

2. It was alleged in the complaint that the mother of petitioner No.1 was owner of a house bearing No. 1319, Gali No. 118, Talab Road, Shanti Nagar, Tri Nagar, Delhi. She died on 14th December, 1978. After her death, petitioner became exclusive owner of the aforesaid property by virtue of a Will dated 10th January, 1978 left behind by her. Petitioner shifted at the first floor of the said property along with his father after the death of his mother. On the request of Chameli Devi, he allowed her to live in one room at the ground floor purely on license basis. Kitchen and toilet at the ground floor was also in their use and occupation. Later on, at the request of Chameli Devi and her husband, he permitted them to occupy two more rooms and one shop at the ground floor. Chameli Devi and her husband assured the petitioner that once they would start earning sufficient money from their business and their two daughters are married, they will vacate the ground floor and shift to some other place. In spite of the fact that husband of Chameli Devi started earning well and his two daughters got married, property was not vacated. In the year 1992, petitioner requested his sister to vacate the ground floor but to no effect, consequently, petitioner terminated the license by serving a legal notice dated 19th August, 1992. Since ground floor was not vacated in spite of the service of legal notice, petitioner filed a suit for recovery of possession and

damages against them. Thereafter, behaviour of Chameli Devi, her husband and sons (hereinafter referred to as 'accused') became hostile and they started creating nuisance thereby forcing the petitioner to shift out from the first floor of the property sometime in the year 1993. However, possession of the first floor remained with the petitioner under his lock and key.

3. During the pendency of the above suit, accused started raising construction at the ground floor sometime in the year 1999. On petitioner moving appropriate application in the suit, accused were restrained from raising any construction on the first floor of the property vide order dated 25th January, 1999. As this order was violated, petitioner was forced to file contempt petition in the said suit, which is since pending. Even thereafter, accused continued with their nefarious activities and started creating hurdles in the peaceful ingress and egress of the petitioner and his family members to the first floor of the property. Another application was filed in the pending litigation, wherein accused made a statement on 3rd April, 2003 that they will not prevent the petitioner and his family members from visiting the property in question.

4. Despite undertaking given in the court that they will not prevent access of the petitioner to the first floor, on 2nd May,

2007 at about 1:40 PM when the petitioner along with his wife visited the suit property, accused forcibly and wrongfully stopped them at the main entrance of the property in question to enable them to reach at the first floor. Not only this, accused persons also threatened that in case petitioner and his wife made any attempt to enter in the premises, their hands and legs will be broken. Petitioner made a call at telephone No. 100, pursuant whereof PCR van arrived at the spot and asked them to visit Police Post Shanti Nagar. Since no action was taken against the accused as the local police was hand in glove with them, petitioner even made a complaint to higher police officers, but to no effect. Hence, the complaint.

5. At the pre-summoning stage, petitioner stepped in the witness box as CW4, his wife as CW3, his sister Kamla Moria as CW1 and his brother-in-law R.L. Moria as CW2. Statements of these witnesses were scrutinized by the Trial Court meticulously. However, Trial Court did not find their version inspiring and sufficient enough to form a, prima facie, view that the accused had committed offences under Section 341/506 (1)/34 IPC. Trial Court further observed that the complaint appears to have been filed to pressurize the accused and to bargain with them in the civil proceedings.

6. Petitioner filed a Criminal Revision Petition No. 2/2010 before the learned Additional Sessions Judge, Delhi against the order passed by the Trial Court which came to be dismissed on 31st March, 2010. Learned Additional Sessions Judge has concurred with the view taken by Trial court. It was held that no, prima facie, case was made out by the petitioner for summoning of the accused. He was also of the view that the statements of CW3 and CW4 did not inspire confidence and were not sufficient to conclude that such an incident had in fact taken place, more so when no independent witness was examined, inasmuch as, civil litigation was pending between the parties with regard to the ground floor of the property right from 1992 onwards.

7. In the given facts, I am not inclined to interfere with the concurrent findings of the courts below and take a different view, than what has been taken on appreciation of evidence, that too in exercise of inherent jurisdiction of this Court under Section 482 Cr.P.C. Now a days it is noticed that there has been a growing tendency in several commercial, matrimonial and family matters to somehow entangle a person in a criminal prosecution so as to achieve imminent settlement. In **Chandrapal Singh and Ors. v. Maharaj Singh and Anr. AIR 1982 SC 1238**, it has been observed that a frustrated landlord

after having met his waterloo in the hierarchy of civil courts, had further enmeshed the tenant in a frivolous criminal prosecution which prima facie, appears to be an abuse of the process of law.

8. Supreme Court in **Indian Oil Corporation vs. NEPC India Ltd. and Ors. 2006(7) Scale 286** has held as under:

“10. While on the issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriage/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal prosecution should be deprecated and discouraged.”

(emphasis supplied)

9. In this case, admittedly, parties are litigating right from 1992 onwards over the immovable property left behind by their mother. Bone of contention appears to be this immovable property. In view of the ongoing civil litigation between the parties, statements of CW3 and CW4 have to be scrutinized meticulously and with care and caution even at the preliminary stage. Both the courts below have done so and

concluded that the version of CW3 and CW4 with regard to the incident does not inspire confidence. I have also perused their statements and concur with the courts below. Both CW3 and CW4 have corroborated each other while deposing in the Court. Even though they have given parrot like version with regards to the manner in which threat was extended but there appears to be some improvement made by them, while deposing in the court, vis a vis initial version as contained in the telegram sent to Commissioner of Police immediately after the alleged incident, in respect of the actual words spoken by the accused. Immediately after the incident, CW3 alleges to have sent a telegram to the Commissioner of Police on 2nd May, 2007 stating therein that when he along with his wife went to the first floor of the property at about 1:40 PM, Ram Chander, Chameli Devi and their three sons forcibly stopped them from entering in the premises and threatened that in case they tried to go to the first floor they will get their hands and legs broken. In other words, they will get their legs and hands broken through some other persons. However, while deposing in the court, they stated that accused threatened them by saying that in case they tried to enter in the property in order to reach at the first floor, their hands and legs would be broken. In other words, they would themselves break the hands and legs of the Petitioner and his wife. Be that as it

may, in the facts of this case, it appears that complaint has been preferred by the petitioner in order to put pressure on the accused to settle the civil litigation and to get the property vacated.

10. For the foregoing reasons, present petition is dismissed being devoid of merits.

A.K. PATHAK, J.

October 19, 2010

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