

**IN THE COURT OF SURESH KUMAR GUPTA
ADDL SESSIONS JUDGE-04 & SPECIAL JUDGE (NDPS) ACT
SOUTH EAST DISTRICT: SAKET COURT: NEW DELHI**

CR No. 24 of 2017

State (Govt. of NCT of Delhi)

.....Revisionist

Vs.

**1 Sarita Parwanda,
W/o Sh. Vipin Parwanda,
R/o 139, Pocket A-8, Kalkaji Exten.,
New Delhi.**

**2 Sh. Vipin Parwanda,
R/o 139, Pocket A-8, Kalkaji Extn.,
New Delhi.**

.....Respondents

Instituted on : 16.01.2017
Arguments heard on : 07.09.2019
Decided on : 20.09.2019

ORDER

1 The revisionist has impugned the order dated 25.10.2016 passed by Ld. Trial Court vide which respondents have been discharged from the case in hand.

2 The revision has been filed on the grounds that respondent have sold property in question to the complainant and possession was also delivered. The respondents have no right, title or interest in the property in question to mortgage it with J & K Bank Limited. The property in question was again mortgaged by respondents with HDFC Bank and thereby they have also cheated HDFC Bank. Sh. Rajesh Bindra, close relative of respondent have colluded with the respondent in mortgaging the first floor of the property in question with HDFC Bank. The property in question was sold by the respondents to their daughter in order to procure loan from ICICI Bank but it was declined. The respondents have forcibly entered in the second floor of the property in question after breaking its lock. There can not be any roving inquiry at the stage of charge. Hence, this revision.

3. The revisionist has also filed an application for condonation of delay on the ground that copy of the order was obtained only on 04.01.2017. The delay is due to processing and obtaining permission from the concerned officials for filing the revision. The delay is due to abovestated reason which is neither intentional nor deliberate.

4 Notice of the revision is given to the respondents.

5 The facts of the case are like this. The complainant Sanjeev Malhotra gave a written complaint to the police with the allegation that respondents were owners of property bearing no. 139, Pocket 8, Kalkaji Extension, New Delhi. There are four floors i.e. basement, ground floor, first floor and second floor. The respondents have sold second floor vide agreement dated 01.04.1994 and handed over its possession to him. They have also sold basement and ground floor vide sale agreement dated 01.07.1994 and handed over its vacant possession to him. The respondents have pledged the entire property in question to J & K Bank. The bank has filed a suit for recovery against them. The respondents have sold first floor of the property in question to Sh. Rajesh Binda vide sale deed dated 26.09.2007 when it was mortgaged with J & K Bank. Sh. Rajesh Bindra, in collusion with respondents, has mortgaged the first floor with HDFC Bank. The respondent have sold the second floor to their daughter Ms. Sonia Grover vide sale deed dated 16.02.2009 in order to take the loan. The loan was applied with ICICI bank but it was declined. The respondent have sold the entire property to Sh. Ashish Uppal, Sh. Manoj Kumar and Sh. Surender Kumar vide agreement to sell dated 25.10.2009. The respondents have

broken the locks of the second floor which was in his possession and handed over it possession to Sh. Ashish Uppal, Sh. Manoj Kumar and Sh. Surender Kumar. All of them approached him to ascertain the true facts who filed the case against the respondents. The FIR was registered on the written complaint. Usual investigation was carried out. Charge sheet u/s 420/468/448/34 IPC was filed against them.

6 Ld. Trial Court after hearing Ld. APP for the State, Ld. Defence Counsel and perusing the record has discharged the respondent.

7 Ld. Addl. PP for the state submitted that respondents were the owners of the property in question who have entered into an agreement to sell dated 01.04.1994 and 01.07.1994 to sell basement, ground floor and second floor to the complainant and handed over the vacant possession to the complainant. He further submitted that the respondents have mortgaged the entire property with J & K Bank. He further submitted that the respondents have sold the first floor and second floor of the property to Sh. Rajesh Bindra and Ms. Sonia Grover in order to take the loan. He further submitted that respondents have sold the property to Ashish Uppal, Manoj Kumar and Surender Kumar. He further submitted that respondents had no right and title

to either mortgage or to sell it once agreement to sell was entered with the complainant. He further submitted that the respondents have cheated the complainant and also created forged documents by executing sale deeds and agreement to sell.

8 Ld. Counsel for the respondents submitted that there is no material on record to show that there was dishonest intention on their part to cheat the complainant at the time of execution of agreement to sell with the complainant. He further submitted that respondent have executed the sale deeds by claiming themselves as owners of the property in question. He further submitted that J & K Bank has not filed any complaint qua cheating against them. He further submitted that Sh. Ashish Uppal, Sh. Manoj Kumar and Sh. Surender Kumar have settled the matter with the respondents. He further submitted that there is no material on record that complainant was cheated or any forged document was prepared by the respondents. He has placed reliance on Mohd. Ibrahim & ors. vs. State of Bihar & ors., 2009 (4) JCC 2753.

9 Heard and perused the record.

10 Section 415 IPC says that whoever, by deceiving any person,

fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property is set to cheat. The explanation would state that a dishonest concealment of facts is a deception within the meaning of this section.

