

Durgesh Paul Sachdev vs The State (Govt. Of Nct Of Delhi) & Anr on 24 December, 2024

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 24

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CRL.M.C. 4948/2019 & CRL.M.A. 37124/2019

DURGESH PAUL SACHDEV

.....Petitioner

Through: Mr. Sunil Dalal, Sr. Advocate with
Ms. Ashish Kumar, Mr. Navish Bhati,
Ms. Shipra Bali, Mr. Akash Gupta,
Mr. Mahabir Singh, Ms. Mudebbera
Zaheen & Ms. Princy Chaudhry,
Advocates.

versus

THE STATE (GOVT. OF NCT
OF DELHI) & ANR

.....Responden

Through: Mr. Ajay Vikram Singh, APP for the
State with SI Nikhil, PS KM Pur.
Mr. Bhupesh Narula, Ms. Rin
Narula, Ms. Poonam Nagpa
Mr. Anugrah Ekka, Mr. Swetabh
Sharma, Advocates for R-2.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The petitioner has filed the present petition, inter alia, praying as under:

a. set aside the impugned order dated 17.09.2019 passed by the Court of Ms. Nupur Gupta, M.M. Saket Courts, New Delhi in Case FIR No.24/07, P.S. Kotla Mubarakpur, u/s 420/120B IRC and;

b. allow the application filed by the petitioner/complainant for summoning the concerned clerk/ahlmad/Record Keepers along with record of case titled State Bank of Patiala vs. Asiatic Overseas Pvt. Ltd. &Ors., being Civil Suit No.467/1993 (earlier No.1224/89) decided by the Court of Ms. Pratibha Rani, the then ADJ, Tis Hazari Courts, Delhi and of case titled 'M.M. Rai Khanna vs. State Bank of Patiala & Ors.', being petition no.CM(M) No.349/2013, decided by the Hon'ble High Court of Delhi at New Delhi and/or;

2. The FIR No. 24/2007 dated 16.01.2007, was registered under Sections 420/468/467/471/34 of the Indian Penal Code, 1860 ('IPC'), on a complaint made by the petitioner/complainant alleging

that Respondent No. 2 along with co-accused, Shashi Lata Khanna (now deceased), fraudulently induced the Delhi Development Authority (DDA) to execute a Conveyance Deed dated 26.06.1996 in regard to the property bearing No. 6/104, Safdarjung Enclave, New Delhi (hereafter 'subject property'). This was allegedly done using forged and fabricated documents.

3. The complainant claims that the subject property had been peacefully handed over to him in 1983 by Respondent No. 2 and Shashi Lata Khanna through a General Power of Attorney (GPA). It is further alleged that Respondent No. 2 misrepresented to the DDA that the original lease deed of the property, dated 31.03.1976, was lost. This misrepresentation was made despite knowing that the original lease deed was lying deposited with the State Bank of Patiala under a mortgage. Based on these misrepresentations, the complainant alleges that Respondent No. 2 fraudulently induced the DDA to issue the Conveyance Deed for the subject property.

4. Following the investigation, the chargesheet was filed and Respondent No. 2 and Shashi Lata Khanna were charged by the learned Metropolitan Magistrate ('MM'), Saket Courts, New Delhi under sections 420/120B of IPC, in Criminal Case No. 88551/2016 vide order dated 02.11.2017.

5. The matter was at the stage of final arguments, when on 06.08.2019 the petitioner/ complainant filed an application under Sections 91/302(2) read with section 311 of Code of Criminal Procedure, 1973 ('CrPC'), for summoning the concerned person in- charge, to bring on record of the case titled 'State Bank of Patiala vs. Asiatic Overseas Pvt. Ltd. & Ors.', being Civil Suit bearing No.467/1993 (earlier No. 1224/89) decided by the learned ASJ, Tis Hazari Courts, Delhi and of case titled 'M.M. Rai Khanna vs. State Bank of Patiala & Ors.', being petition bearing No.CM(M) No.349/2013, decided by this Court, in order to show that Respondent No. 2 had the knowledge about the existence of the original Lease Deed dated 13.03.1976 for the subject property and the fact that the same was lying deposited under mortgage with the State Bank of Patiala for the loan taken by Respondent No. 2 for construction over the subject property.

6. The learned MM, while observing that the chargesheet was filed on 04.06.2009 and the matter was listed for final arguments, dismissed the said application of the petitioner/ complainant vide order dated 17.09.2019, on ground that the above-mentioned civil suits neither formed part of the charge sheet nor the prosecution evidence, and bringing the same on record would amount to re-trail of the entire case with new pleadings, and therefore the same cannot be allowed.

