

## Hazari Lal vs . State & Another on 31 March, 2018

Hazari Lal Vs. State & Another  
CR No: 447/2017

IN THE COURT OF SH. HARISH DUDANI, SPECIAL  
JUDGE, (PC ACT) CBI-I DWARKA COURTS; NEW  
DELHI

Hazari Lal  
S/o Late Sh. Deena @ Deena Ram  
R/o Village & P.O. Dhansa  
New Delhi. ....revisionist

VERSUS

1. State  
Through  
Government of NCTD
2. Jitender Kumar  
S/o Late Sh. Hira Lal Kaushik  
R/o Village & P.O. Dhansa  
New Delhi.  
.....Respondents

CR No.	447/2017
Date of Institution	25.09.2017
Police Station	J.P. Kalan
Reserved for orders on	22.03.2018
Judgment announced on	31.03.2018

### JUDGMENT

1. This is a revision petition under Section 397 r/w Section 401 Cr.P.C. against the impugned order dated 22.06.2017 passed by Ld. MM-06, South West/ Dwarka Courts, New Delhi whereby Ld. MM has been pleased to order for framing of charge under Section CR No: 447/2017 Page 1 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 420 IPC against the revisionist.

2. Briefly stated facts relevant for the disposal of the revision petitions are as under:

3. The aforesaid revision petition arises out of Complaint Case No. 165/1/14 titled as Jitender Kumar Vs. Hazari Lal & Sh. Rakesh, under Section 420/477 read with Section 120B IPC filed by the complainant (respondent no. 2 herein).

4. In the complaint under Section 200 Cr.P.C.

dated 25.05.2014, the complainant ( respondent no. 2 herein) has stated that accused and his son namely Rakesh Kumar had approached him in last week of March 2002 representing that accused

Hazari Lal was owner/co-sharer of 1/8th share in respect of agricultural land measuring 36 bighas 6 biswa comprised in Khasra Nos. 40/16(0-18), 17(2-4), 24(4-

16), 24(4-16), 25(4-16), 41/21/1(2-05), 44/4/1(2-12), 5/1(2-12), 47/3/1(2-04), 4/1(0-10), 11/13(1-11), 18(4-

13), 23(4-08) in the revenue estate of village Dhansa, out of which he intends to sell 2 bighas 8 biswa, for his bonafide needs and accused Hazari Lal proposed to transfer the remaining land in the name of his son so that there is no hurdle in valid transfer of this 2 bigha 8 biswa land in favour of complainant.

5. It is further stated in the complaint that believing the representation of the accused Hazari CR No: 447/2017 Page 2 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 Lal that he proposed to sell the land measuring 2 bighas 8 biswa, the complainant (respondent no.2 herein) paid to the accused Rs. 2,70,000/- as the total consideration amount and on making of agreed payment of Rs. 2,70,000/- by the complainant, accused Hazari Lal on 10.04.2002 executed a General Power of Attorney, WILL, Agreement to Sell, Receipt, Possession Letter and affidavit in respect of the land in question in favour of the complainant in the presence of witnesses. It is further stated in the complaint that GPA and Will were duly registered with the Sub-Registrar but the accused kept on delaying the execution of a Registered Sale deed in favour of the complainant.

6. It is further stated in the complaint that complainant took up the matter with the accused to take the necessary steps for execution of sale deed in his favour so that he could get mutation effected in respect of the land but every time accused Hazari Lal put off the matter saying that complainant was in possession and both registered GPA and Will has been executed in his favour and he had nothing to worry.

7. It is further stated in the complaint that accused Hazari Lal gave a legal notice dated 30.03.2013 to the complainant alleging that he had CR No: 447/2017 Page 3 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 never executed any Power of Attorney dated 10.04.2002 in his favour and had now executed a 'Cancellation Deed' dated 18.03.2013 thereby cancelling the said General Power of Attorney dated 10.04.2002. It is further stated in the complaint that after sending the notice regarding cancellation of General Power of Attorney, the accused persons started harassing the complainant and threatening him to vacate the land or he would have to face very dire consequences.

