



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on: 27<sup>th</sup> March, 2025*  
*Pronounced: 27<sup>th</sup> June, 2025*

+ **CRL.M.C. 2036/2017 & CRL. M.A. 8372/2017**

1. **RATI SAWHNEY**  
 W/o DHRUV SAWHNEY  
 R/o 17, SUNDER NAGAR,  
 NEW DELHI  
 THROUGH: LALIT SACHDEVA  
 S/o LATE SH. P.L. SACHDEVA  
 C/O 15-16, EXPRESS TRADE TOWERS,  
 8<sup>TH</sup> FLOOR, SECTOR 16A,  
 FILM CITY, NOIDA, U.P 201301

.....Petitioner

Through: Mr. Siddharth Aggarwal, Sr.  
 Advocate with Mr. Anunaya Mehta,  
 Advocate.

versus

1. **THE STATE**  
 THROUGH SHO  
 PS MALVIYA NAGAR  
 NEW DELHI

2. **AMULYA KUMAR ROY**  
 (DEAD) THROUGH LRs  
 1. ILLA ROY (WIFE)  
 2. DR. YOGESH ROY (SON)  
 3. DR. RAJNI ROY (DAUGHTER)

ALL RESIDENTS OF HOUSE NO. 42,  
 DIPALI, PITAMPURA,  
 NEW DELHI 110034

.....Respondents



Through: Mr. Yudhvir Singh Chauhan, Ld.  
APP for the State.

**CORAM:**  
**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. Petition under Article 227 of Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as the "Cr.P.C."*) has been filed against the Order dated 06.05.2017 passed by the Ld. ASJ/Special Judge (PC Act) whereby the Order dated 16.07.2015 of the Ld. MM, summoning the Petitioner, Smt. Rati Sawhney, for the offences punishable under Sections 420/467/468/471/120B/34 of the Indian Penal Code (*hereinafter referred to as the "IPC"*), has been upheld.
2. ***Facts in brief*** are that Complainant/Respondent No. 2/Amulya Kumar Roy filed a Complaint dated 17.01.2009 against the present Petitioner, and also against Smt. Rati Sawhney, Smt. Geeta Roy, Dr. Juthika Roy and Sh. R.S. Rathaur for the offences punishable under Sections 420/467/468/471/120B/34 IPC. The Complainant, in the said Complaint had stated that he had 03 brothers, namely, Sh. Vimal Kumar Roy, Sh. Sudhir Kumar Roy and Sh. Himanshu Kumar Roy and one sister Smt. Geeta Roy. His 03 brothers i.e. Sh. Vimal Kumar Roy, Sh. Sudhir Kumar Roy and Sh. Himanshu Kumar Roy died unmarried.
3. It is submitted that Sh. Himanshu Kumar Roy was the owner and in possession of land bearing Khasra Nos. 3/2 (4-2), 4/2 (2-16), 2/2 (3-16) and



4/1 (1-16) and 24 min (1-0) total area measuring 13 Bighas, 10 Biswas situated in the revenue estate of Village Bijwasan, New Delhi.

4. Sh. Himanshu Kumar Roy during his lifetime, used to reside with the Complainant and had executed a General Power of Attorney in respect of all his property, in her favour. However, during his last stage, he went to reside with their sister Smt. Geeta Roy, who did not allow the Complainant and his family members to meet Sh. Himanshu Kumar Roy. It is asserted that she fraudulently and in collusion with Dr. Juthika Roy and Sh. R.S. Rathaur by deceitful means, obtained the signatures of Sh. Himanshu Kumar Roy on certain blank papers, which was subsequently converted into an Agreement to Sell dated 11.12.2006 and a Will dated 11.01.2007 in favour of Smt. Geeta Roy. Dr. Juthika Roy and Sh. R.S. Rathaur were the attesting witnesses to the Will dated 11.01.2007.

5. An Agreement to Sell dated 11.12.2006 was executed by Himanshu Kumar Roy in favour of the Petitioner, Rati Sawney. It is asserted that Smt. Geeta Roy opened a new joint Account in the name of herself and Sh. Himanshu Kumar Roy in which part sale consideration of Rs.1,10,00,000/- with respect to the Agreement to Sell dated 11.12.2006, was deposited. The said amount instead of being transferred in his individual Account, was withdrawn and the account was closed immediately thereafter.

