



2024:DHC:8814



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

% **Date of order: 5th November, 2024**

+ **CRL.M.C. 8644/2024 & CRL. M.A. 33062/2024**

EDWIN DSOUZA THROUGH HIS GPAPetitioner

Through: **Mr. Sanjay Jain, Mr. Girish Kumar,
Mr. Aditya Kumar and Mr. Kishlay
Kumar, Advocates**

versus

RAN SINGH & ANR.Respondents

Through: **Mr. Raghuinder Verma, APP for State
with SI Sandeep Kumar PS,
Ambedkar Nagar and Insp Dinesh
Malik, EOW**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter “BNSS”) read with Article 227 of the Constitution of India has been filed on behalf of the petitioner seeking setting aside of the impugned order dated 15th April, 2024 passed by the learned ASJ-06, South, Saket Courts, New Delhi (hereinafter “ASJ”) in Cr. Rev. No. 124/2021.

2. The brief facts that led to the filing of the instant petition are that a case FIR No. 337/2008 was registered against the respondent No. 1/Sh. Ran Singh/revisionist before the learned ASJ for the commission of offences

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under Section 448/34 of the Indian Penal Code, 1860 (hereinafter “IPC”) on 29th July, 2008 at Police Station – Ambedkar Nagar, Delhi on the basis of a report dated 8th July, 2008 by Sh. Shoban Singh, ACP/GC which was further based on the complaint dated 30th January, 2008 made by the respondent No. 1/revisionist addressed to the Commissioner of Police, Delhi.

3. As per the aforesaid complaint of the respondent No. 1/revisionist, he was authorized by one Smt. Radhika Narain (only child/inheritor of late Sh. Kumar Narain and late Smt. Geeta Narain) to look after the property i.e., E 162/A, Sainik Farms, New Delhi (hereinafter “subject property”) vide a General Power of Attorney dated 29th December, 2005 (hereinafter “GPA”).

4. It was mentioned in the complaint that vide the aforesaid GPA, the respondent No. 1 was in possession of the said subject property and was constantly keeping watch on the house after locking it. It was further mentioned that he had started living in the house and started paying a rent of Rs. 10,000/- per month as per the rent agreement. It was alleged that the local police of Police Station - Ambedkar Nagar and PP Sainik Farms were extending threats to implicate him in a murder case, wherein the mother of Ms. Radhika Narain was murdered in the same house by some unknown criminals on 7th October, 2002 (FIR No. 514/2002). The said case was still untraced and local police was threatening him to dispossess him from the subject property.

5. It was prayed by the respondent No. 1/revisionist that he may kindly be saved from the unwarranted and unlawful threat of the local police. It was also mentioned that local police was not having locus-standi *qua* his



possession and that some independent agency working under Commissioner of Police may kindly be entrusted with the inquiry in this matter. On receipt of this complaint, vigilance inquiry was conducted.

6. On the report thereof, Commissioner of Police directed registration of the case and transfer of the same to Economic Offences Wing (hereinafter “EOW”) after recording the remarks *qua* an anomaly regarding the name of the owner of the property.

7. After registration of the aforesaid FIR, investigation was conducted and charge-sheet was filed before learned CMM/Trial Court on 13th September, 2019 against the respondent No. 1/revisionist along-with Smt. Radhika @ Radhika Narin and one Sh. Inder Singh for commission of offences under Sections 448/453/420/468/471/120B of the IPC.

8. Vide order dated 19th October, 2020, learned CMM/Trial Court took cognizance of the commission of offences punishable under Sections 448/453/120B of the IPC, whereas, aspect regarding taking cognizance *qua* the remaining offences was left open for consideration till the time FSL report by way of supplementary charge-sheet was filed by the State.

9. The respondent No.1 herein/revisionist before the learned ASJ, along-with the other two accused persons, were summoned as accused vide order dated 19th October, 2020, to appear on 12th January, 2021.

10. The order dated 19th October, 2020 was challenged by the respondent No. 1 before the learned ASJ under Section 397 of the Code of Criminal Procedure, 1973 (hereinafter “CrPC”), thereby, seeking setting aside of the said order under the revisional jurisdiction in Cr. Rev. No. 124/2021.



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11. In the said revision petition, the petitioner herein filed an application seeking his impleadment as a party to the said revision petition stating that he is a victim under Section 2(wa) of the CrPC (now Section 2(1)(y) of the BNSS).

12. The petitioner's application seeking his impleadment was dismissed vide order dated 15th April, 2024 by the learned ASJ, thereby, stating that the petitioner has a right to be a party only in a civil case. Thereafter, vide order dated 5th August, 2024, the learned ASJ allowed the aforesaid revision petition, thereby, setting aside the order dated 19th October, 2024 stating that the said order of cognizance was beyond the period of limitation as prescribed under Section 468 of the CrPC.

