

Yashpal Vs. State and ors.

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Court : Delhi

Decided On : Aug-12-2013

Judge : Sunita Gupta

Appellant : Yashpal

Respondent : State and ors.

Advocate for Def. : Mr. Saleem Ahmed, Mr. Hemant Kumar

Advocate for Pet/Ap. : Mr. Gurmit Singh Hans, Mr. Vishal Soni

Judgement :

\$ * IN THE HIGH COURT OF DELHI AT NEW DELHI W.P.(CRL) 1072/2013 Date of Decision:

12. h August, 2013 YASHPAL Through: Petitioner Mr. Gurmit Singh Hans and Mr. Vishal Soni, Advs. versus STATE & ORS. Through: Respondent Mr. Saleem Ahmed, Addl.Standing Counsel, GNCT with Mr. Hemant Kumar, Adv and I.O., G.Joykutty, P.S. Anand Vihar Rly. Station. CORAM: HONBLE MS. JUSTICE SUNITA GUPTA JUDGMENT : SUNITA GUPTA, J.

1. By virtue of this writ petition under Article 226 and 227 of the Constitution of India read with Section 482 of the Code of Cr.P.C, 1973, the petitioner seeks to get the order dated 04.05.2013 passed by learned Session Judge in CrI.Rev. No.51/2012 and order dated 18.07.2012 passed by learned trial Court in CC

No.08/2012 set aside and for restoration of the criminal revision and complaint to its original number.

2. The back ground of the case is that the petitioner filed a criminal complaint u/s 200 read with Section 156(3) of Cr.P.C before the learned Metropolitan Magistrate with the prayer to issue directions to register the FIR u/s 420/468/471/120-B/34 IPC against the accused persons on the ground that the petitioner is doing business and entered into an agreement to sell with one Shri Irtiza Hussain and his son Mohd. Yusuf vide agreement to sell dated 27.06.2011 in respect of property bearing No. Phoenix Lodge, having its covered area measuring 7500 sq.ft approximately along with open area with tennis court measuring 13000 sq.ft approximately situated at Vanistart Estate now known as Hakmans Estate, Mall Road, Mussoorie against the full and final consideration amount of Rs.12,40,00,000/-. A sum of Rs.1,24,00,000/- have already been paid to the seller. An agreement to sell was executed after being satisfied with the representation of respondent but the revisionist came to know that the property was under litigation with a person, namely Afak Mohd and his mother namely Smt. Wasim Jahan, resident of Lucknow who were claiming to be the real owners of the property and even a status quo order was passed on 24.07.2002 by High Court of Allahabad at Lucknow Bench. Number of litigations are pending in Dehradun District Court as well as District Court, Lucknow.

3. As per the status quo order, the property legally cannot be sold without prior permission of the Court. The accused persons refused to return the money of the petitioner and even avoided meeting with him. The petitioner lodged a complaint with SHO concerned as well as senior police officials but no action was taken on his complaints. Thereupon the petitioner filed a criminal complaint before the learned M.M for taking action against the accused persons as per law. In March, 2012, compromise talks were initiated between the revisionist and respondent no.3. Moreover the petitioner had also changed his counsel. When the compromise talks were coming to some result, the revisionist instructed his new counsel to withdraw the complaint and as such the submission was made by the new counsel before the Court on 19.03.2012 but the counsel was directed to call the petitioner in person. For two dates of hearing, the petitioner appeared in

person but since the learned trial court was on leave, the matter was adjourned for further proceedings. Inadvertently, the petitioner noted the date of hearing as 13.08.2012 and did not appear on 18.07.2012 which resulted in dismissal of the complaint in default for nonprosecution. Immediately an application for restoration of the complaint was filed. Realising that the restoration application is not maintainable, same was withdrawn, with liberty to file appropriate application. Thereupon revision was filed before the learned Sessions Court on 18.09.2012. The learned Session Judge admitted the revision petition and called for the Trial Court record. The matter was being adjourned from time to time but again due to wrong noting of the date, the counsel did not appear, as such the revision petition was dismissed in default.

4. An application for restoration of Crl. Revision was filed. However the same was dismissed vide order dated 04.05.2013 hence the writ petition was filed for quashing of the order dated 04.05.2013 passed by the learned Sessions Judge and order dated 18.07.2013 passed by learned Metropolitan Magistrate.

5. Learned counsel for the petitioner relied upon Madanlal Kapoor Vs. Rajiv Thapar & Ors., 2007 Crl.L.J 468. for submitting that a revision petition cannot be dismissed in default and the same has to be decided on merits. It was further submitted that since a huge amount is involved, as such in case the impugned order is not set aside then the petitioner be granted liberty to file fresh complaint.