6. It was claimed that Himanshu Kumar Roy had his individual Account in UCO Bank, Sheikh Sarai Branch and there was no reason to open a New joint Account and that too, in UCO Bank, Connaught Place Branch which was far from his residence. It is apparent from the manner in which money



was immediately withdrawn and Account closed that it was done with a fraudulent intent by Geeta Roy, who has taken away the money.

7. The deceitful and fraudulent intention of the Geeta Roy was claimed to be apparent from reading of the alleged Will dated 11.01.2007 of Late Sh. Himanshu Kumar Roy wherein it was nowhere indicated that he had entered into an Agreement to Sell dated 11.12.2006 with Petitioner, Smt. Rati Sawhney.

8. Smt. Geeta Roy applied for the Probate of the alleged Will dated 11.01.2007. When the Complainant came to know about it, he lodged a report with P.S. Kapashera on 21.04.2007, but no action was taken. He then moved another Complaint before Economic Crime Branch, Qutub Enclave, New Delhi on 27.07.2007 but again no action was taken. He thus, filed the Complaint for taking cognizance of the offences against the Petitioner, Smt. Rati Sawhney herein.

9. The ***Complainant/Respondent No. 2, Sh. Amulya Kumar Roy*** examined **CW1/K.C. Jain**, Notary Public, who denied that the certified copy of the Will dated 11.01.2007 was attested by him. **CW2/Dr. Anil Sharma**, who produced the death summary report of Sh. Himanshu Kumar Roy as **Ex.CW2/A**, which reflects that he died on 12.01.2007 at 9.30 PM. **CW3 (also examined as CW7)/D.R. Sayal** from UCO Bank. **CW4/Ct. Sh. Naveen Kumar** produced the Enquiry Report on the complaint dated 21.04.2007 filed by Sh. A.K. Roy along with the Note Sheets.

10. *Ld. MM vide Order dated 16.07.2015, summoned the Petitioner, Smt. Rati Sawhney, herein under Sections 420/467/468/471/120B/34 IPC.*



11. During the pendency of the proceedings, Sh. Amulya Kumar Roy died and his legal heirs Smt. Illa Roy, Sh. Yogesh Roy and Dr. Rajni Roy were impleaded in his place on 01.02.2017 and they were allowed to continue with the Complaint dated 17.01.2009.

12. The **Revisionist, Smt. Rati Sawhney**, contended that no role has been assigned to her in the preparation of the Will dated 11.01.2007. Moreover, the Complaint in respect of Agreement to Sell dated 11.12.2006 was filed before P.S. Kapashera, which, on Police Enquiry was found to be a genuine document. Thereafter, on 27.07.2007, in another Complaint made with the Police, there were no allegations levelled against the Revisionist.

13. It was further submitted that a **Civil Suit bearing No. CS(OS) 2225/2008** for Specific Performance of the Agreement to Sell dated 11.12.2006 against Geeta Roy, is pending before this Court.

14. Ld. MM, vide Order dated 16.07.2015 summoned the petitioner and other accused.

15. The **Ld. ASJ in the Impugned Order dated 06.05.2017** observed that the manner in which the joint Account was opened and the money withdrawn from the joint Account on 11.06.2007; the fact of Smt. Geeta Roy, sister of deceased Sh. Himanshu Kumar Roy being the attesting witness to the Agreement to Sell dated 11.12.2006 and that the Will dated 11.01.2007 was also in her favour, cast a strong suspicion qua the genuineness of the transaction. The Order of Ld. MM summoning the Petitioner, Smt. Rati Sawhney along with other accused, was upheld.

16. **Aggrieved, present Petition has been filed by Smt. Rati Sawhney to challenge the Summoning Order dated 16.07.2015 on the grounds that**



there is *no cause of action* whatsoever disclosed against her. It was further contented that she was neither a party nor a consultee to alleged forgery of Will dated 11.01.2007 of Late Sh. Himanshu Kumar Roy under which Smt. Geeta Roy is the sole beneficiary. Petitioner, Smt. Rati Sawhney is neither a beneficiary nor a witness to the Will dated 11.01.2007. No role has been ascribed to her in relation to execution of the Will dated 11.01.2007.

