

* **HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 286/2008

% Decided on: 28th May, 2008

STATE Appellant
Through Ms.Mukta Gupta, Standing Counsel
with Mr.Rajat Katyal and
Mr.Akshaj Malik, Advocates

versus

PURSHOTTAM RAMNANI & ORS. Respondents
Through None

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE DR. JUSTICE S.MURALIDHAR

1. Whether reporters of the local papers be allowed to see the judgment ?n
2. To be referred to the Reporter or not ?n
3. Whether the judgment should be reported in the Digest ?n

ORDER

28.05.2008

CM No.8165/2008

Exemption allowed subject to all just exceptions.

CM No.8163/2008

For the reasons stated in the application, delay in filing the appeal stands condoned.

The application stands disposed of.

LPA No.286/2008 & CM No.8164/2008

1. The present appeal is preferred by the State against the judgment

and order dated 28th February, 2008 passed by the learned single Judge in WP(Crl) No.1392/2007 whereby proceedings under Section 107 read with Section 151 of the Code of Criminal Procedure against respondent No.1 have been quashed and further the State has been directed to pay a token damage of Rs.50,000/- to the respondent No.1 and further the Commissioner of Police was directed to initiated proceedings against the erring police officials who invoked the proceedings under Section 107 read with Section 151 CrPC.

2. The respondent No.1 is original writ petitioner. The parties are hereinafter referred to as per their nomenclature in the writ petition. The case of petitioner is that he was family friend of respondent No.4 and her husband Raj Kumar Bansal. Raj Kumar Bansal requested him for financial help and the petitioner extended all financial help to him from time to time. Respondent No.4 and her husband had no child and they adopted a girl child Neelambari. They invested their money to purchase three flats numbers 1,53 and 198 in Swastik Kunj, Sector-13, Rohini. At the request of Raj Kumar Bansal, petitioner renovated flat No.1 and Flat No.198 in Swastik Kunj. It is further case of the petitioner that relation between respondent No.4 and her husband were deteriorated and she was turned out by her husband from flat No.1 and she started living with her mother. The petitioner has lent substantial amounts to her from time to time totalling to nearly Rs.32 lakhs. In fact petitioner had sold his own property and the entire sale consideration

was given to her and she had executed a Power of Attorney in respect of flat No.1 and flat No.198. The petitioner at the request of respondent No.4 had shifted to flat No.53 and was living in the said flat. The petitioner had kept his belongings in flat No.198. Respondent No.4 had executed an undertaking in his favour that she will repay the loan amount along with interest within a span of five years and in case she failed to repay the amount, the petitioner would become owner of Flat No.53. She had also issued two cheques of five lakhs each, which later got dishonoured on presentation. Raj Kumar Bansal died on 24th November, 2006 and thereafter she along with her daughter shifted to Flat No.1 and the petitioner continued to live in Flat No.53 exclusively.

3. The petitioner has alleged that on 25th August, 2007, respondent No.4 came to flat No.198 along with her sister and broke open lock of the flat. On this the petitioner made a call to phone No.100 and brought all these facts to the police. A PCR van visited the flat and took the petitioner, respondent No.4 and her sister to the police station. At the police station the petitioner was asked to sit outside and a complaint was registered by respondent No.4 in connivance with police officials against the petitioner. The petitioner has alleged that the police officials were in collusion and connivance with respondent registered a false case against the petitioner instead of registering a complaint against respondent No.4 regarding breaking open of the lock. The petitioner was falsely implicated in a proceeding under Section 107 read

with Section 151 CrPC and was taken into custody. Respondent No.4 then with the help and connivance of police took possession of flat No.198, Swastik Kunj. The petitioner furnished surety before the Special Executive Magistrate on 29th August, 2007 and was released from the jail on 30th August, 2007. After his release from jail when he reached his flat No.53 Swastik Kunj where he was living for the past eight years he noticed that outer lock of the door had been broken and respondent NO.4 had removed all belongings of the petitioner. Petitioner approached the concerned police station and brought these facts to the notice of the SHO. Instead of registering a complaint, police officials threatened him that in case he visited the flat again another proceeding under Section 107 read with Section 151 CrPC shall be initiated against him. Petitioner made complaint to the higher authorities but in vain. He was constrained to live in a Dharamshala as he was dispossessed from Flat No.53 and as he had no other house.

4. The learned single Judge found that the initiation of proceedings against the petitioner was illegal and mala fide. In paragraph-7 of the judgment he observed thus:

“7. From the report of Sultan Singh, ASI it is clear that the dispute between petitioner and respondent No.4 was in respect of possession of the property. “Petitioner was claiming to be in possession of flat No.198, Swastik Kunj on the basis of Power of Attorney and an agreement, while Respondent No.4 was claiming it to be in her possession. Even if the property belonged to Respondent No.4, she had

admitted that petitioner had lived in flat No.53, Swastik Kunj with her even when her husband was alive. It is also evident that original documents and agreement was in custody of petitioner". Respondent No.4 was not living at flat No.198, Swastik Kunj but had gone there with so called labours and the petitioner found that his lock had been broken. It is also undisputed from the documents placed on record that it was petitioner, who gave a call at '100' to police and made a complaint about breaking open the lock by Respondent No.4. Thus, clearly the proceedings should have been initiated against petitioner and respondents under Section 145 Cr.P.C. Though police has power to initiate proceedings under Section 107 Cr.P.C as well, but one is bound to consider if on being threatened of forcible dispossession, a person calls police, does he commit breach of peace. If informing authorities is breach of peace, then better people settle their dispute without seeking police help. Moreover, it was respondent No.4 who had gone to the flat and broken the lock. She was not booked under Section 107/151 Cr.P.C and only petitioner was booked under Section 107/151 Cr.P.C It is evident that the petitioner was wrongly arrested and booked under Section 107/151 Cr.P.C and was wrongly sent to jail. The detention of the petitioner was illegal. In view of specific provisions of Section 145 Cr.P.C the police should have initiated proceedings against both under Section 145 Cr.P.C and if required under Section 107 Cr.P.C The attitude of police only fortifies the claim of the petitioner that the police was in league with respondent No.4 and was helping respondent No.4 to recover possession from the petitioner, forcibly."

5. Proceedings under Section 107 of the Code of Criminal Procedure which is a preventive measure and not a punitive one is to maintain

public tranquility and public peace and cannot be used as a handle in case of a private dispute between individuals where there is no material of disturbance to public tranquility or public peace. As the Section confers wide and unusual powers to interfere with the liberty of subject who have been found guilty of an offence, it must be exercised strictly in accordance with law, otherwise the provisions may be easily made an engine of injustice and oppression.

6. In the facts and circumstances of the case, no interference is warranted with the impugned order passed by the learned single Judge. The appeal has no merit and is accordingly dismissed. Consequently, the pending application is also dismissed.

CHIEF JUSTICE

**S.MURALIDHAR
JUDGE**

MAY 28, 2008

“V”