Babu Lal Vs. State and Ors

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Court : Delhi

Decided On : Jan-07-2015

Judge : A. K. Pathak

Appellant : Babu Lal

Respondent : State and Ors

Advocate for Pet/Ap. : Mr. K.K. Jha Kamal, Mr. Saleem Ahmed, Ms. Charu Dalal, Mr. Sachin Kumar, Mr. Rajesh Mahajan, Ms. Shinjan Jain

Judgement :

$~39 & 40 * IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(CRL) 808/2014 Decided on 7th January, 2015 BABU LAL ..... Petitioner Through: Mr. K.K. Jha Kamal, Adv. Versus STATE & ORS Through: ..... Respondents Mr. Saleem Ahmed, Standing Counsel (Crl.) with Ms. Charu Dalal, Adv. along with IO ASI Jagpal, P.S. DIU West Distt. Mr. Sachin Kumar, Adv. for R-2 & R-3. AND W.P.(CRL) 874/2014 RAGHUNATH SINGH Through: ..... Petitioner Mr. K.K. Jha Kamal, Adv. Versus THE STATE & ORS Through: ..... Respondents Mr. Rajesh Mahajan, Addl. Standing Counsel with Ms. Shinjan Jain, Adv. along with ASI Jagpal Singh, DIU West Distt. Mr. Sachin Kumar, Adv. for R-2 & R-3. CORAM: HON'BLE MR. JUSTICE A.K. PATHAK A.K.PATHAK, J.(ORAL) 1. Both the writ petitions arise from the same FIR, thus, are disposed of together by this common order.

2. By way of present writ petitions under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), petitioners have challenged the order dated 30 th November, 2012 of the Metropolitan Magistrate, whereby cognizance of offences in the FIR No.426/2009 under Sections 420/468/471/120-B IPC registered at Police Station Paschim Vihar has been taken.

3. FIR was registered pursuant to the directions of the Metropolitan Magistrate, Delhi under Section 156(3) Cr.P.C. on the complaint of Suresh Kumar and his brother Ramesh Kumar. It was alleged in the FIR that complainant had purchased a property bearing No.B-2/39, Paschim Vihar, Delhi on 3rd December, 1981 from the petitioners vide General Power of Attorney, Special Power of Attorney, Agreement to Sell, Will etc., all dated 3rd December, 1981. Documents were executed by petitioner-Raghu Nath Singh in favour of the complainant. Property was purchased against consideration, inasmuch as, payment was acknowledged by way of a registered receipt. Even after the sale, petitioner-Babu Lal continued to occupy the suit property. Later on, petitioner-Babu Lal applied to Delhi Development Authority (DDA) for conversion of the property from lease hold to free hold in his name vide forged and fabricated documents, that is, Agreement to Sell, Special Power of Attorney, General Power of Attorney, Affidavits.

4. Investigation was conducted wherein statements of complainant and other witnesses were recorded. Documents were handed over by the complainant to the Investigating Officer. Complainant alleged that petitioner-Babu Lal had inserted his name in place of complainant-Ramesh Kumar in the Agreement to Sell dated 3rd December, 1981 and applied for conversion of the property form lease hold to free hold. It was further stated that on 24th March, 2009 petitioner-Raghu Nath Singh, who was initial owner of the property, had made a declaration in favour of complainantRamesh Kumar regarding execution of Agreement to Sell dated 3 rd December, 1981 and also that he had received `45,000/- as sale consideration from Ramesh Kumar in respect of the property ad measuring 125 sq yards vide receipt registered as document No.9541, book No.IV Volume No.849 on page No.161 dated 3 rd December, 1981 before the SubRegistrar Delhi, inasmuch as, had executed duly notarized Agreement to Sell dated 3rd December, 1981in

favour of Ramesh Kumar. It may be noted here that during the investigation, Babu Lal was asked to produce original documents including Agreement to Sell dated 3rd December, 1981 but he failed to produce the same. It is further revealed that two General Power of Attorney and three Special Power of Attorney were executed by the petitioner-Raghu Nath Singh in favour of petitioner-Babu Lal, out of which one General Power of Attorney was an unregistered document while other General of Power of Attorney was duly registered in the office of SubRegistrar, Noida, (U.P.). One Will and Receipt dated 3 rd December, 1981 executed by petitioner-Raghu Nath Singh in favour of complainant-Ramesh Kumar were found registered in the office of Sub-Registrar, Kashmere Gate. Agreement to Sell was not found registered. Investigating Officer also collected documents pertaining to the property in question from the Delhi Development Authority, which included Agreement to Sell dated 3 rd December, 1981. These documents were sent to Forensic Science Laboratory (FSL), Rohini on 8th April, 2011 and its report was obtained on 13th March, 2012, according to which alterations were made and some erasing were noticed on the documents. Charge-sheet was then filed in the court of Metropolitan Magistrate, Delhi who has taken cognizance of the offence vide the order impugned in these petitions filed after about two years.

5. It may be pointed out here that case is listed before the Metropolitan Magistrate for arguments on charge on 12th January, 2015.

6. It is trite law that at the time of taking cognizance of the offence in terms of the charge-sheet, Magistrate has to see as to whether on perusal of the charge-sheet and the material collected during the investigation discloses ingredients of offence alleged against the accused. Only a prima facie view is to be taken based on the statement of complainant and witnesses as also on perusal of other material collected during the investigation, which have to be taken on its face value. In this case, statement of complainant accompanied with FSL report discloses, prima facie, ingredients of offence alleged. Conduct of petitioners is also not above board. Petitioners failed to produce documents which they were called upon to produce by the Investigating Officer. Documents had to be collected by the Investigating Officer. These documents were later collected from the DDA and sent to FSL seeking its opinion, according to which there are alterations/erasing

marks on the documents submitted by the petitioners with the DDA. Statement of the complainant has also to be taken as correct at this stage of taking cognizance of the charge-sheet wherein specific allegations have been levelled against the petitioners. In no way, it can be said that sufficient material was not available before the Magistrate for taking cognizance of the offence as alleged in the charge-sheet.

7. Learned counsel for the petitioners has vehemently contended that there was inordinate delay in filing the charge-sheet. FIR was registered in the year 2009; whereas charge-sheet has been filed in the year 2012. He has placed reliance on Wasante and Others vs. State of Maharashtra 1984 CRI. L.J.

419 and R.P. Kapur vs. State of Punjab AIR 1960 SC866 I have perused these judgments and find the same to be in the context of different facts. In Wasante (supra), investigation was completed in the year 1971 and despite this no charge-sheet was filed for about 5 years and in these facts, it was held that there was unexplained inordinate delay in filing the chargesheet. Similarly, judgment of the Supreme Court is also in the context of different facts. In the present case, I do not find any inordinate delay in filing the charge-sheet. After registration of FIR in the year 2009, investigation and continued immediately after conclusion of the investigation charge-sheet was filed. It has further been mentioned in the status report that investigation was delayed due to non-cooperation of the petitioner-Babu Lal, which averment is strengthened from the fact that petitioner did not cooperate in the investigation and did not supply the documents despite notices issued by the Investigating Officer and ultimately said documents had to be obtained from the DDA. That apart, these documents were sent to FSL for seeking expert opinion which also took time.

8. For the foregoing reasons, both the petitions are dismissed. A.K. PATHAK, J.

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