

Date of decision February 28th, 2007

+ CRL.REV.P. 429/2004

PRAMJIT KAUR LUTHRA Petitioner
Through Counsel

versus

STATE (NCT OF DELHI) Respondent
Through Mr. R.N.Mittal, Sr. Advocate with
Ms. Geetika Panwar, Mr. Dhruv Kapur, Advocates

CORAM:

Mr.Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Mr. Justice S. Ravindra Bhat :(Open Court)

1. The petitioner invokes the revisional jurisdiction of this Court in respect of an order dated 22.5.2004. The Metropolitan Magistrate, had by the impugned order rejected the application moved by the petitioner, that she be discharged/excluded from participating in the criminal proceedings.
2. An FIR in this case was filed on 14.8.1993 alleging *inter alia* that 5 accused persons

broke into the house of the complainant/informant at Lajpat Nagar on 22.7.1992 whilst he was alone in the house on the plea that a transaction which was cancelled in pursuance of a transaction which had allegedly taken place in November, 1990; it was alleged that the accused took away papers concerning property, including an agreement by which the original transaction was cancelled, broke open locks in the premises and also occupied certain portions of the building. It was further alleged that the complainant was kept in wrongful restraint for 5 days and threatened by the accused who were armed with deadly weapons. The complainant, it is alleged, sent a telegram on 29.7.1992 claiming that he apprehended for his life at the hands of the accused.

3. During the course of investigation, the police is alleged to have discovered that the petitioner entered into an agreement to sell some property with the complainant/informant for a consideration of Rs. 35.5 lakhs and had allegedly paid Rs. 50,000/- as earnest money and subsequently further paid a sum of Rs. 2.5 lakhs. It was alleged by the complainant that since the agreed balance was not paid the transaction fell through and amount paid was forfeited. On those allegations the petitioner was named as one of the accused.
4. The complainant, in the course of civil proceedings instituted by the petitioner, alleged that he had not signed the agreement in question and that it was forged and fabricated.
5. The court took cognizance of the case on 4.12.1999. At that stage the complainant moved this court under Section 482. The court had dismissed the request for cancellation of non bailable warrants. The matter was carried in appeal. The Supreme Court by its order dated 4.4.2003, permitted the petitioner to be represented before the

Magistrate through counsel, till an application for discharge was decided by the court; a direction not to execute the non-bailable warrant was also made.

6. The petitioner thereafter moved the court, alleging, on the basis of the available materials (that form part of the charge sheet) that no case was made out against her for the offence of alleged conspiracy. Learned counsel submitted that neither the first information report nor even the earlier documents, such as the telegram dated 29.1.1992 had alleged the petitioner involvement; she is a resident of Dubai, a practicing doctor for the last three decades. It was also submitted that in the course of the civil proceedings, the informant/complainant admitted to the signatures in question, under oath. It was also submitted that there is not a shred of evidence to link the alleged incident of forcible entry into the house of the complainant, the alleged confinement threats held out to him etc. with petitioner and that the conspiracy theory alleged has no basis on the materials available.
7. Learned counsel for the respondent complainant submitted that the order in question is a reasoned one and no exception can be taken to it. He submitted that though the petitioner cannot be charged for the offences under Section 342/386 and 506, yet the possibility of her being involved in the transaction and being aware of it and indeed of being one of the conspirators cannot be ruled out. It was submitted that there is no precondition for framing of such a charge that the offender ought to be present at the site of the offence, if any material of the impending crime exists the charge of conspiracy is made out. Counsel for the complainant submitted that the court ought to see only, whether there was any available material to link the petitioner with the crime

as a conspirator and nothing more.

8. Learned counsel for the State submitted that the present petition is pre-mature in the sense that although the application was moved by virtue of orders of the Supreme Court, that did not preclude petitioner's statutory rights to move the competent court namely the Courts of Session at the stage of order of charge. Counsel submitted that as on date the case has not been committed to Sessions and the proper stage for consideration of the petitioner's claim would be when the material is marshalled and an order of charge is to be passed by the Special Court. Counsel also submitted that some material indicative of the petitioner's role by way of the statements under Section 161, are available on the file.

