



2025:DHC:5018



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:26.06.2025

+ **CRL.M.C. 2729/2010**

PREM PARKASH KHATTAR & ORS.Petitioners

versus

STATE Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Kunal Madan, Adv.

For the Respondent : Mr. Pradeep Gahalot, APP for the State for
the State
Mr. Rakesh Mittal, Ms. Yamini Mittal and
Mr. Ajay Harshana, Adv. for R-2.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed challenging the order dated 16.07.2010 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**'), Dwarka Courts, New Delhi in Crl. Rev. No. 30/2010.

2. By the impugned order, the learned ASJ set aside the summoning order dated 06.01.2010 passed by the learned Metropolitan Magistrate ('**MM**'), whereby, Respondent No. 2 was



summoned for the offences under Sections 420/442/448/465/466/468 of the Indian Penal Code, 1860 ('IPC').

3. The brief facts are that the petitioners are the joint owners of a property bearing No. RA-112 (WZ-256E) admeasuring 325 square yards. The said property is situated in Village Naraina in the abadi of an approved colony Inderpuri, New Delhi.

4. The property was initially purchased by the father of the petitioners *vide* a registered sale deed dated 15.04.1961. The father of the petitioners died intestate on 02.10.1994, leaving the said property in favour of the petitioners.

5. Thereafter, using their own sources of income, the petitioners carried out construction of ground, first and second floors on the said property.

6. In June 2007, Respondent No. 2 approached the petitioners and agreed to purchase the second floor of the property without roof rights for a consideration of ₹12,00,000/-, whereafter, a General Power of Attorney ('GPA') was prepared and signed by the parties before the Sub-Registrar.

7. Respondent No. 2, thereafter, issued four cheques of ₹3,00,000/- each drawn on Indian Overseas Bank, Naraina branch, in favour of the petitioners. However, Respondent No. 2 asked the petitioners to return the aforesaid cheques on the pretext that he wanted to take photocopies of the same.

8. It is alleged that despite handing over the possession of the second floor, Respondent No. 2 did not pay any amount to the



petitioners. Upon repeated enquiries from the petitioners, Respondent No. 2 evaded payment on the pretext that the GPA had not yet been registered owing to the change in the circle rates.

9. Suspecting Respondent No. 2's conduct, the petitioners wrote a letter dated 06.09.2007 to the office of the Sub-Registrar regarding the registration of the GPA. However, the petitioners did not receive any reply to the aforesaid letter.

10. Aggrieved by the aforesaid fact, the petitioners on 12.09.2007 went to the office of the Sub-Registrar to make enquires regarding the registration of the GPA, whereafter, they learned that the GPA had been registered on 19.07.2007 and applied for a certified copy of the same.

11. The petitioners after perusing the copy of the registered GPA found that many changes had been made in the document without their consent. It is alleged that the consideration amount had been enhanced from ₹12,00,000/- to ₹31,50,000/-. Further, the GPA mentioned, second floor with roof rights instead of second floor without roof rights. The stamp duty paid was ₹60,000/- whereas Respondent No. 2 alleged to have paid a stamp duty of ₹1,57,488/-.

12. It is alleged that the petitioners upon enquiring from Indian Overseas Bank regarding the cheques mentioned in the GPA, were shocked to learn that the four cheques of ₹3,00,000/- each had been encashed by Respondent No. 2 under the forged signatures of the petitioners. It is alleged that Respondent No. 2 had encashed another



four cheques of ₹4,00,000/- each under the forged signatures of the petitioners.

13. It is further alleged that the petitioners had gone out of station and upon returning back on 13.09.2007, were informed that Respondent No. 2 with the help of his cousin brother had changed the earlier locks of the terrace with his own locks.

14. Subsequently, the petitioners filed a complaint under Section 200 of the Code of Criminal Procedure, 1973 ('CrPC') being CC No. 40/2009 alleging that Respondent No. 2 had cheated the petitioners and committed forgery in the GPA registered.

