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

\+ CRL.M.C. 3797/2024

AKIL AHMAD .....Petitioner

Through: Mr. Jai Kumar Sinha, Advocate

versus

STATE OF NCT OF DELHI & ORS. .....Respondents

Through: Ms. Manjeet Arya, APP for State. Mr. Murari Tiwari, Mr. Kamal Nayan, Ms. Radha Raman and Ms. Sadhika Kochhar, Advocates for

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **06.12.2024**

1. The present petition emanates from the proceedings initiated by the petitioner before the Ld. Judicial Magistrate in which his application filed under Section 156(3) Cr.P.C. as well as 200 Cr.P.C. came to be dismissed vide common order dated 28.02.2020. The said order came to be challenged by the petitioner by way of Criminal Revision No. 18/2021 which was also dismissed on 05.09.2023 by the Ld. ASJ.

2. In its complaint, the petitioner alleged that Abdul Hakim married one Shayda Begum in the year 1981. In the year 1983, Abdul Hakim claiming himself and his brother Abdul Rahim to be the joint owners and in possession of property bearing No. A-188, Chander Vihar, Mandawali, Delhi transferred the same to Shayda Begum vide GPA, Agreement to Sell, Receipt all dated 26.09.1983 and registered before the Sub-Registrar-IV, Delhi on the same date. The petitioner claims that in these documents,

Abdul Hakim and Abdul Rahim did not show as to how they became owners of the said property.

3. Apparently, after execution of the aforesaid documents, Abdul Hakim while claiming ownership of the said property by virtue of a notarized Agreement to Sell and GPA dated 08.09.1986 from one Dharam Singh executed another registered GPA and Will in favour of Shayda Begum on 30.12.2009. The petitioner further alleged that as Abdul Hakim did not have any child from Shayda Begum, they adopted the petitioner, who was 7 years old at that time and was stated to be the brother of Shayda Begum. In this regard, an Adoption Deed dated 19.01.1998 was also signed between Abdul Hakim and Shayda Begum on one part and parents of the petitioner on the other. Later, Shayda Begum on account of her love and affection executed a notarized Will dated 04.07.2012 in favour of the petitioner whereby the aforesaid property was bequeathed to the petitioner. Shayda Begum expired on 31.08.2012. The petitioner further claimed that after the death of Shayda Begum, Abdul Hakim married one Hansa and together adopted a daughter named Shabana. It was alleged that Abdul Hakim in connivance with Hansa and Shabana tried to forcibly evict the petitioner from the aforesaid property and also filed a complaint with the police thereby claiming that both the Adoption Deed and Will executed in favour of the petitioner to be forged. The complaint resulted into registration of FIR No. 33/2015 against the petitioner under Sections 420/467/468/471 IPC at P.S. Madhu Vihar. Abdul Hakim also filed a Civil Suit seeking cancellation of the Adoption Deed and Will in favour of the complainant. On strength of above allegations, the petitioner sought institution of criminal proceedings against accused persons primarily under Sections 420, 467, 468,471 IPC.

4. From the records, it appears that one Mr. Chaudhary Bhagwat Singh claiming himself to be the real owner of the subject property also preferred a suit for declaration and injunction against Abdul Hakim being Suit No. 9950/2016.

5. In the aforementioned backdrop, Ld. Judicial Magistrate while considering the petitioner's applications under Section 156(3) and Section 200 Cr.P.C. requisitioned a Status Report. As per the Status Report, it was noted that Dharam Singh was a non-existing person. Ld. Judicial Magistrate came to the conclusion that petitioner having himself claimed that Abdul Hakim had no right, title or interest in the said property and as such could not have transferred the same to Shayda Begum, had no locus to claim ownership of the same by virtue of a Will executed by the Shayda Begum in his favour. While referring to the decision of Modh. Ibrahim v. State of Bihar reported as **(2009) 8 SCC 751**, Ld. Judicial Magistrate came to the conclusion that the documents statedly executed by Abdul Hakim in favour of Shayda Begum vide Agreement to Sell, GPA, Receipt etc. do not fall within the purview of false documents. It was not Shayda Begum who claimed any cheating or forgery during her lifetime. The Sessions Court also concurred with the said conclusion. The relevant extract of the decision in Mohd. Ibrahim (Supra) are as under :-

> "*13. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be Said to have made and executed false documents, in collusion with the other accused.*

14. An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.
2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise. alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.
In short, a person is said to have made a "false document", if (r) he made or executed a document claiming to be someone else or authorised by someone uise; or (ii) he altered or tampered a document; or (Hi) he nbtalned a document by practicing deception, or from a person not in control of his senses

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16. 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 tc be authorized 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 bona fide believes that the property actually belongs to him The second is that he may be dishonestly or fraudulently claiming it to be his *oven 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.*

17. 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 464 nor Section 471 of the Code are attracted.

18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows:

(i) deception of a person either by making a false OI' misleading representation or by dishonest concealment or by any other act or omission;
(ii) fraudulent or dishonest inducement of that person. To either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and
(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

19. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating the accused should have dishonestly induced the person deceived
(i) to deliver any property to any person, or

(ii) to make. alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.

22. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an finance punishable under Sections 417, 418, 419 or 420 of the Code.

A clarification

23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is rot making a false document and therefore not *forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby do frauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint.”*

(emphasis added)

6. Indisputably, the Adoption Deed and Will executed in favour of the petitioner are under challenge in various civil and criminal proceedings. The petitioner has preferred a civil suit seeking declaration and injunction against Abdul Hakim which is statedly pending consideration before the concerned Court at Karkardooma. In the considered opinion of this Court, Ld. Judicial Magistrate rightly came to the conclusion that the locus, if any, was of Shayda Begum to file a complaint against the accused under Section 420 IPC and not the petitioner. The allegations qua other offences are also not made out in terms of the decision in Mohd. Ibrahim as it is not the petitioner's case that Abdul Hakim has executed the documents in question by impersonating the owner or falsely claiming to be authorized or empowered by the owner. Accordingly, I find no merit in the present petition, consequently the same is dismissed.

MANOJ KUMAR OHRI, J

DECEMBER 6, 2024
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