

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (Crl.) No. 1011/2009

Judgment delivered on: November 04, 2009

Narender Kumar & Anr. Petitioners
Through: Mr. Khusbhir Singh, Adv.

versus

State & Ors. Respondents
Through: Mr. Piyush for Mr. Vikas Pahwa,
Additional Standing Counsel, for the
State.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

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| 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:

By this writ petition filed under Article 226 of the Constitution of India the petitioners seek directions to direct respondents' No. 2 and 3 to register an FIR against the offenders including erring police officials posted at P.S. Farsh Bazar on the basis of complaints of the petitioners dated 3.6.2009 and 18.7.2009. The petitioners also seek directions against the police officials posted at police control room who were on duty at the time when the petitioners had lodged a complaint on 18th July, 2009.

Brief facts relevant for deciding the present writ petition are:-

Late Sh.Bishambhar was residing in House No.4/2335, Gali No.6, Bihari Colony, Shahdra, Delhi, along with his family. He had two sons namely Narendra Kumar, Raj Kumar and three daughters. After the death of Bishambhar Dyal in 1992 , his son Raj Kumar was inducted in Delhi Police as a Constable in the year 1993. Raj Kumar married with Mithlesh @ Pooja against the will of the family members. Narendra Kumar was living in the house in Bihari Colony. After the death of Raj Kumar, Pooja along with her sons Master Sahil Chaudhary and Chahat Chaudhary left the rented accommodation and they started residing in the said property bearing House No. 4/2335,Gali NO. 6, Bihari Colony,

Shahdra, Delhi with the consent of her in-laws and advice of brother-in-law Narendra Kumar. The petitioner No.1 got the sale documents dated as 13.4.2009 executed from his mother and witnessed by the sister of petitioner No.1.

The petitioner No.1 out of 100 Sq. Yards had raised the construction on the area measuring 60 Sq. Yards, which opens towards Gali No.6 and the remaining 40 yards as a courtyard (open area) with an entry from the gate of Gali No.7. The lady Pooja started residing in the property having entrance towards Gali No.7. According to Narendra Kumar some unidentified female named Pooja intruded in the premises of petitioner No. 1. He did not knew Pooja and as per him his brother Raj Kumar was never married and was a bachelor. Pooja did not have any right to trespass in the said property as she was not his wife. She has been joined by the errant police officials in land grabbing and trespassing into the property of Petitioner No. 1. On account of these events, the petitioner in the instant case seeks directions to direct respondents to register an FIR against offenders including errant police officials who according to him allowed Pooja to intrude and illegally trespass into the property of petitioners by breaking open the locks.

Mr. Khushbir Singh, counsel appearing for the petitioners submits that petitioner No.1 is living at 4/2335, Gali No. 6 and 7, Behari Colony, Shadara, Delhi, on a property built on area measuring 100 sq. yds, while petitioner No. 2 is living in the said property on an area measuring 50 sq. yds. Counsel further submits that petitioner No. 1 out of 100 sq. yds had raised construction on an area measuring 60 sq. yards, which opens towards gali No. 6 and remaining 40 sq. yds has a separate entry from the gate of gali No. 7. Counsel further submits that the said property was purchased by the petitioners from his mother vide agreement to sell dated 13.4.2009, General Power of Attorney dated 17.12.2007 and Will etc. Counsel for the petitioners further submits that on 3.5.2009 at about 9.30 p.m. the accused persons named in the complaint dated 3.6.2009 attempted to forcibly enter in the said property of the petitioners. All the accused persons had forced the entry of the said lady Pooja in the said property, but no police assistance came forth despite the complaint lodged by the petitioners till 10.30 p.m. when one Head Constable K.K. Sharma and Constable Jawahar Singh came at the spot who instead of providing police assistance, helped Pooja and allowed her to trespass into the said

property. It is further stated that at the instigation of the police officials co-accused persons broke open the locks of the doors of the side opening towards gali No. 7 of the said property and in this manner they all entered into the property of petitioner No. 1. The petitioners kept on dialing police control room again and again against the nefarious acts of accused persons. It is also stated that on 4.5.2009 again the said acts were repeated by the accused persons and no police assistance was given to the petitioner No. 1 despite repeated efforts made by him by dialing 100 number. It is also stated that petitioner No. 2 had filed an application under Section 156(2) Cr.P.C against the accused persons for the offences committed by them on 3.5.2009 and 4.5.2009, but the said application of petitioner No. 2 was dismissed by the learned Magistrate based on the status reports filed by the police and the same being treated as being false and frivolous. It is further stated that petitioner No. 1 had also filed a civil suit No.228/2009 for permanent injunction, which was pending in the Court of Shri Pulastya Pramachala, Metropolitan Magistrate-cum-Civil Judge, Karkardooma, Delhi. In the said matter the Court gave directions for the appointment of a Local Commissioner on 30.5.2009 and on the execution of the commission the Local Commissioner had filed his report before the said

