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

+ **CRL.M.C. 4289/2018**

**VINOD KUMAR PAUL**

..... Petitioner

Through: Mr. Anuj Aggarwal, Mr. Sidharth  
Nair and Mr. Shubham Bahl, Advocates

versus

**THE STATE GOVT. OF NCT DELHI & ORS** ..... Respondents

Through: Ms. Shubhi Gupta, APP for State with  
SI Sumit, P.S. Subhash Place.

Mr. P.D. Gupta, Senior Advocate with Mr. Atul  
Gupta, Advocate for R-4.

**CORAM:**

**HON'BLE MS. JUSTICE JYOTI SINGH**

**ORDER**

**01.02.2024**

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1. This petition has been preferred under Section 482 Cr.P.C. on behalf of the Petitioner seeking quashing of order dated 03.08.2017, passed by learned CMM (North-West), Rohini, Delhi, whereby cancellation report dated 12.09.2012 filed by the Investigating Officer was accepted and protest petition filed by the Petitioner was dismissed. Petitioner has also laid a challenge to an order dated 14.05.2018, passed by the Revisional Court in Crl. Rev. No. 181/2017, whereby the revision petition was dismissed and order dated 03.08.2017 was upheld.

2. Case of the Petitioner, as averred in the petition is that father of the Petitioner expired on 11.11.1997 under mysterious circumstances and was cremated on the same day by Respondent No.2, without informing the family including the Petitioner herein. Petitioner has been residing at



Chandigarh since 1998 with his mother and on learning of his father's death after several days, immediately approached the police, but neither any investigation was carried out nor FIR was registered. Compelled by the circumstances, Petitioner filed a complaint on 15.03.2004 under Section 156(3) Cr.P.C. and the learned Metropolitan Magistrate, Tis Hazari Courts, New Delhi, vide order dated 03.03.2005, directed the Police to register an FIR against Respondents No.2 to 6. Accordingly, FIR No.208/2005 was registered on 05.03.2005 under Sections 406/420/379/120B/34 IPC at PS: Saraswati Vihar but police did not carry out proper investigation and failed to collect material evidence, only to help the accused persons. The collusion was evident from the fact that the Police submitted a cancellation report dated 20.04.2006, which was unwarranted in the facts of the present case.

3. It is further averred that since the cancellation report dated 20.04.2006 was lacking in material particulars, Petitioner submitted his objections against the report and the learned MM, after satisfaction that the cancellation report was not touching upon the material points and appeared to be faulty, issued directions to Delhi Investigating Unit ('DIU'), Rohini, Delhi to further investigate the matter. Unfortunately, DIU also conducted shoddy investigation and did not look into the unnatural death of Petitioner's father or the reason why his father was cremated in a distant cremation ground at Nigam Bodh Ghat, instead of the cremation ground situated close to the residence of his deceased father. Investigation ought to have been done into the conduct of Respondent No.2, who cleverly pretended and portrayed himself as nephew of deceased Ram Prakash before the concerned persons at the cremation ground and gave his name as Om Prakash Paul, whereas his actual name is Om Prakash Dakeria. The cremation slip issued at the



cremation ground as well as records in the office of MCD are evidence to the fact that Respondent No.2 deliberately changed his name and added the surname Paul with a view to show himself as a nephew of deceased Ram Prakash Paul, so as to grab his property but this was also overlooked during investigation. DIU also filed a cancellation report dated 12.09.2012, which primarily relied on the statements of Respondent No.2, one of the accused persons and was collusive.

4. On 01.09.2016, learned MM directed the IO to produce the statement given by Respondent No.2, but the order was never complied with and finally vide order dated 03.08.2017, cancellation report was accepted by the learned MM and the protest petition was dismissed. Aggrieved by this order, Petitioner filed Revision Petition being CrI. Rev. No. 181/2017 before the Additional Sessions Judge, North West-03, Rohini Courts, Delhi, which was also dismissed on 14.05.2018, leading to filing of the present petition.

5. Learned counsel for the Petitioner submits that Petitioner's father was residing at Delhi due to differences with his mother. Petitioner was living in Chandigarh with his mother but he and his sisters were meeting the father from time to time and were on good terms. In April, 1997, when Petitioner visited his father along with his sister, they found that Respondents No.2 and 3 were residing with him as attendants/caretakers. In August, 1998, when Petitioner came to meet his father, he was shocked to see that the house was demolished and a multi storeyed building was being constructed. On contacting Respondent No.5, Petitioner learnt that his father had passed away and it was obvious to the Petitioner that it was not a natural death and he was murdered for the sake of property and other assets. Mysteriously even his cremation was carried out at a far away place at Nigam Bodh Ghat,



despite the fact that a cremation ground was located near Prashant Vihar, where his father was residing.

