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

+ **CRL.M.C. 6246/2019**

SUBHASH CHANDER SURI

.....Petitioner

Through: Mr. Neerad Pandey and Mr. Mayank
Shekhar Sushwaha, Advocates

versus

LAJPAT RAI SURI & ORS.

.....Respondents

Through: Mr. Jagjit Singh, Ms. Preet Singh and
Mr. Rahul Khan, Advocate for R-1, 3
and 4.
Mr. G. Rajpur, Advocate for R-2 & 5.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

27.02.2025

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1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter “Code”) [now under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter “BNSS”)] has been filed on behalf of the petitioner seeking setting aside of the order dated 25th October, 2019 (hereinafter “impugned order”) passed by the learned Additional Sessions Judge, South, Saket Courts, New Delhi (hereinafter “ASJ”) in Criminal Revision No. 189/2019.

2. The brief facts of the case are that the petitioner/complainant alleged that he is one of the co-owners of Shop No. 32, Central Market, Lajpat Nagar, New Delhi which was allotted by the Ministry of Rehabilitation vide lease deed/conveyance deed dated 10th November, 1966. The said shop was



run in the name and style of M/s Devi Das Suri & Sons by the petitioner's father namely Mr. Devi Das Suri, who was the Karta of the Hindu Undivided Family (HUF). Thereafter, Mr. Devi Das Suri passed away on 19th September, 1989, leaving behind nine legal heirs i.e., his widow wife, seven sons and one daughter.

3. It is stated in the complaint that the respondent no. 1, 3, 4 along with the widow namely Smt. Budhwanti filed a civil suit bearing no. 356/1990 against the petitioner and his brother Mr. Ved Prakash Suri seeking permanent injunction from interfering with the business and possession of the said shop. *Vide* order dated 15th September, 2004, the Court concerned decreed the suit in favour of the plaintiffs therein. However, while the said proceedings were pending before the Court concerned, the petitioner alleged that the mutation of certain portion of the shop was done by illegal and unauthorized means.

4. Aggrieved by the order dated 15th September, 2004, the petitioner filed an appeal and the Court concerned referred the matter to the Mediation Centre. Accordingly, a settlement was arrived at between the parties on 8th August, 2007. The Court concerned passed the order dated 13th February, 2008, wherein, it was agreed that the amount deposited as FDR shall be released to the petitioner and Mr. Ved Prakash Suri on mutation of portions of the property in favour of their respective names. It was further directed that the petitioner shall appear before the Sub-Registrar on 25th February, 2008 and cooperate with the respondents in getting the registered relinquishment deed signed before the Court.

5. It was alleged that on 25th February, 2008, the relinquishment deed submitted by the respondents was not accepted by the Sub-Registrar on the



ground that the same is a fabricated document.

6. Aggrieved by the same, the petitioner filed the instant complaint bearing no. 663/2013 under Section 200 of the Code before the learned Metropolitan Magistrate-05, South, Saket, New Delhi (hereinafter “MM”), however, vide order dated 20th February, 2019, learned MM dismissed the complaint on the ground that the instant matter is of civil nature.

7. Aggrieved by the dismissal, the petitioner filed a review petition before the learned ASJ and by the impugned order, the same was dismissed.

8. Hence, the instant petition is filed by the petitioner seeking setting aside of the impugned order.

9. Learned counsel appearing on behalf of the petitioner submitted that the learned ASJ passed the impugned order without considering the material on record and appreciating the facts of the case.

10. It is submitted that the petitioner filed the instant complaint under Section 200 of the Code alongwith an application under Section 156(3) of the Code, which was dismissed by the learned MM vide order dated 31st March, 2014. Thereafter, the matter was listed for pre-summoning evidence and after completion of the same, the learned MM erroneously reached a conclusion that the instant case is of civil nature, thereby dismissing the complaint *vide* the impugned order.

11. It is submitted that the learned ASJ has failed to consider that the instant case is filed alleging the respondents of cheating and forgery of documents pertaining to the aforesaid shop, thereby making a criminal case against them.

12. It is submitted that as per the order dated 13th February, 2008, the total decreed amount is Rs. 40,00,000/-, out of which the petitioner and Mr.



Ved Prakash Suri received an amount of Rs. 6,00,000/- and Rs. 4,00,000/- respectively. The remaining amount of Rs. 30,00,000/- was already deposited in the FDR, which will be disbursed to the petitioner and Mr. Ved Prakash Suri in the ratio of Rs. 18,00,000/- and Rs. 12,00,000/-, respectively on mutation of the respective portions of the property.

13. It is submitted that the learned ASJ has ignored the evidence given by CW-1 herein i.e., Deputy Manager of Axis Bank wherein it was stated that the respondent no. 2 has been enjoying the interest accrued upon Rs.30,00,000/- i.e., deposited FDR, without informing and taking permission from the petitioner, thereby showing their intent to deceive the Courts and the petitioner.