7. Aggrieved by the same, the petitioner filed a revision petition challenging the impugned order dated 17.09.2019 before the learned ASJ, but withdrew owing to the fact that a revision against dismissal of application under section 311 of the CrPC was not maintainable before that Court.

8. The learned senior counsel for the petitioner submitted that great prejudice would be caused to the petitioner/ complainant if the said evidence is not allowed to be placed on record as Respondent No. 2/ accused had already transferred the subject property to Respondent No. 2/ complainant vide GPA in 1983 and thereafter caused wrongful loss to him by approaching the DDA authority in 1996 with a malafide intention, to secure a fresh conveyance deed. He relied on the judgement in *Mina Lalita Baruwa v. State of Orisaa & Ors. : (2013) 16 SCC 173*, wherein it was held that the complainant

being a third party has the locus standi to bring errors in trial to the notice of the court.

9. He submitted that a re-trial is not necessary in this case since the records of Civil Suit No. 467/1993 are already part of the court record. He further submitted that Respondent No. 2, despite being fully aware that the original Lease Deed was mortgaged with the bank, filed a baseless application before the DDA, falsely claiming that the lease deed was lost, in order to fraudulently procure the conveyance deed for the property.

10. He submitted that the learned MM failed to consider the petitioner's submissions adequately. The dismissal of the application under sections 91/302(2) read with section 311 of the CrPC on procedural grounds, without addressing the petitioner's submissions, amounted to a miscarriage of justice.

Analysis :

11. Section 311 of the CrPC reads as under:

"311. Power to summon material witness, or examine person present.

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

12. The Hon'ble Apex Court in the case of Rajaram Prasad Yadav v. State of Bihar : (2013) 14 SCC 461 discussed a number of decisions and underlined the principles to be considered while dealing with an application under Section 311 of the CrPC. The relevant portion of the same is reproduced hereunder:

"17. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 CrPC read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the courts:

17.1. Whether the court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the court for a just decision of a case?

17.2. The exercise of the widest discretionary power under Section 311 CrPC should ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.

17.3. If evidence of any witness appears to the court to be essential to the just decision of the case, it is the power of the court to summon and examine or recall and

re-examine any such person.

17.4. The exercise of power under Section 311 CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

17.5. The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

17.6. The wide discretionary power should be exercised judiciously and not arbitrarily.

17.7. The court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case. 17.8. The object of Section 311 CrPC simultaneously imposes a duty on the court to determine the truth and to render a just decision.

17.9. The court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered. 17.10. Exigency of the situation, fair play and good sense should be the safeguard, while exercising the discretion. The court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified.

17.11. The court should be conscious of the position that after all the trial is basically for the prisoners and the court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused.

The court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

17.12. The additional evidence must not be received as a disguise or to change the nature of the case against any of the party. 17.13. The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

17.14. The power under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care,

caution and circumspection. The court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right."

(emphasis supplied)

13. By an application under Section 91/302 (2) read with Section 311 of the CrPC, the petitioner had sought summoning of the concerned ahlmad/clerk/record keeper, alongwith the record of the case titled State Bank of Patiala vs. Asiatic Overseas Pvt. Ltd. being civil suit no. 467/1993 which was decided by the learned ADJ, Tis Hazari Courts, Delhi. The petitioner had also sought the record in regard to case titled M.M. Rai Khanna vs. State Bank of Patiala being CM(M) No.349/2013 decided by this Court.

14. It is pointed out by the learned counsel for Respondent No.2 that the record in regard to suit no.467/1993 has already been destroyed. He has taken this Court through the learned Trial Court record and in regard to the record of the case being CM(M) 349/2013

- the said case was filed by the petitioner therein/Respondent No.2 seeking release of documents in regard to the property bearing no. B- 6/104, Safdarjung Enclave in his favour.

15. The FIR in the present case was filed way back in the year 2007. The learned Trial Court while passing the impugned order noted that the chargesheet was filed way back on 04.06.2009 and the prosecution evidence was also closed in the year 2018. The statement of the accused thereafter was recorded on 13.12.2018 and the matter was fixed for defence evidence. The accused, thereafter, examined one witness and the defence evidence was also closed and the matter was fixed for final arguments on 16.03.2019. The application under Section 311 of the CrPC was thereafter filed on 22.07.2019.

16. It is pertinent to highlight that the petitioner's application was dismissed primarily on the ground that it was filed at a belated stage, during the final arguments and the record of the civil suit did not form part of the chargesheet. The learned Trial Court expressed concerns that allowing the application would amount to a re-trial, which is impermissible under the law, and could disrupt the progress of the trial. It also observed that the documents sought were not part of the original chargesheet or referred to during the prosecution's evidence stage.

