

Surjeet Kaur And Anr. vs State on 30 May, 2014

Author: J.R. Midha

Bench: J.R. Midha

*IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.M.A.Nos.5018/2013, 2446-47/2014 in
BAIL APPLN. 64/2013

% Date of decision : 30th May, 2014

SURJEET KAUR AND ANR. Appellants
Through : Dr. Shyamla Pappu, Sr.
Adv. with Mr. R.
Krishnamorthi, Adv. with
appellant no.1.

versus

STATE Respondent
Through : Mr. Varun Goswami, APP.
Mr. Ajeya Bhardwaj and
Ms. Sangeeta Singh, Adv.
for R-2 along with R-2.
S.I. Mukesh, P.S. Dabri.

CORAM :-
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

1. The complainant is seeking cancellation of the anticipatory bail granted to the petitioners vide order dated 15th January, 2013 on the ground that they have violated the undertaking given to this Court on 15th January, 2013.

Factual background

2. The dispute between the parties relate to property bearing no. E-104, Jeevan Park, Uttam Nagar, Delhi which was owned by late Ranjit Singh Jutla who died intestate on 12th July, 2003 at U.K. leaving behind five legal heirs, namely, petitioner no.1(mother), the complainant(wife), and three sons, namely, Sandeep Jutla, Harpal Jutla and Inderjeet Jutla. Petitioner no.2 is the daughter of petitioner no.1.

3. On 20th April, 2005, the complainant instituted a petition under Section 278 of Indian Succession Act for grant of Letters of Administration in respect of the estate of her husband late

Ranjit Singh Jutla in respect of his movable and immovable estate including property no. E-104, Jeevan Park, Uttam Nagar, Delhi (hereinafter referred to as "the subject property").

4. Petitioner no.1 contested the said petition on the ground that she was the owner in possession of subject property which was her self-acquired property. Petitioner no.1 also claimed the right in respect of the money lying in the FDR and savings bank account of the deceased.

5. Both the parties led the evidence in the said petition. The complainant appeared in the witness box as PW-1 and deposed that her husband late Ranjit Singh Jutla died intestate on 12 th July, 2003. The death certificate was proved as Ex.PW-1/1. She deposed that Late Ranjit Singh Jutla left behind the subject property, a FDR and a savings bank account. The complainant deposed that she was paying house tax of the said property. The house tax receipts for the years 2005-06 and 2006-07 were proved as Ex.PW-1/2 and PW-1/3 respectively. Petitioner no.1 did not cross-examine PW-1 despite opportunity given. The complainant proved the receipt and Will executed by the seller, Rattan Singh in favour of her deceased husband as Ex.PW-2/1 and Ex.PW-3/1 by examining the witnesses from the office of the Sub-Registrar, Kashmiri Gate, Delhi. The complainant also proved the Will Ex.PW-2/1 of the seller, Rattan Singh in favour of her deceased husband by examining the attesting witness as PW-4.

6. Petitioner no.1 appeared in the witness box as RW-1 and deposed that she purchased the subject property from the funds of her husband and she was the owner of the subject property. However, she could not produce any document in respect of the subject property in her name and also could not give the date, month and year of the purchase of the property. She also could not produce any other evidence to prove the retiral benefits of her husband and payment of sale consideration to the seller for purchase of the subject property.

7. On 10th July, 2008, petitioner no.1 filed an application under Order 11 Rules 1 & 2 of the Code of Civil Procedure to serve the interrogatories on the claimant. Interrogatory mentioned in para 3

(iii) is relevant in the present context and is reproduced hereunder:

"3(iii) Who is occupying the property no.104 Jeevan Park, New Delhi?"

The complainant submitted the reply to the said interrogatory on 16th September, 2008. The reply is as under:

"(iii) Jointly by the petitioner, her sons respondents no.3, 4, 5 & the respondent no.2 as the petitioner some time back when she was in India had put her lock in the premises with one key with her and the other with the respondent no.2."

The petitioner did not contest this position.

8. Vide judgment dated 27th October, 2009, the learned District Judge allowed the petition and issued Letters of Administration in respect of the subject property in favour of the complainant.

With respect to the FDR and savings bank account, the Letters of Administration were granted in favour of the complainant and petitioner no.1 in equal shares. The learned District Judge, however, clarified that he has not decided the title of the subject property and both the parties are liberty to get the title decided by the Civil Court by filing a regular suit. The relevant portion of the said judgment is reproduced hereunder:

"24. In the instant case, the petitioner has filed the present petition seeking Letters of Administration of the property of the deceased, Ranjit Singh Jutla. The case of petitioner is that deceased Ranjit Singh Jutla was owner of house No. E- 104, Jeevan Park, Uttam Nagar, New Delhi and he died intestate. The petitioner has proved copies of documents regarding purchase of the property by deceased Ranjit Singh Jutla, copy of registered receipt is Ex.Pw-3/1 and copy of registered Will in favour of the deceased is Ex.Pw-2/1. The petitioner has proved the said receipt and Will by examining one of the attesting witness namely Shri Paramjeet Singh (Pw-4). He has deposed that testator Rattan Singh had executed Will in favour of Ranjit Singh, which was registered on 25.05.1984, copy of said Will is Ex.Pw-2/1. He has also deposed that Rattan Singh executed receipt, which was also registered in the office of Sub-Registrar-I, Kashmere Gate, Delhi and copy of said receipt is Ex.Pw-3/1.

He has also deposed that Ranjit Singh purchased the property from Rattan Singh in his presence. He was cross examined on behalf of respondent No.2 but no question was put to him that Rattan Singh had not sold the property to deceased Ranjit Singh.

25. The petitioner has also examined PW-2 Shri S. Bhattacharya from the office of Sub-Registrar-II, Kashmere Gate, Delhi, who has deposed that Will dated 25.05.1984 of Rattan Singh in favour of Ranjit Singh was registered in the office of Sub-Registrar on 25.05.1984. Similarly, PW-3 Shri Rakesh Ranjan from the office of Sub-Registrar-I, Kashmere Gate, Delhi has deposed that receipt dated 25.05.1984 executed by Rattan Singh was registered in the office of Sub- Registrar on 25.05.1984.

26. It is pertinent to mention here that petitioner, Smt. JasbinderKaur has tendered her affidavit, which is Ex.P-1. By way of her affidavit, she has deposed that deceased Ranjit Singh left behind house No. E-104, Jeevan Park, Uttam Nagar, New Delhi, she is paying house tax in respect of said property, receipt of house tax for the year 2005-06 is Ex.Pw- 1/2 and receipt of house tax for the year 2006-07 is Ex.Pw- 1/3. She has also deposed that property belonged to her deceased husband Ranjit Singh Jutla. She has not been cross examined at all on behalf of respondent. Even no suggestion was put to her that deceased Ranjit Singh was not owner of the said property. Same amounts to admission on the part of the respondent.

27. Moreover, the respondent No.2 has alleged that she is owner of house No. E-104, Jeevan Park, Uttam Nagar, New Delhi. She has not adduced any evidence in this regard. The respondent No.2 has neither produced any document nor adduced any

evidence in support of her plea. The respondent No.2 has deposed that deceased Ranjit Singh did not spend a single penny on the property in question and she is owner of the suit property. She has not deposed when she purchased the property, from whom she purchased the property, the amount of consideration and nature of documents in her favour. In her cross examination she could not tell the date, month or year when the property in question was purchased by her. She stated that she purchased the said house from Shri Rattan Singh, she paid money to Karnail Singh and Trilochan Singh who handed over some documents to her and stated that Rattan Singh had executed said documents. But she has failed to produce said documents, alleged to have been executed in her favour.

28. It may be mentioned that petitions for grant of Letters of Administration are to be decided summarily and this Court cannot decide the right or title to the property. In case titled as Kashi Nath Vs. Dulhin Guljari reported as AIR 1941 Patna 475, it was held that in an application for Probate of a Will or for the grant of Letters of Administration with a copy of the Will annexed the sole question that arises is whether or not the Will is a true one. It is not open to the Probate Court to decide whether or not the property with which a testator has purported to deal, infact, belong to him.

29. In another case titled as Chiranjilal Srilal Goenka Vs. Jasjit Singh reported as (1993) 2 SCC 507 , it was held that:-

"The Succession Act is a self contained code in sofar as the question of making an application for probate, grant or refusal of probate or an appeal carried against the decision of the probate Court. This is clearly manifested in the fascicle of the provisions of the Act. The probate proceedings shall be conducted by the probate Court in the manner prescribed in the Act and in no other way. The grant of probate with a copy of the Will annexed establishes conclusively as to the appointment of the executor and the valid execution of the Will. Thus, it does not more than establish the factum of the Will and the legal character of the executor. Probate Court does not decide any question of title or the existence of the property itself."

30. The respondents No. 3 to 5, who are children of deceased Ranjit Singh Jutla have given no objection dated 28.07.2005 in favour of the petitioner.

31. The petitioner being widow of deceased Ranjit Singh Jutla is entitled to administer the property in question. However, it is made clear that by grant of Letters of Administration, the title of property No.E-104, Jeevan Park, Uttam Nagar, New Delhi is not decided. Both the parties are at liberty to get the title decided from the Civil Court by filing regular suit.

