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

Date of Reserve: 4.12.2007
Date of Order: 28.2.2008

+ W.P.(Crl.) No. 1392/2007

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28.02.2008

Mr. Purshottam Ramnani ... **Petitioner**
Through: Mr. M.N.Srivastava, Advocate

Versus

Government of NCT of Delhi & Ors. ... **Respondents**
Through: Ms. Rajdipa Behura, Advocate

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT :

This Writ Petition under Article 226/227 of the Constitution of India read with Section 482 Cr.P.C. has been filed by the Petitioner with following prayers:

- (a) *issue an appropriate writ, order or direction to the respondents no. 2 and 3 not to obstruct/restrain the petitioner from visiting flat no. 53, Swastik Kunj, Plot No. 29, Sector-13, Rohini, Delhi;*
- (b) *issue appropriate writ, order or direction to the respondents no. 2 and 3 to register the complaint dated 7.9.2007 of the petitioner addressed to DCP (North West);*
- (c) *issue appropriate writ, order or direction by quashing the proceedings under Sections 107/151 of*

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the Code of Criminal Procedure initiated against the petitioner at the instance of respondents no. 4 and 5;
(d) issue appropriate writ, order or direction against respondents 1 to 3 to award damages to the petitioner for having been illegally sent to jail at the instance of respondents no. 4 and 5;
(e) Award costs in favour of the petitioner and against the respondents; and
(f) Pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

2. The Petitioner has contended that he knew one Mr. Raj Kumar Bansal and his wife Urvashi Bansal (Respondent No.4). Mr. Raj Kumar Bansal requested him for financial help and the Petitioner extended all financial help to him from time to time. Mr. Raj Kumar Bansal used to repay the loan to the Petitioner. Mr. Raj Kumar Bansal and Urvashi Bansal had no child and they adopted a baby girl Neelambri Bansal. They invested money to purchase three flats numbers 1, 53 & 198 in Swastik Kunj, Sector-13, Rohini, Delhi between 10.3.1995 to 29.12.1995. The Petitioner had started the business of construction and developing of buildings by that time and he renovated and decorated Flat No. 1, Swastik Kunj at the request of Mr. Raj Kumar Bansal. Quarrels started between Mr. Raj Kumar Bansal and his wife Urvashi Bansal. The Petitioner in order to help them, renovated the second flat no. 198, Swastik Kunj so as to rent it out and have some running income. The flat was let out to one Shri Ramesh Kumar at the monthly rent of Rs.7,000/- per month.

3. In March 2000, due to the strained relations, Urvashi Bansal was turned out by her husband Mr. Raj Kumar Bansal from flat no. 1,

Swastik Kunj and she started living with her mother. After being turned out she approached the Petitioner and requested for financial assistance. Petitioner claims that he advanced a loan of Rs.5 lac to her for renovation of 3rd flat i.e. flat no. 53, Swastik Kunj. She spent about Rs.2.5 lac on the renovation of that flat and started living there. Thereafter, she started seeking financial help from the Petitioner from time to time. Petitioner used to treat her as his sister. He advanced a fresh loan of Rs.10 lac to her and assisted her in the legal battle against her husband and also assisted her in continuation of studies of her adopted daughter. Since she could not repay the loan availed from the Petitioner, she executed a Power of Attorney in Petitioner's favour in respect of flats no. 1 & 198, Swastik Kunj, Sector-13, Rohini and confirmed that so long as the loan taken by her was not returned, the Petitioner could retain the Power of Attorney of the two flats. She handed over the vacant physical possession of flat no. 198, Swastik Kunj to the Petitioner. She then asked the Petitioner to shift to flat no. 53, Swastik Kunj and both started living in same flat. The Petitioner claims that he disposed of his father's flat no. B-144, Karam Pura, Delhi and started living with Respondent No.4 at 53, Swastik Kunj since May, 2003. He also advanced another loan of Rs.8 lac to her and in lieu of that Respondent No.4 handed over all the original documents pertaining to flat no. 53, Swastik Kunj to him and also executed an undertaking in his favour affirming 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 the owner of the said flat. Petitioner further claims that in October, 2005 he again advanced another loan of Rs.10 lac to her. In lieu of the said loan she gave him two post dated cheques of Rs.5 lac each. These two cheques later got dis-honoured on presentation. On 24.11.2006, Mr. Raj Kumar Bansal, husband of Urvashi Bansal died and on this she and her daughter shifted to flat no. 1, Swastik Kunj, where Mr. Raj Kumar Bansal used to live, and started living there. Petitioner continued living at flat no. 53 exclusively.

