

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

+ CRL. REVISION PETITION NO.423/2007

% Reserved on : 26-03-2008
Date of decision : 04-04-2008

UMED SINGH SEHRAWAT ... PETITIONER

Through: Mr. S. S. Dhaiya and
Mr. L.K. Dhaiya,
Advocates

- V E R S U S -

STATE & ORS ... RESPONDENTS

Through: Mr. Jaideep Malik,
APP for the State / R-1.

Mr. S.C. Sagar and
Mr. Krishan Kartik, Advs.
for Respondent Nos. 2-6.

CORAM: HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

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| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be
reported in the Digest? | No |

SANJAY KISHAN KAUL, J.

1. The present petition has been filed challenging the order dated 15-03-2008 of the learned Metropolitan Magistrate (for short, 'MM'), Delhi dismissing the complaint cases (being CC 875/01 and CC 876/01) filed by the petitioner and respondents 2-6 respectively against each other. The complaint cases being in the nature cross complaints, the

petitioner has challenged this order only in respect of the dismissal of CC 875/01.

2. The petitioner claims to have purchased small plants of Safaida trees from Mehta Nursery and Mahavir Nursery in the year 1986 and planted the same on his plots in Khasra nos. 539/01 and 539/02 at Mahipalpur, New Delhi stated to be owned by his wife. The plants over time grew into trees. The petitioner filed a criminal complaint (being CC 875/01) alleging that the respondents cut down safaida trees on the night of 11/12-07-1999. It was also claimed that the Forest Department had issued a show cause notice to all the respondents (respondents 2-6 herein).
3. Pursuant to the said complaint, the learned MM ordered an inquiry under s. 202 of the Code of Criminal Procedure (hereinafter referred to as 'Cr. P.C'). The petitioner alleges that although the report stated that the trees had been felled and taken away, process was not issued. It is also claimed that CW 2 being the Assistant Conservation Officer, Forest Department found that the trees had been cut and held the respondents guilty of so doing.
4. The learned MM directed a status report by the SHO, Vasant Kunj with regard to the persons informing the complainant of the cutting down of the trees; the proceedings conducted by the forest department; enquiries made by the metrological department regarding the occurrence of a storm and the intensity thereof on the night of the alleged cutting of trees or on 17.06.99, 06.07.99 and 19.07.1999 and; in case of the occurrence of a storm, whether the same of sufficient

intensity to uproot the trees. The report was also to mention whether any trees had been seized, and whether according to the forest department, the same had been uprooted or cut down.

5. The petitioner alleges that the report of the metrological department shows that there was no storm of such intensity to cause uprooting/falling of the trees. It is further claimed that the forest department has penalized the accused and directed them to pay a fine of Rs. 2700/-. The Petitioner submitted that the statements of Sh. Mahender Singh, Sh. Mahabir Singh, Smt. Shakuntala Devi and HC Vijay Pal supported his case. The petitioner has thus prayed for the setting aside of the impugned order.
6. A perusal of the impugned order shows that the learned MM had noted that the information collected by the Metrological Department shows that there was a dust storm of a speed of 41Km/ hr occurred on 11.07.1999 but it gave no opinion on whether the same was sufficient to uproot any tree. It was however admitted that there was no expertise with the department to ascertain the wind speed required to uproot 13-14 year old Eucalyptus trees.
7. The order also takes note of the statement of HC Vijaypal who has visited the spot on 15-07-1999 and found that some trees had fallen down of which 10-15 trees were in cut position and that local inquiry revealed that because of rains and storm some trees had fallen on the electric cables as a result of which electric cables snapped.

8. A letter dated 29.09.2004 of the Deputy Conservator of Forests noted that on an inspection of the site of the offence by the forest guard on 06.08.1999, it was found that four Eucalyptus trees were broken from the upper side and two had been cut.
9. The learned MM was of the view that the findings of the forest guard and the statement of the Head Constable indicated a situation where the trees may have broken or fell due to strong winds and that the trees had to be cut in order to restore the electricity. Another aspect taken note of by the learned MM is that the pre summoning Complainant's Evidence brought to light that there were about 180 Eucalyptus trees but neither of the reports indicated that those numbers of trees were cut down. Also, nothing has been placed on record to show that the trees were sold or transported to some place or were found lying at the site.
10. It was thus found that there is nothing on record to show that theft was committed by the accused persons. Proceedings by the tree officer under s. 21 of the Delhi Preservation of Trees Act, 1994 in respect of the limited number of trees alleged to have been cut down were pending. The evidence for summoning the accused persons under ss. 379/452 IPC was found to be grossly deficient.
11. The impugned order has also dealt with CC 876/01 alleging that three bills (nos. 460,396 and 376) of Mehta Nursery as well as other bills had been forged/manipulated by the petitioner and used as evidence in CC 875/01. The order notes that the affidavit of CW-1, manager of Mehta nursery

