

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

+ CRL.M.C.No.1993/2009

% Reserved on: 15th February, 2010
Date of Decision: 16th February, 2010

LALIT KUMAR MALHOTRA & ANR Petitioners
! Through: Mr.Ravi Kant Chadha, Sr. Adv.
with Ms.Mansi Chadha &
Ms.Pooja Verma, Advocates

versus

\$ JASBIR KAUR SOHAL & ANR Respondents
^ Through: Mr.S.S.Gandhi, Sr.Adv. with
Mr.Saurabh Shandilya for R-1
Mr.Jaideep Malik for State.

* **CORAM:**
HON'BLE MR. JUSTICE V.K.JAIN

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

: **V.K. JAIN, J.**

1. This is a writ petition under Section 482 of the Code of Criminal Procedure for quashing the complaint filed by the respondent No.1 against the petitioners.

2. Vide Lease Agreement dated 10.8.1985, three shops measuring 945.99 sq.ft. in Hotel Sofitel Surya were leased out

to Late Jiwand Singh at the rent of Rs.1,300/- per sq.ft. and possession of the shops was delivered to Mr.Jiwand Singh. He also kept some articles of furniture in each of the three shops. The case of the complainant/respondent, as disclosed in the complaint, is that after death of her father late Shri Jiwand Singh on 13th March, 1989, these shops came to the joint share of herself, her mother Smt.Suhagwanti, and her sister Ms.Manjeet Kaur, and all the documents in this regard were given to the lessor. When the complainant/respondent went to the shops in March, 1993, with a view to start business therein, she found that the locks on three shops had been broken and the goods lying therein were not available in the shops. When the matter was brought by the complainant to the notice of the Director of the Hotel, he stated that the shops had been opened for inspection and allowed the complainant to relock the same. It is further alleged that when the complainant again went to the shops on 20th August, 1996, it transpired that the locks of all the three shops had been broken and some other persons had been inducted therein. It has also been alleged in the complaint that since the time of second incident the

complainant had been contacting Malhotras(petitioners) and every time they have been promising to look into the matter and finalise the same and that they used to say that since the deciding authority was not available, no decision could, therefore, be taken. This is also the case of the complainant that the petitioners A.K.Malhotra and L.K.Malhotra of Cosmopolitan Hotels Limited were party to a criminal conspiracy, pursuant to which the shops in question continue to be possessed by unauthorized persons.

3. The scope of exercise of power under Section 482 Cr. P.C. and the categories of cases where the High Court may exercise power under it, relating to cognizable offences, to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in “**State of Haryana v. Bhajan Lal**”, AIR 1992 SC 604. The illustrative categories indicated by the Hon’ble Supreme Court are as follows:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section [156\(1\)](#) of the Code except under an order of Magistrate within the purview of Section [155\(2\)](#) of the Code.

(3) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section [155\(2\)](#) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the

proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

4. In “**R. Kalyani v Janak C. Mehta & Others**” , (2009) 1 Supreme Court Cases 516, the Hon’ble Supreme Court summarized the proposition of law on the subject as under:

“(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.”

5. It is not in dispute that shops in question were leased out to late Shri Jiwand Singh for a period of 99 years and a

sum of Rs.12,29,787/- was taken from him as acknowledged in the Lease Agreement, a copy of which has been filed by the petitioners themselves. The case of the complainant is that physical possession of all the three shops was given to late Shri Jiwand Singh and he had not only kept some articles of furniture in each of the three shops but had also put them under lock and key. The case of the petitioners, however, is that only permissive use of the shops was given for a particular trade but neither the shops were opened nor the dues were paid by Late Shri Jiwand Singh despite notice given to him and, consequently, the hotel was forced to cancel the allotment of the shops.

6. The possession of a lessee pursuant to a lease agreement between him and the lessor is a lawful possession of the leased premises and the lessor has no legal right to take physical possession of the leased premises, unless the lessee himself surrenders possession thereof to the lessor or the possession is obtained through due process of law which necessarily would involve filing of a suit for possession against the lessee and taking possession through the process of the court.

7. This is not the case of the petitioners that Late Shri Jiwand Singh, lessee of thee three shops, or his legal heirs, had at any point of time surrendered possession of these shops to the lessor M/s.Cosmopolitan Hotels Limited. The case of the petitioners, in substance, is that since the lessee did not pay the charges which were payable by him for use of these shops and did not start the trade for which these shops were leased to him, the lessor invoked Termination Clause contained in the lease agreement. Even if the lessee did not pay the rent and/or other charges which were payable by him to the lessor, in terms of the Lease Agreement, and consequently the lessor was justified in terminating the lease, in terms of Termination Clause contained in the lease deed, the lessor had no right to take forceful possession of the leased shops by opening the locks which had been put by the lessee on them. Also, neither lessor nor any of its Directors or employees had any right to remove the articles of the lessee which were lying in the leased shops. Even after termination of the lease the lessor was necessarily required to file a suit for possession and recovery of rent and other charges that were payable to it under the lease agreement.