4. On 25.8.2007, Petitioner found a change in the attitude of Urvashi Bansal/Respondent No.4. Respondent No.4 along with her sister Upma Bhagoria (Respondent No.5) visited flat no. 198, Swastik Kunj and broke open the locks of the said flat. On this, Petitioner made a call at 100 and brought all these facts to the notice of the police. A PCR Van visited the flat and took the Petitioner, Respondent No.4 and her sister to the Police Station. At Police Station, Petitioner was made to sit outside and a complaint was got registered by Respondent No.4 in connivance with police officials against the Petitioner. He alleged that the police officials were in collusion and connivance with Respondent No.4 and registered a false case against the Petitioner instead of registering a complaint of the Petitioner regarding breaking open of lock. Petitioner was falsely implicated in proceedings under Section 107/151 Cr.P.C. and was taken into custody. Respondent No.4, with the help and connivance

of police took forcible possession of flat no. 198, Swastik Kunj, Rohini. Petitioner furnished surety bond before Special Executive Magistrate on 29.8.2007 and was released from the jail on 30.8.2007. After his release from jail, when he reached his flat no. 53, Swastik Kunj, where he was living for past 8 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 his complaint, police officials threatened him that in case he visited the flat again another proceedings under Section 107/151 Cr.P.C. shall be initiated against him. Petitioner made complaint to the higher police officials but in vain. On 22.9.2007, Respondent No.4 called upon the Petitioner to return all original documents of the flats and threatened that in case those are not returned, she would get the Petitioner eliminated. Petitioner stated that he was forced to live in a '*dharamshala*' as he was not in a position to live in flat no. 53 and also had no other house. The Petitioner then sent a complaint to the Chief Justice of Delhi High Court with copy to the Commissioner of Police. He has challenged the action of the police on various grounds.

5. A perusal of proceedings under Section 107/151 Cr.P.C. would show that on receipt of DD No. 10A ASI Sultan Singh went to the spot where he found Petitioner in drunken condition and abusing Urvashi Bansal and the labourers, who were working in the flat no. 198, Swastik

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Kunj. He was ready to beat the labourers and said that this was his house. Respondent No.4 made a complaint to him that after her husband death, Petitioner pretended to be her brother. They had also lived together even during the lifetime of her husband in flat no. 53, Swastik Kunj, but separately. After death of her husband Petitioner wanted to capture her flats. She had three flats, which were her property. She went to the flat for some labour work and the Petitioner obstructed and was ready to beat the labours. ASI Sultan Singh in his report observed that there was a quarrel for possession of property and some crime might take place. However, proceedings under Section 107/151 Cr.P.C. were initiated against the Petitioner and he was taken in custody.

6. Section 145 Cr.P.C. is a specific provision to be invoked if a dispute is in respect of immovable property and it reads as under:

145. Procedure where dispute concerning land or water is likely to cause breach of peace – (1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by the Code for the service of a summons upon such person or persons as the Magistrate may

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direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties, to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any as he thinks necessary, and, if possible, decide whether and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6)(a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbances of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any

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question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons, claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceeding under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under Section 107.

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.

8. The Petition of the Petitioner is allowed and the proceedings under Section 107/151 Cr.P.C. against him are quashed. The Commissioner of Police/Respondent No.2 is directed to initiate proceedings against the erring police officials, who deliberately invoked Section 107/151 Cr.P.C. in an illegal manner in a property dispute where Section 145 Cr.P.C. was to be invoked and wrongly confined Petitioner

first in the Police Station and then in the jail. Since, Petitioner was wrongly sent to jail under Section 107/151 Cr.P.C., I consider that Petitioner is entitled to damages. The Petitioner may claim damages by filing a suit for tortious liability against the police, however, a token damage of Rs.50,000/- is awarded to the Petitioner for wrongful confinement of the Petitioner under Section 107/151 Cr.P.C.

9. As far as other reliefs sought by the Petitioner are concerned, the Petitioner is at liberty to take appropriate legal action before the appropriate Court for recovery of possession of the properties, if he has any kind of right and title over the properties. In Writ Petition, the Court cannot entertain the matter with disputed facts. With these directions, the Writ Petition stands disposed of.

A copy of this judgment be sent to the Commissioner of Police, Delhi.

February 28, 2008.
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SHIV NARAYAN DHINGRA, J.

- Fresh Crl. M.A. No. 9945/08 by petitioner for directions to R-1 to 3 to give compensation awarded to him vide orders dt. 28/2/08.