

(2019) 02 DEL CK 0415

In the Delhi High Court

Case No : Criminal Revision Petition No. 274 Of 2015

Sushila Yadav

APPELLANT

Vs

State Of Nct (Delhi) & Anr

RESPONDENT

Date of Decision : 19-02-2019

Acts Referred:

Indian Penal Code, 1860 — Section 30, 415, 420, 463, 467, 468, 471
Code of Criminal Procedure, 1973 — Section 401, 401(2)

Citation : (2019) 1 JCC 736

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Jugal Wadhwa, Raghav Goyal, Akanksha Gupta, Hirein Sharma, Syed Hasan Isfahani, Parveez Zaidi

Judgement

Sanjeev Sachdeva, J

1. Petitioner impugns judgment dated 13.03.2015 whereby the revisional court has set aside the order on charge dated 17.11.2014 whereby the charge was framed by the trial court against respondent no. 2 under Section 420/467/468/471 of the IPC and the respondent no. 2 was discharged.

2. Petitioner- Original Complainants have impugned the said order inter-alia on the ground that no notice under Section 401 Cr. P.C. was issued to them prior to the Revisional Court passing an order which was averse to their interests. Secondly the petitioner impugns the order contending that the order on charge was an order on correct appreciation of documents and other material and evidence and the statements of witnesses which were filed along with the chargesheet.

3. Learned counsel for the petitioner submits that the revisional court, inter-alia, erred in not appreciating the fact that the documents which were submitted by respondent no. 2 for the purpose of mutation were ex-facie forged and the FSL report had clearly indicated that the same were not signed by the petitioners.

4. It is contended that respondent no. 2 had applied for mutation of the property left behind by the deceased father exclusive in his name and induced the corporation into mutating the same in his name to the exclusion of the petitioner and other legal heirs and it constituted an offence punishable under Section 420 of the IPC.

5. Learned counsel for the petitioner, inter-alia, contends that no offence of cheating or forgery is made out against the petitioner. He submits that the revisional court had rightly set aside the order of the trial court holding that no complaint had been made by the municipal corporation which is alleged to have been induced for mutating the property in favour of the respondent no. 2. Further it is contended that prosecution has failed to establish that it was respondent no. 2 who had forged or used any forged document. Further it is contended that no benefit has been obtained by respondent no. 2 as mutation does not create any title but only determines as to who is liable to pay property tax. He further contends that the order on mutation was with regard to payment of tax and does not create any right in favour of respondent no. 2.

6. Learned counsel for the respondent relies on the judgment of the Supreme Court in "Mohammed Ibrahim & Ors. Vs. State of Bihar & Anr." (2009) 3 SCC (Cri.) 929 to contend that the condition precedent for an offence under Sections 467 and 471 IPC is forgery. He submits that none of the ingredients of the said Sections are prima facie satisfied and as no such charge could have been framed against the said respondent under Section 467 and 471 IPC.

7. Learned counsel for the respondent further relies on the decision of the Supreme Court in 'Jibrial Diwan Vs. State of Maharashtra' AIR 1997 SC 3424; to contend that where there is no wrongful gain, intention cannot be said to be dishonest or fraudulent and as such basic ingredients of the charge under Section 471 IPC is not satisfied.

8. Learned Addl. PP supports the contention of the learned counsel for the petitioner and submits that the trial court had correctly framed the charge and the Revisional Court committed an error.

9. Learned Addl. PP submits that the certain documents had been sent to Forensic Science Laboratory (FSL) for examination and the report was received from the FSL after the impugned order was passed and as such the same could not be brought to the notice of the revisional court. Learned Addl. PP submits that the FSL report confirms that the signatures of some of the legal heirs on the no objection submitted for the purposes of mutation did not match and the signatures of respondent no. 2/accused on the said document matches.

10. The original documents submitted for mutation have been produced by learned Addl. PP and also some of the original documents are part of the trial court record, digital copy of the same have been placed on record.

11. Petitioner as well as respondent no. 2 are brother and sister, all being legal

heirs of one late Shri Jorawar Singh Yadav. Late Shri Jorawar Singh Yadav was recorded owner of property bearing No. 9988-C, Sarai Rohilla, situated in Delhi. He was married to Smt. Rampiari Yadav. Out of their wedlock, 7 (seven) children were born, i.e., four sons and three daughters. The petitioner/complainant is one of the daughters. Respondent no. 2/accused is one of the sons.