32. As regards, FDR and bank account in the name of deceased Ranjit Singh Jutla, as mentioned in sub-para (ii) &

(iii) of para 4 of the petition, it may be mentioned that petitioner, who is widow of deceased and respondent No.2, who is mother of deceased falls in the category of class-I legal heirs. Hence, both are entitled to Letters of Administration in respect of FDR No. 7703 DBD No.28107636 and amount lying in the saving bank account No. 17432 with Bank of India, Ajay Enclave, New Delhi in the name of deceased Ranjit Singh Jutla, in equal shares. Issue No.1 is decided accordingly.

ISSUE NO.2 (RELIEF)

33. As a result of above discussion and my finding on issue No.1, petition is allowed. Letters of Administration for due administration of property No. E-104, Jeevan Park, Uttam Nagar, New Delhi be issued in favour of petitioner on furnishing administration bond cum surety bond with one surety and payment of requisite Court fees. Letters of Administration in respect of FDR No.7703 DBD No.28107636 with Bank of India, Tilak Nagar Branch, New Delhi and amount lying in saving bank account No. 17432 with Bank of India, Ajay Enclave, New Delhi in the name of deceased Ranjit Singh Jutla be issued in favour of petitioner and respondent No.2 Smt. Surjeet Kaur @ Ajit Kaur in equal shares on furnishing administration bond cum surety bond with one surety and payment of respective court fees. File be consigned to Record Room."

(Emphasis Supplied) Misc. App. M.-11/10

9. The complainant filed an application before the District Court for directing petitioner no.1 to hand over the keys of the subject property which was contested by petitioner no.1 on the ground that subject property was vacant and both the parties have put their locks on it. Vide order dated 24 th November, 2010 in M- 11/10, the Court observed that no keys were required to be given as the house is vacant and both the parties have put their locks on it. The relevant portion of the order dated 24th November, 2010 is reproduced hereunder:

"No keys are required to be given for that purpose to the petitioner as house is lying vacant and both the parties have put their locks on it. The question of handing over possession to one or the other party cannot be decided by this court. Ld. Counsel for respondent is however, directed to co-operate with petitioner in getting as far as possible the exact valuation of the property ascertained."

(Emphasis Supplied)

10. On 6th March 2010, petitioner no.1 instituted an appeal being FAO No.91/2010 against the judgment dated 27th October, 2009 before this court. Petitioner no.1 also sought stay of the impugned judgment dated 27th October, 2009 by filing CM No.4382/2010 under Order XLI Rule 5 of the Code of Civil Procedure.

11. In the Probate Case No.335/2006, petitioner no.1 had raised a defence that she is the owner of the subject property having purchased the same from Rattan Singh out of the retirement benefits received after the death of the husband, meaning thereby that the title documents were executed by Rattan Singh in her favour. However, she did not remember the date as well as place of execution of

the title documents. She also could not give the description of the documents. She further deposed that she paid the sale consideration to Karnail Singh and Trilochan Singh who handed over same documents which also she could not produce.

However, in FAO No.91/2010, petitioner no.1 raised a plea which is totally contradictory to the defence set-up before the Trial Court. In para 2(i), she set-up a plea that she purchased the subject property out of the pensionary benefits of her late husband in the name of her son, Ranjeet Singh Jutla meaning thereby that she is the benami owner of the subject property.

12. In the grounds of appeal, petitioner no.1 made yet another somersault and restricted her claim only to 1/5th share in the subject property according to the ordinary rule of succession on the basis that her son Ranjeet Singh Jutla died intestate leaving behind five legal heirs namely, petitioner no.1 (mother), complainant (wife) and three children, meaning thereby she gave her claim of ownership. The grounds (ii) and (iii) of the appeal are reproduced hereunder:-

"(ii) Because the Learned Trial Court has failed to appreciate that in view of the Hindu Succession Act the Respondent No.1 is entitled for 1/5th share as deceased Ranjit Singh Jutla survived by appellant and Respondent No.2 to 4.

(iii) Because the Learned Trial Court has failed to appreciate the fact that no objection given by the Respondent No.2 to 4 in favour of the Respondent No.1 cannot be regarded as a relinquishment of their rights and therefore, no letter of administration can be issued to her except 1/5th share in the property or the FDR."

13. Vide order dated 9th March, 2010, this Court admitted FAO No.91/2010. With respect to the stay application CM No.4382/2010, this Court permitted the complainant and her children to manage the estate of the deceased but they shall not alienate or create third party interest in the property till the disposal of the appeal. Order dated 9th March, 2010 is reproduced hereunder:

Admit.

List in due course.

This is an application under Order 41 Rule 5 and Section 151 of the Code of Civil Procedure for stay of the operation of the impugned judgment dated October 27, 2009.

The respondents are permitted to manage the estate of the deceased but they shall not alienate or create third party interest in the property till the disposal of the appeal. The application is disposed of."

(Emphasis Supplied)

14. The order dated 9th March, 2010 was not challenged by any of the parties and has thus become final.

15. On 6th July, 2012, learned counsel for the complainant submitted before this Court in FAO No.91/2010 that petitioner no.1 has broken open the lock of the subject property which was disputed by petitioner no.1 who submitted that subject property was lying locked and nobody has broken open the lock. She further stated that lock was of both the parties. Relevant portion of the order dated 6th July, 2012 is reproduced hereunder:

"Learned counsel for the respondents submits that the appellant has broken open the lock of the suit property. Learned counsel for the appellant submits that the suit property is lying locked and nobody has broken open the lock. It is stated that there is lock of both the parties."

(Emphasis Supplied)

16. FAO No.91/2010 is still pending before this Court. Vide order dated 22nd January, 2014 it has been directed to be listed in due course.

Contempt Case(C) 377/2011

17. On 23rd May, 2011, the complainant filed a petition under Sections 10 and 12 of the Contempt of Courts Act, 1971 against the petitioner no.1 seeking direction to appellant no.1 to comply with the order dated 9th March, 2010 in FAO No.91/2010 by not disturbing her peaceful possession. The complainant claimed to be in possession of the subject property in terms of the order dated 9th March, 2010 in FAO No.91/2010 and alleged that petitioner no.1 has twice broken open the locks whereupon the complainant has lodged complaints to the police on 5th February, 2011 and 4th March, 2011 recorded in DD Nos.67 and 79, P.S. Dabri. Para 5 of the contempt petition is reproduced hereunder:-

"5. That the appellant is living separately at Tilak Nagar in other house i.e. WZ-36A, Plot No.67, Vishnu Garden, Tilak Nagar, New. The appellant is acting in connivance with anti-social elements and has broken the locks (twice) of the suit premises i.e. E-104, Jeevan Park, Uttam Nagar, New Delhi and threatened the respondent no to enter either in the area or in the property i.e. E- 104, Jeevan Park, Uttam Nagar, New Delhi."

18. Petitioner no.1 filed the reply dated 30th August, 2011 in which she admitted that the subject property is under the lock and key of the complainant and petitioner no.1 has also put her lock upon the lock of the complainant. Para 5 of the reply is reproduced hereunder:-

"5. That the contents of para 5 as stated are vague, false, incorrect and denied. The entire para is devoid of any specific particulars. There is no question of vacating or opening the locks as the premises are already under lock and key of non-applicant

and the applicant also put her lock upon the lock of the non- applicant."

(Emphasis supplied)

19. Petitioner no.1, in para 1 of the reply dated 30th August, 2011, took a contradictory stand and stated that the complainant has broken the locks. She further submitted that she has moved an application before the learned District Court seeking directions to hand over the keys of subject property. The relevant portion of para 1 of the reply of petitioner no.1 is as under:-

" 1. ...It is submitted that after the said order, the applicant moved an application before the Id. Trial Court seeking the directions to hand over the keys of House No.E-104, Jeevan Park, Uttam Nagar, New Delhi which was opposed and the Hon'ble Court observed that no keys are required to be given as house is lying vacant and both the parties have put their locks on it. ..."

20. Vide order dated 8th July, 2013, this Court dismissed the contempt petition on the ground that the same have been instituted beyond the limitation period of one year. Relevant portion of the order dated 8th July, 2013 is reproduced hereunder:

The order of which the initiation of contempt proceedings is alleged dated 9.3.2010 and the petition itself has been filed on 23.5.2011, that is, beyond the period of one year as envisaged under Section 20 of the Contempt of Court Act. Since, no application seeking condonation of delay has been filed, the petition is barred by limitation and the same is dismissed."

21. On 14th August, 2012, the complainant filed a complaint under Section 156(3) of the Code of Criminal Procedure against petitioner no.1 on the ground that she was managing the subject property in terms of the order dated 9 th March, 2010 in FAO No.91/2010 and petitioner no.1 broke the locks which was reported to the police on 5th February, 2011 vide DD No.67B and no action has been taken by the police despite complaints dated 4 th March, 2011 and 3rd May, 2012 against the petitioners. The copy of the complaints dated 5th February, 2011, 4th March, 2011 and 3rd May, 2012 were filed along with the complaint.