17. In fact, she is not concerned with the Roy family in any manner. She was the *bona fide* purchaser for valuable consideration, of the property under the Agreement to Sell dated 11.12.2006 executed by Late Sh. Himanshu Kumar Roy in her favour during his lifetime, and whoever succeeds to his estate is bound by the Agreement to Sell dated 11.12.2006. The Petitioner is not in any manner, concerned with the successor to the estate of Late Sh. Himanshu Kumar Roy or with the *inter se* disputes of the legal heirs of Late Sh. Himanshu Kumar Roy. The rights of the Petitioner, Smt. Rati Sawhney are neither dependent nor in any way related to the Will dated 11.01.2007. It is hereby clear that no basis whatsoever on which the Petitioner can be stated to be involved in forgery or fabrication of Will dated 11.01.2007.

18. It is further submitted that the claim of the Complainant that the Agreement to Sell dated 11.12.2006 is forged, is an afterthought. In fact, the genuineness of the Agreement to Sell dated 11.12.2006 was admitted by the Complainant, Sh. Amulya Kumar Roy in Probate Proceedings wherein he stated that his brother had entered into an Agreement to Sell dated 11.12.2006 and had taken Rs.1,10,00,000/- as part consideration of sale from the Petitioner and that the cheque was duly encashed. Furthermore, the joint



bank Account that was opened in the name of Sh. Himanshu Kumar Roy and Smt. Geeta Roy, had the signatures of Sh. Himanshu Kumar Roy at multiple places and there is not a remotest allegation that his signatures on Account Opening Form, was not genuine or forged.

19. Complainant, Sh. Amulya Kumar Roy's grievance in the *Complaint dated 27.07.2007*, was only that after the demise of Late Sh. Himanshu Kumar Roy, on 12.01.2007, the entire amount was withdrawn by Smt. Geeta Roy and the Account was closed without finalising the Will of late Himanshu Kumar Roy. Furthermore, he himself had stated that SDM, Bijwasan Estate, Kapashera to ensure that nobody occupies the aforesaid land without payment to the legal heirs and finalisation of the Sale Deed. However, the Civil Suit for Specific Performance of Agreement to Sell has already been filed.

20. Furthermore, in the *Complaint dated 03.06.2008*, the Complainant, Sh. Amulya Kumar Roy had asserted that Smt. Geeta Roy had kept the demise of Sh. Himanshu Kumar Roy, his cremation or who all attended the cremation a secret not only from him but even from the immediate neighbours. It is Smt. Geeta Roy, who was doing the mischief as per contents of the Complaint dated 17.01.2009.

21. Furthermore, the execution of Agreement to Sell dated 11.12.2006 was duly acknowledged and there was never any claim of it being forged and fabricated, which has been later alleged as an afterthought. In the Police Enquiry, Agreement to Sell dated 11.12.2006 has been found to be genuine.

22. There is no allegation that Petitioner, Smt. Rati Sawhney took part in getting blank papers signed and in fabricating the Agreement to Sell dated



11.12.2006. There are only general allegations which in no manner connect the Petitioner with the alleged conspiracy. Even otherwise, the allegations of conspiracy are completely unfounded and so inherently improbable that no prudent person can ever reach to a conclusion that there is any ground for proceedings against the Petitioner.

23. *It is therefore submitted that the Summoning Order dated 16.07.2015 against the Petitioner, is liable to be set aside.*

24. ***Reply has been filed on behalf of the LR's of the Complainant/Respondent No. 2, Sh. Amulya Kumar Roy*** who have asserted that Petitioner, Smt. Rati Sawhney is one of the conspirators in forging and fabrication of Will dated 11.01.2007 and Agreement to Sell dated 11.12.2006 in respect of the suit property. The Complaint dated 17.01.2009 discloses the facts establishing the fraud committed by the Petitioner, Smt. Rati Sawhney which had earlier been mentioned in the Complaint dated 21.04.2007 lodged at SHO, P.S. Kapashera as well as in the Complaint under Section 200 Cr.P.C., filed before the Ld. MM.