12. The case of the petitioner is that respondent no. 2 had forged and fabricated the documents for the purposes of mutation. The application submitted by respondent no. 2 for the purpose of mutation is dated 13.10.1995. In the application for mutation, signed by respondent no. 2, it is mentioned that Indemnity Bond duly attested, affidavit duly attested and no objection from legal heirs and copy of death certificate of late Shri Jorawar Singh Yadav were submitted for the purpose of mutation. The original Indemnity Bond is attested on 13.01.1995. The affidavit is attested on 13.01.1995 as also the purported signatures of the legal heirs and the mother of the parties.

13. The affidavit is notarized by one Shri Sunil Pandit and the Indemnity Bond is notarized by Shri G.D. Dahiya on 13.01.1995. Learned Addl. PP submits out that both the Notary Public - Shri Sunil Pandit and Shri G.D. Dahiya in their statements given to the Investigating Officer have denied their signatures and attestation of the said documents and stated that the attestation, etc. do not belong to them. Consequent to the application for mutation, the property was mutated by Municipal Corporation of Delhi on 16.01.1995.

14. Trial Court after perusing the record on 17.11.2014 was satisfied that there was prima facie sufficient material against the accused for framing of charge under Section 420/467/468 of the IPC and accordingly framed charge.

15. The Revisional Court in the revision petition filed by the respondent no. 2, by the impugned order dated 13.03.2015 held that no charge under Section 420 IPC could be framed as no complaint had been made by Municipal Corporation of Delhi as the alleged inducement was to MCD officials for mutating the property.

16. With regard to the charge framed under Section 467 IPC, the Revisional Court was of the view that as the document which is alleged to have been forged was not a valuable security or a Will or part of the record as defined under Section 30 of the IPC, no charge could be framed. Further the Revisional Court was of the view that the mutation letter does not create any right and it is only meant for the purpose of property tax and as such Section 467 IPC was not attracted.

17. The Revisional Court was of the view that since no charge of cheating was made out, so accused cannot be charged with Section 468 IPC. With regard to the offence under Section 471 IPC i.e. using as genuine a forged document, Revisional Court was of the view that no charge of forgery could be framed against accused under Section 471 IPC.

18. The documents produced by the Investigating Officer as also the documents

filed along with the chargesheet clearly do not warrant an order, as has been passed by the Revisional Court rather show a complete non application of mind by the Revisional Court.

19. The documents ex facie show tampering and alterations. It would be expedient to refer to the documents accordingly for a better appreciation images of the documents and of the alternations, which are apparent to the naked eye are extracted herein below and encircled in red:

20. Original of documents extracted as Figure # 1, 2 and 3 were filed along with the charge sheet and copies of documents extracted as Figure # 4 to 10 were filed along with the Charge sheet as originals had been sent to FSL for examination. The originals of documents at S. No. 4 to 10, were received from the FSL after the revisional court had already discharged respondent no. 2.

21. When these documents are examined, they ex facie show the original name of the executant in the documents has been rubbed out and name of respondent no. 2 has been written thereon. Prima facie the documents show that the documents were created in the name of Smt. Ram Pyari Yadav, wife of Zorawar Singh Yadav, mother of the parties and her name has been rubbed out and the name M.S. Yadav son of Zorawar Singh Yadav (respondent no. 2) has been typed over the erased portion.

22. There are two FSL reports; one dated 08.10.2012 which opines that the signatures of Sh. Gian Prakash Yadav and Sh. Brahm Prakash Yadav and Smt. Kanta Yadav do not match, another FSL report dated 20.07.2015 opines that the signatures of M.S. Yadav matches on some of the documents.

23. Further it may be seen from the application for mutation dated 13.01.1995, that the name of the original applicant has been erased and name of Mahender Singh Yadav (respondent No. 2) typed thereon. The typewriter and type font used are different. The application appears to have been submitted on 16.01.1995, which is evident from the fact that there is a reference of deposit of fee of Rs. 50/- on the said date. The mutation letter has also been issued on 16.01.1995 i.e. on the same date when the application was made. Perusal of all the documents as noticed above, clearly show that the name of Smt. Ram Pyari Yadav has been erased and name of respondent no. 2 has been added.

24. It is apparent that the documents were tampered with for the purposes of obtaining mutation of the subject property in favour of respondent no. 2. The municipal corporation also mutated the property in favour of respondent no. 2. The expediency with which the municipal corporation has mutated the property (i.e. the same day on which an application is moved) speaks volumes.

25. Section 30 of the IPC reads as under:

30. "Valuable security".-The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or where by any person

acknowledges that he lies under legal liability, or has not a certain legal right.

26. Section 30 defines valuable security, inter-alia, to include any document whereby any legal right is created.

27. The argument of learned counsel for respondent No. 2 that mutation does not create any title in property and is only determinative of who pays the property tax does not further the case of Respondent No. 2.