6. Learned counsel contends that father of the Petitioner has been murdered by a well-orchestrated plan and conspiracy hatched between Respondents No.2 to 5, for the purpose of taking away the movable and immovable assets of his deceased father. This is demonstrated by the fact that Respondent No.2 was earlier living in a *jhuggi* but he suddenly got nearly Rs. 5 lacs to purchase a house in Saraswati Vihar. It was strange and unbelievable that his father would have executed an unregistered Will only a day prior to his death, bequeathing all his assets in favour of Respondent No.2, when he had executed a registered Will of his house in Saraswati Vihar, just 6 months prior thereto or that at the age of 95 years, any prudent person would want to sell his only residential house and that too in favour of someone, whom he had hardly known. In a nutshell, the grievance is that the protest petition was erroneously dismissed by the Trial Court without considering that Police had repeatedly filed false cancellation reports, in collusion with Respondents No.2 to 6 overlooking that Respondent No.2 had forged the signatures of his father on the GPA and Will and murdered him so that the mystery of forgery would never be resolved and the order was wrongly upheld by the Revisional Court.

7. Learned Senior Counsel for Respondent No.4 and learned APP for the State have raised common grounds to defend the impugned orders and state that the matter was duly investigated and only when no incriminating evidence was found against the Respondents, closure report was filed and was correctly accepted by the learned CMM. Finding no infirmity in the order, the revision petition was also dismissed by the learned Additional



Sessions Judge.

8. I have heard learned counsel for the Petitioner and learned Senior Counsel for Respondent No.4 as well as learned APP for State.

9. It is an undisputed fact that FIR No. 208/2005 was registered on 05.03.2005 under Sections 406/420/379/120B/34 IPC by the Police against five persons, pursuant to the order of learned MM. Petitioner/Complainant alleged that his father, late Ram Prakash was the owner and in possession of property bearing No. E-1073, Saraswati Vihar, Delhi. Petitioner and his other family members were staying at Chandigarh on account of differences between his parents and taking advantage of the fact that Petitioner's father was alone and aged, Respondents No. 2 and 3 started residing with his father. During his visit to his father's house in 1998, Petitioner learnt that his father had expired and after demolishing his house, a multi storeyed building was being constructed by the accused persons and it was obvious to him that his father was murdered by the Respondents to grab his movable and immovable assets.

10. After completion of investigation, IO filed a cancellation report dated 20.04.2006 but dissatisfied with the investigation, Court directed DIU to conduct further investigation, which was carried out and post investigation, second cancellation report dated 12.09.2012 was submitted by DIU. Objections were filed by the Petitioner on 12.02.2014 giving host of grounds to point out that the investigation was shoddy and crucial and material facts had been deliberately ignored by the Police.

11. Learned Trial Court examined the investigation report and other documents and observed that investigation revealed that the property in question was allotted to late Ram Prakash by DDA in 1975 and he was



residing therein since 1981. He had been judicially separated from his wife since 1972. During his last days, he was living with Respondent No.2/ Accused No.1/Om Prakash Dakeria in the said property and in the mid of 1997 sold the property to Respondent No.2 through GPA etc. Later Respondent No.2 sold the property to Mohan Devi through GPA and other related documents and in this transaction, Ram Prakash was the attesting witness on the property documents. Mohan Devi got the property converted to freehold from DDA and sold the same to a builder firm M/s. Kirtimaan Developers through a sale deed and finally in the year 1998, property was sold to Respondent No.4/Dr. Ravi Gupta. Ram Prakash expired on 11.11.1997 at the age of 95 years. Trial Court noted that both the documents transferring the property in favour of Om Prakash and later by him in favour of Mohan Devi, were registered and when the GPAs were sent to FSL, as per the report dated 30.08.2005, no divergence was observed between the questioned and standard signatures and the writings were similar in most of the general features such as movement, skill, speed, spacing, alignment, strokes etc. Based on this analysis, the Trial Court concluded that late Ram Prakash had willingly transferred the property in favour of Om Prakash under a duly registered GPA.

12. Insofar as the allegation that Petitioner's father was murdered by the Respondents was concerned, Court came to a conclusion that he had died at the age of 95 years and it was a natural death, which was proved through investigation. Finding that there was no incriminating evidence against the accused persons and that investigation had been conducted from all possible angles, cancellation report was accepted and protest petition filed by the Petitioner was dismissed.



13. For similar reasons and after examining the record, by a detailed order, the Revisional Court upheld the order of the Trial Court. The Revisional Court further observed that perusal of the record revealed that the Will and other documents executed by late Ram Prakash, in respect of the property, were registered documents. Ram Prakash, as per record, was a retired teacher and not any illiterate person, who would not know what he was signing on. Court noted that Petitioner was residing in Chandigarh and had left his father alone in Delhi only to wake up after his death and his claims were even otherwise not substantiated as none of the other sisters approached the Court making any claim.

