



2024:DHC:8651



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

% Reserved on : 25.07.2024
Pronounced on : 05.11.2024

+ **CRL.M.C 7412/2023**
ABHISHEK JAIN & ANRPetitioners
Through: Mr. Mr. Gandharv Anand and Mr.
Devesh Bhatia, Advocates.

versus

SACHIN JAINRespondent
Through: Mr. Mr. A. K. Thakur, Mr. R. K.
Mishra and Mr. Sujeet Kumar,
Advocates.

AND

+ **CRL.M.C 7417/2023**
ANIL KUMAR JAINPetitioner
Through: Mr. Mr. Gandharv Anand and Mr.
Devesh Bhatia, Advocates.

versus

SACHIN JAINRespondent
Through: Mr. Mr. Mr. A. K. Thakur, Mr. R. K.
Mishra and Mr. Sujeet Kumar,
Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of present petitions, the petitioners seek quashing of the Complaint Case bearing No. 43878/2016 (Old No.5/1/2012) filed by the respondent, pending before Ld. Judicial Magistrate, Patiala House Courts,



New Delhi and all subsequent proceedings emanating thereto. Since both the petitions seek quashing of the same Complaint case and summoning order, they are being decided by way of a common judgement.

2. Before proceeding, it is apposite to note that while petitioner/Anil Kumar Jain is the father, the petitioners/Abhishek Jain and Abhinav Jain are his two sons. All of them have been arrayed as a accused in the aforesaid complaint filed at the behest of the respondent, who is nephew of petitioner/Anil Kumar Jain and cousin of Abhishek Jain and Abhinav Jain.

3. The subject complaint is filed in the context of a building bearing N-94, 2nd floor, Munshilal Building, 'N' Block, Connaught Place, New Delhi. Indisputably, the aforesaid property was initially owned by common ancestors of both the parties whereafter, with passage of time it was partitioned amongst family members. In the complaint, it has been alleged that pursuant to an understanding arrived at between the parties, the Abhishek Jain and Abhinav Jain as well as respondent together sold one half portion of the aforesaid subject property to one M/s Central Court Hotel. The other half portion was retained by the respondent. The sale agreement was executed by the respondent as well as Abhinav Jain and Abhishek Jain. Anil Kumar Jain has signed the same as confirming party. Subsequently, a Release Deed dated 12.04.2017 was also executed by Abhinav Jain and Abhishek Jain in which Anil Kumar Jain signed as a witness. It is alleged that thereafter, the petitioners hatched a conspiracy in pursuance of which Abhinav Jain and Abhishek Jain executed rent receipts dated 02.08.2006, 01.05.2007 and 03.11.2008 in favour of their father Anil Kumar Jain. The said rent receipts were used by Anil Kumar Jain in Civil Suit 17/2012 (Old No. 771/09) on basis of which he claimed that he was in possession of the



portion of the subject property and since the same was not handed back over after repairs, the prayer for repossession was made.

4. The subject criminal complaint came to be filed on 12.01.2012 seeking prosecution of the petitioners for the offence of breach of trust, forgery and falsification of accounts for having forged the rent receipts and then used in civil proceedings.

5. Petitioners seek quashing of the criminal complaint primary on two counts. Firstly, the respondent after filing of the aforesaid complaint on 12.01.2012 also filed an application under Section 340 Cr.P.C. on 15.05.2014 on similar ground however, without disclosing the factum of pendency of the complaint. It is stated that as on the date of the filing of the said application under Section 340 Cr.P.C., pre-summoning evidence in the complaint was already led and the matter was pending at the stage of arguments on summoning. Instead of pursuing its complaint and without disclosing its pendency, the application under Section 340 Cr.P.C was filed. A finding has been returned by the civil court on the aspect of rent receipts that the same were not forged. On dismissal of the application 340 Cr.P.C., the respondent instead of challenging the same, re-invigorated the complaint leading to passing of the impugned summoning order on 17.03.2023. Secondly, the complaint is not maintainable as the bar of Section 195(1)(b) Cr.P.C. would be applicable as the impugned documents i.e. rent receipts were allegedly forged prior to it being used in the aforesaid civil proceedings. Reliance is placed on the decision in Bandekar Brothers Pvt. Limited vs. Prasad Vassudev Keni & Ors reported as **2020 SCC OnLine SC 707**.

6. Per contra, learned counsel for the respondent, while referring to the



decision of Constitution Bench in Iqbal Singh Marwah v. Meenakshi Marwah reported as (2005) 4 SCC 370, would urge that rent receipts having been forged prior to its being used, only a private complaint would lie and the bar of Section 195(1)(b) Cr.P.C. would not be applicable.

7. From the material placed on record, it is evident that Anil Kumar Jain had preferred a Civil Suit for possession of the aforesaid property by claiming tenancy rights. In the said civil suit, it was claimed that he was a tenant in the said property and had handed over its keys to the respondent for repair. The respondent however failed to hand over back the possession after repairs. The claim of oral tenancy was premised on the basis of an affidavit of one *Dal Chand Paliwal* as well as aforementioned three rent receipts. The suit came to be filed on 15.06.2009 whereafter the respondent preferred the criminal complaint on 12.01.2012 before the Ld. Judicial Magistrate wherein pre-summoning evidence was led on 10.04.2012 but the matter remained pending for about a period of 11 years at the stage of arguments on summoning. In between, the respondent preferred an application under Section 340 Cr.P.C. alleging use of forged rent receipts. The said application was eventually dismissed on 23.03.2019 by the Civil Court by holding that the rent receipts executed by Abhishek and Abhinav Jain in favour of Anil Kumar Jain were admitted to be issued and thus no case of forgery was made out. Concededly, the finding remained unchallenged.

Pertinently, in the said application, the respondent did not disclose the factum of pendency of criminal complaint. At the same time, the factum of dismissal of the application under Section 340 Cr.P.C. was not disclosed in the criminal proceedings when it was re-invigorated.

8. In this backdrop, there is no doubt that the respondent has rather



sailed in two boats. In neither of the proceedings, he disclosed the pendency or outcome of the other. Moreover, on a bare reading of the criminal complaint and the application filed under Section 340 Cr.P.C., it is apparent that both were filed with primarily with allegation of use of forged rent receipts. Further, the finding rendered by the civil court on the aspect of dismissal of respondent's challenge to the genuineness and authenticity of the three rent receipts, having not been challenged has attained finality, and is binding between the parties. On a careful perusal of same, the conclusion arrived at by the civil court is also in line with the ratio of decision in Mohd. Ibrahim vs. State of Bihar 2009 (8) SCC 751. The relevant paragraphs are extracted hereinbelow :-

"13. The condition precedent for an offence under Sections 467 and 471 is forgery. 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 (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 practising deception, or from a person not in control of his senses.

15. The sale deeds executed by the 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 the complainant's land (and that Accused 2 to 5 as the purchaser, witness, scribe and stamp vendor, colluded with the first accused in execution and registration of the said sale deeds) would bring the case under the first category.

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 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 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 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.

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 467 nor Section 471 of the Code are attracted.



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9. Once a finding is rendered by the Civil Court concluding that the rent receipts were not forged, the said finding not being challenged and attaining finality could not be re-urged before the Criminal Court as the allegations in the complaint do not make out a case of forgery, this Court is inclined to allow the present petitions on this count only. Consequently, the aforementioned impugned complaint case is quashed.

10. Both the petitions are disposed of in the above terms.

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 05, 2024

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