Court. It is further submitted that before the arrival of the Local Commissioner the police officials had allowed the said lady Pooja to intrude and illegally trespass into the said property of the petitioners by breaking opening the locks of the premises of petitioner No. 1. Again due to the said illegal action of Pooja and the police officials the petitioners approached the DCP (East) and lodged a written complaint with a request to take action against them. Petitioner No. 1 also filed a complaint under Section 156(3) Cr.P.C. for offences committed by accused persons and erring police official posted at P.S. Farsh Bazar, which too was dismissed by the learned MM Sh. R.L. Meena based on the status report filed by the police. Petitioner No. 1 then approached the Civil Court where the suit for permanent injunction was pending with the application under Section 151 CPC to seek directions against the said lady Pooja for removal of her belongings lying in the courtyard of the premises of petitioner No. 1. It is further alleged that on 18.7.2009 at about 2.30 p.m. the additional SHO Frash Bazar along with the police force came to the property of the petitioners and with the help of some goonda elements started breaking the doors from outside of gali No. 7 Behari Colony. These persons also attempted to break open the doors from outside of gali No. 6, but they could not

succeed in their attempts. The police officials then allowed entry of Pooja with the help of a ladder. The petitioners lodged many complaints against the illegal acts of said police officials and the said lady Pooja. Counsel for the petitioners submits that instead of taking action on the complaint of the petitioners the police officials themselves took law in their hands in illegally allowing the said lady Pooja to trespass into the property of petitioner Nos. 1 and 2. Counsel thus submits that necessary directions be given by this Court for the registration of FIR against the police officials and also against the said lady and other accused persons named by the petitioners in their complaints.

Pursuant to the directions given by this Court the State has filed the status report. In the said status report filed by the State the stand taken by the State is that Ms Pooja happens to be the Bhabhi of petitioner No. 1 Narender Kumar as she was married to his brother Rajkumar. It is also stated that Rajkumar expired on 27.4.2009 and prior to his death he was residing in a rented accommodation at House No. A-10, Gali No. 2, Ashok Nagar, Delhi. It is also stated that on 3.5.2009 Smt. Pooja with her sons left the rented accommodation and came to reside along with the family of petitioner No. 1 after taking

consent of petitioner no.1. On 4.5.2009 a PCR call was received regarding beating of a woman in house No. 4/2335, Gali No. 7, Bihari Colony, Delhi and on this information Head Constable Charan Dass visited the spot and he found that Smt. Pooja along with her two minor sons were present in the property in question. She also stated that she came to live in the property after having taken the permission of her brother-in-law Narender Kumar. The said Charan Dass has also recorded the statement of Narender Kumar and in the said statement he clearly stated that her sister-in-law Pooja along with her two sons came to live in the said house after the death of her husband. It was thus found by the police that no cognizable offence was committed by any of the persons named by the petitioners. On 4.5.2009 another PCR call was received by the police vide D.D. No. 26-A at 2309 Hrs regarding quarrel at house No. 4/2335, Gali No. 7, Bihari Colony, Delhi and on reaching at the spot necessary statements of relatives and neighbours were recorded. It is also stated that Smt. Pooja performed tehranvi of her husband at the same premises on 8.5.2009 which was attended by the neighbours and relatives. It is also stated that the petitioners got executed the sale documents only on 13.4.2009 from his mother and at that point of time the husband of Pooja was lying on

death bed. The status report further states that the petitioners also procured an affidavit on 11.5.2009 from the mother, wherein she falsely stated that she had no concern with her son Raj Kumar for the last 14 years. The sale documents were witnessed by none else but the sister of petitioner No. 1 only. In the said status report it is also stated that the said Rajkumar had also treated his mother in private hospital in 2006 and spent huge amount on her treatment. On 30th May, 2009 since the SHO was a party in the civil suit, he was present in the Court when the order for appointment of the Local Commissioner was made and accordingly SHO had accompanied the Local Commissioner to visit the suit property. Various status reports were filed by the police before the Metropolitan Magistrate taking the stand that no cognizable offence was committed by any of the accused persons named by the petitioners. On 18.7.2009 an application was moved by petitioner No. 1 under Section 151 CPC to seek directions to SHO for protection at the time of removal of the alleged trespasser from the suit property, but without waiting for the orders of the Court the petitioners committed trespass and theft of belonging and ornaments of Pooja and a case under Sections 448/380/34 IPC was registered against the petitioners and their family members vide FIR

No. 128/2009 dated 18.7.2009. It is further stated that Pooja is in continuous possession of the said property.