Neither the lessor nor any of its Directors or employees was entitled to take the law into his own hand and take possession of the leased shops by removing the locks which had been put by the lessee on them and removing the articles lying therein.

8. It was pointed out by the learned counsel for the petitioners that under the Rules of Hotels, duplicate key had been kept with the lessor and those duplicate keys were used for opening the locks that had been put on these shops. Clause 14 of Surya Shopping Arcade Management Rules, a copy of which had been filed by the petitioners, reads as under:

“14. Key of the demised premises.

- (i) Duplicate key under sealed covers shall be given by the Lessee to the designated person nominated by the Lessor, which shall be kept in safe custody in safe deposit locker for any unexpected emergent use like fire etc.
- (ii) The duplicate key shall be in a sealed cover signed by the authorised representative of the Lessor and Lessee.
- (iii) After the emergent use of the key, the Lessee shall be informed the reason in writing for such emergent use of the earliest opportunity but not later than 72 hours, from the time of use.

(iv) After use, the key would again be sealed under the signatures of the Lessor and the Lessee and put in safe-custody/safe deposit lockers.

(v) It would be the responsibility of the Lessee to insure against theft and fire and other related risks.”

9. A perusal of the above referred rules would show that the duplicate keys were meant to be used in unexpected emergency such as fire, etc. and were required to be kept in a sealed cover signed by the authorized representative of the lessor and the lessee. After emergent use of the key, the hotel was required to inform the lessee in writing, within 72 hours from the time of use and the keys were to be resealed under the signatures of the lessor and lessee and put in safe custody/safe deposit locker. Neither the lesser nor any of its Directors or employees could, therefore, have used these duplicate keys kept in Safe Deposit Locker, for the purpose of regaining the possession of the leased shops and removing the articles of the lessee where were lying therein. The duplicate keys could have been used only for the purpose specified in Clause 14 of the Rules and for no other purpose. In any case, this is not the case of the petitioners that after

opening the locks using duplicate keys kept in safe custody, they had intimated the lessee within 72 hours of the use and had got the keys resealed and kept back in safe custody. Even in case of use of duplicate keys for emergent use, the lessor was not entitled to dispossess the lessee from the leased premises, remove his articles lying therein and deliver possession of the premises to some other person. The possession of the leased premises could have been taken by the lessor only through due process of law, unless the lessee himself surrendered the tenanted premises to the lessor.

10. In the proceedings under Section 482 of the Code of Criminal Procedure, the allegations made in the complaint have to be taken as correct and on their face value. Hence, it is not open to this Court to go into the question as to whether any articles of the lessee were actually lying in the leased premises or not. For the purpose of leased premises, the court has to proceed on the assumption that, as claimed by the complainant, some articles belonging to the lessee had been kept in each of the three shops and have been removed from there.

11. The case of the complainant is that late Shri Jiwand

Singh, lessee of these shops, had put his locks on these shops and that after her visit to these shops in March, 1993, she had re-locked the shops. This is also her case that when she again visited these shops on 20th August, 1996 she found that not only the locks had been removed, some other persons had been inducted in the shops. If petitioners are the persons who had removed the locks that had been put by late Jiwand Singh on these shops and had removed the articles which he had kept inside these shops, prima facie, they committed offences under Sections 448 and 380 of IPC since the entry in the shop was with an intent to commit theft of the articles which were lying therein and was even otherwise bound to annoy the lawful occupants of the shop, which in this case were the legal heirs of late Jiwand Singh. They, in that case, will also be guilty of the offence punishable under Section 380 of IPC by removing the articles which were lying therein, without consent of the legal heirs of late Jiwand Singh. Prima facie, the removal of these articles was dishonest within the meaning of Section 24 of the Indian Penal Code since the purpose was to cause wrongful loss of these articles to the legal heirs of late Shri Jiwand Singh and

wrongful gain thereof to them or to the lessor or to those who removed the articles. If the petitioners are the persons who removed the locks that were put by the complainant on these shops after inspection by her in March, 1993, they would be guilty of criminal trespass punishable under Section 448 of IPC. Presuming the entry to be lawful, they would nevertheless be guilty of criminal trespass since they had no legal right to remain in the shops and their remaining in possession of these shops was bound to annoy the complainant and other legal heirs of Late Shri Jiwand Singh, who were in legal possession of these shops at that time. In fact, one could argue that the act of those who entered these shops amounts to house-breaking since they entered the shops by opening the locks which had been put on them by late Shri Jiwand Singh and/or his legal heirs. One could also argue that their act would be punishable under Section 451 and not under Section 448 of IPC since the purpose of the trespass was to commit theft which is an offence punishable with imprisonment for upto seven years. But, I need not go into these aspects since the petitioners have been summoned only for the offence punishable under

Sections 380/448 of IPC read with Section 120-B thereof, and the stage for framing of charges is yet to reach.