13. Being aggrieved by the impugned order dated 15th April, 2024, the petitioner has filed the instant petition seeking setting aside of the same.

14. Learned counsel appearing on behalf of the petitioner submitted that the impugned order is bad in law and is liable to be set aside as the same has been passed without taking into consideration the entire facts and circumstances.

15. It is submitted that the petitioner had filed an application for impleadment as a party with an objective to assist the State to put forth the correct propositions before the learned Trial Court for the adjudication of the aforesaid FIR.

16. It is submitted that the learned Court below has failed to appreciate the relevant facts and documents which were part of the charge sheet as well as the investigation conducted by the police over a period of time of about



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eleven years. It is submitted that without considering the documents which were part of the record, the learned ASJ erroneously dismissed the petitioner's application seeking his impleadment as a victim.

17. It is submitted that the learned ASJ failed to consider that the accused, during the investigation, admittedly entered the property again in the year 2014 and filed a collusive suit and obtained a fraudulent decree, and the said fact is necessary for the proper adjudication of the proceedings.

18. It is submitted that Smt. Radhika Narayan has failed to produce any documents in support of her claim to be the biological child or the adopted child of the deceased Sh. Kumar Narayan and Smt. Geeta Narayan, except a school leaving certificate which mentions the aforesaid names as parents of Smt. Radhika Narayan. It is further submitted that there are a number of inconsistencies and contradictions found in her statement. It is an admitted fact that she had never visited or resided in the subject property.

19. It is submitted that the respondent No. 1 is a former Delhi Police Inspector who claims to be in possession of the property since the year 2005, however, evidence suggests that he entered the said property fraudulently in the year 2008 and is still continuing on the basis of a collusive suit.

20. It is submitted that police investigation in the present case further revealed that school records presented by Smt. Radhika Narayan show inconsistencies in her claimed relationship with the deceased couple, including discrepancies in her parents' names and the existence of a sister namely Smt. Renuka, which Smt. Radhika did not disclose in her legal claims. The investigation found no evidence to support Smt. Radhika's



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claim of being the daughter of the deceased couple.

21. It is further submitted that multiple witnesses who knew the deceased couple stated they never saw or heard of Smt. Radhika as their daughter. Bank accounts and property documents of the deceased couple do not mention Smt. Radhika as a nominee or heir. Further, Smt. Radhika Narayan executed multiple agreements to sell the property including one with Sh. Ran Singh's wife for consideration significantly below market value. Therefore, the investigation concluded that the accused persons (Smt. Radhika Narayan, Sh. Ran Singh and Sh. Inder Singh) conspired to usurp the property based on forged papers and false claims. In the said investigation, there they found no evidence that the deceased couple had any children other than the petitioner herein.

22. It is submitted that the petitioner is the sole legal heir of the deceased Smt. Geeta Narayan and the same is evident from the chargesheet and record of the investigation. Thus, the impugned order is liable to be set aside as the petitioner is a necessary party and grave injury and prejudice would be caused in case he is not impleaded.

23. Therefore, in view of the foregoing submissions, it is prayed that the instant petition may be allowed and the reliefs be granted as prayed for.

24. *Per Contra*, the learned APP appearing on behalf of the State vehemently opposed the instant petition submitting to the effect that the same is liable to be dismissed being devoid of any merits. It is further submitted that there is no illegality in the impugned order and the same has been passed after taking into consideration the entire facts and circumstances



of the case.

25. Heard learned counsel appearing on behalf of the parties and perused the material placed on record.

26. It is the case of the petitioner that he is a victim under Section 2(wa) of the CrPC (now Section 2(1)(y) of the BNSS) and thus he had approached the learned ASJ, thereby, seeking his impleadment as a party in the aforesaid criminal revision petition. It has been submitted that he is the sole legal heir of late Smt. Geeta Narayan which makes him a victim to the fraudulent possession of the subject property by the respondent no. 1. In view of the same, the petitioner contends that the learned ASJ erred in dismissing his application which makes the impugned order erroneous.