8. It is further stated in the complaint that the complainant filed a civil suit for declaration and permanent injunction against the accused persons which is pending in the court of Ld. ACJ/ARC Dwarka Courts, New Delhi and accused Hazari Lal has filed his written statement in that case and admitted having received payment of Rs. 2,70,000/- from the complainant but tried to distort the true facts by saying that he was in dire need of money and had approached one Sh. Krishan who is resident of same village and he showed his inability to advance any money to accused Hazari Lal and introduced him to the complainant stating that he deals in lending money on interest and complainant agreed to lend the money to the accused Hazari Lal on the condition that accused had

to execute the loan CR No: 447/2017 Page 4 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 agreement and other ancillary documents and in the good faith accused had taken a loan from the complainant and signed various documents including stamp papers and some blank paper and accused had repaid the entire loan amount in about three years time and at no point of time, there had been any discussion between the complainant and the accused Hazari Lal with respect to the sale of any land nor there was any agreement that the document/blank papers, on which the signatures of the petitioner were obtained would be used to write down any kind of transaction of sale of any land.

9. It is further stated in the complaint that complainant was deceived into a belief that the accused persons wanted to sell their land and acting on their representation he made the payment to the accused persons. It is further stated in the complaint that intention of the accused persons was fraudulent/dishonest from the very beginning and they never infact intended to sell the land to the complainant but wanted to cheat him.

10. Vide order dated 29.05.2014 , Ld. MM was pleased to take cognizance of complaint under Section 200 Cr.P.C. and the case was fixed for pre summoning evidence.

11. In the pre summoning evidence, the CR No: 447/2017 Page 5 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 complainant examined himself as CW1, Sh. Dildar Singh as CW2 and Sh. Krishan as CW3. Thereafter pre summoning evidence was closed by the complainant on 18.01.2017.

12. Accused persons were ordered to be summoned by Ld. Trial Court vide order dated 22.07.2014. As per order dated 29.07.2015 it was noted that accused Rakesh was a juvenile on the date of offence hence he was sent to JJB concerned.

13. Vide impugned order dated 22.06.2017, Ld. MM was pleased to observe that prima faice charge under Section 420 IPC is made out against the accused Hazari Lal and charge under Section 420 IPC was framed against accused Hazari Lal (revisionist herein)

14. Aggrieved by the order dated 22.06.2017 whereby Ld. MM has been pleased to frame charge under Section 420 IPC against the accused Hazari Lal ( revisionist herein) , revisionist has filed the present revision petition.

15. In the revision petition the revisionist has stated that revisionist is a semi literate person and has retired as "Mess Bearer(Waiter) from International Students Hostel, situated in University of Delhi. It is further stated in the revision petition that he is the co- owner to the extent of 1/8th share CR No: 447/2017 Page 6 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 in respect of agricultural land measuring 36 bighas 6 biswa comprised in Khasra Nos. 40/16(0-18), 17(2-4), 24(4-16), 24(4-16), 25(4-16), 41/21/1(2-05), 44/4/1(2-

12), 5/1(2-12), 47/3/1(2-04), 4/1(0-10), 11/13(1-11), 18(4-13), 23(4-08) in the revenue estate of village Dhansa , Najafgarh New Delhi.

16. It is further stated in the revision petition that the revisionist was in dire need of money for completing the ongoing construction of his house and he had approached one Shri Krishan who is resident of the same village and said Shri Kishan showed his inability to advance any money to the revisionist and introduced him to respondent no. 2 (complainant) who is his close friend and deals in lending money on interest and after the meeting the respondent no. 2 (complainant) agreed to lend the money to the petitioner on the condition that he had to execute the loan agreement and other ancillary documents for the said purpose and in good faith petitioner signed various documents which included stamp papers and blank papers. It is further submitted in the revision petition that at no point of time there had been any discussion between the respondent and the revisionist with respect to the sale of any land nor there was any agreement that the documents/blank papers on which the signatures CR No: 447/2017 Page 7 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 of the revisionist were obtained would be used to write down any kind of transaction of sale of any land and revisionist was assured that the said documents would be destroyed upon the payment of the loan amount.

17. It is further stated in the revision petition that the revisionist has returned the entire loan amount to the respondent in about three years's time . It is further stated in the revision petition after knowing that respondent no. 2 was trying to negotiate with the outsiders for the sale of the land of the revisionist on the basis of power of attorney of the petitioner, the revisionist has executed separate cancellation deeds thereby cancelling the Power of Attorney and Will purportedly executed by the revisionist in favour of the respondent and a legal notice dated 30.03.2013 for cancellation of Deed was sent to the respondent. It is further stated in the revision petition that thereafter a civil suit against the revisionist has been filed which is pending in the court of Ld. ACJ(SW).