22. Vide order dated 21st August, 2012, the learned Metropolitan Magistrate directed the SHO to register a case against the petitioners. Relevant portion of the order dated 21 st August, 2012 is reproduced hereunder:

"Present application was filed u/s156(3) Cr.P.C. stating therein that accused No.1 and 2 committed serious offences regarding the property bearing No.E-104, Jeevan Park, Uttam nagar, New Delhi. It is mention that complainant had filed a suit against accused no.1 which was decreed in favour of the complainant. Accused No.1 filed copy before the Hon ble High Court and vide order dt.09.03.2010, the complainant was allowed by the Hon ble High Court to manage the property. Thereafter accused No.1 threatened the complainant for dire consequences and broke open the lock of the

property bearing No.E-104, Jeewan Park violating the court order and entered into the said property. The counsel for complainant mentioned those facts before the Hon ble High Court on 06.06.2012. As per order dt. 06.07.2012 of Hon ble High Court of Delhi, Ld. Counsel for accused No.1 stated before the court that the suit property is lying locked and nobody has broken open the lock and there was lock of both the parties.

The complainant already made complaints regarding the alleged incident before the concerned police station but police has not taken any positive action at the complaint of the complainant and therefore the present application is filed before the court. Ld. Counsel also cited case laws i.e. Radha Vs. State, 179 (2011) DLT 810 and Sakiri Vasu Vs. State of Uttar Pradesh & ors., (2008) 2 SCC 409. Action taken report was called from the SHO PS: Dabri and which is filed today before the court through SI Dinesh Kumar in which it is mentioned that Smt. Surjeet Kaur i.e. accused No.1 is living in the said property. I have heard the Ld. Counsel for complainant and perused the copy of order of Hon ble High Court of Delhi dt. 06.07.2012 where it is mentioned that Ld. Counsel for accused stated that the suit property was lying locked. Ld. Counsel for complainant submitted before this Court that it is the same property which is in question in the present complaint. Hence, there is contradiction regarding the status of the property as if the said property was locked then how the accused No.1 is living in it as per the status report filed before this court by the SHO PS: Dabri. Keeping in view the facts and circumstances, court thinks that a thorough investigation is required in this matter. It is also well settled law that SHO is duty bound to register a case on receiving an information regarding commission of cognizable offence. Hence, SHO concerned is directed to register a case against the wrong doer under relevant provisions of law and to file the report on 07.09.2012."

(Emphasis Supplied)

23. In pursuance to the aforesaid order dated 21st August, 2012, the police registered FIR No . 3 2 5 / 2 0 1 2 d a t e d 2 7 t h A u g u s t , 2 0 1 2 u n d e r S e c t i o n s 191/441/109/504/201/451/192/442/16/506/203/457/ 193/445/120B/218/503/197/446 IPC, P.S. Dabri.

24. In the status report dated 18th February, 2013 submitted by the I.O. before the learned Metropolitan Magistrate, it is recorded that accused persons are ready to give possession of the subject property to the complainant. The relevant portion of the status report is as under:-

"...IO further submitted that both the alleged accused persons have contacted with him and stated that they are ready to give possession of house no.E-104, Jeewan Park, Uttam Nagar, Delhi to the complainant in compliance of their submissions made before Hon'ble High Court. Ld. Counsel for the complainant is apprised about this fact. ..."

(Emphasis supplied)

25. The Criminal Complaint No.869/1 is still pending before the learned Metropolitan Magistrate and last listed on 26th May, 2014. The orders dated 21st January, 2013, 24th January, 2013 and 18th February, 2013 are relevant and therefore reproduced hereunder:

"21.01.2013 Ld. Counsel for complainant filed copy of order of Hon ble High Court dt.15.01.2013 whereby it is mentioned that the opposite party gave undertaking before the Hon ble High Court that they will not interfere in the peaceful possession of the said property by the complainant. Today, complainant submits that she is having fear that opposite party will not allow here to enter into the said premises.

Heard. I.O. is directed to accompany the complainant to the said property to give her adequate protection for the enjoyment of her legal right and to file the report regarding the clarification on undertaking given by the parties before the Hon ble High Court on 24.01.2013.

Complainant submits that she will contact the IO on 23.01.2013 at 2:00 pm for the said purpose to which IO also informed and agreed accordingly."

(Emphasis Supplied) "24.01.2013 Status report filed by the IO stating that they had visited the spot on 23.01.2013 in furtherance of order dt.21.01.2013 and found that the house in question was found that the house in question was locked at main gate and from inquiry from neighbourers it was found that accused Surjeet Kaur not residing there for last 2-3 months. Ld. Counsel for complainant submits that I.O. is deliberately not conducting the investigation properly. SHO submits that he will look into the matter to ensure the fair investigation of the case keeping in view of the order of Hon ble High Court dt.15.01.2013.

An application is also moved by Ld. Counsel for complainant for taking appropriate steps regarding the compliance of Hon ble High Court pertaining to undertaking given by the accused before Hon ble High Court and for taking steps against erring officials. Copy of application be supplied to I.O.

Put up for consideration on application/further proceedings on 31.01.2013 at 2:00 pm."

(Emphasis Supplied) "18.02.2013 Status report filed by the IO regarding investigation stating that the investigation of the case is going on. IO is directed to expedite the investigation. IO further submitted that both the alleged accused persons have contacted with him and stated that they are ready to give possession of house no.E- 104, Jeewan Park, Uttam Nagar, Delhi to the complainant in compliance of their submissions made before Hon'ble High Court. Ld. Counsel for the complainant is apprised about this fact.

Put up for filing of further report regarding investigation on 20.03.2013."

(Emphasis supplied) Anticipatory bail application of the petitioners before the Sessions Court

26. The petitioners filed an application for anticipatory bail before the Sessions Court which was dismissed by the Ld. Sessions Court vide order dated 30th November, 2012 on the ground that this Court vide order dated 9th March, 2010 has permitted the complainant to manage the subject property. The learned Sessions Court further observed that the petitioner No.1 was not staying in the subject property as recorded in their statement dated 16 th March, 2009 before the District Judge in the Letters of Administration case. The Court further noted that the petitioner stated before the High Court on 6th July, 2012 that they have put their locks on the house which prima facie shows that the petitioners are in violation of the order dated 9 th March, 2010 passed by this Court in FAO No.91/2010. Relevant portion of the order dated 30th November, 2012 is reproduced hereunder:

"30.11.2012 Present: Sh. Devender Kumar, Ld. Chief Prosecutor on behalf of the State along with IO SI Dinesh. Petitioner in person with counsel Ms. S. Sood, Adv.

Complainant in person with counsels Sh. Ajay Bhardwaj and Ms. Sangeeta Singh.

This order shall dispose of anticipatory bail application.

Case of the prosecution is that complainant Jasvinder Kaur, who is widow of son of the applicant/petitioner Smt. Surjeet Kaur, filed a complaint before the police stating therein that she is owner of H.No. E-104, Jeevan Park, Uttam Nagar, New Delhi and the applicants/accused person who are the mother in law and sister in law, have forcibly taken the possession of the said property and had also threatened her and she apprehend danger to her life and not in position to visit the area and that the accused persons are being helped by the local police personnels. The complainant had also filed a contempt petition against the present petitioner/applicant in Hon ble High Court of Delhi, in reply thereto, applicant/petitioner had stated that no such act was committed by her and her counsel made the statement that the property was still lying locked and nobody had broken open the locks and there is lock of both the parties. The said statement was totally false and same was mentioned on behalf of the complainant before Hon ble High Court and Hon ble High Court had observed that the complainant has remedy of filing a complaint in case the police fails to take the action. The fact that the locks are being broken and both the accused have committed serious offences is well in the knowledge of the IO. Both the accused persons Smt. Surjeet Kaur and Balwinder Kaur have also removed movables from the Suit property. The accused persons have committed offence of house breaking and trespassing in addition to other offences. On this FIR for the offence under Section 191 / 441 / 109 / 504 / 201 / 451 / 192 / 442 / 16/506/203/457/193/445/120B/218/503/197/446 IPC was registered.

It is argued on behalf of the applicant that she is an old lady of 75 years of age and that she had been in continuous possession and occupation of the house in question and the complainant was an NRI and was never in possession of the property and it is

a false case filed by her just to harass her in this old age.

Ld. Counsel for the applicant has shown me various orders of Probate Court and Hon'ble High Court which have been taken into consideration by me. I have also perused the record and report of the prosecution.

It is admitted fact that the applicant is the mother in law of the complainant. It is also admitted fact that the husband of the complainant had died. It is also admitted fact that she was an NRI earlier and after the death of her husband she wanted to shift to India. It is admitted case that this house belongs to the husband of the complainant. After his demise, a case was filed for obtaining probate against the property and vide order dated 27.10.2009, the management of house No. E-104, Jeevan Park, Uttam Nagar, New Delhi was given to the complainant. The accused persons/applicants had challenged that order before Hon'ble High Court of Delhi and vide order dated 9.3.2010.

