

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(CrI.) NO. 918/2008

Judgment delivered on: November 03,2009

Shri Rajiv Garg

.....Petitioner.

Through: Mr. Anil Kumar for the petitioner.

versus

State

..... Respondents

Through: Ms. Meera Bhatia, ASC for the State.
Mr. S.P. Mehta for the respondent.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

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By this petition filed under Articles 226 and 227 the petitioner seeks following directions:

i). Pass an appropriate writ, order or direction thereby quashing and setting aside the impugned order dated 18.9.2007 passed by Sh. Sanjay Khanagwal, Metropolitan Magistrate, Rohini, Delhi in the Criminal Case No. 1732/2007 titled as Sh. Rajiv Garg Vs. Sh. Pradeep Sharma & Ors. and also the impugned order dated 14.02.2008 passed by Sh. V.P. Vaish, Addl. Sessions Judge, Delhi and to issue a direction to the respondent No.2 to lodge an FIR against the respondent Nos. 3 to 7 and to investigate the matter as per law.

ii) Pass any other order deem fit and proper in the circumstances of the case in favour of the petitioner and against

the respondents.

The brief facts leading to the present petition are :-

Petitioner had purchased a property bearing No.201 Rajouri Place, situated at J-1/162, Rajouri Garden, New Delhi on 12.07.1999 after paying the small consideration amount of Rs.2,40,000/- to respondent No.3. Sh. Pradeep Kumar, the respondent No.3 after receipt of amount from petitioner executed transfer documents i.e. Agreement to Sell, GPA, Receipt, Will etc. The petitioner took possession of property on 12.7.1999. The respondent No.3 made illegal demand of Rs.1,00,000/- and on refusal by the petitioner the respondent No.3 attempted to take forcible possession of the property in question. A suit for permanent injunction against respondent No.3 was filed before the learned Civil Judge where the court passed order dated 7.8.2001 in favour of plaintiff thereby protecting possession of a suit property. Respondent No.4 wife of respondent No.3 was working as Sub Inspector with Delhi Police. With influence and use of her powers, she got a FIR No.822/2001 lodged. With the continuing threat of forcible illegal dis-possession from the suit property, petitioner filed a Contempt Petition bearing No.98/2003 titled as Sh. Rajiv

Garg Vs. Sh. Pradeep Sharma before the learned Civil Judge. The learned Civil Judge passed an order dated 3.4.2007 that petitioner was in possession of suit property and the respondent no 3 forcibly took the possession of property by getting FIR lodged. The Court directed the respondent No.3 to hand over possession of property bearing No.201, Rajouri Place, J-1/162, Rajouri Garden, New Delhi. Despite the orders of the learned Judge directing the respondent no. 3 to restore possession, a complaint was lodged for not restoring back the possession but no action was taken on account of police officials being involved. A criminal complaint No.1732/2007 was lodged under Sections 174, 166, 167, 182, 420, 465, 468, 448, 384, 506, 120-B and 34 along with application under Section 156(3) of Cr.P.C. before Sh. Sanjay Khanagwal, MM, Rohini. The MM vide order dated 18.9.2007 directed pre-summoning complainant evidence under Section 200 Cr.PC and disposed of application under Section 156(3).

Aggrieved by the order of learned Metropolitan Magistrate, Delhi a revision petition was filed by the petitioner.

The ASJ, Delhi, vide order dated 18.9.2008 upheld the order of the Trial Court by holding that there is no illegality or

infirmity in the order passed by learned Trial Court.

Aggrieved by the said orders, the petitioner filed the present writ petition.

Counsel for the petitioner submits that the petitioner had purchased the property bearing no. 201, Rajouri Palace, J-1/162 Rajouri Garden, New Delhi after paying consideration amount of Rs. 2.40 lacs to respondent no.3 Pradeep Sharma. Counsel further states that respondent no.3 after receiving the said amount executed agreement to sell & purchase, GPA, will and receipt in favour of the petitioner on 12.7.1999. It is further stated that after full and final payment towards the sale price, possession of the said property was handed over to the petitioner. It is the case of the petitioner that he was in peaceful possession of the said property but on 28.8.2001 an attempt was made by the respondent no.3 to forcibly dispossess the petitioner from his lawful possession. It is further submitted that the employee of the petitioner was present at the site and at the time of the said attempt the said employee of the petitioner lodged a complaint with the police and simultaneously informed the petitioner about such threats having been extended by the