14. It is submitted that there is sufficient material on record proving a case against the respondents, however, the same was ignored by the learned MM while dismissing the complaint under Section 203 of the Code and the same was erroneously upheld by the learned ASJ.

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

16. *Per Contra*, learned counsel appearing on behalf of the respondents vehemently opposed the instant petition and submitted that the instant petition is nothing but a gross misuse of process of law.

17. It is submitted that the learned ASJ has rightly observed that the persisting issue is with regard to the payment to be made to the petitioner as directed by the Court concerned vide order dated 13th February, 2008. Furthermore, the learned ASJ has rightly observed that the instant case is civil in nature and that the petitioner can claim the said amount by filing appropriate applications before the Court concerned. Therefore, the filing of



the complaint under Section 200 of the Code is frivolous.

18. It is further submitted that the FDR of Rs. 30,00,000/- in the name of Court concerned i.e., learned ADJ was issued by the Axis Bank, which is kept in a sealed cover and the same is to be released in favour of the petitioner and Mr. Ved Prakash Suri in the ratio of Rs. 18,00,000/- and Rs. 12,00,000/-, respectively, alongwith the interest accrued thereon.

19. It is submitted that Mr. Ved Prakash Suri filed an execution petition bearing no. 25379/2016 before the learned ADJ-01 Central, Tis Hazari Court, Delhi and *vide* order dated 10th April, 2018, the execution Court directed the Axis Bank to pay a sum of Rs. 23,02,694/- to Mr. Ved Prakash Suri as per the terms mentioned therein. Accordingly, the execution Court recorded in order dated 26th April, 2018 that the amount of Rs.23,02,694/- was handed over to Mr. Ved Prakash Suri.

20. It is submitted that the petitioner's share is still pending with the Court concerned and an amount of Rs. 34,54,043/- is still lying with the learned ADJ for the past 7 years.

21. It is submitted that the petitioner has concealed a material fact before this Court regarding the filing of the execution petition. He has also filed an application for releasing the said amount. Moreover, the petitioner herein lodged a complaint under Section 200 of the Code, thereby giving a criminal colour to a civil dispute.

22. It is submitted that the learned MM and learned ASJ has rightly considered the material on record and accordingly, assigned sufficient reasons while dismissing the complaint under Section 203 of the Code, therefore, there is no cogent reason for this Court to interfere in the impugned order.



23. It is submitted that in view of the above facts, there is no illegality in the impugned order and therefore, no grounds are available for the purpose of exercising inherent powers under Section 482 of the Code for interfering in the impugned order.

24. In view of the foregoing submissions, it is prayed that the instant petition may be dismissed, being bereft of any merit.

25. Heard learned counsel for the parties and perused the record.

26. At this juncture, it is pertinent to understand the scope of interference of this Court under Section 482 of the Code i.e., Section 528 of the BNSS, wherein this Court is bestowed with inherent jurisdiction to exercise its powers to either “prevent any abuse of process of law” or “secure the ends of justice”. However, the said terminologies are devoid of any specific definition due to its wide ambit and therefore, the determination as to whether the case falls within the scope of the aforesaid terms lies with the Court and must be testified based on the established principles of law. Moreover, under this provision, the Court must exercise its adverse powers sparingly, cautiously and in exigent cases.

27. Therefore, keeping the foregoing in mind, the limited question for adjudication before this Court is whether the impugned order suffers from any illegality.

28. For the sake of convenience, this Court finds it apposite to examine the findings of the impugned order. The relevant portion of the same are as follows –

“With the settlement dated 13.02.2008 in OA 21/07, the issue got narrowed down to payment to the revisionist and his brother. Some payment was made before the Court and for the remaining FDR had been deposited. The FDR was also to be



released within six months with proportionate accrued interest even if the mutation was not done. According to the revisionist the mutation could not be done due to certain forgeries committed by the proposed accused. Be that as it may, the revisionist and his brother Mr. Ved Prakash Suri could have withdrawn the amount of FDR from the Court of Ld. ADJ. In the status report filed by the police before Ld. MM, it is stated that the proposed accused claimed that interest amounting to Rs. 15,00,000/- is lying in Axis Bank. CW-1 stated that no interest was lying in the bank against the FDR and the interest was withdrawn by the proposed accused Mr. Rajender Pal Suri. Even if the interest was being withdrawn by Mr. Rajender Pal Suri, revisionist and his brother could have withdrawn the FDR from the Court of Ld. ADJ and could have filed appropriate petition to recover the accrued interest. The present complaint was filed in the year 2013 approximately five years after the settlement in OA 21/07. I completely agree with the observation of Ld. MM that it is a civil dispute. The complaint is nothing but an abuse of process of law. I do not find any infirmity in the impugned order. Revision is dismissed. Copy of this order be sent to Learned Trial Court along with Trial Court record. Revision file be consigned to record room.”