Hon'ble High Court of Delhi had permitted the respondent (complainant in this case) to manage the said estate of the deceased and restricted her to create third party interest. This prima facie shows that the management of the property No. E-104, Jeevan Park, Uttam Nagar, New Delhi remained with the complainant. Submission of the applicant/accused that she had been in occupation and possession of the Suit property, is contrary to her previous statement recorded on 16.3.2009 as RW1 wherein, the applicant Ajit Kaur had clearly stated that she had been living in H.No. WZ-36-Am Vishnu Garden, New Delhi. It therefore, is apparent that neither the applicant, nor her daughter Balvinder Kaur had been staying in this house as per this statement.

From the submissions made by the Ld. Counsel for the accused persons before Hon'ble High Court of Delhi on 6.7.2012, it is apparent that the accused had put her lock in that house. This prima facie shows that despite the fact that vide order of the court of Sh. V.P. Vaish Ld. District Judge dated 27.10.2009 and Hon'ble High Court directions dated 9.3.2010, the accused/applicant tried to take forceful possession of the property by putting her lock. Her contention that she had been occupying property also stands falsified by her statement recorded on 16.3.2009 as RW1.

Keeping in view the serious nature of the offence, wherein the accused tried to grab the property of her daughter in law and also violating its undertaking before the court and flouting the directions of not only lower court but also the Hon'ble High Court, I do not find it a fit case where the discretion of bail be exercised in favour of the accused. Bail application is dismissed. Nothing in the order shall tantamount to expression of opinion on merits of the case.

Application is disposed of accordingly."

(Emphasis supplied)

27. On 7th January, 2013, the petitioners filed an application for anticipatory bail being BA No.64/2013 before this Court which was taken up on 15th January, 2013. During the course of hearing of the application, learned counsel for the petitioners gave an undertaking not to interfere with the peaceful possession of the complainant which was accepted by this Court. This Court also recorded the complainant to be in possession as per admitted case of the parties and the undertaking of the petitioners not to interfere with the peaceful possession of the property by the complainant. This Court further granted liberty to the complainant to stay in the subject property. The order dated 15th January, 2013 is reproduced hereunder:

By this petition filed under Section 438 Cr.P.C the petitioners seek grant of anticipatory bail. Addressing arguments, counsel for the petitioners submits that the petitioner no.1 is about 75 years old and happens to be the mother-in-law of the complainant and petitioner no.2 is sister-in-law of the complainant. Counsel further submits that the main issue of controversy between the parties is regarding the ownership with regard to the property bearing no. E-104, Jeevan Park, Uttam Nagar, New Delhi, which as per the petitioners was purchased by the petitioner no.1 in the name of her son i.e. husband of the complainant, while as per the case of the complainant the said property was solely and absolutely owned by her husband. Counsel submits that the petitioners are ready to give an undertaking that they will not interfere with the peaceful possession of the complainant in the said property and under no circumstance will take law into their own hands. Counsel further submits that the petitioners are already before the civil Court and for obtaining any kind of order they will approach the said court only. The present bail application is strongly opposed by Mr.Navin Sharma, APP for the State and the counsel representing the complainant on the instructions of the complainant present in the court.

Heard.

The Letter of Administration to administer and manage the said property has been granted by the learned District Judge vide order dated 27.10.2009 in favour of the complainant and the said order is under challenge before the Civil Court.

Once the parties are before the civil court, they are bound by the orders already passed or to be passed by the civil court.

As per the admitted case of the parties, the complainant is presently in possession of the subject property and today before this court the petitioners through their advocate have given an undertaking that they will not interfere in the peaceful enjoyment of the said property by the complainant and will not take law into their own hands so as to cause any sort of hindrance or obstruction in the complainant's peaceful possession over the property in terms of the order passed by the District Judge. In the light of the above and considering the fact that the subject matter of the

controversy is primarily of civil nature and also considering the age of the petitioner no.1, this court is inclined to grant anticipatory bail to the petitioners. In the event of arrest, petitioners shall be granted bail, on their furnishing a personal bond in the sum of Rs.25,000/- each with one surety each of the like amount to the satisfaction of the SHO/I.O. of the concerned police station, subject to the condition that these petitioners shall fully cooperate in investigation and will not create any hindrance or impediment during the course of investigation. The complainant shall be at liberty to stay in the said property, if she so wishes.

The present petition stands disposed of accordingly."

(Emphasis supplied)

28. In para 4 of the Bail Application 64/2013, the petitioners pleaded that both parties are residing in the subject property. Para 4 is reproduced hereunder:-

"4. That, the Investigation officer - Sub Inspector Dinesh Kumar, Dwarka Police Station has filed his report as on 30 th October, 2012 and clearly stated in the said report that both the parties i.e. the complainant and the accused persons are residing in the stated disputed property and that it is submitted that if the same fact is taken into account as true and correct that both the parties were residing at same place as per the status report then beyond any reasonable doubts breaking the locks was not required by any party as such. (A photocopy of Report by I.O. dated 30/10/12 is also attached herewith as „Annexure)"

(Emphasis supplied)

29. The status report of I.O. dated 30th October, 2012 relied upon by the petitioners is Annexure „C in the Bail Appl.No.64/2013. The relevant portion is reproduced hereunder:-

"STATUS REPORT ...the complainant of this case told before Hon ble Delhi High Court through her counsel that petitioner had broken open the lock of the suit property. On the other hand the counsel of the petitioner told before Hon ble High Court that no body had broken open the lock of the suit property and there are locks of both parties. In this way it appears that the petitioners also put her lock for illegal possession of the suit property with intend to grab the property of the complainant. Hence the bail application of the petitioners are strongly opposed."

MOU dated 22nd February, 2013

30. On 22nd February, 2013, the parties executed a Memorandum of Understanding in which petitioner no.1 agreed to take 1/5th share in the market value of the subject property and to remove her belongings lying in the subject property before 11th March, 2013.

31. Petitioner no.1 has not disputed the said Memorandum of Understanding dated 26th February, 2013.

32. The original Memorandum of Understanding was filed in Contempt Case(C) No.377/2011 on 26th February, 2013 and is reproduced hereunder:-

"Memorandum of Understanding This memorandum of understanding is made on this 22nd day of February, 2013 between Smt. Surjeet Kaur alias Ajit Kaur r/o WZ36A Vishnu Garden, Tilak Nagar, Delhi, (hereinafter referred to as 1st party) which expression unless repugnant to the context shall include her successors, legal attorneys, heirs, executors and permitted assignees of the 1st part.

And Smt. Jasbinder Kaur w/o Late Sh. Ranjit Singh Jutla, r/o (at present residing in Hotel Aman Palace, Raja Garden, Delhi) (hereinafter referred to as 2nd party) which expression unless repugnant to the context shall include her successors, legal attorneys, heirs, executors and permitted assignees of the 2nd part.

1. That the 2nd party had filed a suit titled "Jasbinder Kaur Vs. Surjeet Kaur and letter of administration was granted in favour of the 2nd party by District Judge, Delhi vide order dated 27.10.2009.

2. That the 1st party preferred an appeal before Hon ble High Court and one contempt petition was filed by the 2nd party against the 1st party with regard to deliberate violation of the court order dated 9, March, 2010.

3. That the 2nd party also initiated criminal proceedings against the 1st party which culminated into registration of FIR against the 1st party and 1st party got anticipatory bail vide order dated 15.1.2013 after the statement that the 1st party shall not disturb the peaceful possession of the 1st party.

4. That the 1st party alongwith her counsel appeared before Hon ble High Court on 30.1.2013 and made proposal for settlement of the matter. The 1st party offered/demanded 1/5th share of the property of Late Sh. Ranjit Singh Jutla (as 5th legal heir of R.S. Jutla apart from the 2nd party and her three sons) bearing no.E-104 Jeevan Park, Uttam Nagar, Delhi.

5. Now the present Memorandum of Understanding witnesseth as under:-

A. The 2nd party shall give 1/5th share of the market value of property bearing no.E-104 Jeevan Park, Uttam Nagar, Delhi to the 1st party which, is to be calculated by respective counsel of both the parties. B. The above said amount equivalent to 1/5th share of the property shall be given to 1st party within three months from the date of signing of present MOU. C. That the 1st party shall remove all her belongings lying in the suit property before 11th March, 2013. D. The 2nd party shall have all the rights and liberty to take appropriate steps for compliance of present MOU. E. The 2nd party shall withdraw the criminal case by assisting 1st party to get the FIR

quashed before Hon ble High Court of Delhi.

F. Both the parties shall comply /fulfil all the statements given before the court and also abide themselves to comply with the terms given in the present MOU. In witness the present MOU is being signed by both the parties in presence of the following witnesses:

Smt. Surjeet Kaur Smt. Jasbinder Kaur"

Crl. M.A. 5018/2013, 2446/2014 and 2447/2014 in Bail

33. On 18th April, 2013, the complainant filed Crl. Misc. Appl.

5018/2013 seeking cancellation of the anticipatory bail of the petitioners on the ground that the petitioners have violated the solemn undertaking given to this Court not to interfere with the peaceful possession of the complainant in the subject property. The complainant also attached the copy of the MOU dated 22 nd February, 2013 as Annexure P-5 to the application. Vide order dated 26th April, 2013, the notice of this application was issued to the petitioners for 10th May, 2013.

