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

+ CRL.M.C. 6337/2019 & CRL.M.A. 42229/2019

ANIL PRAKASH & ANR.Petitioners
Through: Mr. Joydeep Sarma, Adv.

versus

DESH DIPAK GULHATI & ORS.Respondents
Through: Mr. D. Verma, Adv.
(through VC)

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
27.09.2024

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1. The petitioner challenges the order dated 06.03.2017 passed by the learned Additional Sessions Judge ('ASJ'), thereby allowing the revision petition filed by one, Rita Gulati.
2. The revision petition was filed under Sections 397 and 399 of the Code of Criminal Procedure, 1973, challenging the order dated 20.02.2016 passed by the learned Metropolitan Magistrate ('MM'), pursuant to which the petitioners were discharged in Complaint Case No. – CC No. 65/1/2014.
3. The complaint was filed alleging that the petitioners had conspired with the officials of Sub-Registrar to usurp Ms. Rita Gulati's right in the original Will which was sought to be replaced by a forged Will dated 17.07.2000.
4. During the pendency of the complaint, the complainant, Rita Gulati died on 14.03.2015.
5. The learned MM noted that the dispute in regard to the Will is pending consideration before the High Court and that the MM is not competent to decide the issue as a first forum.



6. The Magistrate, while passing the order, relied upon the judgment passed by the Hon'ble Apex Court in ***Sardool Singh and Another v. Nasib Kaur* : 1987 Supp SCC 146**.

7. The revision petition was, thereafter, filed in the name of the complainant, however, admittedly, the complainant by that time, had already expired.

8. The learned counsel for the respondent submits that the complaint was filed by her husband holding a valid Power of Attorney.

9. The learned Court of Sessions though noted the objection raised by the petitioner in regard to the maintainability of the revision petition, however, did not adjudicate on the said aspect.

10. It is undisputed that the complaint can be instituted, in some circumstances, through the Power of Attorney, however, undisputedly, a dead person cannot initiate the proceedings. Moreover, once the person has already expired, the Power of Attorney also expires along with the person. The same, in some cases, can be considered as valid and operative, especially, when it relates to transfer of title. However, in regard to institution of the case, the Power of Attorney holder does not hold any right to continue with the proceedings after the death of the donor. This right is only available to the legal heirs.

11. Admittedly, the revision petition was not filed by the husband of the complainant as a legal representative but only claiming as a Power of Attorney of the complainant who, admittedly, at that point of time, had already expired.

12. The learned counsel for the petitioner submits that the probate has already been granted in the petition filed by the petitioner. The probate has been granted on the Will which was alleged by the complainant to be forged and fabricated.



13. He submits that, in such circumstances, the proceedings even otherwise, ought to be quashed on merits.

14. The learned counsel for the respondent submits that the appeal has already been filed challenging the grant of probate and the same is pending consideration.

15. Concededly, the complainant Rita Gulati expired on 14.03.2015 whereas the revision petition was filed in the year 2016.

16. The revision petition has admittedly been filed by Respondent No. 1 claiming to be the Power of Attorney holder of Rita Gulati. It is settled law that the power of attorney extinguishes with the death of the principal unless the agent has interest in the subject matter of the agency.

17. Consequently, the revision petition was wrongly filed. The proceedings in the name of Rita Gulati were *non est* and ought not to have been entertained. The impugned order was therefore passed in *non est* proceedings and cannot sustain.

18. In view of the above, the present petition is allowed and the order dated 06.03.2017 is set aside.

AMIT MAHAJAN, J

SEPTEMBER 27, 2024

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