29. Before advertng to the instant case, it is pertinent to examine the procedure laid down under the relevant provisions of the Code pertaining to the complaints made to the Magistrate. The relevant provisions i.e., Sections 200, 201, 202, 203, 204 of the Code lays down the powers of the Magistrate, wherein either the process is issued or complaint is dismissed. The considerations of each provision and their scope has been discussed by the Hon’ble Supreme Court in the case of ***Pramatha Nath Talukdar v. Saroj Ranjan Sarkar***, 1961 SCC OnLine SC 155 and the relevant extract of the same is as follows –

“50. Under the Code of Criminal Procedure the subject of “complaints to Magistrates” is dealt with in Chapter XVI of the



Code of Criminal Procedure. The provisions relevant for the purpose of this case are Sections 200, 202 and 203. Section 200 deals with examination of complainants and Sections 202, 203 and 204 with the powers of the Magistrate in regard to the dismissal of complaint or the issuing of process. The scope and extent of Sections 202 and 203 were laid down in Vadilal Panchal v. Dattatraya Dulaji Gha Digaonkar [Vadilal Panchal v. Dattatraya Dulaji Gha Digaonkar, AIR 1960 SC 1113 : 1960 Cri LJ 1499] . The scope of enquiry under Section 202 is limited to finding out the truth or otherwise of the complaint in order to determine whether process should issue or not and Section 203 lays down what materials are to be considered for the purpose. Under Section 203 of the Criminal Procedure Code the judgment which the Magistrate has to form must be based on the statements of the complainant and of his witnesses and the result of the investigation or enquiry, if any. He must apply his mind to the materials and form his judgment whether or not there is sufficient ground for proceeding. Therefore if he has not misdirected himself as to the scope of the enquiry made under Section 202 of the Criminal Procedure Code, and has judicially applied his mind to the material before him and then proceeds to make his order it cannot be said that he has acted erroneously....”

30. As required under Section 203 of the Code, dismissal of the complaint can be done by the Court after considering the statements of the complainant and witnesses therein. In the instant case, the learned MM has examined the witnesses i.e., CW-1 to CW-5 and after taking the same into account, dismissed the complaint vide order dated 20th February, 2019, wherein it was observed that no criminal offence was made out as the allegations raised by the complainant are civil in nature.

31. Given that the learned MM has dismissed the complaint on the ground that the instant case is of civil nature, which was upheld by the learned ASJ vide impugned order, it is pertinent to note that it is trite law



that the criminal proceedings which are inherently civil in nature may be quashed as observed in the case of ***Paramjeet Batra v. State of Uttarakhand***, (2013) 11 SCC 673.

32. Considering the immense increase in the number of criminal cases being filed, which are essentially are of civil nature, the Hon'ble Supreme Court in the case of ***A.M. Mohan vs. The State Represented by SHO and Another***, 2024 INSC 233 observed the implications of filing such cases, which are disguised as criminal cases. The relevant extracts of the same are as follows –

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed: (SCC p. 643, para 8)

33. *“It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to*



secure the ends of justice.”

34. In the present case, after examining the Lower Court Record, it is observed that the issue raised by the petitioner is pertaining to the FDR amount which was not received due to fabricated documents presented before the concerned Sub-Registrar. However, as rightly observed by the learned ASJ, the petitioner had other remedies available, wherein he could have withdrawn the said FDR from the learned ADJ and filed an appropriate petition for the recovering the accrued interest thereon, which was allegedly withdrawn by one Mr. Rajender Pal Suri.

35. Moreover, it is observed that the Mr. Ved Prakash Suri filed an execution petition, thereby recovering the said amount alongwith the interest accrued thereon, amounting to Rs. 23,02,694/-, which was recorded in the orders dated 10th April, 2018 and 26th April, 2018 passed by the learned ADJ. This Court is also apprised that the petitioner's share of Rs. 34,54,043/- has been pending with the learned ADJ for the past 7 years. Moreover, as per the respondents' contention, the petitioner has also filed an execution petition before the Court concerned and an appropriate application for recovering the said amount.

36. Taking into consideration the foregoing discussion, it is observed that the learned MM has rightly dismissed the complaint under Section 203 of the Code after examining the witnesses and the petitioner/complainant as the instant case, which is essentially a civil case, was given a criminal colour in order **to** unnecessarily pressurize the respondents herein despite having appropriate remedies in recovering the said amount *via* filing appropriate petition. The said route was taken by one Mr. Ved Prakash Suri,



who filed an execution petition and recovered the FDR amount alongwith the interest accrued thereon.

37. Therefore, considering the law laid down by the Hon'ble Supreme Court as well as the facts and circumstances of the case, this Court is of the considered view that the learned ASJ has not committed any error or illegality in passing the impugned order and therefore, this Court does not find any reason to exercise its inherent powers under Section 482 of the Code (Section 528 of the BNSS) by interfering in the impugned order.

38. Accordingly, the instant petition, being bereft of any merit, stands dismissed alongwith pending applications, if any.

CHANDRA DHARI SINGH, J

FEBRUARY 27, 2025

Rk/mk/kj

Click here to check corrigendum, if any