Suit challenging the said Gift Deed or the substitution of the respondent no.2 for the said shop or the Conveyance Deed issued by the NDMC.

22. Clearly, the petitioner is trying to give a criminal colour to a civil family dispute between him and the respondent no.2. In this process, the petitioner seeks to take the assistance of the police to conduct a fishing and roving inquiry. In my opinion, the learned Trial Court has rightly relied upon the judgments in ***Subhakaran Loharuka & Anr. v. State (Govt. of NCT of Delhi) & Anr***, Neutral Citation no. 2010:DHC:3345; ***Meenakshi Anand Sootha v. State***, 2007 (4) JCC 3230 Delhi; ***Minu Kumari Another v. State of Bihar and Ors*** (2006), 4 SCC 359; and, ***M/s Skipper Beverages Pvt. Ltd. vs. State*** 2001 SCC OnLine Del 448, while dismissing the application of the petitioner filed under Section 156(3) of the Cr. P.C.

23. Recently, the Supreme Court in ***Usha Chakraborty v. State of W.B.***, 2023 SCC OnLine SC 90, has held under:

“6. In Paramjeet Batra v. State of Uttarakhand (2013) 11 SCC 673, this Court held:—

“12. While exercising its jurisdiction under Section 482 of the Code of the High Court has to be cautious. This power is to



be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of the facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.”

24. In view of the above, I can find no fault in the Order of the learned Trial Court dismissing the application filed by the petitioner under Section 156(3) of the Cr.P.C. or in the Impugned Order of the learned ASJ rejecting the revision against the same.

25. I also find merit in the submission of the learned counsel for the respondent no.2 that in the garb of a petition under Section 482 of the Cr.P.C., the petitioner is merely trying to prefer a second revision against the Order of the learned Trial Court, which is not maintainable in view of statutory bar under Section 397(3) of the Cr.P.C.. Reference in this regard can be made to the judgment of the Supreme Court in ***State of Punjab v. Davinder Pal Singh Bhullar***, (2011) 14 SCC 770, wherein the Court cautioned as under:

“57. In Rajan Kumar Machananda v. State of Karnataka 1990 Supp SCC 132 this Court examined a case as to whether the bar under Section 397(3) CrPC can be circumvented by



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invoking the inherent jurisdiction under Section 482 CrPC by the High Court. The Court came to the conclusion that if such a course was permissible it would be possible that every application facing the bar of Section 397(3) CrPC would be labelled as one under Section 482 CrPC. Thus, the statutory bar cannot be circumvented.”

26. I must also note that this Court is also not acting in the appellate jurisdiction against the Impugned Order.

27. Keeping in view the above facts and principles of law, I find no infirmity in the Impugned Order and, consequentially, I also find no merit in the present petition. The same is, accordingly, dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

APRIL 16, 2024/Arya/AS

Click here to check corrigendum, if any