On 28th July, 2009 when this matter was taken up by this Court directions were given to the police to verify the fact as to whether Pooja is still under the occupation of the rented accommodation or left the same after the demise of her husband Rajkumar. On verification the police found that the said Pooja was no more living in the rented accommodation, which she had vacated immediately after the death of her husband. Police also took a stand that Pooja is the legally wedded wife of Rajkumar brother of petitioner No. 1 and she started residing in the said property bearing No. 4/2335, Gali No. 6 and 7, Behari Colony, Shadara, Delhi along with her two children after the demise of her husband. After the said disclosure of the police that the Pooja happens to be the wife of brother of petitioner No. 1, a query was posed to the counsel appearing for the petitioners to inform as to whether the said lady Pooja is the legally wedded wife of the brother of petitioner No. 1, but the counsel on instructions said that she was not the legally wedded wife of Raj Kumar and therefore, she has no right to enter the said property. On that date i.e. 11th August, 2009 petitioner No. 1 Narender Kumar was also present in the Court and he was also

questioned by this Court to disclose as to whether his brother Rajkumar was married to Pooja or not and in reply he stated that Rajkumar was a bachelor and he was never married. He also stated that the petitioners do not recognize any lady with the name of Pooja, to be the wife of deceased Rajkumar. Based on the said statement of petitioner No. 1 directions were given to the SHO to verify the factum of marriage of Pooja with Rajkumar and to file all documents in proof of the said marriage and also with regard to the children who were born out of the wedlock of Rajkumar and Pooja. Pursuant to the said directions given by this Court fresh status report has been filed by the State. Along with the status report the State has filed number of documents along with the photographs. These documents comprise of Form No. 3 submitted by the deceased Rajkumar under Rule 54(2) of the Police Rules, nomination letter whereby the deceased Rajkumar has nominated his wife Pooja Chaudhary to be his nominee entitled to all the benefits payable in the event of his death while in service and Form A furnished by the deceased Rajkumar under Rule 53.1 nominating his wife to be entitled for the amount of gratuity in the event of his death. The State has also filed photographs, which shows the marriage between Rajkumar and Pooja and also the photographs of

Terhavi where the children of Pooja are shown to be present. The police has also filed various documents on record to show the proofs with regard to the admission of the children in Sant Krishna Bodh Public School, West Nathu Colony, Delhi, since 1.4.2009 and in the admission form in the relevant columns name of the father has been disclosed as Rajkumar and of the mother as Smt. Pooja Chaudhary.

All these documents coming from the Government record and the Public school besides the photographs clearly show that the said Pooja was the legally wedded wife of Rajkumar brother of petitioner No. 1. It is quite shocking that in the entire petition and the complaint made by the petitioners nowhere the said relationship with Pooja has been disclosed by the petitioners. Not only this, petitioner No. 1 has the audacity to mislead this Court by clearly denying the said relationship and further went to the extent of saying that Rajkumar was a bachelor and he never got married.

Power under Section 482 Cr.P.C. cannot be exercised in favour of unscrupulous and dishonest persons.

In Ramesh Chand Gupta and Ors. Vs. UOI & Anr. in Crl.M.C. 3671/2007 decided on 06.02.2009, this Court observed as under:

“Powers under Section 482 Cr.PC. should be exercised by court with great care and circumspection. In this case it is manifest that complainant filed the complaint on account of personal reasons, preilections and prejudices. Chagrined and frustrated litigant should not be permitted by the court to give vent to his frustration by invoking jurisdiction of criminal court. Invoking jurisdiction of criminal court under the circumstances is misuse of process of law. ”

In Janata Dal Vs. H.S. Chaudhary & Ors., (1992) 4 SCC

305, the Hon’ble Apex Court observed as under:-

“The criminal courts are clothed with inherent powers to make orders as may be necessary for ends of justice. Such power should be exercised in appropriate cases, ex debito justitiae, to do real and substantial justice.”

In the present case the inherent powers of the court have been invoked based on distorted, manipulated, misleading and false averments.

Without expressing any opinion on the merits of the case as to whether the said lady Pooja had any right to live in the said property or not it is quite shocking to find that the petitioners throughout has based their claim on utter falsehood by pleading that one unidentified lady Pooja with the help of the police officials had threatened to trespass into the property. Taking into view the said brazen dishonest conduct of petitioner No. 1 by not truthfully disclosing his relationship with the said lady Pooja and in a most blatant manner misleading this

Court by denying the said relationship, I am constraint to dismiss the present petition with costs of Rs. 50,000/-. The costs of Rs. 50,000/- shall be paid by the petitioners to Smt. Pooja wife of deceased Rajkumar within a period of four weeks. On payment of the said amount the petitioners shall file necessary proof with the Registrar General of this Court.

Since petitioner No. 1 has made a false statement before this Court on 11th August, 2009 besides swearing a false affidavit with false averments in the petition, therefore, I am of the view that it would be expedient and in the interest of justice to proceed against the petitioner No. 1 under Section 340 Cr.P.C.

The Registrar General of this Court is accordingly directed to file a complaint against petitioner No. 1 under Section 340 Cr.P.C. The relevant records of this case be taken out with a view to proceed against petitioner No. 1 under Section 340 Cr.P.C.

November 04, 2009
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KAILASH GAMBHIR,J