34. On 15th July, 2013, the petitioners present in Court along with their counsel submitted that petitioner no.1 has 1/5 th share in the subject property which is valued about Rs 2 to 2.5 crores and she is willing to hand over the vacant and peaceful possession upon receipt of her 1/5th share which was agreeable to the complainant. She, however, submitted that the complainant should disclose the other estate of her husband whereupon the complainant was directed to file the affidavit of the entire movable and immovable of her husband within one week. The order dated 15th July, 2013 is reproduced hereunder:

1. The complainant is seeking cancellation of the anticipatory bail granted to the petitioners on the ground that they have violated the undertaking given to this Court on 15th January, 2013.

2. The dispute between the parties relate to property bearing no.E-104, Jeevan Park, Uttam Nagar, Delhi which was owned by late Ranjit Singh Jutla who died intestate in the year 2003 leaving behind five legal representatives, namely, petitioner no.1 (mother), Mrs. Jasbinder Kaur (wife) and three sons, namely, Mr. Sandeep Jutla, Harpal Jutla and Inderjeet Jutla.

3. Learned counsel for the petitioners submit that petitioner no.1 has 1/5th share in the subject property which is of the value of about Rs.2 crores to Rs.2.5 crores. Learned counsel initially submitted that petitioner no.1 is ready to handover the vacant and peaceful possession of the said property upon receipt of her 1/5th share. However, later on learned counsel submitted that she is ready to make the payment of 4/5th share to the wife and children of the deceased and would like to retain the property as she has sentimental value attached to the same. Learned counsel further

submits that respondent no.1 is permanently settled in UK and, therefore, she would sell this property and go back to UK.

4. Learned counsel for respondent no.2 (wife) submits that respondent no.2 has now shifted permanently to India and she would like to stay in the subject property. Learned counsel further submits that the wife is ready to make the payment of Rs.40 lacs towards the 1/5th share of petitioner no.1 to petitioner no.1.

5. Learned counsel for the petitioners further submits that the wife should disclose the other estate of the husband as petitioner no.1 has got 1/5th share in the entire estate of her son, namely, late Ranjit Singh Jutla.

6. Learned counsel for respondent no.2 submits that late Sh.

Ranjit Singh Jutla has no estate other than the subject property in question.

7. Let the affidavit of respondent no.2 with respect to the entire movable and immovable estate of her husband be filed within one week.

8. List for hearing on 19th August, 2013."

(Emphasis supplied)

35. In terms of the aforesaid order dated 15th July, 2013, the complainant filed an affidavit dated 22nd July, 2013 in which she deposed that there is no movable or immovable estate of the deceased except the subject property.

36. On 12th September, 2013, the petitioners and the complainant agreed to resolve their disputes through mediation on the terms that the existing structure of the subject property shall be demolished and a new building shall be constructed through a builder under a collaboration agreement; the cost of construction shall be borne by the builder and the parties shall receive their shares in terms of the order dated 15 th July, 2013. The parties agreed to identify a builder and negotiate the terms of the collaboration agreement. The complainant agreed to identify a builder and produce him before the Court on 26th September, 2013. All this is recorded in the order dated 12 th September, 2013. The parties negotiated the various proposals given by the builder which are recorded in the orders dated 22nd October, 2013, 1st November, 2013, 25th November, 2013, 19th December, 2013 and 20th December, 2013. The order dated 1st November, 2013 is signed by petitioner no.1.

37. On 24th January, 2014, petitioner no.1 changed her counsel who submitted that petitioner no.1 has changed her mind and is not agreeable to execute the collaboration agreement.

38. On 11th February, 2014, the complainant filed Crl. Misc.Appl.2446/2013 under Section 340 Cr.P.C. and Crl. Misc.Appl.2447/2013 under Article 215 of the Constitution for initiating contempt

proceedings against the petitioners. Vide order dated 14th February, 2014, notice of both these application was issued to the petitioners which was accepted by their counsel and the petitioner have filed their reply.

39. On 21st March, 2014, the parties again agreed to meet learned mediator to make an endeavour to resolve their disputes. In the meantime, there was change of counsel by the petitioners on 26th March, 2014. Mr. B.R. Handa, learned senior counsel appeared on 26th March, 2014 and sought time to amicably resolve the disputes between the parties.

40. On 16th April, 2014, there was again change of the counsel by the petitioners. Dr. Shyamllha Pappu, learned senior counsel appeared on 25th April, 2014 submitted that she has been instructed to contest the matter.

40.1 On 26th April, 2014, the petitioners filed an affidavit in which she disowned the undertaking given by her counsel. The matter was finally heard on 29th April, 2014.

Submissions of the petitioners

41. Crl. Misc. Appl.5018/2013 for cancellation of the anticipatory bail is not maintainable as the complainant was not a party in the main Bail Appl. No.64/2013 and, therefore the complainant should have filed a separate petition under Section 482 Cr.P.C. to seek cancellation of the anticipatory bail.

42. The petitioners disown the undertaking given by their counsel to this Court on 15th January, 2013 on the ground that their counsel did not know that the complainant was not in possession of the subject property and he unknowingly made a statement that the petitioner shall not interfere with the peaceful possession of the complainant. The petitioners claim to be living in the subject property for the last 30 years ever since the property was purchased in 1984. The petitioners further claim to be in continuous possession of the subject property and therefore, there was no occasion for them to give any such undertaking. Petitioner no.1 is not willing to leave the possession of the subject property where she has stayed for the last 30 years.

43. The petitioners also disown the statement made by her before this Court on 15th July, 2013 on the ground that her counsel made the statement without her consent and such admission is not binding on her.

44. The statement of the complainant was recorded by this Court on 6th September, 2013 in which the complainant stated that the petitioners never handed over the physical possession of the subject property to her and she was never in physical possession of the subject property.

Submissions of the State

45. The petitioners cannot withdraw the undertaking given by their counsel on 15th January, 2013. It is submitted that but for the said undertaking, this Court would not have granted anticipatory bail

to the petitioners. It is further submitted that the petitioners withdrawal of the undertaking dated 15th January, 2013 is malafide and highly belated having been raised for the first time after more than a year.

46. Learned APP for the State has referred to the order dated 30th November, 2012 whereby the learned Sessions Court dismissed the anticipatory bail application of the petitioners. It is submitted that the petitioners were present in Court at the time of hearing dated 30th November, 2012 which records their presence. Submissions of the complainant

47. The statement of petitioner no.1 that she has been continuously staying in the subject property for the last 30 years is absolutely false. Reference is made to the statement made by the petitioners in the Probate Case and the affidavit filed by the petitioner no.1 before this Court along with petition on 14th January, 2013 which gives her address as WZ-36A, Plot 67, Vishnu Garden, New Delhi-110018.

48. The petitioners challenge to the undertaking given to this Court on 15th January, 2013 on the basis of which they secured anticipatory bail for this Court is frivolous.

49. The challenge to the order dated 15th July, 2013 is also frivolous. The order dated 15th July, 2013 was followed by order dated 1st November, 2013 which was signed by both the petitioners as well as complainant along with their counsels.

50. The petitioner no.1 admitted before this Court on 6th July, 2012 that the subject property was lying vacant and locked by both the parties which falsifies her stand taken before this Court that she is continuously residing in the subject property.

51. With respect to the statement dated 6th September, 2013, it is submitted that after the death of her husband, the complainant being the co-owner had put her lock on the subject property as the property was lying vacant and this position was admitted by petitioner no.1 as back as in September 2008 in the probate proceedings as well as in other proceedings. Vide the order dated 9th March, 2010 in FAO 91/2010, the complainant was permitted to manage the subject property during the pendency of the appeal whereupon petitioner no.1 was required to remove her locks.

However, petitioner no.1 failed to remove her lock and therefore, the complainant stated that petitioner no.1 never handed over the possession to her. It is further submitted that the statement of the complainant was deferred after part examination. Consequences of filing false affidavit

52. In *Dhananjay Sharma v. State of Haryana*, (1995) 3 SCC 757, the Supreme Court held that filing false affidavit amounts to contempt of court. The relevant observations are as under:-

"38...The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the

intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits or making false statement on oath in courts aims at striking a blow at the rule of law and no court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving of false statements and fabricating false evidence in a court of law. The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the court and interfere with the due course of judicial proceedings or the administration of justice.

(Emphasis supplied)

53. In *Murray & Co. v. Ashok Kr. Newatia*, (2000) 2 SCC 367, the Supreme Court held as under:-

"While it is true that the statement made in the affidavit has been introduced as and by way of a denial but the fact remains that such a statement has in fact been made in an affidavit before this Court. The litigant public ought to be extremely careful and cautious in the matter of making statements before courts of law. Whether, however, the respondent has obtained a definite advantage or not is wholly immaterial in the matter of commission of offence under the Act, though the same would be a relevant factor in the context of punishment to be imposed against a contemner..."