25. It is asserted that the suspicion in regard to the Will dated 11.01.2007, is evident from the fact that on the very next date i.e. 12.01.2007, Sh. Himanshu Kumar Roy died in suspicious circumstances. Not only did the Petitioner executed the alleged Agreement to Sell dated 11.12.2006 with Himanshu Roy, but he also executed another Will dated 03.04.2007 without the Probation of the first Will dated 11.01.2007, which shows the *mala fide* intention of the Petitioner, Smt. Rati Sawhney. In fact, Smt. Geeta Roy had tried a Probate in respect of Will dated 11.01.2007 but the Probate Petition has been dismissed by the Ld. Trial Court by observing that the Will dated



11.01.2007, was forged and fabricated. The Appeal preferred by Smt. Geeta Roy, has also been dismissed.

26. It is further asserted that Smt. Geeta Roy was one of the attesting witnesses in the alleged Agreement to Sell dated 11.12.2006. She had opened a joint Bank Account with Sh. Himanshu Kumar Roy and had surreptitiously withdrawn the sale consideration of Rs.1,10,00,000/- that was deposited in conspiracy with the other accused persons, on 12.12.2006. It is also asserted that the Agreement to Sell dated 11.12.2006 was found to be forged and fabricated by the Handwriting Expert whose Report is already submitted in CS(OS) 2225/2008.

27. It is submitted that there are sufficient allegations in the Complaint dated 17.01.2009 to show the complicity of the Petitioner with other co-accused to forge and cheat the Complainant.

28. *It is therefore submitted that there is no merit in the present Petition, which is liable to be dismissed.*

29. *Ld. Counsel for the Petitioner, Smt. Rati Sawhney has argued on similar lines* as the contentions raised in the Petition. It is submitted that she is a *bona fide* purchaser of the property under an Agreement to Sell dated 11.12.2006, which has been found to be genuine. *The Summoning Order dated 16.07.2015 is therefore, liable to be set aside.*

30. Ld. Counsel on behalf of the **Respondent No. 2/Complainant, Sh. Amulya Kumar Roy** has taken a **preliminary objection** that the present Petition under Section 482 Cr.P.C. is not maintainable since it has been filed by Petitioner through her SPA holder Sh. Lalit Sachdeva.



31. Reliance has been placed on Amrinder Singh @ Raja Through: SPA Holde Sukhjinder Singh vs. The State of NCT of Delhi, CRL.M.C. 1571/2021 decide by the Co-ordinate Bench on 04.01.2022, wherein, it had been observed that the Criminal Miscellaneous Petitions under Article 227 of Constitution of India read with Section 482 Cr.P.C. seeking quashing of FIR through Power of Attorney holder should not be entertained.

32. Reference is made to Amit Ahuja vs. Gian Parkash Bhambri, 2010(3) RCR (Crl) 586, wherein *it had been noted that no third person can fight a proxy war on his behalf under the garb of public interest litigant*. It was further observed that the Petition for quashing under Section 482 Cr.P.C. for the Summoning Order and the subsequent proceedings, proxy war cannot be permitted to be fought through third person

33. Similarly, in T.C. Mathai and Another vs. The District & Sessions Judge, Thiruvananthapuram, Kerala, AIR 1999 SC 1385, it was observed that the appearance of the accused should not be permitted through Power of Attorney holder.

34. ***On merits***, it is contended that sufficient allegations of conspiracy of the Petitioner with the other co-accused and *she has been rightly summoned and the Petition has no merit*.

35. **Submissions heard and record perused.**

36. At the outset, with respect to the ***maintainability of the present petition***, though it has been held that the criminal proceedings cannot be permitted to be conducted by an accused through the SPA holder, but essentially, it can be deciphered from the aforesaid judgements that the concern only is to ensure that it is not a proxy war or that the presence of



the accused gets exempted through third party, which may result in miscarriage of justice.