11. Section 463 IPC defines forgery to the effect that whoever makes any false document or false electronics record or part of a document or electronic record with intent to cause damage (or injury) to the public to any person or to support any claim or title or to cause any person to part with property or to enter into any express or implied contract with intend to commit fraud or that fraud may be committed, commits forgery.

12 Section 464 IPC Making false document.--- A person is said to make a false document or false electronic record--

First—who dishonestly or fraudulently--

(a) makes, signs, seals, or executes a document or part of a

document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature or any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, authenticity of the digital signature with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed, sealed executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed;

Secondly- xxxx

Thirdly – xxxx

Explanation 1 - xxxx

Explanation No.2-The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

13 Section 467 IPC provides that whoever forges a document which purports to be a valuable security shall be punishable.

14 The condition precedent for an offence u/s 467 and 471 IPC is forgery and creation of a false document.

15 In Niranjan Singh Karam Singh Punjabi v. Jitender Bhimraj Bijjaya, AIR 1990 SC 1962, and after considering the provisions of sections 227 and 228 Cr.PC, the court posed a question, whether at the stage of framing the charge, the trial court should marshal the material on record of the case as he would do on the conclusion of trial. The court held that at the stage of framing the charges, the charge inquiry must necessarily be limited to deciding if the facts emerging from such materials constitutes the offence with which accused could be charged. The court may peruse the record for a limited purpose, but it is not required to marshal it with a view to decide the reliability thereof.

16 The contention of the parties have to be seen in the light of the law laid down by their Lordships.

17 There is delay in filing the revision petition. The revision is filed by the State. The time is consumed to take the opinion from the Department.

The delay does not smack of malafide on the part of revisionist. Moreover, the technicalities should not be given much importance and case should be decided on merits. The reason given by the revisionist comes within the ambit of sufficient cause and accordingly delay in filing the revision is condoned.

18 In the instant case, respondents were the owner of property bearing no. 139, Pocket A, Kalkaji Extn., New Delhi. The property comprises of Four Floors i.e. basement, ground floor, first floor and second floor. The perusal of the record shows that the respondents have executed agreement to sell dated 01.04.1994 regarding second floor of the property in favour of the complainant and also executed agreement to sell dated 01.07.1994 regarding basement and ground floor of property in question in favour of the complainant. The perusal of the record also shows that the respondents have also executed Will, possession letter and other documents in favour of the complainant.

19 There is no material on record even at this stage to show that there was dishonest intention on the part of respondents at the time of executing agreements to sell with the complainant. The dishonest intention at

the time of execution of the agreement has to be seen and dishonest intention is missing from case in hand. Further, agreement to sell does not confer any right, title or interest in favour of the complainant. The complainant did not lodge any complaint from 1994 onwards for the reasons best known to him. The perusal of the record shows that respondents have issued a receipt that physical possession of the property in question has been given to the complainant. No document is collected by prosecution to show that complainant was actually in possession of the property in question. There is nothing in the record to show that when the respondents have actually trespassed in the property in question. There is only a bald allegation.

20 The respondents have executed the mortgage documents in favour of J & K Bank and obtained the loan against the property in question. The bank has recovered its loan from the respondents. No complaint is filed by the bank that there was cheating with the bank.

21 The respondents had executed the sale deeds of first floor and second floor in favour of Rajesh Binda and Sonia Grover. They have also executed advance receipt cum agreement to sell dated 25.10.2009 in favour of Maonj, Ashish and Surender.

22 In Mohd. Ibrahim & ors. vs. State of Bihar & Ors., (Supra) it was held by the Lordship that when a document is executed by a person claiming a property which is not his, he is not claiming that he is some one else nor is he claiming that he is authorised by someone else. Therefore, the execution of such documents (purporting to convey some property of which he is not owner) is not the execution of a false document u/s 464 IPC. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attractive.

23 It is not only sufficient that document has been executed dishonestly or fraudulently but it must have been made with the intention of causing it to be believe that such document was made or executed by the authority of the person by whom or by whose authority he knows that it was not made or executed.

24 In the instant case, the respondents have executed the documents by claiming themselves as owners of the property. They have not claimed that they have been authorised or empowered by someone else to execute the documents. The execution of document on the part of respondents does not come within the ambit of false document as defined u/s 464 IPC. Therefore,

there is not question of forgery if the document is not false. There is nothing in record in this case to show that respondents have executed any false document.

25 Sh. Ashish Uppal, Sh. Manoj Kumar and Sh. Surender Kumar have prosecuted the respondents for the offence of cheating and they have compounded the matter with the respondents.

26 To my mind, the entire material on the record nowhere creates a strong suspicion the respondents have committed the offence in question.

27 I do not find any infirmity in the order dated 25.10.2016 passed by Ld. Trial Court.

28 The revision petition is dismissed.

29 TCR alongwith copy of this order be sent back.

30 Revision file be consigned to records.

announced in the open court on

20th September, 2019

(SURESH KUMAR GUPTA)
Add. Sessions Judge-04 & Spl. Judge (NDPS)
South East, New Delhi