

(2018) 08 DEL CK 0359

In the Delhi High Court

Case No : Criminal Miscellaneous Petition No. 2330 Of 2015 & Criminal Miscellaneous Appeal No 8133 Of 2015, 3371 Of 2016

Sandeep Singh Bhatia

APPELLANT

Vs

State Govt. Of Nct Delhi & Anr

RESPONDENT

Date of Decision : 09-08-2018

Acts Referred:

Indian Penal Code, 1860 — Section 466, 468, 471
Code of the Criminal Procedure, 1973 — Section 482

Citation : (2018) 08 DEL CK 0359

Hon'ble Judges : R.K.GAUBA, J

Bench : Single Bench

Final Decision : Diposed Off

Judgement

R.K.GAUBA, J

1. On a complaint made by the second respondent (the first informant) the Station House Officer (SHO) of Police Station Rajouri Garden, West Delhi

registered first information report (FIR) No.1373/2014 on 26.11.2014 to take up investigation into alleged offences punishable under Sections

468/466/471 of the Indian Penal Code, 1860 (IPC). It appears allegations have been made in the said FIR, inter alia, against the petitioner.

2. By the petition at hand, prayer is made for this court to exercise its inherent power and jurisdiction under Section 482 of the Code of Criminal

Procedure, 1973 (Cr.P.C.) to quash the proceedings arising out of the said FIR. The petition has been resisted by the respondents.

3. There is a long history to the dispute between the complainant and his family on one hand and the petitioner and his family on the other, they

admittedly being related to each other. The dispute essentially relates to share in

and partition of property described as D-45, Rajouri Garden, New

Delhi, built on plot of land admeasuring 1200 sq.yds., which had statedly been purchased jointly in the names of the complainant and Jagmohan Singh

Bhatia (brother of the petitioner).

4. On 11.05.2009 the petitioner joining his said brother Jagmohan Singh Bhatia and their father Gurbachan Singh Bhatia had filed a civil suit

(No.391/11/2009) for partition, declaration and permanent injunction. In the said suit, the complainant was impleaded as the first defendant, this in

addition to his son, wife and certain others. The civil suit was founded essentially on a document described as partition deed dated 14.02.1986 statedly

executed to divide the property in a certain manner. Besides this, certain other cases had also come to be filed in addition to complaint being lodged by

the complainant with municipal authority.

5. On 22.01.2010, Jagmohan Singh Bhatia joined by his father Gurbachan Singh Bhatia entered into an agreement/settlement with the complainant and

his son. As per the terms and conditions settled in the said document, the civil suit was to be withdrawn as compromised, all claims and allegations

made by both parties were to be deemed as withdrawn and the complaint sent to municipal authority with respect to regularization of the

building over the plot in question was also to be treated as withdrawn, this besides withdrawal of certain notices served by the complainant on

the plaintiffs, the parties further agreeing to help each other in getting the FIR being quashed, a vague reference about two cross FIRs that were

registered respecting the quarrel that had taken place on 28.04.2009. Statements of the parties and their counsel were recorded by the additional

district Judge before whom the civil suit was pending on 22.01.2010. The suit, thus, came to be disposed of as withdrawn.

6. In March-April, 2011, another document was executed, it being described as Memorandum of Understanding (MoU), the petitioner and the

complainant herein being the signatories. This MoU referred to the compromise/settlement dated 22.01.2010 and expressed the intention that it would

be part and parcel of the MoU, the petitioner agreeing not to claim any right, title and interest in respect of the afore mentioned civil suit. It also

mentioned that the petitioner would not lay any claim for a certain specified portion in the disputed lawn shown in colour red in the site plan, which

would exclusively belong to the complainant as had been settled on 22.01.2010. The parties also agreed by this MoU not to pursue the complaints that had been lodged by them against each other nor to file any suit/complaint(s) in respect of each others' portions in the property. Reference was also made to two FIRs, i.e., FIR No.165/2009 and 168/2009 of Police Station Rajouri Garden with agreement that the parties would take steps to have the same compounded/quashed.

7. It is clear from the subsequent developments including the complaint leading to registration of the FIR dated 26.11.2014 that the parties have continued to remain at loggerheads, the controversy surrounding their respective claims vis-à-vis the subject property having remained unaddressed.

8. It is against the above backdrop that through the FIR lodged by the complainant it has been, inter alia, alleged that the partition deed dated 14.02.1986 was a forged document created with aid and assistance of certain other persons wherein signatures of the complainant and his father had been fabricated. The contention of the petitioner before this court invoking jurisdiction under Section 482 Cr.P.C. essentially is that in the wake of the settlement agreement dated 22.01.2010 and MoU of March-April, 2011 the complainant cannot be allowed to revive the challenge to the genuineness of the partition deed. It is his submission that the registration of the FIR, from this perspective, is in the nature of abuse of the process of the court. He places reliance on *Gian Singh vs. State of Punjab & Anr.*, (2012) 10 SCC 303, *Ruchi Agarwal vs. Amit Kumar Agrawal & Ors.*, (2005) 3 SCC 299, and *Sanjeev Nagpal & Ors. vs. State & Anr.*, 2007 (98) DRJ 510.

9. Having heard the submissions of both parties, this court finds the matter at hand to be distinguishable from the cases cited at bar. There is nothing in the settlement agreement dated 22.01.2010 or MoU of March-April, 2011 from which it can be inferred that the complainant had conceded to the genuineness of the partition deed dated 14.02.1986. Undoubtedly, the partition deed dated 14.02.1986 was the foundation of the claim in the civil suit.

But then, its genuineness or otherwise never came to be tested. On the basis of settlement on terms other than those arising out of the partition deed, the civil suit stood withdrawn. The settlement on the basis of which the suit was withdrawn as compromised also seemingly fizzled out. Whether or not the parties could wriggle out of the terms of the settlement is besides the

point, not the least the concern of this court in this matter. The fact remains that the petitioner and those on his side have seemingly continued to harp on and claim to derive benefit out of the partition deed 14.02.1986.

In this view, the complainant is within his rights to seek suitable inquiry, and action, in accordance with law on his allegations that the partition deed dated 14.02.1986 is not a genuine document but a document on which the signatures of the complainant and his father had been fabricated.

10. The submissions made by the petitioner give rise to the questions of facts which cannot be addressed conclusively in the jurisdiction under Section

482 Cr. PC. In this context, the following observations of the Supreme Court in *Rajiv Thapar and Ors. Vs. Madan Lal Kapoor*, (2013) 3 SCC 330

need to be borne in mind.

â??29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation

of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These

are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power

vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would

negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be

rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that

the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable

facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the

material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the

prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the

necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be

justifiably refuted, being material of sterling and impeccable quality. The material

relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.â??

(emphasis supplied)

11. In the foregoing facts and circumstances, the prayer for quashing of the aforementioned FIR is declined.

12. The petition stands disposed of in above terms.

13. Pending applications also stand disposed of.