18. It is stated in the revision petition that impugned order suffers from gross non-application of mind and has been passed mechanically. It is stated in the revision petition that Trial Court failed to appreciate that there has been un-explained and CR No: 447/2017 Page 8 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 inordinate delay on the part of respondent no. 2 in approaching the court. It is stated in the revision petition that trial court failed to appreciate that the complaint filed by the respondent was clearly an abuse of the process of law. It is further stated in the revision petition that complainant did not take any perceivable action for more than 10 years for completion of transaction. The revisionist has prayed for setting aside the impugned order dated 22.06.2017.

19. I have heard Ld. Counsel for the parties and carefully perused the records.

20. The contention of Ld. Counsel for the revisionist is that the revisionist was in need of money and respondent no. 2 was introduced to the revisionist by Sh. Krishan and the respondent no. 2 agreed to lend the money on the condition that petitioner had to execute the loan agreement and other documents for the said purpose and in good faith, the revisionist signed various documents including some documents engrossed on stamp papers and some on blank papers.

21. Ld. Counsel for the revisionist has contended that there was no discussion between the revisionist and the respondent no. 2 regarding sale of land and the revisionist had returned the

entire CR No: 447/2017 Page 9 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 loan amount in the period of three years. It is contended by Ld. Counsel for the revisionist that in the early 2013 the revisionist came to know that the respondent no. 2 has been claiming that he holds the Power of Attorney of the revisionist and on the basis of Power of Attorney, he was trying to negotiate with the outsiders for the sale of the land and thereafter on enquiries revisionist came to know about existence of Power of Attorney dated 10.04. 2002 and Will dated 10.04.2002 and in order to avoid mischief on the part of respondent no. 2, the revisionist cancelled the said Power of Attorney by the Cancellation Deed dated 18.03.2013 and Will was cancelled on 14.06.2013.

22. It is contended on behalf of revisionist that notice dated 30.03.2013 for cancellation of Power of Attorney was sent to the respondent no. 2 and the respondent no. 2 sent the reply dated 01.05.2013 to the said notice and thereafter revisionist issued rejoinder dated 17.07.2013.

23. Ld. Counsel for the revisionist has further contended that respondent no. 2 had also filed a civil suit against the revisionist in which the revisionist filed the written statement and thereafter respondent no. 2 filed an application thereby seeking to withdraw the said suit and the said application was CR No: 447/2017 Page 10 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 dismissed.

24. Ld. Counsel for the revisionist has contended that the transaction is void in view of provisions of Section 33 and 45 of Delhi Land Reforms Act. Ld. Counsel for the revisionist has contended that disputes between the parties is of civil nature and has relied on following decisions :

1. Suraj Lamp & Industries (P) Ltd v. State of Haryana and Another, (2012) 1 Supreme Court Cases 656

2. Vesa Holdings Pvt. Ltd v. State of Kerala and others (2015), 8 Supreme Court Cases 293

25. Ld. Counsel for respondent no. 2 has contended that the revisionist had denied the execution of documents i.e. GPA dated 10.04.2002 and Will dated 10.04.2002 and the revisionist has raised inconsistent pleas in his defence which is reflected from the notice dated 30.03.2013 and the cancellation deed dated 18.03.2013. Ld. Counsel for the respondent no. 2 has contended that in the notice dated 30.03.2013, the revisionist has mentioned that he came across the General Power of Attorney dated 10.04.2002 purportedly executed by him, which shows that revisionist had no intention of CR No: 447/2017 Page 11 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 admitting the General Power of Attorney executed on 10.04.2002 whereas in the cancellation deed dated 18.03.2013, the revisionist has mentioned that he had executed a General Power of Attorney which is a registered as document No. 2373, Book No. IV, Volume No. 292, Page no. 199 to 200 dated 10.04.2002 in the office of Sub Registrar-IX, New Delhi in favour of Sh. Jitender Kumar S/o Sh. Hira Lal Kaushik.

26. Ld. Counsel for the respondent no. 2 has contended that now the revisionist has come up with the defence that he had taken loan from respondent no. 2 and the same has been returned but the

revisionist has not mentioned as to when the said loan was returned and what was the mode of return of the said loan amount and no document has been placed on record by the revisionist to substantiate this plea.

