

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

Date of Reserve: July 30, 2010

Date of Order: August 06, 2010

+ CrI. M.C. No.1008/2009 & CrI. M.A. No.3725/2009

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06.08.2010

RAJESH PURI & ORS.

..... Petitioners

Through: Ms. Rebecca M. John, Mr. Vishal Gosain
& Ms. Megha Gremal, Advocates.

Versus

STATE & ANR.

..... Respondents

Through: Mr. O.P. Saxena, APP for the State with
Inspector Vinod Gandhi, EOW Cell.

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. Present petition has been filed by the petitioners for quashing of FIR registered against the petitioners under Section 448, 452 read with Section 34 of IPC.

2. It is undisputed fact that the petitioners are Directors of Company M/s. Darintech Constructions Pvt. Limited and this company is co owner of 50 per cent of the property bearing No. B-7/20, Safdarjung Enclave Extension, New

Delhi. It is also not disputed that the property has not been divided between the complainant and the petitioners and the petitioners' company i.e. M/s. Darintech Constructions Pvt. Limited are owner of undivided 50% share in the property. There is some construction over the property and it is settled law that anything embedded in the immovable property is part of the property and the 50% construction existing over the property thus also belongs to the petitioners who are co-owner. The property was purchased by the petitioners company in August 2008 from its previous owner vide a registered sale deed. After purchase of the property, the petitioners went to occupy the property and put some of their goods and articles in the property, on which a complaint was made by respondent to police by dialing 100. Later on complainant wrote a letter dated 13th September, 2008 to SHO concerned wherein he specifically stated that 50 per cent of the property belonged to the complainant while remaining 50% has been sold to the petitioners. On 13th September, 2008, in the morning, the petitioner entered the property with their goods and on this he gave a phone call at number 100. Now the matter had been settled and he did not want any police action. Subsequent to this letter, an FIR was got registered against the petitioners on 7th February, 2009 about the trespass by the petitioners over the property. A civil suit was filed by the petitioners against the respondent/complainant in High Court being CS(OS) No. 2673 of 2008 and this Court had restrained the complainant from

creating any third party interest in the suit property and also restrained the complainant from interfering with possession of the petitioner. After registration of this FIR, the petitioners were granted anticipatory bail by the Court on the admitted fact that the petitioner was owner of 50 per cent of the property and a complaint about the trespass dated 13th September, 2008, made by the complainant, was withdrawn later on.

3. Since the petitioners have shown that the petitioners were lawful owner of 50% undivided share of property bearing No. B-7/20, Safdarjung Enclave Extension, New Delhi, and were also in possession of part of the property, the petitioners being owners of 50 per cent of undivided share, cannot be termed as trespassers, in their own property.

4. Dispute between the parties is purely of civil nature. It is for the petitioners and respondent to partition the property in two equal parts and live peacefully in their respective portions. If they cannot mutually divide the property, they can resort to legal recourse for partition of the property. But, under no circumstances it can be said that the petitioners, who are lawful owner of 50% undivided share of the property, can be booked as trespassers in their own property despite the fact that the petitioners after purchase entered into the property & the complainant initially made a complaint at

number 100 and later on withdrew the complaint stating that no police action is wanted and they shall settle the matter.

5. I, therefore, quash FIR No. 58/2009, registered against the petitioners at Police Station Sarojini Nagar, New Delhi, under Sections 448/452/34 of IPC.

AUGUST 06 , 2010
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SHIV NARAYAN DHINGRA, J.