17. It is the petitioner's contention that the summoning of the record of CM(M) 342/2013 is necessary because these records pertain to the property in question, bearing No. B-6/104, Safdarjung Enclave.

18. The proceedings in CM(M) 349/2013 pertain to a dispute about the title and ownership of the subject property. This petition was filed by the Respondent No. 2 seeking return of title deeds of the subject property. The court, in its order, directed the bank to return the title deeds to the defendant therein, subject to further adjudication of ownership claims in appropriate civil or other proceedings.

19. The petitioner in the present case contended that Respondent No. 2 misrepresented the status of the property to the DDA by falsely claiming that the original lease deed was lost. These misrepresentations were made despite the fact that the original lease deed was already mortgaged with the bank, which had initiated proceedings under a judgment and decree dated 28.09.2001. The proceedings in CM(M) 349/2013 and the related records corroborates the allegations made by the petitioner.

20. The records in proceedings indicate that the title deeds of the subject property were lying deposited with the Bank and were not released in favour of Respondent No. 2. The proceedings are, therefore, directly relevant to the dispute in the present case that the Conveyance Deed was obtained without alleged lawful ownership.

21. These documents pertain to the same property involved in the present case and are relevant and desirable to address the issue of alleged misrepresentation of ownership by Respondent No. 2. In the opinion of this Court, these are critical pieces of evidence to reach a just conclusion and should be considered during the trial.

22. The Hon'ble Apex Court in Varsha Garg Vs the State of Madhya Pradesh and Ors. : 2022 SCC Online SC 986 while discussing the scope and application of Sections 91 and 311 of the CrPC, held as under :

"40. In the present case, the application of the prosecution for the production of the decoding registers is relatable to the provisions of Section 91 CrPC. The decoding registers are sought to be produced through the representatives of the cellular companies in whose custody or possession they are found. The decoding registers are a relevant piece of evidence to establish the co-relationship between the location of the accused and the cell phone tower. The reasons which weighed with the High Court and the Trial Court in dismissing the application are extraneous to the power which is conferred under Section 91 on the one hand and Section 311 on the other. The summons to produce a document or other thing under Section 91 can be issued where the Court finds that the production of the document or thing "is necessary or desirable for the purpose of any investigation, trial or other proceeding" under the CrPC. As already noted earlier, the power under Section 311 to summon a witness is conditioned by the requirement that the evidence of the person who is sought to be summoned appears to the Court to be essential to the just decision of the case."

23. The learned senior counsel for the petitioner submits that it is a settled law that the application for calling the additional evidence can be filed at any stage as long as the evidence sought to be produced is relevant for just decision of a case.

24. Undisputedly, the application is filed towards the end of the trial. It is important to note that the application was filed by the complainant, not the prosecution. The possibility of the complainant being unaware of all the evidence on record cannot be ruled out, which may explain the application being filed at a later stage in the proceedings. The nature of the documents sought to be introduced

is limited to the records of proceedings in CM(M) 349/2013, which are already part of judicial records.

25. Section 482 of the CrPC empowers the High Court to make such orders as may be necessary to give effect to any order under the Code, to prevent abuse of the process of the Court, or otherwise to secure the ends of justice. Considering the importance of these documents in determining the factual matrix and ensuring a fair adjudication, it becomes essential to allow their inclusion at this stage.

26. Section 311 of the CrPC is a salutary provision which empowers the Court to summon any person at any stage as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined, if his evidence appears to it, to be essential to the just decision of the case. It is aimed at empowering the Court to find out the truth and to render a just decision. The object of the provision is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society. Having said that, it is to be kept in mind that the objective of Section 311 of the CrPC is to ensure that there is no failure of justice owing to any omission or mistake of either party in bringing relevant evidence to the record. This provision empowers the Court to summon or recall evidence at any stage of proceedings if it deems the evidence essential for a just decision.

27. Given that these documents are already part of the judicial record, their summoning will aid in the effective adjudication of the matter and ensure that no material evidence is excluded, which could impede the Court's ability to render a just decision. Upon their production, the accused shall be granted sufficient time to examine the evidence and, if necessary, cross-examine any witnesses related to these records.

28. This Court reiterates that the objective of summoning this evidence is to uncover the truth and render a just decision. By providing the accused with the opportunity to address the evidence, the Court maintains the balance between the prosecution and defence, ensuring that the trial proceeds fairly and equitably.

29. In light of the above, the present petition is allowed. The learned Trial Court is directed to summon the documents as prayed in accordance with law. Let the necessary steps be taken to ensure compliance in the interest of justice.

30. Pending application(s), if any, are disposed of.

AMIT MAHAJAN, J DECEMBER 24,2024