27. Ld. Counsel for the respondent no. 2 has contended that the order of summoning dated 22.07.2014 was also challenged by the revisionist by way of revision petition and in the said revision petition , the revisionist has raised the same grounds which have been raised by way of this revision petition and the said revision petition was dismissed by Sh. Kawaljeet Arora, Ld. Special Judge, CBI, CR No: 447/2017 Page 12 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 Dwarka vide order dated 11.12.2014.

28. Ld. Counsel for the respondent no. 2 has contended that after dismissal of the revision petition vide order dated 11.12.2014, no new defence has come on record except the bald plea of revisionist that he had taken loan from respondent no. 2 which has been repaid and the said plea has not been substantiated by any document and moreover this plea is to be proved by the respondent no. 2 by leading appropriate evidence in his defence at appropriate stage of trial.

29. Ld. Counsel for the respondent no. 2 has contended that impugned order dated 22.06.2017 does not suffer from any infirmity and the revision petition is liable to be dismissed.

30. By way of present revision petition, the revisionist has challenged the impugned order dated 22.06.2017 by which Ld. Trial Court has been pleased to frame charge for the offence under Section 420 IPC against the accused ( revisionist herein).

31. Section 240 Cr.P.C. reads as :

Framing of charge.- (1) if, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the CR No: 447/2017 Page 13 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

32. In Union of India V. Prafula Kumar Samal AIR 1979 Supreme Court 366, Hon'ble Supreme Court was pleased to hold:

10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for

the limited purpose of finding out whether or not a prima facie case against the accused has been made out;

(2) Where the materials placed  
before the Court disclose grave

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suspicion against the accused

which

has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial. (3) The test of determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post-Office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the CR No: 447/2017 Page 15 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 Court, any basis infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

33. In State of M.P. V. S.B. Johari, AIR 2000 Supreme Court 665, Hon'ble Supreme Court was pleased to hold:

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It is settled law that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to CR No: 447/2017 Page 16 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 prove the guilty of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that accused committed the particular offence. In such case there would be no sufficient ground for proceeding

with the trial. In *Niranjan Singh Karam Singh Punjabi etc. v. Jitendra Bhimraj Bijjayya etc.*, reported in ( 1990) 4 SCC 76 :

( AIR 1990 SC 1962 : 1990 Cri LJ 1869), after considering the provisions of Ss 227 and 228, Cr. P.C. Court posed a question whether at the stage of framing the charge, trial Court should marshal the materials on the record of the case as he would do on the conclusion of the trial? The Court held that at the stage of framing the charge inquiry must necessarily be limited to deciding if the facts emerging from such materials constitute the offence with which the accused could be charged.

The Court may pursue the records for that limited purpose, but it is not required to marshal with a view to CR No: 447/2017 Page 17 of 34 D.O.J. 31.03.2018 *Hazari Lal Vs. State & Another* CR No: 447/2017 decide the reliability thereof. The Court referred to earlier decisions in *State of Bihar V. Ramesh Singh* ( 1977) 4 SCC 39: ( AIR 1977 SC 2018 : 1977 Cri LJ 1606), *Union of India V. Prafulla Kumar Samal* ( 1979) 3 SCC 4: ( AIR 1979 SC 366: 1979 Cri LJ 154) and *Supdt. of Remembencer of Legal Affairs, West Bengal v. Anil Kumar Bhunja* (1979) 4 SCC 274 : ( AIR 1980 SC 52 : 1979 Cri LJ 1390), and held thus :-

"From the above discussion it seems well settled that at the Ss. 227 and 228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose shift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.' CR No: 447/2017 Page 18 of 34 D.O.J. 31.03.2018 *Hazari Lal Vs. State & Another* CR No: 447/2017

34. In *CBI Vs. K. Narayana Rao*, CA No. 1460 of 2012 , Hon'ble Supreme Court was pleased to hold:

12. While considering the very same provisions i.e. framing of charge and discharge of accused, again in *Sajjan Kumar* ( supra), this Court held thus:

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21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been



made out. The test to determine prima face case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

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(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basis infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the CR No: 447/2017 Page 20 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

35. Section 420 IPC reads as under:

Cheating and dishonestly inducing delivery of property.- Whoever cheats and thereby dishonestly induces the persons deceived to deliver any property to any person, or to make, alter or destroy the 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, shall be punished with imprisonment of either description for a term CR No: 447/2017 Page 21 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 which may extend to seven years, and shall also be liable to fine.