respondents 3 and 4. Counsel submits that since respondent no.4 was a police officer, therefore, acting on behalf of all the respondents, false case was registered against the said employee vide FIR No.822/2001 dated 28.8.2001 under Sections 380/448/34 IPC. Counsel submits that no action was taken by the police on the complaint lodged by the complainant and his employee. Counsel for the petitioner has also placed reliance on the report of the vigilance enquiry where the Vigilance Department has clearly castigated the police officials who were found to be hand in glove with Mr. Pradeep Sharma and his wife. The contention of the counsel for the petitioner is that despite clear finding of the Vigilance Department, the concerned Magistrate has directed further enquiry in the matter by calling the complainant to give his evidence. Counsel further submits that even the revisional court has not appreciated the case of the petitioner and in a most illegal manner upheld the order of the Magistrate. Counsel for the petitioner also contends that the learned Magistrate has committed grave illegality in giving hearing to the accused at the preliminary stage of summoning the accused and such illegality would clearly reflect perversity on the part of the learned

Magistrate in passing the order dated 18.9.2007.

The present petition is opposed by the State as well as by the counsel for the respondent Nos. 3 and 4. Both the counsel submit that the order of the learned Magistrate as well as the revisional court does not call for any interference by this court as no final decision has yet been taken by the court on the said complaint. Counsel for the respondent contends that the court has merely asked for the evidence of the petitioner but the petitioner has been shirking to adduce his evidence or join the investigation. Counsel further submits that civil disputes are pending between the parties and the petitioner had filed the said complaint in question after a lapse of about six years. Counsel further submits that the petitioner has not filed any proof to show that the petitioner was in possession of the said property as on the date of the alleged dispossession. Counsel also submits that in the first report of the Local Commissioner the possession of the petitioner was shown by the Local Commissioner but that report was filed by the L.C. at the back of the respondents and in the second report of the L.C. the possession of the respondent no.3 was shown in the said report. As far as hearing to the accused on 10.9.2009 is

concerned, counsel states that the accused had never appeared before the concerned court but due to some oversight the court has shown the presence of the counsel for the accused. Counsel also submits that even no power of attorney has been filed to represent the accused before the Trial Court.

I have heard learned counsel for the parties at considerable length.

It is not in dispute that the petitioner had earlier filed a suit for permanent injunction and thereafter also filed a suit for possession and an ex-parte decree of possession under Section 6 of the Specific Relief Act was passed in favour of the petitioner and the said decree has been stayed by the revisional court as per the counsel for the respondent Nos. 3 and 4. In the present matter disputed questions of facts are involved, therefore, I do not find any illegality in the order passed by the learned M.M. calling upon the petitioner to give his evidence.

In the case of **Adalat Prasad vs Rooplal Jindal 113(2004) DLT 356 (SC)** scope of Section 482 Cr.P.C. was involved as to whether the section 482 is applicable to disputed facts or not.

It was held that disputed facts cannot be resolved in proceedings under section 482 Cr.P.C but have to await trial.

In **Amitosh Moitra vs Ram Prakash 2005(121)DLT 278**

this court observed that examination of reply filed by the respondent was not to be examined under section 482 because that would mean examining case on facts which can be done only in trial and not in petition under section 482 of Cr.P.C. Disputed question of facts have to be settled in trial.

It was held in **BC Sharma vs Shree Bhagwati Enterprises 1999 (6) AD (delhi) 521** that disputed question of facts cannot be decided in the present proceedings. Order of Metropolitan Magistrate and Addl. Sessions Judge do not suffer from any illegality. Hence no interference is required. Petition was dismissed.

Considering the above cited cases it is apparent that the scope of section 482 does not extend to cases where disputed facts are involved.

It is a settled legal position that learned Magistrate upon receiving a complaint under Section 200 of the Code of Criminal Procedure may inquire into the case himself or by directing investigation to be made by the police or by some other person as he thinks fit. The Magistrate has been given an undoubted discretion to be judicially exercised by him to come to the conclusion for taking prima facie view on the averments made in the complaint and the materials filed in support thereof. The power is to direct such investigation through the police or through some other person or by holding an enquiry himself.

In the present case instead of directing investigation by the police the learned M.M. has merely directed the petitioner to adduce evidence. I, therefore, do not find any illegality or perversity in the order passed by the learned M.M. and the order passed by the revisional court. The learned M.M. instead of directing investigation to be made by the police has given the directions for recording the evidence of the complainant so as to reach to the bottom of the truth. Nevertheless, the learned M.M. will take into consideration the report of the vigilance officer wherein the officers of the police have been castigated being in

collusion with respondents 3 and 4.

The present writ petition is disposed of accordingly with the above directions.

November 03, 2009
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KAILASH GAMBHIR,J