shows that the bills were neither issued by him or his staff but it had not been stated as to whether he was the manager at the time when the plants were stated to have been purchased or whether the format of the letterhead of the Nursery in that year was the same as CW1/B. This evidence was thus found by the learned MM to be grossly deficient. The learned MM has noted that several cases were pending between the parties in respect of the said khasra numbers.

12. The aforesaid shows that the learned MM has thoroughly examined the evidence on record. The statements of the HC Vijaypal and the inspection report of the forest guard, as noted by the learned MM indicate that a few trees had fallen down and some appeared to be cut. Both reports however mention a different number of trees as having been cut or having fallen. The complainants' evidence on the other hand is to the effect that there were about 180 trees on the said plots and that trees had been cut. While the statements of the complainant and Sh. Mahender Singh do not mention the number of trees alleged to have been cut, the statements of CW1 (20.11.2000) and Sh. Mahabir Singh are to the effect that 159 trees had been cut by the accused persons. The reports of HC Vijaypal and the Forest Guard, as noted by the learned MM do not indicate that such a large number of trees had been cut or had even fallen down. The proceedings before the assistant conservator of forests are also in respect of a small number of trees (i.e., two four trees alleged to be fallen and two trees alleged to have been cut).

13. The evidence placed on record does not show that the trees were removed from the premises. The evidence on record also does not show that any number of trees had been recovered from the property in question or elsewhere.
14. Insofar as the reports of the Metrological department in respect of the storm are concerned, the reports state that the storms stated to have occurred on 11.07.1999 was of a speed of 41 Km per hr but they were unable to give an opinion on whether the same was sufficient to uproot the trees or the wind speed required for trees to have been cut. The inspection reports of HC Vijaypal and the forest guard however mention both trees that had fallen as well as trees that had been cut.
15. Another factor to be taken note of is that the evidence on record does not show that the trees had been stolen by the accused persons.
16. This Court, while exercising revisional jurisdiction merely conserves the power to see that justice is done in accordance with the recognized rules of criminal jurisprudence and that its subordinate courts do not exceed their jurisdiction or abuse the power vested in them under the Cr. P.C. or to prevent miscarriage of justice. The revisional power of the High Court cannot be exercised as a second appellate court.
17. There are also several disputes noted to be pending between parties in respect of the property (being khasra nos. 539/01 and 539/02). In fact the respondents had also filed a criminal complaint against the petitioner alleging forging by the petitioner of the receipts issued by Mehta Nursery which

complaint was also dismissed by the impugned order dated 15-03-2008 for want of evidence. It appears, as the learned MM has also noted that the criminal complaints by the petitioner and respondents arose as a result of the disputes already pending between them. The Apex Court in All Cargo Movers (I) Pvt. Ltd & Ors v. Dhanesh Badarmal Jain and Anr. AIR 2008 SC 247, relying on the decisions in Indian Oil Corporation v. NEPC India Ltd. & Ors. (2006) 6 SCC 736 and G. Sagar Suri v. State of U.P. AIR 2000 SC 754, has frowned upon criminal proceedings being used as an arm twisting technique where the matters are purely civil in nature.

18. The evidence before the learned MM was insufficient for summons to be issued and the learned MM has been mindful of the fact that at the pre-trial stage of framing of notice in a private complaint, the Court only has to see that from the evidence and material placed on record, there is a prima facie case made out against the accused. It does not have to make a roving inquiry into the pros and cons of the matter and weigh the evidence as if conducting a trial. In my considered view, the trial court has discharged its function of sifting through the material on record to come to the conclusion that there was insufficient material on record to issue summons and thus I find no error in the impugned order for this court to interfere with the same.

19. Dismissed.

April 04, 2007
mr/RA

SANJAY KISHAN KAUL, J.