36. The complainant ( respondent herein) has filed the complaint under Section 200 Cr.P.C. alleging therein that the revisionist had approached the respondent no. 2 for sale of agricultural land measuring 2 bighas 8 biswa for his bonafide needs and on 10.04.2002 the complainant (respondent no. 2 herein) made payment of Rs. 2,70,000/- (Two lacs seventy thousands) by cash to accused no. 1 (revisionist herein) and the revisionist executed the General Power of Attorney, Will, Agreement to Sell, Receipt, Possession Letter and affidavit in respect of land in question in favour of complainant ( respondent no. 2 herein) and the said documents were executed and signed by the revisionist in presence of witnesses and General Power of Attorney and Will were got registered before Sub Registrar-IX, New Delhi.

37. In the complaint, the complainant has further alleged that the complainant told the accused ( revisionist herein) to take necessary steps for execution of sale deed in his favour for getting mutation effected in respect of land in question but the revisionist kept on delaying the matter and thereafter with malafide intention, the revisionist CR No: 447/2017 Page 22 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 cancelled the General Power of Attorney dated 10.04.2002 and the Will and revisionist sent him notice dated 30.03.2013 thereby stating that he has not executed the Power of Attorney dated 10.04.2002.

38. The complainant appeared in the witness box as CW1 and reiterated the allegations as contained in the complaint under Section 200 Cr.P.C.

39. In the cross examination of complainant/CW1, the revisionist has given suggestion to the effect that the revisionist had extended a loan to the accused and the documents in question were got executed in blank/security, which was denied by the complainant/CW1.

40. In the notice dated 30.03.2013, the revisionist has mentioned as under:

2. That my client had come across a General Power of Attorney dated 10.04.2002 purportedly executed by him in your favour.

3. That my client has instructed me to say that my client had never nominated/appointed/or constituted you or any body else has his Attorney. Thus, the aforesaid General Power of Attorney dated 10.04.2002 is null and void document.

41. In the notice dated 30.03.2013, the revisionist CR No: 447/2017 Page 23 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 has nowhere mentioned that he has taken loan from the revisionist and that the documents i.e. General Power of Attorney dated 10.04.2002 and Will dated 10.04.2002 were signed by him in good faith while the said documents were blank.

42. The defence as raised by the revisionist is that he signed the General Power of Attorney and Will at the time of taking loan from the respondent no. 2 but in the notice dated 30.03.2013, the revisionist has mentioned that he has come across General Power of Attorney dated 10.04.2002 purportedly executed by him and in the deed of cancellation of GPA dated 18.03.2002, the revisionist has categorically stated about execution of General Power of Attorney in respect of

agricultural land measuring 2 Bighas 8 Biswa which is registered as document No. 2373, dated 10.04.2002 in the office of Sub Registrar-IX, New Delhi in favour of Sh. Jitender Kumar S/o Sh. Hira Lal Kaushik.

43. In the impugned order dated 22.06.2017 Ld. Trial Court has been pleased to observe:

The defence raised by the accused regarding the value of land in question has not been established and thus, it is a bare assertion. Now, the same can only be established during trial CR No: 447/2017 Page 24 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 after framing of charge. Further, stand of the accused is apparently inconsistent in his notice dated 30.03.2013, Ex.CW1/G and his written statement Ex.CW1/H ( December 2013). In notice Ex.CW1/G he has remained conspicuously silent about receipt of loan from the complainant and he has vaguely stated that has come across a GPA dated 10.04.202 purportedly executed by him. However, in his written statement, he has admitted his signatures on the said GPA , though, he has denied the execution of the said documents. In his written statement, he has stated that the complainant had obtained his signatures on blank documents at the time of receipt of loan. He has further stated that he returned the said loan within three years from its receipt. However, he did not place on record any receipt in that regard.