12. It was submitted by the learned counsel for the petitioners that as per the report submitted by the police to the Metropolitan Magistrate on 10th January, 2005, no offence was made out from the complaint. I find that neither in his first report dated 3.7.2004 nor in his second report dated 10.1.2005, the Investigating Officer claimed that on making enquiries and recording statements of the witnesses he had come to the conclusion that the possession of these three shops was never handed over to late Shri Jiwand Singh or that he had not put any locks on these shops. He also did not conclude that the locks which had been put on these shops had not been removed or that no article lying in these shops was stolen. In fact, in his first report, he only referred to the claim of the petitioners that the Management of the Hotel had cancelled the allotment of the shops on account of non-payment of outstanding dues. He did not find that the possession of these shops was never delivered to late Shri Jiwand Singh. In fact, he specifically recorded that the allegations of the complainant that the hotel authorities had

removed/stolen the goods of the shops was yet to be inquire into and he needed some more time for that purpose. Before submitting the second report dated 10.1.2005, the Investigating Officer, for the reasons best known to him, did not inquire into the allegations and he merely accepted the claim of the Hotel that the possession of these shops was never taken by the complainant. This was done by him without even making an attempt to verify the case set up by the complainant. Since no inquiry in this regard was made by the Investigating Officer and the complainant specifically claims that possession of these shops was delivered to late Jiwand Singh, who had also put some articles in each of the three shops, the factual allegations made in this regard definitely need to be looked into during trial.

13. While exercising jurisdiction under Section 482 of the Code, the High Court should not normally embark upon an enquiry to find out whether the evidence sought to be produced by the prosecution is reliable or not or whether it would be possible to sustain the accusation on a reasonable appreciation of the evidence. Appreciation of evidence is the function of the Trial Court and not of the High Court

exercising jurisdiction under Section 482 of the Code. It is not appropriate for the High Court to analyse the case of the prosecution on probabilities and to come to a particular conclusion, an assessment of the material produced by the prosecution. The purpose of empowering the High Court, to quash FIR and/or charge-sheet/complaint is that the court proceedings should not be allowed to be used as a tool of harassment or persecution. If on a consideration of the allegations it appears to the High Court that ingredients of the offence or offences alleged to have been committed by the petitioner are made out and there is no material to show that the prosecution is mala fide, frivolous or vexatious, there would be no justification for interference by it.

14. The learned counsel for the petitioner has referred to the decision of the Hon'ble Supreme Court in "***M/s.Indian Oil Corporation Vs. NEPC India Limited & Others***", AIR 2006 SC 2780, where the Hon'ble Supreme Court, after considering its earlier decision on the subject, laid down the following principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaint and criminal proceedings:

“(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

15. The learned counsel has next referred to the decision of the Hon’ble Supreme Court in “**State of Punjab & Others** vs. **Inder Mohan Chopra & Others**” , 2000 (2) JCC 927, where the Hon’ble Supreme Court, after considering the principles laid down by it in the case of Bhajan Lal(supra) observed:

“As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and

the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See: The Janata Dal etc. v. H.S. Chowdhary and others, etc. (AIR 1993 SC 892), Dr. Raghubir Saran v. State of Bihar and another (AIR 1964 SC 1). It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/F.I.R. has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the F.I.R. that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/F.I.R. is

mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding.”

16. The learned counsel has also referred to the decision of the Hon’ble Supreme Court in “**G Sagar Suri & Another vs. State of UP & Others**”, AIR 2000 SC 754, where the Hon’ble Supreme Court, inter alia, observed:

“Jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal Court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

17. The learned counsel has referred to the decision of the Hon'ble Supreme Court in ***"M/s Zandu Pharmaceutical Works Ltd. & Others vs. Md. Sharaful Haque and Others"***, 2005 CRI. L. J. 92 (SC), where the Hon'ble Supreme Court held as under:

“Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which find expression in the section which merely recognizes and preserves inherent powers of the High Courts. All Courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle “quando lex aliquid alicui

concedit, concedere videtur et id sine quo res ipsae esse non potest” (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of process of the Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

18. In the present case, the allegations made in the complaint, if taken on their face value and accepted in their entirety, do make out commission of offence for which the

petitioners have been summoned. Therefore, applying the principles laid down by the Hon'ble Supreme Court in the above referred case, there is no ground for quashing the complaint filed against them. As noted by the Hon'ble Supreme Court in these proceedings, this Court is not required to carry out a meticulous analysis of the material available on record, nor is it expected to take a view on the reliability or otherwise of the allegations made in the complaint. In fact, the petitioners do not claim that the lessor had not removed the locks that were put by the lessee on shops in question. This is not the case of the petitioners that no locks at all were put on these shops when they were leased out to late Shri Jiwand Singh. This is also not the case of the petitioners that the lessee or his legal heirs themselves had removed the locks which they had put on these shops and had handed over vacant possession of these shops to the lessor. Therefore, it is very difficult to accept that no offence is made out from the allegations made in the complaint.