6. The petition has been contested by respondent no.2 who filed a status report wherein it was submitted that the petitioner filed a complaint in P.S. Anand Vihar Railway Station alleging therein that he entered into an agreement to sell dated 27.06.2011 with respondent no.3 through his general attorney and respondent no.4 regarding sale of property situated at Mussorie for a consideration amount of Rs.12,40,00,000. Certain payments were made by him. He was assured that the property is free from litigation and any encumbrance. Later on, he came to know that the property was under litigation and status quo order has been passed. It is further reported that initially the petitioner joined the enquiry and submitted agreement to sell and cash receipts. He was requested to provide the details of the pending litigation in respect of the property and copy of the status quo order

dated 24.07.2012 but he never provided the same. In view of the magnitude of the cheated amount, effort was made to forward the complaint to E.O.W but the same came back. Later on, when the complainant was contacted telephonically he informed that he was in the process of settling the issue amicably. Thereafter he never joined the enquiry. He was also not available at the given address. Accordingly the complaint was filed.

7. By virtue of the present petition, the petitioner is challenging the impugned order dated 04.05.2013, vide which application moved by the petitioner for restoration of criminal revision was dismissed. Although the petitioner has placed reliance on Madanlal(supra), where it was held that the criminal revision cannot be dismissed in default and it has to be decided on merit, however the revision was dismissed in default vide order dated 19.02.2013 and this order has not been challenged by the petitioner.

8. Even otherwise, a perusal of certified copy of impugned order dated 04.05.2013 passed by learned Session Judge goes to show that the application for restoration of revision petition has been dismissed by a detailed speaking order whereby the learned Sessions Judge has dismissed the application not only on the ground that there were no grounds for allowing the application for restoration of the revision petition but has also dealt with the conduct of the petitioner while prosecuting the criminal complaint filed by him before the Metropolitan Magistrate and thereafter the revision petition. It was observed that the copy of the proceedings attached with the revision petition reflect that on 13.09.2011 the complaint came up for hearing but complainant was not present and it was made clear that if on the next date of hearing i.e 05.10.2011 the complainant did not appear then it will be presumed that he was not interested to proceed the case further. Thereafter the complainant appeared and the report was called for 22.10.2012 and then matter was adjourned from time to time for 02.02.2012, 19.03.2012, 27.03.2012. On 27.03.2012, the complainant appeared and wanted to withdraw the complaint. As such it was put up for 02.04.2012. On that date, the complainant did not appear, as such court notice was issued to him for 10.04.2012, 30.04.2012 and 18.07.2012. On 18.07.2012 when the complainant did not appear then the complaint was dismissed for non-appearance and non-prosecution. Thereafter the

complainant moved an application for restoration of the complaint. However same was withdrawn by him with liberty to take appropriate steps as the M.M had no power to restore the complaint which was dismissed in default. Thereupon the petitioner preferred revision petition seeking to set aside the order dated 18.07.2012. The matter was being adjourned time and again before the learned Sessions Judge and thereafter when the petitioner or his counsel did not appear then it was dismissed for non-prosecution. A detailed account of the entire proceedings have been given by learned Sessions Judge as to why the revision was dismissed for non-prosecution. Things would have been different had the application for restoration of the revision petition been dismissed only on the ground mentioned in the application but in fact while deciding that application, the learned Session Judge had also gone through the entire record and in fact thereby decided the merits of the case which resulted in dismissal of the criminal complaint before the Metropolitan Magistrate. That being so, the impugned order does not suffer from any infirmity which calls for interference.

9. As regards the prayer of learned counsel for the petitioner that the petitioner be permitted to file a fresh complaint on the same cause of action, no such permission can be granted, more particularly keeping in view the fact that he himself filed the criminal complaint but he did not choose to prosecute diligently. Even otherwise, no prejudice is going to be caused to the petitioner, inasmuch as, as per the status report filed by respondent no.2, a complaint was filed by the petitioner in P.S. Anand Vihar Railway Station and enquiry was being made by the police where the petitioner was called time and again. However the status report reflects that before the police authorities also his attitude was of non-cooperation and he failed to supply the relevant documents. In any case, keeping in view the magnitude of the amount involved in the case, the enquiry if continued by P.S. Anand Vihar Railway Station, the petitioner may co-operate in the enquiry, if so desired. However, as regards the present petition is concerned, there is no merit in the same. The petition is accordingly dismissed. SUNITA GUPTA (JUDGE)
AUGUST 12 2013 as