15. The learned MM after making a preliminary investigation *vide* order dated 06.01.2010 noted that a *prima facie* case had been made out against Respondent No. 2 and thereby summoned him for the offences under Sections 420/442/448/465/466/468 of the IPC. On 22.10.2010, Respondent No. 2 appeared before the learned MM and was enlarged on bail on payment of ₹3,00,000/-.

16. Aggrieved Respondent No. 2 filed a Criminal Revision being CrI. Rev. No. 30/2010 before the learned ASJ. By the impugned order the learned ASJ noted that no *prima facie* case had been made out against Respondent No. 2 and consequently set aside the order dated 06.01.2010 passed by the learned MM and discharged Respondent No. 2 from the aforesaid offences.

17. The learned counsel for the petitioners submitted that the learned ASJ did not have jurisdiction to entertain the said revision petition and placed reliance on the judgment of the Hon'ble Apex



Court in the case of *Subramaniam Sethuraman v. State of Maharashtra* : 2004 (13) SCC 324. He submitted that a summoning order is an interlocutory order and the only remedy that an accused has to challenge the same is under Section 482 of the CrPC.

18. He submitted that the learned ASJ failed to consider that a number of changes had been made in the registered GPA without the consent of the petitioners. He submitted that both Respondent No. 2 and the Sub-Registrar acted in connivance to register the forged GPA.

19. He further submitted that the learned ASJ failed to consider that Respondent No. 2 had allegedly encashed the cheques under the forged signatures of the petitioners. He submitted that the cheques were dated 19.07.2007 whereas Respondent No. 2 had belatedly encashed the cheques on 10.09.2007.

20. *Per contra*, the learned counsel for Respondent No. 2 vehemently opposed the arguments as raised by the learned counsel for the petitioners. He consequently prays that the present petition be dismissed.

21. He submitted that the petitioners had concealed the fact that they were the ones who had entered into an oral agreement with Respondent No. 2 for the development of the said property. He submitted that it was mutually agreed between the parties that, the petitioners would retain the ground and first floor, and a GPA would be executed for the second floor with roof rights in favour of Respondent No. 2.



22. He submitted that Respondent No. 2 had issued 8 bearer cheques in favour of the petitioners. It is alleged that after encashing the aforesaid cheques, on 13.09.2007, sons of the petitioners broke open the locks of the terrace which belonged to Respondent No. 2 and allegedly tried to take possession of the same.

23. He submitted that if it is alleged that Respondent No. 2 had not advanced any payment in favour of the petitioners after executing the GPA, the petitioners had the right to file a complaint regarding the same. He submitted that no such action had been taken by the petitioners till they had encashed the bearer cheques as they had received the money in terms of the registered GPA.

24. I have heard the learned counsel for the parties and perused the record.

Analysis

25. Before delving into the merits of the present case, it is imperative to decide the issue of jurisdiction that has been agitated by the petitioners. It is argued that the revision petition against the summoning order was not maintainable as a summoning order is an interlocutory order in view of the bar in Section 397(2) of the CrPC. Reference is made to the judgment in the case of *Subramaniam Sethuraman v. State of Maharashtra* (*supra*).

26. The reliance on the said judgment, in the opinion of this Court, is misplaced. As rightly appreciated by the learned ASJ, the dictum in the said judgment is not applicable to the facts of the present case as the issue before the Hon'ble Apex Court was essentially whether the



learned Magistrate had the jurisdiction to review or recall its own summoning order. In that context, the Hon'ble Apex Court held that the learned Magistrate did not have the power to recall an order issuing process against the accused. While the Hon'ble Apex Court had made a passing observation that the only remedy available to the accused to challenge a summoning order was to invoke the inherent jurisdiction of the High Court under Section 482 CrPC instead of filing an application seeking recall of summons or seeking discharge, however, it is pertinent to note that no specific consideration was given to the question of maintainability of a revision petition. The Hon'ble Apex Court in the case of ***Om Kumar Dhankar v. State of Haryana and Another: (2012) 11 SCC 252***, while dealing with the specific issue of maintainability of a revision petition against a summoning order, held as under:

*“8. The counsel for the appellant is not present. However, from the special leave petition, it transpires that two questions have been raised, namely, (i) **whether the criminal revision petition against the order of summoning is maintainable?** and (ii) whether in the facts and circumstances of the present case, the sanction under Section 197 of the Code of Criminal Procedure (CrPC) is required?*

*9. Insofar as the first question is concerned, it is concluded by a later decision of this Court in **Rajendra Kumar Sitaram Pande v. Uttam [(1999) 3 SCC 134 : 1999 SCC (Cri) 393]** . In **Rajendra Kumar Sitaram Pande case [(1999) 3 SCC 134 : 1999 SCC (Cri) 393]** this Court considered earlier decisions of this Court in **Madhu Limaye v. State of Maharashtra [(1977) 4 SCC 551 : 1978 SCC (Cri) 10]** , **V.C. Shukla v. State [1980 Supp SCC 92 : 1980 SCC (Cri) 695]** , **Amar Nath v. State of Haryana [(1977) 4 SCC 137 : 1977 SCC (Cri) 585]** and **K.M. Mathew v. State of Kerala [(1992) 1 SCC 217 : 1992 SCC (Cri) 88]** and it was held as under: (**Rajendra Kumar case [(1999) 3 SCC 134 : 1999 SCC (Cri) 393]** , SCC p. 137, para 6)*



“6. ... This being the position of law, it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under sub-section (2) of Section 397 would apply. On the other hand, it must be held to be intermediate or quasi-final and, therefore, the revisional jurisdiction under Section 397 could be exercised against the same.”

10. In view of the above legal position, we hold, as it must be, that revisional jurisdiction under Section 397 CrPC was available to Respondent 2 in challenging the order of the Magistrate directing issuance of summons. The first question is answered against the appellant accordingly.”

(emphasis supplied)

27. In view of the above, this Court finds no infirmity in the observation of the learned ASJ that it was competent to entertain the challenge against the summoning order.

28. Insofar as the merits of the case are concerned, it is important to note that the petitioners have invoked the inherent jurisdiction of the Court. It is settled law that this Court ought to exercise its inherent jurisdiction sparingly, especially when the Sessions Court has already exercised revisional jurisdiction. However, the present case is not one where there are concurrent findings by the Sessions Court and Magistrate. In this case, the summons issued by the learned MM were set aside by the learned ASJ. The same warrants a scrupulous appraisal of the facts of the case to ascertain whether interference is required to secure the ends of justice.

29. The learned ASJ was weighed by a number of factors to hold that no *prima facie* case was made out against Respondent No.2. The learned ASJ has noted that a joint complaint by four persons is not maintainable in view of the judgment in the case of *Santokh Singh v.*



Gurpal Singh : 1995(3) RCR (Criminal) 357, as the complainant has to be one person rather than more than one. The said aspect has not been addressed by the petitioners during the course of arguments.

30. It is argued instead that Respondent No. 2 allegedly made changes in the GPA by enhancing the consideration amount and including roof rights without the consent of the petitioners. It is noted by the learned ASJ that as per the report of the Sub-Registrar submitted before the learned MM, the GPA in question had been presented before the Sub-Registrar on 19.07.2007, whereafter due to the new circle rates coming in force on 19.07.2007, corrections were made in the document and it was presented for registration. A bare perusal of the report shows that while it is mentioned that corrections were not made in Form A, however, it is also mentioned that *both* the parties had attested the corrections in the document and presented the document again for registration after making the corrections. The parties had also signed the document and affixed their finger prints on the same, after which, the document was accepted. It is pertinent to note that the learned MM had not properly appraised the said report while passing the summoning order at the first instance.