37. In the present case, Petitioner, Smt. Rati Sawhney is first and foremost a lady, who has filed a Petition through SPA holder essentially to challenge a Summoning Order dated 16.07.2006, which on the face of it, is patently illegal. Considering the nature of the Order and the role assigned to the Petitioner, it cannot be said that it is a proxy war that she is trying to fight or that there would be any miscarriage of justice if the Petition through SPA holder, is entertained.

38. In the present Petition under Article 227 of Constitution of India, it is the patent illegality of an Order dated 16.07.2006, which has been challenged. *It cannot be said that the present Petition in the given circumstances, is not maintainable.*

39. ***On merits***, in the Complaint dated 17.01.2009 under Section 200 Cr.P.C. filed on behalf of the Respondent No. 2, Sh. Amulya Kumar Roy made specific allegations against Smt. Geeta Roy, Dr. Juthika Roy and Sh. R.S. Rathaur of having conspired to get the blank document signed from Late Sh. Himanshu Kumar Roy, unmarried brother depriving him of his shares. Subsequently, these blank documents have been converted into a Will dated 11.01.2007 and Agreement to Sell.

40. The only role assigned to the present Petitioner in the entire Complaint is that Geeta Roy managed to execute an Agreement to Sell dated 11.12.2006 with her, in collusion with other accused. It is further asserted that in the Will dated 11.01.2007, there was no mention of Agreement to Sell dated 11.12.2006 executed by Sh. Himanshu Kumar Roy with the Petitioner,



Smt. Rati Sawhney. In the end, it was asserted that all the accused persons were totally responsible for commission of the criminal offences.

41. The averments made in the Complaint dated 17.01.2009, do not assign any role to Petitioner. Essentially, all the allegations are against Smt. Geeta Roy, Dr. Juthika Roy, Sh. R.S. Rathaur against whom specific allegations had been made of forging the Agreement to Sell dated 11.12.2006 and the Will dated 11.01.2007. At no point of time, is there any complicity shown between those three persons and the Petitioner.

42. The only role of Petitioner was that she entered into the Agreement to Sell dated 11.12.2006 with Sh. Himanshu Kumar Roy. The Agreement to Sell dated 11.12.2006 was not contested by the Complainant, Sh. Amulya Kumar Roy, who in the Probate Proceedings, admitted the genuineness of Agreement to Sell dated 11.12.2006.

43. The Petitioner has rightly contended that pursuant to the said Agreement to Sell dated 11.12.2006, she had deposited the part sale consideration in the sum of Rs.1,10,00,000/- in the joint Account of Sh. Himanshu Kumar Roy and his sister Smt. Geeta Roy. Whether the Account was surreptitiously got opened by Smt. Geeta Roy in joint name with Sh. Himanshu Kumar Roy, was not her concern and she was in no manner involved in the opening of the bank Account. She was a genuine *bona fide* purchaser of the suit property for the sale consideration. The suit for Specific Performance has been filed wherein the balance sale consideration of Rs.1,10,00,000/- has already been deposited.

44. It is evident from the record that there is not a whisper of any allegation in the Complaint dated 17.01.2009 nor is there any role assigned



to her, except making a general allegation that all the accused persons had committed the conspiracy and the offences stated therein.

45. The averments of the Complainant, as was reflected in his statement and the Probate Proceedings, were that the entire consideration of Rs.1,10,00,000/- had been siphoned off by Smt. Geeta Roy from the joint Account of Sh. Himanshu Kumar Roy with Smt. Geeta Roy, which apparently, she had manipulated and got opened with a *mala fide* intent to take away the entire consideration amount.

46. No role whatsoever has been assigned to the Petitioner in this entire transaction. Therefore, it is held that there is no allegation of any kind made against the Petitioner *prima facie* reflecting her being a part of conspiracy for committing the offences under Sections 420/467/468/471/120B/34 IPC.

47. Therefore, the Summoning Order dated 16.07.2015 *vis-a-vis* the Petitioner, Smt. Rati Sawhney, is hereby set aside and she is discharged.

48. The present Petition along with pending Application(s), is accordingly disposed of.

**(NEENA BANSAL KRISHNA)**  
**JUDGE**

**JUNE 27, 2025**

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