(Emphasis supplied) Frivolous litigation

54. In the recent case of *Subrata Roy Sahara v. Union of India*, MANU/SC/0406/2014, J.S. Khehar, J. observed that the Indian judicial system is grossly afflicted with frivolous litigation. The relevant portion of the judgment is as under:-

150. The Indian judicial system is grossly afflicted, with frivolous litigation. Ways and means need to be evolved, to deter litigants from their compulsive obsession, towards senseless and ill-considered claims.

One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part. He pays for the litigation, from out of his savings (or out of his borrowings), worrying that the other side may trick him into defeat, for no fault of his. He spends invaluable time briefing counsel and preparing

them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his. Should a litigant not be compensated for, what he has lost, for no fault?...

XXX XXX XXX

152. This abuse of the judicial process is not limited to any particular class of litigants. The State and its agencies litigate endlessly upto the highest Court, just because of the lack of responsibility, to take decisions. So much so, that we have started to entertain the impression, that all administrative and executive decision making, are being left to Courts, just for that reason. In private litigation as well, the concerned litigant would continue to approach the higher Court, despite the fact that he had lost in every Court hitherto before. The effort is not to discourage a litigant, in whose perception, his cause is fair and legitimate. The effort is only to introduce consequences, if the litigant's perception was incorrect, and if his cause is found to be, not fair and legitimate, he must pay for the same. In the present setting of the adjudicatory process, a litigant, no matter how irresponsible he is, suffers no consequences.

Every litigant, therefore likes to take a chance, even when counsel's advice is otherwise.

153. Does the concerned litigant realize, that the litigant on the other side has had to defend himself, from Court to Court, and has had to incur expenses towards such defence? And there are some litigants who continue to pursue senseless and ill-considered claims, to somehow or the other, defeat the process of law. ...

(Emphasis supplied) Ethics in Litigation - Duty not to deceive or mislead

55. The most basic obligation of the litigant and his lawyer is not to deceive or mislead the Court. This responsibility extends to every function including the presentation and interpretation of facts, drafting of pleadings and documents, legal argument and other submissions to, or communications with the Court. The duty not to intentionally mislead or deceive is only the bare minimum required of the advocate and solicitor. As an officer of the Court, he is expected to advance the public interest in the fair administration of justice even if this would jeopardise his client's interests. Hence, he is required to inform the Court of all relevant decisions and legislative provisions of which he is aware whether the effect is favourable or unfavourable towards the contention for which he argues. In the same context, he is prohibited from advancing submissions, opinions or propositions which he knows to be contrary to the law. He is bound not to make any statements which are inaccurate, untrue and misleading.

In *D.P. Chadha v. Triyugi Narain Mishra*, (2001) 2 SCC 221, the Supreme Court held as under:-

"22. ... A lawyer in discharging his professional assignment has a duty to his client, a duty to his opponent, a duty to the court, a duty to the society at large and a duty to himself. It needs a high degree of probity and poise to strike a balance and arrive at the place of righteous stand, more so, when there are conflicting claims. While discharging duty to the court, a lawyer should never knowingly be a party to any

deception, design or fraud. While placing the law before the court a lawyer is at liberty to put forth a proposition and canvass the same to the best of his wits and ability so as to persuade an exposition which would serve the interest of his client so long as the issue is capable of that resolution by adopting a process of reasoning. However, a point of law well settled or admitting of no controversy must not be dragged into doubt solely with a view to confuse or mislead the Judge and thereby gaining an undue advantage to the client to which he may not be entitled. Such conduct of an advocate becomes worse when a view of the law canvassed by him is not only unsupportable in law but if accepted would damage the interest of the client and confer an illegitimate advantage on the opponent. In such a situation the wrong of the intention and impropriety of the conduct is more than apparent..."

(Emphasis supplied) Discussion on the contentions raised

56. With respect to the petitioner's contention that Crl. Misc. Appln.5018/2013 is not maintainable, it is noted that the Supreme Court in *R. Rathinam v. State*, (2000) 2 SCC 391 held that the High Court can cancel the anticipatory bail upon being approached by the State or by any aggrieved party. It was further held that the said power can also be exercised suo moto by the High Court. There was no impediment either in Section 439 Cr.P.C or in any other law which inhibits a person from moving the High Court for cancellation of the bail. The relevant portion of the judgment is reproduced hereunder:

"6. ... the next question is whether the same High Court can cancel the bail for other reasons. The answer is explicit in Section 439(2) of the Code of Criminal Procedure. It reads thus:

"439. (2) A High Court or Court of Session may direct that any person who has been released on bail under this chapter be arrested and commit him to custody."

7. The frame of the sub-section indicates that it is a power conferred on the said courts. Exercise of that power is not banned on the premise that bail was earlier granted by the High Court on judicial consideration. In fact the power can be exercised only in respect of a person who was released on bail by an order already passed. There is nothing to indicate that the said power can be exercised only if the State or investigating agency or even a Public Prosecutor moves for it by a petition.

8. It is not disputed before us that the power so vested in the High Court can be invoked either by the State or by any aggrieved party. Nor is it disputed that the said power can be exercised suo motu by the High Court. If so, any member of the public, whether he belongs to any particular profession or otherwise, who has a concern in the matter can move the High Court to remind it of the need to invoke the said power suo motu. There is no barrier either in Section 439 of the Code or in any other law which inhibits a person from moving the High Court to have such powers exercised suo motu. If the High Court considers that there is no need to cancel the bail for the reasons stated in such petition, after making such considerations it is open to the High Court to dismiss the petition. If that is the position, it is also open to the High Court to cancel the bail if the High Court feels that the

reasons stated in the petition are sufficient enough for doing so. It is, therefore, improper to refuse to look into the matter on the premise that such a petition is not maintainable in law."

(Emphasis supplied)

57. The petitioners' contention that her counsel was not aware that she was not in possession of the subject property and he unknowingly gave an undertaking to this Court on 15 th January, 2013 that the petitioners shall not interfere with the peaceful possession of the complainant is absolutely false. In para 4 of the bail application BA-64/2013 (reproduced in para 28 above), petitioner no.1 has pleaded that both parties are residing in the subject property. Prior thereto, petitioner no.1 as back as on 24th November, 2010 filed an application M-11/10 before the District Judge in Probate Case No.335/2006 in which she stated that the complainant had broken her locks and therefore, the complainant be directed to hand over the keys of the subject property to her which was refused by the learned District Judge on the ground that the house was lying vacant and both the parties have put their locks on it. Relevant portion of the said order is produced in para 9 above. It is, therefore, clear that as back as on 24 th November, 2010, petitioner no.1 had admitted being out of possession and had put her lock on the lock of the complainant and further that the property was lying vacant. On 6th July, 2012, the complainant submitted before the High Court that petitioner no.1 had broken open the lock which was disputed by petitioner no.1 who submitted that the subject property was lying locked; there was lock of both the parties and nobody had broken open the lock. On 24th January, 2013, learned Metropolitan Magistrate recorded in her order that the subject property was lying locked. On 18 th February, 2013, petitioner no.1 submitted before the investigating officer that she was ready to give the possession of the subject property to the complainant in compliance with the order of the High Court in FAO 91/2010. Petitioner no.1 has not challenged any of the aforesaid orders which have thus become final.

From the above orders, it is clear that petitioner no.1 herself admitted the possession of the complainant as back as in September, 2008. On 24th November, 2010, she again admitted that the property was lying vacant and both the parties had put their lock on it. On 6th July, 2012 also, petitioner no.1 admitted lock of both the parties on the subject property meaning thereby that the locks of both the parties continued from 24th September, 2008 to 6th July, 2012. There is no order of the Court for breaking open of the locks of the parties and therefore, the same status continued on 15th January, 2013. As such, the statement of the counsel for petitioner no.1 before this Court that the complainant was in possession of the subject property on 15th January, 2013 is not contrary to the facts on record.

58. The petitioners have not explained that how petitioner no.1 came into possession of the subject property which was lying vacant and under the lock of both the parties continuously from 24th September, 2008 to 6th July, 2012. Since there is no order of the Court for removal of the complainant's lock from the subject property, it is clear that petitioner no.1 has broken open the complainant's lock to enter into the property. The question then arises as to the date on which petitioner no.1 has broken the lock of the complainant to enter into the property. Since petitioner no.1 has admitted before this Court that the complainant was in possession on 15th January, 2013, the only conclusion possible is that petitioners broke the complainant's lock to enter into the

property after 15th January, 2013. This is corroborated by the statement made by petitioner no.1 before investigating officer on 18th February, 2013 that she was ready to give the possession of the subject property to the complainant in compliance with their statements made before the High Court meaning thereby that petitioner no.1 broke the locks of the complainant between 15th January, 2013 to 18th February, 2013. The complainant's contention that the petitioner's broke the locks of the complainant on 5th February, 2011 and 26th February, 2011 appears to be true.