9. The impugned order to the extent it is relevant and concerns the petitioner reads as follows :

“In the instant case it is not in dispute that there had been an Agreement between the complaint and the accused/application wherein the complainant had agreed to sell his property to the accused Smt. Paramjeet Kaur Luthra, the applicant herein for Rs. 35.5 lacs. S. Sarvjeet Singh Luthra is the brother or Smt. Paramjeet Kaur Luthra and the attorney of the applicant. Although she alleged that she had a written Agreement to sell and the complainant also handed over the possession vide possession letter but the same has been denied by the complainant in the civil proceedings as well as during investigation of this case. From the material placed on record, I find that the ultimate beneficiary from this transaction was Smt. Paramjeet Kaur Luthra. An agreement was arrived at on her behalf, payment was made to the complainant on her behalf, the suit

for specific performance was filed in the High Court on her behalf by her attorney. Though the applicant has produced some documents of FRRO alleging that on the day of alleged incident she was not present in India and was in England but there are allegations of criminal conspiracy against accused Paramjeet Kaur Luthra. The conspiracy can also be on telephone or from some other place. Physical presence is not necessary for an act of criminal conspiracy. It is not the case of the applicant that she never had transactions in respect of the aforesaid property. I find that when the applicant could not fulfill certain items and conditions, the complainant revoked the Agreement, forfeited the earnest money and thereafter goonda elements along with the attorney of the applicant and other persons as mentioned in the charge sheet in prosecution of the object of criminal conspiracy entered into the premises in occupation of the complainant armed with knives and revolver and snatched the keys at the point of pistol from him, took away his important files and papers including the property papers and confined him in a room and thereafter they took the forcibly possession of the property. No doubt the CSFL report is against the complainant but the complainant has produced the report of other hand writing experts claiming that he did not sign the Agreement to Sell and the possession letter. Further the Stamp Vendor Smt. Prem Kumari denied have sold or issued the stamp paper on which the Agreement to Sell was allegedly executed. All these controversies are to be decided on merits and it is too early to form an opinion about the genuineness of these documents. As regards the receipt of notice or issuance of notice regarding cancellation, it is a matter to be decided on merits.

The court at the stage of framing charge is not supposed to weigh the material placed on record meticulously or to have detailed discussions about the merits or demerits of the case. It has to prima facie see whether on the basis of material and the documents placed on record, prima facie case is made out or not. Further the court has to form prima facie opinion of its own and is not the mouthpiece of the prosecution. Hon'ble Mr. J.D.Kapoor vide order dated 11.10.2002, observed that the omission of Section 395/397 will be of no consequence so far as trial pursuant to the charge sheet is concerned. There are statements of witnesses from where I find that the accused persons after this incident had telephonic conversations about their act.”

10. In this case there is no gainsaying as to the submission that the petitioner cannot be implicated of having committed illegal forcible entry and the alleged acts of confining the complainant/informant. In that sense the only allegations against her are that she was conspirator to the acts, being a party to the alleged previous transaction that had been entered into by her, (or at her behest) for the purchase of some property. The view taken by the court below, on the petitioner moving an application, (permitted by the Supreme Court) was that the charge of conspiracy could not be ruled out.

11. After considering the materials on record and the submissions of the parties, I am inclined to agree with the counsel for the respondent State that the submissions in defence as sought to be raised at this stage would be best seen by the competent court at the stage of framing of charges. The Supreme Court in the case of the petitioner perhaps looking at the peculiar facts had permitted her to move an application before the Magistrate. That however does not preclude her statutory right to move under

Section 227 of the Code of Criminal Procedure at the stage of framing of charges seeking an appropriate order of discharge. If this court were to examine the merits of the contentions at this stage, it would be prejudging the issue and prejudicing the rights of one or the other of the parties. In these circumstances I am satisfied that the stage for considering charges in competent court having not arrived, this court decline exercising jurisdiction.

12. For the above reasons the revision petition cannot succeed. It is however made clear that all the contentions raised in these proceedings and all contentions available to the petitioner in law are reserved and kept open; if raised in the proceedings before the competent court after the committal of the case, they shall be dealt with on merits. It is also clarified that in terms of the directions of the Supreme Court's order the petitioner is entitled to exemption till the order upon her application for discharge is made by the court. The parties are directed to appear before the Magistrate on 15.3.2007 and apprise the court of this order.

13. The petition is disposed off in the above terms.

14. The trial court records shall be sent forthwith.

(S.RAVINDRA BHAT)
JUDGE

FEBRUARY 28, 2007
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