The intention of a person is not a physical fact that can be perceived through naked eyes. The same can be deduced or deciphered through his previous or subsequent conduct. The execution of property documents including registered GPA and registered Will are proved by CW-1 and CW-2. The said two documents i.e. GPA and Will were registered by the Sub-Registrar. Therefore, the contention of the accused regarding ignorance of the nature CR No: 447/2017 Page 25 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 and non-execution of the said documents is untenable. Rather, there is a presumption that any act done by public official in his official capacity must have been done in a manner as prescribed by law unless the same is rebutted. Thus, the Sub-Registrar must have disclosed the nature and contents of the said documents to the accused before they were registered by him. The very denial of the execution, registration and contents of the said documents, duly proved by CW1 and CW2, prima facie discloses that accused had from very inception intended and planned to retract or back out from execution of the said documents.

44. The revisionist had challenged the order of summoning dated 22.07.2014 passed by Ld Trial Court and in the said revision petition also, the revisionist had pleaded that the alleged transaction is otherwise violative of provisions of Delhi Land Reforms Act and that the dispute between the parties is essentially of civil nature and also that the amount of Rs. 2,70,000/- ( two lacs seventy thousand) was taken by him as a loan from the respondent which he has paid back and the said revision petition was dismissed by the Court of Sh. Kalwaljeet Arora, Ld. Special Judge, CBI vide order dated 11.12.2014.

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45. In the order dated 11.12.2014 Shri Kawaljeet Arora, Ld. Special Judge, CBI has been pleased to observe :

21. Ld. Counsel for the revisionists had further contended that the alleged transaction is otherwise violative of the provisions of Delhi Land Reforms Act.

26. In the light of above, I would consider the first facet of arguments advanced by Ld. Counsel for the revisionists. It is contended by Ld. Counsel for the revisionists that the dispute between the parties, is essentially of a Civil Nature, which has been wrongly given the color and flavor of a Criminal Dispute, just to exert pressure on the revisionists/accused.

38. In the revision petition, it is contended by the revisionists that this amount was taken by them, only as a loan from the respondent which they have paid back and the same was not towards the "consideration amount" for sale of 2 Bhiga 8 Biswa Land, situated in the revenue estate of Village Dhansa.

46. In the order dated 11.12.2014, Shri Kawaljeet Arora, Ld. Special Judge, CBI has been pleased to observe:

31. It has been held by Hon'ble Apex Court CR No: 447/2017 Page 27 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 in a catena of judgments that there are a number of instances where Criminal Law and Civil Law can run and be invoked, side by side. It has also been observed by Hon'ble Apex Court that both these remedies are mutually exclusive and clearly co-

extensive. Both these remedies differ in their content consequences, scope and import. Thus, each case is required to be considered on the basis of its own peculiar facts.

37. It is apparent on the basis of the material on Trial Court Record as well as facts stated in the Revision Petition, that a transaction did take place between respondent herein and the revisionists on 10.04.2002 vide which an amount of Rs.2,70,000/- was paid to the revisionists, by the respondent.

39. This contention of Ld. Counsel for the revisionists is devoid of any merits. Firstly because, no date, time or the mode by way this amount was paid back is mentioned by the revisionists and Secondly, and more importantly, this fact was not before Ld. Trial Court as this is a probable defence which can be raised by the revisionist/accused persons, before Ld. Trial Court at appropriate stage.

CR No: 447/2017 Page 28 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 Thus, this contention does not, in any way, vitiate the orders dated 22.07.2014.

40. Another facet which belies the version of Ld. Counsel for the revisionists, that the dispute only revolves and involves civil issues between the parties, is that the "General Power of Attorney" and "Will" dated 10.04.2002, were registered with Sub- Registrar by revisionist Hazari Lal himself. Had he not executed these documents, as has been alleged by him in the revision petition, then Firstly, he should not have got the same registered and Secondly, he could have challenged the same or got the same cancelled, immediately thereafter. But that was not to be.

41. As per the material on record, Hazari Lal executed a "Cancellation deed" dated 18.03.2013 i.e. after an expiry of more than 1 decade. Further, in this cancellation deed, he admitted of having executed "General Power of Attorney" in favour of the respondent, whereas in the legal notice dated 30.03.2013 sent to the respondent through his Lawyer, he denied having executed any such attorney in favour of respondent. In the revision petition, he has taken an altogether different stand that only a loan was taken by CR No: 447/2017 Page 29 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 him from the respondent on which respondent got some papers signed from him, which he might have mis-used.