59. Crl. M.A.5018/2013 for cancellation of the anticipatory bail under Section 439(2) Cr.P.C. was filed by the complainant on 18th April, 2013 and the notice was issued to the petitioners on 26th April, 2013 in pursuance to which the petitioners appeared before this Court along with their counsel on 10th May, 2013 and the case was thereafter listed on more than 15 occasions but no such stand was ever taken by the petitioners before this Court. Having enjoyed the benefit of the order dated 15th January, 2013, the petitioners attempt to walk out of the undertaking given by her counsel to this Court after a delay of more than one year is clearly an attempt to overreach this Court and is therefore hereby rejected.

60. On 24th November, 2010, the complainant was in possession of the subject property in terms of the order dated 9th March, 2010 and therefore, petitioner no.1 in her reply dated 30th August, 2011 in Cont. Cas(C) 337/2011 claimed back the possession which was rejected by this Court vide order dated 24th November, 2010 on the ground that the subject property was lying vacant and both the parties have put their locks on it. The joint locks of both the parties admittedly continued upto 6th July, 2012. It appears that the same status was continuing even on 15th January, 2013 when petitioner no.1 admitted before this Court that the complainant was in possession and therefore, she gave an undertaking not to interfere with the possession of the complainant. According to the complainant, the petitioner broke open the locks on 5th February, 2011 and 26th February, 2011 whereupon she filed a criminal complaint before the Metropolitan Magistrate in which learned Magistrate directed the police to register an FIR vide order dated 21st August, 2012 which resulted in FIR No.325/2012 under Sections 116/109/191/192/193/ 197/201/203/218/451/441/442/445/446/457/506/503/504/120B. Since the petitioners could not explain how she could enter the subject property without breaking open the lock of the complainant which she has admitted before the Court on 24th November, 2010 and 6th July, 2012, it is abundantly clear that the petitioner broke open the lock of the complainant to enter into the subject property during the period 15th January, 2013 to 18th February, 2013 and therefore, the complainant is justified in prosecuting the petitioners under FIR No.325/2012 dated 27th August, 2013.

61. Petitioner no.1 has given false statement on oath before this Court in her affidavit dated 26th April, 2014 that she is continuously living in the subject property for the last 30 years i.e. from 1984. This statement is false in view of her previous statements on oath as given below:-

(i) In Probate Case No.335/2006, petitioner no.1 gave her address as WZ-36A, Plot No.67 Vishnu Garden, PO Tilak Nagar, New Delhi in five affidavits dated 27th March, 2008, 3rd July, 2008, 13th August, 2008, 16th March, 2009 and 22nd April, 2009. In the evidence by way of affidavit dated 16th March, 2009 also, petitioner no.1 has given the same address.

(ii) In FAO No.91/2010, petitioner no.1, in her affidavit dated 1st February, 2010 has given her Vishnu Garden address.

(iii) In the contempt petition CCP 337/2011 also, petitioner no.1 has given her Vishnu Garden address in the affidavit dated 30th August, 2011.

(iv) In Bail Appln.64/2013, the affidavit dated 14th January, 2013 of petitioner no.1 in support of the bail application bears her Vishnu Garden address. The same address is given in the affidavit along with the exemption application. Affidavits dated 26 th February, 2014 of petitioner no.1 in support of the replies to Crl.

Misc. Applns.2446/2014 and 2447/2014 also contain the same address.

In the affidavit dated 26th April, 2014 before this Court petitioner no.1 for the first time mentioned her address as E-104, Jeevan Park, Uttam Nagar, New Delhi which is contrary to her earlier affidavits and is therefore, false. Apart from the addresses given by petitioner no.1 in all the proceedings, petitioner no.1 has admitted before the different Courts that the subject property was lying vacant and under the lock of both the parties meaning thereby that petitioner no.1 was not staying in the subject property. It is, therefore, abundantly clear that petitioner no.1 never stayed in the subject property and has made false statement on oath before this Court in her affidavit dated 26th April, 2014.

Even if the statements of petitioner no.1 in her affidavit dated 26th April, 2014 are taken to be true, the previous statements made by petitioner no.1 on oath would become false and, therefore, petitioner no.1 would be liable to the consequences of making false statements on oath. This is a classic case where petitioner no.1 herself has given so many contradictory statements.

62. With respect to the contention of petitioner no.1 that on 15 th July, 2013 her counsel made a statement that she has 1/5 th share in the subject property without her instructions, is absolutely false. Counsel for the petitioner no.1 had talked to petitioner no.1 in the open Court within the hearing of this court before making the statement and this Court recorded the statement after satisfying that petitioner no.1 admitted her share in the subject property as 1/5 th only. As such, the blame put by petitioner no.1 on her counsel with a view to wriggle out of the admission made in this Court on 15th January, 2013 is clearly contemptuous. That apart, petitioner no.1 admitted her right in the subject property to be only 1/5th in the MOU dated 22nd February, 2013 as well as the grounds (ii) and

(iii) of FAO 91/2010.

63. The claim of petitioner no.1 to be absolute owner of the subject property is not sustainable in law as the title documents in respect of the subject property are in the name of her son late Ranjeet Singh Jutla. The petitioner no.1 does not have any title document in respect of the subject property in her name. She was also not aware as to the date, time and place of execution of the said documents. She has not paid any sale consideration to the seller Rattan Singh. She claims to have

paid the sale consideration out of the pensionary benefits of her husband which also have not been proved. The claim of petitioner no.1 appears to be barred by Sections 91 and 92 of the Indian Evidence Act. Petitioner no.1 appears to be well aware of the legal position and therefore, admitted her share in the subject property according to the ordinary law of succession to be 1/5th which is clearly admitted by her in grounds (ii) and (iii) of FAO No.91/2010; Memorandum of Understanding dated 22nd February, 2013 and again before this Court on 15th July, 2013. Petitioner no.1 has not disputed her admissions made in FAO No.91/2010 as well as Memorandum of Understanding dated 22nd February, 2013. However, petitioner no.1 has made an attempt to wriggle out of the statement made before this Court on 15th July, 2013 in her affidavit dated 26th April, 2014 which also amounts to contempt.

64. On careful consideration of the rival contentions of the parties, this Court is of the prima facie view that the petitioners are guilty of wilful disobedience of the undertaking given to this Court as well as making false statements on oath before this Court. The petitioners have time and again changed their stand and have misled this Court. The conduct of the petitioners is also clearly contemptuous which is clear from the sequence of events summarized hereinbelow:-

10th July, 2008 Petitioner no.1, the complainant and her sons were in joint occupation of the subject property - In the Probate Case No.335/2006, petitioner no.1 filed an application under Order XI Rules 1 and 2 C.P.C. to serve the interrogatory, "Who is occupying property No.104, Jeevan Park, New Delhi" to which the complainant replied that she, her three sons and petitioner no.1 are in joint occupation as one key of the lock is with the complainant and the second key is with petitioner no.1. Petitioner no.1 did not contest this position.

27th October, 2009 The Letters of Administration in respect of the subject property were issued in favour of the complainant.

6th March, 2010 Petitioner no.1 filed FAO No.91/2010 before this Court to challenge the judgment dated 27th October, 2009 in which she restricted her claim to only 1/5th share according to the ordinary law of succession. Petitioner no.1 admitted 1/5th share of the complainant and 3/5th share of the three children of the complainant.

9th March, 2010 This Court permitted the complainant and her children to manage the subject property till the disposal of FAO 91/2000. Petitioner no.1 did not challenge this order which has thus become final.

24th November, 2010 Petitioner no.1 admitted that subject property was lying vacant and both the parties have put their locks on it - The complainant filed an application M-11/10 before the District Judge to seek the keys of the subject property from petitioner no.1 who admitted that the subject property was lying vacant and both the parties have put their locks on it.

30th August, 2011 Petitioner no.1 admitted that subject property was lying vacant under the lock of the complainant - Petitioner no.1 in para 1 of the reply to Cont.Case(C)No.337/2011, admitted that the subject property was lying vacant under the lock of the complainant.

Petitioner no.1 submitted that she has also put her lock.

6th July, 2012 Petitioner no.1 admitted that the subject property was lying locked and there was lock of both the parties -

Petitioner no.1 in FAO No.91/2010 admitted that the subject property was lying locked and nobody has broken the lock; and there was lock of both the parties.

30th November, 2012 First contradicting statement - The petitioners claimed to be in continuous possession and occupation of the subject property and that the complainant was never in possession -

During the hearing of the anticipatory bail application before the learned Sessions Court, petitioner no.1 claimed to be in possession and occupation of the subject property and that the complainant was never in possession. The learned Sessions Court held that the petitioners have illegally put their locks on the subject property.

7th January, 2013 The Petitioners filed BA 64/2013 in which they admitted that petitioners as well as the complainant were residing in the subject property - In para 4 of the bail application, the petitioners relied upon the status report of the I.O. dated 30th October, 2012 according to which both the parties i.e. the petitioners and the complainant were residing in the subject property.

15th January, 2013 Petitioners admitted the complainant to be in possession of the subject property

- The petitioners admitted before this Court at the time of hearing of BA 64/2013 that the complainant was in possession and undertook not to interfere with their peaceful possession.