31. It is the case of the petitioners that Respondent No.2 took possession of the subject property without making any payment and forged some details in the GPA. It is also alleged that Form A was forged. Considering that the GPA is a registered document, it is to be presumed that the same is *prima facie* a genuine document and valid in law. The onus to prove the alleged forgery or rebut the presumption



of genuineness is on the petitioners. Bald assertions of forgery are insufficient in this regard and the petitioners are required to put forth cogent material to cast any doubt against Respondent No.2. The petitioners before the learned MM were examined as CW-1 to CW-4. As noted by the learned ASJ, the petitioners have not named the Sub-Registrar or any of its staff members in their statements and they have not led any evidence that proves the alleged connivance. The petitioners have also not deposed as to who was the person that had informed them regarding the breaking of locks either. Further having admitted that they were out of station and had returned on 13.09.2007, the assertion of the petitioners that they went to the office of the Sub-Registrar on 12.09.2007 to enquire about the status of the GPA raises suspicion regarding their version.

32. The learned ASJ in the impugned order has also rightly noted that the two public witnesses, namely, Mr. Naveen and Mr. Virender, who were witnesses to the GPA had not been summoned as witnesses before the learned MM. The two public witnesses that were present at the time of the registration of the GPA in the opinion of this Court would have been the best witnesses to prove whether the GPA had been forged by Respondent No. 2 and the alterations had been made without the consent of the petitioners or not. In the absence of the examination of the said individuals, the case of the petitioners falls well short in establishing sufficient grounds for proceeding against Respondent No.2 for the offences of cheating and forgery.



33. It is also alleged that the cheques were encashed by Respondent No.2 himself and the petitioners never received the cash payment of ₹3,48,977/-, as mentioned in the GPA, either. Insofar as the encashment of the cheques are considered, it is pertinent to note that it is alleged that Respondent No.2 had taken back the four cheques of ₹3,00,000/- for photocopying. It is contended on behalf of Respondent No.2 that the cheques were encashed by the petitioners themselves. Usually, cheques are encashed after ascertaining the identity of the bearer. As rightly noted by the ASJ, no particular evidence is led to establish that there was a divergence from routine practice and the cheques had been encashed by Respondent No.2 instead. No particular evidence is led to establish forgery on part of Respondent No.2 in this regard as well. In the absence of any cogent material in this relation, it cannot be held that the mere allegations in this regard, which are only supported by the statement of the petitioners themselves, are sufficient to set criminal law in motion against Respondent No.2. As also noted by the learned ASJ, it is peculiar that the petitioners would have handed over the possession of the property without any payment.

34. It is pointed out that the petitioners have succeeded in the Civil Suit instituted by them against Respondent No.2 and a decree of ₹31,48,977/- has been awarded in their favour. The same has been challenged before this Court by Respondent No.2. It is pertinent to note that the standard of proof in both the proceedings is different. While the petitioners may ultimately succeed in meeting the threshold of preponderance of probability, however, they have been



unsuccessful in meeting the higher bar of certainty as required for issuance as summons by failing to establish any sufficient ground for proceeding against Respondent No.2.

35. It is also pertinent to note that the matter has been pending before this Court since the year 2010 and the dispute relates to the year 2007. As noted above, the petitioners had also filed a civil suit on the same set of facts and an appeal has been filed by Respondent No.2 against the decree passed in the said suit. Even though it is open to a litigant to pursue civil and criminal remedies simultaneously on the same facts, however, at this stage, when almost two decades have elapsed and the Appellate Court is already seized of the issue in the civil proceedings, this Court does not consider it apposite to reignite the criminal proceedings by issuing summons. Issuance of summons is a serious issue and the same cannot be issued in a routine manner. In the case of *Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others* : (1998) 5 SCC 749, the Hon'ble Apex Court had observed as under:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may



even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

29. No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial....”

(emphasis supplied)

36. Therefore, in view of the aforesaid discussion, this Court is of the considered opinion that the impugned order suffers from no infirmity and warrants no interference by this Court.

37. The present petition is therefore dismissed.

AMIT MAHAJAN, J

JUNE 26, 2025