14. Having heard the parties, first and foremost, this Court finds that Petitioner has already exhausted the remedy of revision *albeit* unsuccessfully. Indisputably, High Courts enjoy inherent powers under Section 482 Cr.P.C., but that power has to be exercised sparingly and with great caution, where a person approaching the High Court has already availed the remedy of first revision before the Sessions Court, as observed by this Court in ***Surender Kumar Jain v. State & Anr., 2012 SCC OnLine Del 571***. In the said judgment, the Court had relied on the judgments of the Supreme Court in ***Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551***; ***State of Orissa v. Ram Chander Agarwala and Others, (1979) 2 SCC 305*** and ***Rajan Kumar Manchanda v. State of Karnataka, 1990 Supp SCC 132***, wherein the Supreme Court observed that bar under Section 393(3) Cr.P.C. cannot be overcome merely by stating that the petition was filed invoking inherent powers of the High Court under Section 482 Cr.P.C. In ***Rajinder Prasad v. Bashir and Others, (2001) 8 SCC 522***, the Supreme Court held as follows:-



*“7. .... though the power of the High Court under Section 482 of the Code is very wide, yet the same must be exercised sparingly and cautiously, particularly in a case where the petitioner is shown to have already invoked the revisional jurisdiction under Section 397 of the Code. Only in cases where the High Court finds that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order was not correct, the High Court may, in its discretion, prevent the abuse of the process or miscarriage of justice by exercise of jurisdiction under Section 482 of the Code. It was further held: (SCC p. 248, para 10)*

*“10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person — accused/complainant — cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code.”*

15. In ***Kailash Verma v. Punjab State Civil Supplies Corporation and Another***, 2005 SCC OnLine SC 120, the Supreme Court observed as under:-

*“5. It may also be noticed that this Court in Rajathi v. C. Ganesan [(1999) 6 SCC 326 : 1999 SCC (Cri) 1118] said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilised as a substitute for second revision. Ordinarily, when a revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to revision before the High Court under Section 397(1) of the Criminal Procedure Code as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law are not complied with and when the High Court feels that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.”*

16. The question therefore is whether Petitioner has made out an extraordinary case warranting interference by this Court under Section 482 Cr.P.C. and having examined the facts of the case and the record, in my view, the answer to the question is in the negative. Conjoint reading of both the impugned orders leads this Court to conclude that no infirmity can be



found in accepting the cancellation report and dismissing the protest petition/objections filed by the Petitioner. During investigation, role of an investigator is not only to collect material in favour of the Complainant but he is under a mandate to collect all relevant material so that truth surfaces. After the entire available material is collected, the Investigating Officer will form a final opinion whether the final report under Section 173 Cr.P.C. or a cancellation report is to be filed and this decision or opinion is the call of the Investigating Officer, based of-course on the material collected. It has been held in various judgments that while accepting a cancellation report, Magistrate does not enter into the realm of appreciation of evidence. However, sifting of the material collected during investigation has to be carried out and if the version of the Complainant is not substantiated, Court would be within its jurisdiction to accept the cancellation report, dismiss the protest petition and drop the proceedings. [***Ref: H.S.Bains, Director, Small Saving-cum-Deputy Secretary Finance, Punjab, Chandigarh v. State (Union Territory of Chandigarh), (1980) 4 SCC 631 and K v. The State Govt. of NCT of Delhi, 2016:DHC:7418***].

17. On perusal of the cancellation reports and other documents on record, this Court is of the considered view that no fault can be found with the investigation conducted by DIU, which is an independent Investigating Agency. The Investigating Officer investigated into the entire chain of documents and found that late Ram Prakash had transferred the property in favour of Respondent No.2 by and under duly executed GPA, Will etc. and he was an attesting witness on the documents of sale between Respondent No.2 and Mohan Devi. DDA converted the property to freehold on an application by Mohan Devi and it was only thereafter that the property was



sold to a builder and finally to Ravi Gupta. The questioned documents were also sent to FSL and as per the FSL report, the questioned and the standard signatures and the writings matched in most of the general characters. Therefore, during investigation, material of impeccable nature in the form of FSL report, GPAs, documents pertaining to conversion of property into freehold, etc. was collected. Both Courts correctly noted that the transactions were valid and with the consent of late Ram Prakash, who was a retired teacher and educated enough to know what he was signing on. Finding was also rendered based on the documents related to his death that he died at an age of 95 years and it was a natural death. This Court finds no error in the conclusion drawn by the learned Trial Court or with the order dismissing the revision petition.

18. Accordingly, the Revision Petition is dismissed, being devoid of merit.

**JYOTI SINGH, J**

**FEBRUARY 01, 2024/kks/DU**