21st January, 2013 The learned Metropolitan Magistrate directed the I.O. of FIR No.325/2013 to accompany the complainant to give her adequate protection for compliance of the order dated 15th January, 2013.

24th January, 2013 The Investigating Officer visited the subject property for compliance of the order dated 21st January, 2013 when the subject property was found locked at the main gate. The status report is noted in the order dated 24th January, 2013 passed by the learned Metropolitan Magistrate. 18th February, 2013 Petitioners agreed to hand over the possession of the subject property to the

complainant - The petitioners submitted before the Investigating Officer during the investigation of FIR No.325/2013 that they were ready to hand over the possession of the subject property to the complainant in terms of the submission before the High Court.

22nd February, 2013 Petitioner no.1 admitted her share in the subject property to be 1/5th according to the ordinary law of succession - In the Memorandum of Understanding dated 22nd February, 2013, petitioner no.1 admitted her share in the subject property to be 1/5th and agreed to accept the amount equivalent to 1/5th share within three months. She further agreed to remove her belongings before 11th March, 2013.

15th July, 2013 Petitioner no.1 again admitted her share in the subject property to be 1/5th

- Petitioner no.1 admitted her share in the subject property to be 1/5th according to the ordinary law of succession in this Court.

65. From the conduct of the petitioners, it is clear that the petitioners have time and again made contradictory statements and have repeatedly changed their stand. However, from the admissions of petitioner no.1, it is clear beyond doubt that the subject property was lying vacant under the lock of both the parties from as back as on 10th July, 2008 recorded in the Probate Case. This situation continued up to as late as on 15th January, 2013 when the petitioners, who were unsuccessful in getting anticipatory bail before the Sessions Court, admitted the possession of the complainant and gave an undertaking to secure anticipatory bail. However, after securing the anticipatory bail, the petitioners again turned dishonest and removed the lock of the complainant and again started claiming the exclusive possession. The conduct of the petitioners is clearly contemptuous.

66. From the complainant's statement before this Court on 6th September, 2012 that the petitioners never handed over the physical possession to her, it appears that both the parties had put their lock on the subject property which was lying vacant. In the eyes of law, upon the death of Ranjeet Singh Jutla, all the legal heirs of late Ranjeet Singh Jutla, namely, petitioner no.1(mother), complainant(wife) and three sons would be in possession of the subject property and petitioner no.1 cannot claim the same to the exclusion of others. Petitioner no.1 has also admitted that the subject property was lying vacant and under the lock of both the parties from prior to 10th July, 2008 to 5th February, 2011. After the order dated 9th March, 2010 in FAO 91/2010, permitting the complainant to manage the subject property during the pendency of the appeal, petitioner no.1 was duty bound to remove her lock which she failed to do so.

67. The petitioners are guilty of playing tricks and misleading the Court which is clear from the fact that the petitioners, after being unsuccessful in getting anticipatory bail from the Sessions Court, approached this Court in Bail Appln.64/2013, secured the anticipatory bail from this Court after giving solemn undertaking. The petitioners continue to enjoy the order dated 15th January, 2013 for more than a year and only at the stage of hearing of the application for cancellation of bail, the

petitioners are seeking to wriggle out of the solemn undertaking given to this Court. During this period, petitioner no.1 admitted before this Court on 15th July, 2013 that she has only 1/5th share in the subject property and she is ready to accept the market value of 1/5th share. After the statement was recorded, petitioner no.1 again changed her mind and submitted that she is ready to make payment of 4/5th share to the complainant and her children and would like to retain the property. Since both the parties were keen to stay in the property and the present construction could not be divided by metes and bounds, petitioner no.1 later agreed for construction of a building by a collaboration agreement through a builder and to retain 1/5 th share of the built up structure which was accepted by the complainant. The complainant accepted even this. Petitioner no.1 is now trying to wriggle out of this also on the ground that all this was being done without her consent. This Court is of the view that the contentions of the petitioners are false and therefore, rejected.

68. During the course of the hearing dated 29th April, 2014, learned senior counsel for the petitioners admitted that vide order dated 9th March, 2010, this Court has permitted the complainant to manage the subject property till the disposal of the appeal subject to the condition that they shall not alienate or create third party interest. Learned senior counsel further admitted that the petitioners have not challenged the said order which has become final. It was specifically put to the petitioners whether today they are ready to permit the complainant to occupy and manage the subject property in terms of order dated 9 th March, 2010 whereupon learned senior counsel for the petitioners took instructions from petitioner no.1 present in Court and said that the petitioners are not willing to comply with the order dated 9th March, 2010 which shows that the petitioners have not respect for the order dated 9th March, 2010 of this Court and the non-

compliance is wilful and deliberate.

69. It is well settled that wilful disobedience of an undertaking given to the Court amounts to contempt of Court. If a party is permitted to resile from an undertaking given to the Court, the same would completely destroy the sanctity to such solemn undertaking and would encourage dishonesty and disrespect for the judicial process. It would also undermine the majesty and authority of Courts, and instil doubts in the minds of the litigating public with regard to the efficacy of the judicial process and, in particular, with regard to the process of accepting undertaking by the Court and of the efficacy of the undertaking given to the Court by a party.

70. While exercising the contempt jurisdiction, this Court can, apart from punishing the petitioners for contempt of this Court, also direct the contemnors to restore the advantage gained by them by resorting to contempt. A party to the litigation cannot be allowed to take an unfair advantage by committing breach of an undertaking and thereafter retain the advantage gained in breach of the undertaking meaning thereby that this Court would be within its power to direct the petitioners to hand over the possession of the subject property which has been illegally taken by committing contempt of this Court. This Court can also direct the petitioners to pay the damages for illegal occupation of the subject property. Both the parties are therefore, directed to file an affidavit with respect to the approximate rental value of the subject property in order to determine the damages.

Conclusion

71. On careful consideration of rival contentions of the parties, this Court is of the view that the petitioners have violated the solemn undertaking given to this Court on 15 th January, 2013 that they will not interfere with the peaceful possession of the complainant and therefore the anticipatory bail of the petitioners is liable to be cancelled. Crl. M.A. No.5018/2013 is therefore allowed and the anticipatory bail granted to the petitioners is hereby cancelled.

72. This Court is seriously concerned about the age and health of petitioner no.1 who is more than 75 years old and not in good health. However, the petitioners have not left any stone unturned to open the gate leading to their custody. The petitioners have violated the solemn undertaking given to this Court and have made false statements on oath as well as misled this Court. The petitioners are not complying with the order dated 9 th March, 2010 in FAO No.91/2010 whereby the complainant is entitled to manage the subject property till disposal of the appeal. Although, petitioner no.1 was ready and willing to hand over the possession of the subject property to the complainant on 18th February, 2013 (paras 24 and 25) but she changed her mind later on and is still holding on to the subject property. Be that as it may, if the petitioners desire to gracefully hand over the possession of the subject property to the complainant in terms of order dated 9 th March, 2010, they shall inform the Investigating Officer who shall produce both the petitioners before the learned Metropolitan Magistrate in Crl. Complaint 869/1.

Crl. M.A. 2446/2014 & 2447/2014

73. After substantial hearing had taken place on all the applications, learned senior counsel for the petitioners raised a technical objection that although a formal notice of the Crl. M.A.2446/2014 and 2447/2014 has been issued on 14th February, 2014 to the petitioners who have filed reply to both the applications but a specific show cause notice is mandatory to show cause why the petitioners be not prosecuted for Contempt in Crl. Misc. Appl. 2447/2014 and why proceedings under section 340 be not initiated against them in Cr. M.A.2446/2014. Although the technical objection raised is misconceived, in the interest of justice, further hearing of Crl. M.A.2446/2014 and 2447/2014 is deferred. In Crl. M.A.2447/2014, a specific show cause notice is issued to the petitioners as to why they be not punished for contempt of this Court, returnable on 30th July, 2014. Since the petitioners have entered into possession by committing breach of the undertaking given to this Court, the petitioners shall also show cause as to why the possession of the subject property be not restored back to the complainant and further, why the petitioners be not directed to pay the damages for illegal use and occupation of the premises. A specific show cause notice is also issued to the petitioners in Crl. M.A. 2446/2014 as to why the proceedings under Section 340 Cr.P.C. be not initiated against them for making false statements on oath, returnable for the same date.

74. List for continuation of arguments on 30th July, 2014. Since substantial arguments have already been advanced by both the parties, this case shall be treated as part-heard.

75. The petitioners as well as the complainant shall remain present in Court on the next date of hearing.

76. The record of pending cases namely, Crl.Compl. No.869/1 as well as FAO No.91/2010 be returned back forthwith. However, the records of the decided cases namely, Probate Case No.335/2006 and Cont.Cas(C)No.337/2011 be retained. The record of anticipatory bail application of the petitioner before the Sessions Court as well as record of M-11/10 be requisitioned for the next date of hearing.

77. Copy of this order be given dasti to the petitioners, complainant as well as learned APP for the State under the signature of the Court Master. Copy of this order be also sent to learned Metropolitan Magistrate along with the record of Criminal Complaint No.869/1.

J.R. MIDHA, J MAY 30, 2014/dk