



2024:DHC:3479



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

Date of decision: 26.04.2024

+ CRL.M.C. 115/2022
ALKA

..... Petitioner

Through: Mr.Prashant Diwan &
Mr.Brajesh Dwivedi, Advs.
along with petitioner in person.

versus

STATE & ORS.

..... Respondents

Through: Mr.Shoaib Haider, APP.
SI Preet Dagar, PS Mangolpuri.
Mr.Sanjeev Kumar Kakkar &
Mr.Prateek Kumar, Advs. for
R-2 to R-4.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the Order dated 15.03.2021 (hereinafter referred to as the 'Impugned Order') passed by the learned Additional Sessions Judge-02, North-West District, Rohini Court, Delhi (hereinafter referred to as the 'ASJ') in the Revision Petition, being CrI.Rev. No. 20/2020 titled *Alka v. State NCT of Delhi & Ors.*, dismissing the Revision Petition filed by the petitioner herein.



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2. The said Revision Petition had been filed by the petitioner herein challenging the Order dated 25.10.2019 passed by the learned Metropolitan Magistrate-01, North-West District, Rohini Courts, Delhi (hereinafter referred to as the 'Trial Court') in Complaint Case No. 12261/2018 titled ***Alka v. Prakash Wati Etc.***, whereby the learned Trial Court had dismissed the application filed by the petitioner herein under Section 156(3) of the Cr.P.C. in a complaint filed under Section 200 of the Cr.P.C..

3. The above complaint had been filed by the petitioner herein alleging that the respondent nos.2 to 4 had represented themselves to be the owners of Flat No. B-3/7, Shivaji Apartment, Sector-14, Rohini, Delhi, and offered to sell the same to the petitioner. It is alleged that based on the said representation, the petitioner paid a sum of Rs.13.35 lakhs to respondent nos.2 to 4 till 16.12.2002, and later on, the remaining amount of Rs.15,000/- out of the total sale price of Rs.13.50 lakhs was also paid. It was stated that respondent nos.2 to 4 had represented that the said flat was free from all disputes and encumbrances. It is claimed that the respondent nos.2 to 4 had, in fact, concealed from the petitioner that there were civil disputes/litigation pending in relation to the said flat, due to which they could not have transferred and did not have the authority to transfer the same in favour of the petitioner. It is further alleged that in the year 2010, respondent no.2 lost the said litigation and an Order was passed against her for vacating



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the said flat. The petitioner alleged that in this manner, the respondent nos.2 to 4 defrauded the petitioner and made the petitioner part with Rs.13.50 lakhs.

4. It is stated that as, even after the lapse of a considerable amount of time, no action was taken by the police on the complaint made by the petitioner, the petitioner filed the above mentioned complaint under Section 200 of the Cr.P.C. along with an application under Section 156(3) of the Cr.P.C. before the learned Trial Court.

5. The application filed by the petitioner under Section 156(3) of the Cr.P.C., however, came to be dismissed by the learned Trial Court vide an Order dated 25.10.2019.

6. Aggrieved of the said Order, the petitioner filed the above-mentioned Revision Petition, which has also been dismissed by the learned Additional Sessions Judge by way of the Impugned Order.

7. The learned counsel for the petitioner submits that the respondent nos.2 to 4 have defrauded the petitioner by representing themselves to be the true owner of the above-mentioned flat and making the petitioner part with Rs.13.50 lakhs. He submits that these matters are required to be inquired by the Police and the learned Trial Court has erred in dismissing the application filed by the petitioner under Section 156(3) of the Cr.P.C., which Order has also been wrongly upheld by the learned ASJ.



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8. He submits that the respondent nos.2 to 4 had concealed from the petitioner that there were litigation(s) pending regarding the flat in question and the fact that they were not the true owner thereof and falsely represented that the flat is free from all encumbrances.

9. On the other hand, the learned counsel for the respondent nos.2 to 4 submits that the petitioner was well aware of the status of the flat and pending litigation. He submits that in any case, this petition has been rendered infructuous inasmuch as the complaint itself later has been dismissed in default by an Order dated 30.10.2023 passed by the learned Trial Court, for non-prosecution. He submits that, therefore, nothing survives in the present petition.

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

11. The learned Trial Court, in the Order dated 25.10.2019, while dismissing the application filed by the petitioner under Section 156(3) of the Cr.P.C., has observed that the identity of the accused person is known and the documents on the basis of which the case is said to be made out by the petitioner against the respondent nos.2 to 4 are in their possession and, therefore, the assistance of the investigating agency/Police is not required. The learned ASJ in the Impugned Order has again reiterated that no error/infirmity can be found in the dismissal of the application under Section 156(3) of the Cr.P.C. by the learned Trial Court.



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12. Though certain observations on the merit of the complaint have also been made in the Impugned Order, those would not be binding on the learned Trial Court while adjudicating the complaint that was pending before it.

13. It is to be kept in mind that a Second Revision is not maintainable due to the statutory bar under Section 397(3) of the Cr.P.C.. The Petitioner in the garb of a petition under Section 482 of the Cr.P.C. cannot circumvent the same by camouflaging it as a petition invoking the inherent powers of this Court. 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. It is also to be kept in mind that this Court does not sit in the appellate jurisdiction over the Impugned Order passed by the learned ASJ in the Revision petition.

14. In the present case, the entire case of the petitioner is based on documentary evidence, which would not require any further investigation from the investigating agency. Therefore, no fault can be found in the Order of the learned Trial Court dismissing the application filed by the petitioner under Section 156(3) of the Cr.P.C. and the Order of the learned ASJ upholding the same.

15. The learned counsel for the petitioner has submitted that recovery of the amount paid by the petitioner to respondent nos.2 to 4 is also to be made. It must be noted herein that these proceedings are not recovery proceedings.



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16. In any case, now that the complaint under Section of the 200 Cr.P.C. filed by the petitioner before the learned Trial Court has itself been dismissed in default, and I am informed that till date, even an application seeking restoration has not been filed by the petitioner before the learned Trial Court, the present petition has in fact, become infructuous. Be that as it may, as even otherwise I do not find any merit in the petition. The same is dismissed.

17. There shall be no order as to costs.

NAVIN CHAWLA, J

APRIL 26, 2024/rv/AS

Click here to check corrigendum, if any