19. Applying the principles laid down by the Apex Court from time to time, in the judicial pronouncements noted in

the previous paragraphs, it cannot be said that no offence is disclosed against the petitioner from the averments made in the complaint. Therefore, the proceedings initiated against them cannot be quashed in exercise of extraordinary inherent powers of this Court under Section 482 of Code of Criminal Procedure.

20. There is yet another aspect of this matter which needs to be dealt with, despite there having been no arguments on it. The shops in question were leased out to Late Shri Jiwand Singh by a Company named M/s.Cosmopolitan Hotels Limited. After removal of locks of the lessee and the articles which had been kept by him in the shops, the possession of the shops came to the Company which then inducted some other persons therein. Therefore, the Company would prima facie be liable for the offence alleged to have been committed in this case, though, in the event of conviction, the Company being a juridical person, cannot be sentenced to imprisonment, and it can only be subjected to fine prescribed for the offences punishable under Sections 448 and 380 of IPC. However, I find that neither the Company has been impleaded nor summoned as an accused. I, therefore, say

nothing further at this stage. It will be for the trial court to apply its mind to the issue, and take an appropriate view on it.

21. It is true that the Company being a juridical person acts through its Directors and employees but before a Director or an employee of the Company can be prosecuted for offences of this nature, there have to be allegations which would show that they themselves committed these offences or they abetted commission of these offences or they were part to a criminal conspiracy, pursuant to which these offences were committed. It has to be kept in mind that there is no statutory provision holding the Directors and/or an employee of a Company vicariously liable for the offences punishable under Sections 448 and 380 of IPC. Vicarious liability of the Directors and/or employees of a Company would arise only if a provision exists in that behalf in the relevant statute. The Indian Penal Code, save and except in some matters, does not contemplate any vicarious liability on the part of a person. The Managing Director or Directors of a Company cannot be said to be guilty of an offence only because they are holders of these offices in the Company. At the same time, the Court

cannot be oblivious to the fact that an outsider, such as the complainant in this case, may not know which Director and/or employee of the Company trespassed into the shops leased out to her father and removed his articles lying therein or took a decision to remove the locks on the shops and the articles kept inside and take possession of the shops and then transfer the possession to some other persons. These are matters which are especially in the knowledge of the Directors and/or employees of the Company. The complainant, normally, can identify the Directors/employees responsible for these offences only from such facts, conduct and circumstances which come to her knowledge. In the present case, the complainant has specifically alleged that in March, 1993 when she found the locks removed and also found that the articles kept by her father in the shops were not available in the shops, she brought the matter to the notice of the Director of the Hotel, who represented to her that the shops had been opened only for inspection, and allowed to re-lock them. Of course, the complainant does not give the name of the Director whom she had approached in the year 1993. But, she can always give the name during

trial. It has been further alleged in the complaint that after the second incident the complainant had been contacting Malhotras, who kept on promising to look into the matter and finalise the same on the ground that the Deciding Authority was not available. Both the petitioners being Malhotras they appear to be the persons referred as Malhotras in the complaint. If this is so, that would indicate that the petitioners were parties to the decision to remove the locks of the lessee, remove the articles which had been kept by him inside the shops, take possession of the shops and induct some other persons therein. If a matter of this nature is brought to the notice of the Directors of the Company and they, instead of addressing the grievance of the complainant and taking remedial steps by restoring possession of the premises to her, make a misrepresentation to her taking false pretexts, this would be a strong indicator of they at least being a party to the criminal conspiracy pursuant to which these offences were committed and in that case they would be liable for offences punishable under Section 120-B IPC read with Sections 380 & 440 thereof. It will be pertinent to note here that petitioner Lalit Kumar Malhotra is the Managing

Director of the Company, whereas petitioner Ashok Kumar Malhotra is alleged to its Director. It will, however, not be appropriate for this Court to take a final view on this aspect of the matter. The complaint is pending before the trial court and the petitioners have already been summoned. After recording pre-charge evidence, it will be open to the trial court to take appropriate view on the criminal liability attributed to the petitioners, in the light of evidence which is led before it, without in any manner being influenced by the observations made in this order.

22. The petition has no merit and is, hereby, dismissed. The observations made in this order, which have been necessitated only with a view to deal with the contentions made and the judgment relied upon by the petitioners, shall not affect the decision of the case at any stage of the proceedings. The petition stands disposed of.

(V.K.JAIN)
JUDGE

FEBRUARY 16, 2010
RS/