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HIGH COURT OF DELHI AT NEW DELHI

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LPA 289/2008

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Decided on: 28th May, 2008

STATE

..... Appellant

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

versus

KESHAV KUMAR & 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 ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

ORDER

28.05.2008

CM No.8198/2008

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

The application stands disposed of.

LPA No.289/2008 & CM No.8199/2008

1. This appeal is preferred by the State against the judgment and

order dated 25th February, 2008 passed by the learned single Judge in WP(Crl) No.2448/2006 whereby proceedings under Section 107 read with Section 151 of the Code of Criminal Procedure against the respondent No.1 have been quashed and further the State has been directed to pay a token compensation of Rs.50,000/- to the respondent No.1 and further the Commissioner of Police has been directed to initiate proceedings against the erring police officials.

2. The first respondent is original writ petitioner. The parties shall be hereinafter referred to according to their nomenclature in the writ petition. The grievance of the petitioner is that he was illegally detained and sent to Tihar Jail by the police officials invoking Section 107 read with Section 151 of the Code of Criminal Procedure on a false complaint by one Ashok Kumar Munna, respondent No.5, who is a known bad character of the area. The petitioner is a businessman and living at the first floor of Flat No.C-48, Karampura, Moti Nagar, New Delhi. The petitioner has alleged that respondent No.5 made unauthorised encroachment covering open public place towards rear portion of his flat and raised construction upto the second floor, in this process he closed the window/ventilation of the petitioner's only toilet-cum-bathroom. Against this illegal action, the petitioner had made complaints to MCD and also filed a Civil Suit No.471/04 seeking demolition of the unauthorised construction and his right to ventilation and the said Civil Suit is still pending.

3. The petitioner has further alleged that on 16th July, 2006 at the instance of respondent No.5 he was taken to the police station and put behind bars. He was threatened by respondent No.2-Sub Inspector Sudesh Ranga that unless he withdraws his complaint against respondent No.5 and tenders his apology to respondent No.5 and also withdraws his court case, he would not be let off. He was not allowed to go home and kept illegally in police station. On 17th July, 2006 when respectable persons of the area went to the police station to give surety for the petitioner, they were threatened by respondent No.2 and respondent No.5 who said that they would ensure that the petitioner was not bailed out for a week. Thereafter the petitioner was produced before ACP(SEM) and was sent to Tihar Jail on 17th July, 2006. The ACP(SEM) did not listen to the requests of the petitioner or his advocate or other persons of the locality who had come to stand surety to him. His surety was not accepted and he was sent to judicial custody. He was released from Tihar Jail in the evening of 18th July, 2006. The petitioner No.5 alleged that only after obtaining certified copies of the Kalandra proceedings against him he found that the proceedings under Section 107 read with Section 151 CrPC were initiated against him at the instance of respondent No.5 who had been threatening him earlier and against whom he had made complaints to the police several times. The petitioner has alleged that respondent No.5 is an agent of local leaders and police in illegal recovery of money from traders and innocent people

and was also indulging in grabbing and encroaching upon public land.

4. On a perusal of the complaint of respondent No.5, it is seen that all that was stated in the complaint was that toilet water from the petitioner's toilet is seeping into complainant's house and though the complainant had tried to make the petitioner understand about this problem, no solution has been found. Respondent No.5 again went to talk to the petitioner over this topic but he refused to talk and said that he would not get his toilet repaired whatever respondent No.5 may do. The petitioner quarrelled with respondent No.5 and did "maarpeet" and therefore respondent No.5 had lodged the complaint to police. On the basis of the said complaint, respondent No.2 allegedly went to the residence of the petitioner and it is alleged that on seeing the police, the petitioner started abusing respondent No.5 and said in a fit of rage that he would not get the toilet repaired and started shouting and it was only on the apprehension of commission of some cognizable offence that he was arrested under Section 107 read with Section 151 CrPC. The learned single Judge found that the proceedings against the petitioner were wholly unlawful and illegal. He observed in paragraph-4 thus:

"4. A perusal of above complaint would show that the complaint disclosed no cognizable offence, no medical of Ashok Kumar Munna was got done by police. A civil case was already going on between the parties. As per petitioner, Ashok Kumar Munna himself had made unauthorised construction abutting toilet of the house of the petitioner thus closing all ventilation of the toilet. A civil case in

respect of removal of this unauthorised construction was also going on., It is very surprising that on the basis of this complaint which does not disclose any cognizable offence and only disclosed a civil dispute, police officials went to the house of petitioner, arrested him and thereafter registered proceedings under Section 107/151 Cr.P.C alleging petitioner's shouting and collection of people there. Sections 107, 108 & 109 are to maintain public tranquility and to prevent a wrongful act that may occasion a breach of peace or disturb public tranquility. The Section cannot be invoked when there is a civil dispute between the two neighbours in respect of unauthorised construction. Police cannot act as an agent of those who do unauthorised construction and cannot be an accomplice of those who try to swallow their neighbour's rights. The proceedings initiated against the petitioner at the instance of Ashok Kumar Munna only re-confirm the league between the criminals and the police and also shows how the life and liberty of innocent persons is at stake at the hands of such police officials. It is apparent that petitioner was taken into custody by police on 16th July, 2006 itself without any rhyme and reason. The undated complaint was obtained later on to justify the action and high handedness. He was produced before ACP(SEM) on next date, who sent him to Tihar Jail without application of mind and without seeing if there was a case worth proceeding under Section 107 of 151 Cr.P.C. ACP while acting under Section 107/151 Cr.P.C acts as a Special Executive Magistrate and performs quasi-judicial functions. He is supposed to apply his mind which GOD has given to him and not to act blindly on the report of his subordinates and juniors. No reason has been given in the Status Report as to why the sureties produced by the petitioner on 17.7.2006 were not taken on record and accepted on the same day and why he was sent to Tihar Jail."

5. Ms.Mukta Gupta, learned Standing Counsel appearing for the appellant-State, submitted that the writ petitioner was not arrested on

the basis of the complaint of respondent No.5 but when respondent No.2 went to the petitioner's house to verify the complaint, on seeing the police the petitioner started shouting and abusing and as there was apprehension of commission of cognizable offence, the petitioner was arrested. She submitted that there was no occasion for respondent No.2 to get knowledge with respect to the civil disputes and the proceedings were not initiated against the petitioner at the instance of or on the complaint of respondent No.5 but as per the circumstances prevailing at that time.

6. We are afraid that there is absolutely no merit in the submissions of the learned Standing Counsel. The case of the petitioner was that respondent No.5 had been threatening the petitioner to eliminate him and his family members. In this regard the petitioner made several complaints to the police but no action was taken on the complaints of the petitioner against respondent No.5. The complaint given by respondent No.5 is undated, it does not show that when this complaint was given. There is no receiving endorsement stamp or date of Moti Nagar Police Station on it. Although it is alleged in the complaint that respondent No.5 was manhandled, he was not sent for medical examination. We are satisfied that the complaint is completely false and concocted with the object of illegally detaining the petitioner. It is seen from the records that the petitioner had been illegally detained on a false complaint as an excuse and that he was sent to Tihar Jail

without informing him the grounds thereof and without affording him an opportunity.

7. 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.

8. 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

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