42. These contrary stands taken by revisionists, which have been depicted before Ld. Metropolitan Magistrate by the complainant, by virtue of his complaint and pre-summoning evidence led thereon, have been the basis of the summoning order passed by Ld. Metropolitan Magistrate. These stands did disclose the intention of the revisionists, right from the very beginning when the consideration amount of Rs.2,70,000/- was accepted and the documents dated 10.04.2002 were executed.

44. Having regards to this deposition which has been supported by the witnesses examined by the complainant, who were the witnesses to the documents dated 10.04.2002, it is clear that the facts so brought on record in addition to raising Civil Issues, does disclose the necessary ingredients of a criminal cognizable offence.

55. Another limb to the arguments advanced by Ld. Counsel for the revisionists, was that Ld. Trial Court while passing the summoning order had failed to take into CR No: 447/2017 Page 30 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 consideration that this transaction between the parties, even if the same is presumed to have taken place, would have violated the provisions of Delhi Land Reforms Act.

56. This contention of Ld. Counsel for the revisionist, to my mind, is also devoid of any merits. Considering the fact that at the time of passing the summoning order dated 22.07.2014, Ld. Trial Court was not having the exact measurement of the land holding of revisionist Hazari Lal before it. Even otherwise, bare perusal of the pre-

summoning evidence led by respondent/complainant, it is apparent that he categorically deposed before Ld. Trial Court that while transferring the land mentioned in the "Agreement to Sell" dated 10.04.2002 to him against consideration, Hazari Lal had represented to him that he shall be transferring his remaining land- holding in favor of his son Rakesh Kumar. Complainant/respondent who appeared before Ld. Trial Court as CW-1 has deposed that had Hazari Lal and Rakesh Kumar, not induced him to this effect then he would not have parted-with the

consideration amount to purchase this land.

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47. After passing of summoning order, the accused(revisionist herein) has cross examined the complainant CW1 Jitender Kumar and CW2 Sh. Dildar Singh. In the cross examination of CW1 Shri Jitender Kumar, suggestion was given by the revisionist to the effect that that he had extended a loan to the accused and the documents in question were got executed in blank/security, which was denied by CW1, Sh.Jitender Kumar. In the cross examination of CW2 Dildar Singh, suggestion was given to the effect that there was no transaction of sale or that the accused was in need of money for which the loan transaction was carried out, which was denied by CW2 Sh. Dildar Singh.

48. The revisionist while cross examining the complainant i.e CW1 Sh. Jitender Kumar and his witness Sh. Dildar Singh CW2, the accused(revisionist herein) had raised defence that loan was extended to him by the complainant and the documents in question were executed in blank and this defence is to be proved by the revisionist by leading cogent evidence.

49. In the impugned order Ld. Trial Court has been pleased to observe :

In the above facts and circumstances, there is a grave suspicion and presumption, that CR No: 447/2017 Page 32 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 the accused was aware about the nature of transaction and the contents of the said documents and therefore, his subsequent unilateral cancellation of the said GPA with the lame excuse that he came across the same for the first time in year 2013 apparently seems to be false. Non-production of any receipt of refund of loan and non-disclosing of date, time or mode of repayment of loan further weakens the defence of the accused. Had the accused admitted the execution of said registered documents but may have showed his inability to execute sale deed on account of other circumstances beyond his control, this dispute between the parties would have come within the ambit of civil dispute only.

50. The question for determination is not whether the Agreement of Sell between the parties was void and could not have created any interest in or charge on the property in favour of respondent no. 2 but the question is whether the revisionist acted with dishonest intention of causing wrongful gain to himself and wrongful loss to respondent no. 2. In the circumstances and in view of aforesaid discussions, the decisions in Suraj Lamp & Industries (P) Ltd v. State of Haryana and Another (supra) and Vesa Holdings Pvt. Ltd v. State of Kerala CR No: 447/2017 Page 33 of 34 D.O.J. 31.03.2018 Hazari Lal Vs. State & Another CR No: 447/2017 and others (supra) are of no help to the revisionist.

51. In view of aforesaid discussions , I find no infirmity in the impugned order dated 22.06.2017. The revision petition is devoid of merits and the same is dismissed.

52. TCR be sent back to the court concerned along with copy of this order. Revision file be consigned to record room.

Announced in the open ( HARISH DUDANI) Court on 31.03.2018 Special Judge (PC Act) CBI-I Dwarka Courts, New Delhi.

HARISH

by HARISH

DUDANI

Date: 2018.03.31  
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