27. At this stage, this Court shall peruse the impugned order, relevant extracts of which are as under:

“..6. Admittedly, present FIR was registered in the year 2008 on the directions of Special Commissioner of Police, Vigilance, Delhi after property bearing no. E-152/A, Sainik Farms, New Delhi was put under the constant watch by local police because its occupiers namely Mr. Kumar Narain and his wife expired in the year 2000 and 2002 respectively. The allegations are that revisionist herein had tried to occupy the said property fraudulently in connivance with one Mr. Inder Singh and Ms. Radhika Narain after making allegations against the local police. During the course of investigation, applicant herein came forward with a complaint that he was the legal heir being son of deceased of Smt. Geetanjali Narain. After completion of investigation, charge-sheet was filed against the revisionist and two other accused persons for the offences U/s 448/ 453/ 420/ 468/ 471/ 120B IPC wherein applicant was also cited as a witness to prove his statement U/s 161 Cr.P.C. dated



29.11.2018 and a seizure memo of the same date. Apparently, his statement U/s 161 Cr.P.C. on record is qua him being son of Smt. Geetanjali Narayan who was allegedly known as Bibiana Girty Walder (B.G. Walder) earlier. He was not a witness to the incident in question in any manner whatsoever. Though investigating agency was not able to dispute his contention that he was the son of Smt. Geetanjali Narayan during investigation however, that in itself was not sufficient to make him a victim as per Section 2 (wa) Cr.P.C. Whether the applicant is in fact a legal heir of Smt. Geetanjali Narayan and is entitled to possession of property in question is something which can be determined by the Court of Ld. ADJ which was already seized of the matter. In any case, his joining the proceedings herein is of no consequence as in the present revision petition, this Court is required to see on the basis of material on record as to whether the summoning order passed by Ld. Trial Court was justified in law or not. The question as to whether the applicant is a necessary party in the present proceedings is not material for just decision of present revision petition. Judgment of Hon'ble Apex Court in **Jagjeet Singh And Others Vs. Ashish Mishra Alias Monu (Supra)** is clearly distinguishable on facts. 7. Considering the above discussion, this Court is of the view that no ground for allowing the present application for impleadment of Mr. Edwin D'Souza as a party in the present revision petition is made out. Application is accordingly dismissed...”

28. Upon perusal of the aforesaid excerpts of the impugned order, it is made out that the petitioner herein had submitted that he was the only legal heir of deceased Smt. Geetanjali Narayan who was in last occupation of the subject property and he further submitted that he is covered by the definition of victim under section 2(wa) of the CrPC.

29. With respect to the said contention, the learned ASJ observed that



although the petitioner claimed to be the legal heir of the deceased Smt. Geetanjali Narain, this assertion alone did not qualify him as a victim under Section 2(wa) of the Cr.P.C. The Court noted that the petitioner's claim of legal heirship and entitlement to the property should be determined by the Additional District Judge, who was already handling another matter regarding the subject property. Furthermore, the learned ASJ emphasized that the petitioner's inclusion in the current criminal proceedings was irrelevant, as the focus of the revision petition was solely to assess the legality of the learned Trial Court's summoning order based on the existing record. Consequently, the application to implead the petitioner as a party in the revision petition was dismissed.

30. In view of the aforesaid submissions and observations of the learned ASJ, the issue before this Court is to decide as to whether the learned ASJ rightly dismissed the petitioner's impleadment application and whether the petitioner herein is entitled to be impleaded as a party as a victim.

31. Before delving into the analysis of the issue at hand, this Court shall discuss the law with regard to the impleadment of a stranger to a criminal proceeding who is stating himself to be the victim under Section 2(wa) of the CrPC (now Section 2(1)(y) of the BNSS). Insofar the law is concerned, in criminal cases, a victim holds the right to participate in the trial, however, there is no provision for the victim or any other person to be formally impleaded as a party to a criminal proceeding.

32. The prosecution of a criminal case is fundamentally a matter between the State and the accused as it is the State's duty to ensure justice and



maintain law and order. While victims have the right to provide input, testify, and may have limited participatory rights, they are not considered necessary parties in the same way as in civil cases.

33. Consequently, there is no obligation on the Court to implead a victim as a party in a criminal case. This approach ensures that the focus of the criminal trial remains on determining the guilt or innocence of the accused, with the State representing the broader public interest and advocating on behalf of the victim and society as a whole.

34. The same issue has been discussed in the case of ***VLS Finance Ltd. v. State (NCT of Delhi)***, 2024 SCC OnLine Del 3908, wherein, the Coordinate Bench of this Court dealt with the question as to whether a victim, as a matter of right, can seek impleadment or whether the victim only has a right to be heard. In the said judgment, the Court observed that in a State prosecution, a victim can only be a witness to the proceedings and can participate through the Public Prosecutor, but cannot be impleaded as a party. The relevant paragraphs of the same are as under:

“..45. From the above submissions, the question to be decided by this Court is whether in the revision petition filed by the accused challenging the Order passed by the learned Magistrate refusing to discharge the said accused, the victim/complainant can, as a matter of right, seek impleadment, or only has a right to be heard, or only has a right to assist the Public Prosecutor?”

