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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 7757/2023**
VEENA DEVIPetitioner

Through: Mr. Lalit Ajmani, Advocate

versus

STATE OF NCT OF DELHI & ORSRespondents
Through: Mr. Nawal Kishore Jha, APP for State

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

% **ORDER**
26.07.2024

1. By way of present petition, the petitioner seeks to assail the order dated 19.05.2020 passed by the learned ASJ (SFTC), South West, Dwarka Courts, New Delhi in Criminal Revision No.220/2019. Vide aforesaid order, learned Sessions Court upheld the order dated 28.03.2019 passed by the learned Judicial Magistrate First Class.

Vide order dated 28.03.2019, learned Judicial Magistrate had dismissed the complaint preferred by the petitioner under Section 200 CrPC for the offences under Sections 406, 446, 447, 458, 149, 120B, 34 IPC and discharged the accused persons.

2. Pertinently, the present proceedings arise in the context of a complaint preferred by the petitioner/complainant against the accused persons/respondents concerning a 'Construction Cum Collaboration Agreement' dated 08.06.2011 (hereafter, "the Agreement"), with respect to property number A-105, Gulab Bagh, Near Nawada Metro Station, Uttam Nagar, New Delhi-59 (hereinafter, "the aforesaid property") The petitioner



claims to have been approached by respondent no.2/*Satinder* for reconstruction/renovation of the said house in lieu of which the said construction agreement was entered into between the petitioner's daughter *Kamlesh* and respondent no.3/*Jitender*. The respondents taking advantage of the factum that the petitioner's daughter was not well read, got the agreement signed thereby mentioning that ground and upper ground floor (also referred to as first floor) of the property would be transferred in the name of respondent no.3, which was contrary to the original understanding. It was further claimed that after reconstruction/renovation of the aforesaid property in March, 2012, the petitioner took possession of the entire property and the respondents were given possession of the first floor. As some work was pending on the ground floor and on the roof, the respondents were asked to complete the same. At that stage, the respondents claimed ownership of the ground floor on which the petitioner had put her lock. It was claimed that on 13.04.2012, at about 9:30 PM, respondents along with others broke open the gate and put lock on the ground floor and forcibly took possession of it.

3. The petitioner preferred an application under Section 156(3) Cr.P.C along with complaint under Section 200 Cr.P.C. While application under Section 156(3) Cr.P.C came to be dismissed, the complaint proceeded under Section 200 Cr.P.C and the present respondents along with one *Asha* and *Indu* were summoned. The respondents had challenged the said order before the Sessions Court, which upheld the summoning against the respondent Nos 2 to 4 only and the summoning order was set aside against *Asha* and *Indu* who are respondent No.5 and 6 respectively, in the present petition. The said order remained unchallenged and attained finality.



4. In the complaint proceedings, the petitioner had examined herself as CW-1. In her statement, she deposed that construction was carried out by *Satinder* and *Anand* while she was residing on the second floor. She exhibited a sale deed (Ex.CW-1/X1) vide which she had sold the upper ground floor (without roof rights) to her daughter *Kamlesh* on 20.03.2012. Pertinently, the land underneath the construction was not transferred.

5. During her cross examination, she admitted her signatures on the registered sale deed dated 20.3.2012 however, she has stated that she had no knowledge of the contents of the GPA dated 19.05.2011 that was executed by her in favour of her daughter. Vide the aforesaid GPA, she had transferred the property in favour of her daughter. It is the case of the respondents that having transferred the property in favour of her daughter, she would not have sold it further. More importantly, the “Agreement” (Ex.CW-1/X3) was also put to her during her cross-examination, where she admitted her signatures on it. She was confronted with the claim that in terms of the “Agreement”, the respondents took over the possession of ground floor and upper ground floor, which was denied. The learned Judicial Magistrate First Class while dismissing the complaint took note of the fact that at the stage of pre-charge evidence, the petitioner had examined only herself and no other independent person. The petitioner and her daughter *Kamlesh* along with one *Satish Chauhan* filed a civil suit for declaration, possession and damages along with future mense profit, permanent and mandatory injunction being Suit No. 16740/2016. The suit came to be dismissed vide judgment dated 07.02.2017. Learned Judicial Magistrate took note of the issues framed in the said suit and also while relying on the same, came to the conclusion that there was no material to proceed against the



respondents for any of the offences.

6. While concurring with the conclusion arrived at by the Judicial Magistrate, learned ASJ opined that there was no merit in the complaint.

7. During the course of the proceedings, while the learned counsel for the petitioner submitted that the judgment of the Civil Court was challenged in appeal, however, conceded that no stay was granted. Further, though with respect to the incident, a DD No. 31B dated 14.04.2012 was registered, however, on a specific query, learned counsel for the petitioner submits that there was no MLC done. Additionally, there was no independent witness either cited or examined by the petitioner at the pre-charge stage. The petitioner has admitted her signature on the “Agreement” wherein it is categorically mentioned that on completion of construction, the first party would execute sale documents in respect of the entire ground and upper ground floor of the property.

8. In fact, the respondents who claimed title and possession in terms of the aforesaid agreement cannot be accused of trespassing into their own portion. Since the “Agreement” stated that upon completion of construction, the specified portions namely the ground and upper ground floor would be transferred to the respondents, their occupation of these areas is consistent with their contractual rights. Further, in absence of any evidence to show that the petitioner was residing therein, the allegations regarding the respondents trespassing into the said property is legally unsustainable.

9. Considering the facts and circumstances of the present case, in my view, it is evident that the petitioner has failed to establish a valid case. Consequently, I find no merit in the petition, the same is accordingly dismissed.



JULY 26, 2024/*rd*

MANOJ KUMAR OHRI, J