28. No doubt mutation does not create any title in favour of any individual, however, it does create some legal rights as to who is to represent the property before the municipal authorities. It may not be a document which can be used against the actual owner of the property, however, a mutation does create certain rights in favour of the individual, in whose favour mutation has been carried out, to represent and deal with the property tax matters.

29. Though mutation does not create any title in favour of an individual, however, a lay person who is not well versed with legal procedure or legal rights would get an impression that substantial valuable rights are conveyed by mutation. Further, authorities would deal with person in whose favour mutation has been carried out in all matters relating to the said property.

30. Section 415 IPC defines cheating. Section 415 IPC reads as under:

415. Cheating.-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 said to "cheat".

31. Section 415 IPC defines cheating, inter-alia, to include where a person is deceived into doing something which he would not otherwise have done. In the instant case, respondent no. 2 is alleged to have forged and fabricated documents and thereby induced municipal corporation into carrying out a mutation in his favour to the exclusion of other legal heirs.

32. Section 420 makes cheating as an offence where a person is induced into delivering a property or making, altering or destroying whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security. Prima facie in this case, it appears that the respondent no. 2 induced the Municipal Corporation into carrying out in his favour and handing over the document of mutation, which could be then used to enforce a legal right.

33. The documents extracted hereinabove, prima facie show that the documents are forged and fabricated, in as much as, they have been altered.

34. Section 463 IPC defines forgery and making any false documents, inter-alia,

with intent to causing damage or injury to any person or to support any claim or title, or to cause any person to part with property, etc.

35. Section 467 IPC, inter-alia, makes forging of a document, which purports to be a valuable security, punishable. Section 30 defines security to include a document which creates a legal right. A document of mutation, as noticed above, does create legal rights in favour of the person in whose favour mutation has been carried out. Similarly, Section 468 IPC makes forgery of a document for the purposes of cheating punishable.

36. Clearly, the Revisional Court fell in error in holding the petitioner was not liable to be tried under Section 467 IPC and no charge was prima facie made out against him.

37. In so far as Section 471 IPC is concerned, it is the case of the prosecution that respondent no. 2 had submitted these documents for the purpose of mutation. Signatures of respondent no. 2 on the said documents have matched as per the FSL report. As regards to the signatures of the other signatories, report qua some is that they do not match and for others there is no confirmation. Said documents have been submitted for the purpose of obtaining mutation bearing the Signatures of respondent no. 2. This prima facie shows that it is respondent no. 2 who has used the said documents as genuine when he knew said documents to be not genuine documents.

38. Further the two Notary Publics who are alleged to have notarized the documents have denied having signed the same and stated that it is not their signatures. Clearly the impugned order of the revisional court that prima facie no case is made out is unsustainable.

39. Apparently, the Revisional Court did not even examine the documents, else the tampering would not have gone unnoticed. Further, the Revisional Court did not even await the report of the FSL, prior to passing the impugned order discharging respondent No. 2.

40. The Judgments in the cases of Mohammed Ibrahim & Ors. Vs. State of Bihar & Anr." (supra) and 'Jibrial Diwan Vs. State of Maharashtra" (supra) relied upon by learned counsel for respondent No. 2 to contend that the condition precedent for an offence under Sections 467 and 471 IPC is forgery, in the facts of the present case and the documents extracted hereinabove are not applicable. The reliance is misplaced.

41. As noticed above, the documents ex-facie to the naked eye, appear to be tampered with and the FSL report supports the view that the same are not signed at least by the some of the purported executants of the documents.

42. On perusal of the record, I am satisfied that prima facie case is made out against respondent no. 2 for the purpose of framing charges under Section 420/467/468/471 IPC.

43. In view of the above, the impugned order dated 13.03.2015 is set aside. Sequitur is that the order passed by the trial court dated 17.11.2014 and the consequent charge framed against Respondent No. 2 is revived.

44. Since I have examined the case of the petitioner on merits and found the same sustainable, the question of law raised by the learned counsel for the petitioner that the impugned order of the revisional court is liable to be set aside as there is non compliance of Section 401(2) is not gone into and is left open.

45. It is clarified that this Court has expressed only a prima facie view on the document and anything stated herein shall not influence the trial court at the stage of final hearing.

46. It is noticed that the FSL has not given any opinion with regard to the overwriting or erasing of name on the said document as has been noticed by this Court. Learned Addl. PP has informed that no such opinion has been rendered by FSL as a query to the said effect was not made. Learned Addl. PP further submits that the Investigating Officer shall be sending the said documents to FSL to express its opinion with regard to the alleged erasing and over-writing on the said documents.

47. List the matter before the trial court for further proceedings on 07.03.2019.

48. Original trial court record as well as lower court record be transmitted back to the trial court and the lower court, if not already done.

49. Order dasti under signatures of the Court Master.