46. Before proceeding further, what is relevant to note herein is that in a case arising out of a Revision Petition between the same parties, a Coordinate Bench of this Court in Vipul



Gupta (supra), had answered the above question by holding that the case being a State Prosecution, at the highest, the complainant/victim can only be a witness to the proceedings and can participate through the Public Prosecutor, but cannot be impleaded as a party to the revision petition. It held that if the complainant/victim is to be allowed to participate in the proceedings before the learned Sessions Court, it shall change the entire nature of the proceedings from criminal to civil and shall hamper independence of the prosecution. The Court held that the complainant/victim can, at best, assist the prosecution, however, the Public Prosecutor in such a case has to make an independent call. This Court, therefore, set aside the order of the Revisional Court which had directed the petitioner herein to be impleaded as a party to the revision petition filed by the respondent no. 2 herein.

73. Keeping in view the above principles of law, derived from the provisions of the Cr. P.C. and precedents, it must be held that while the victim/complainant has a right to be heard in the revision proceedings, such right does not upscale itself to a right to be impleaded in the said criminal revision. The Court while affording a right to be heard to a complainant/victim, shall regulate the same depending on the facts and circumstances of each case. The Court should keep in mind that the criminal prosecution does not turn into a battle between the two private warring parties. However, at the same time, the Court should also keep in mind that it is eventually the victim who has suffered and has knocked at the doors of Criminal Justice System to seek justice against the alleged crime committed against it. Therefore, a balance has to be struck between the duty/responsibility of the State to conduct the criminal prosecution on behalf of the society as a whole, and the right of the victim/complainant to seek justice for the wrong done to it. In achieving this balance, though the



victim/complainant may be heard, however, would not have a right to be impleaded, and such hearing shall be regulated by the Court depending on the facts and circumstances of each case....”

35. This Court is of the view that the learned ASJ rightly dismissed the petitioner’s application seeking his impleadment as a party. This Court does not find any cogent reasons to implead the victim as a party, *firstly*, because the grievances of the petitioner, if any, is already being addressed by the Prosecution before the learned Trial Court. *Secondly*, there is no provision in the CrPC (now BNSS) which provides for any provision in favour of the victim or any other party for that matter to be impleaded as a party to a criminal proceeding.

36. Here, it is pertinent to mention that the petitioner’s reliance upon the judgment of ***Jagjeet Singh v. Ashish Mishra, (2022) 9 SCC 321*** is completely misplaced and the same has been rightly observed by the learned ASJ. The said case was only deciding the issue as to whether the ‘victim’ has the right to be heard by the Court while deciding the question of grant of bail in an application preferred by the accused. In ***Jagjeet Singh (Supra)***, it was held by the Hon’ble Supreme Court that a ‘complainant’ is not necessarily a ‘victim’ in a case, as an informant can also be the complainant in a given case.

37. Therefore, the petitioner herein, not even being the complainant, cannot be considered to be the ‘victim’ of the alleged crime without any substantial proof and even if there is any substance in his submission that he is the victim, the same still cannot be a ground for him to be impleaded as a



party. Moreover, remedies available to a petitioner to seek entitlement *qua* the subject property, if any, can only be adjudicated before a Civil Court for which separate proceedings are pending before the Court of Additional District Judge.

38. In light of the aforesaid discussions, it is held by this Court that the right to representation and being heard are separate from the right to be impleaded/inducted as a formal party in a criminal case.

39. It is noted that following the Hon'ble Supreme Court's directive in ***Jagjit Singh (Supra)***, victims now possess extensive participatory rights in all related criminal proceedings, however, this does not justify impleading them as a party in such proceedings unless specifically required by law.

40. Furthermore, the law does not mandate nor expressly provide for a requirement to implead the victim as a party in criminal proceedings. There is no express provision under which a victim can move an application for impleadment. While victims hold certain participatory rights, such as the right to be heard, particularly in matters like bail hearings, these rights do not equate to the status of a formal party in the case.

41. Keeping in view of the above facts and circumstances, this Court does not find any cogent reasons to exercise its powers under Section 528 of the BNSS or under Article 227 of the Constitution of India. In view of the same the impugned order dated 15th April, 2024 passed by the learned ASJ-06, South, Saket Courts, New Delhi in Cr. Rev. No. 124/2021 is, hereby, upheld.

42. Accordingly, the instant petition stands dismissed along with the pending applications, if any.



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43. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

NOVEMBER 5, 2024

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Click here to check corrigendum, if any

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