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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 1691/2011

HANIF

..... Petitioner

Through Mr.R.K.Sonkiya, Adv.

versus

JAGMAL

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

ORDER

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23.05.2011

1. This is a petition filed under Section 482 Cr.P.C. for quashing of the complaint case no.105/1, under Section 406/409/446/448/506 IPC titled **Jagmal Vs. Hanif & Ors.** and the consequent summoning order dated 13.12.2010.
2. I have heard the learned counsel for the petitioner and have gone through the record.
3. The respondent had filed a complaint under Section 406/409/446/448/506 IPC against the present petitioner. Although along with the complaint, he had filed an application under Section 156(3) Cr.P.C., however, the same was dismissed by the learned Magistrate. Thereafter, the complainant examined himself as the sole witness at the pre-summoning stage. In his statement of CW-1, he has stated that he is the owner of a plot measuring 250 sq. yds. situated in Khasra no.117, Khatoni

Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

No.209 having total area of 3 bigas, 16 biswas. Certified copy of the document were proved as Ex.CW1/1 to CW1/4.

4. It was alleged by him that there is a dispute between the respondent and one Tula Ram with regard to the ownership of the said property as a consequence of which there is a Regular Second Appeal bearing no.168/2005 pending in the High Court. The High Court vide order dated **7.9.2005** has stayed the operation of the judgment passed by the Court below in favour of Tula Ram.
5. The certified copy of the said judgment has also been proved as Ex.CW1/5. It is stated by him that on account of the said dispute, he did not raise the construction on the said plot of land but engaged one Abdul Majid (since deceased) for the purpose of taking care of the plot of land. It is stated by him that Abdul Majid unfortunately died and his son, who happens to be the present petitioner requested the respondent to allow him to occupy the said piece of land on humanitarian consideration and also to permit him to graze his cattle on the said land.
6. Believing the representations of the present petitioner, the respondent 4/5 years back permitted him to take care of the said disputed land and he has stated that immediately thereafter, he stopped keeping the cattle on the said plot of land. On the contrary, one Aaesa, who is the accused no.4 (but is not before this Court) was engaged as a domestic maid of the respondent for

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which she was duly remunerated either by cash or by way of gifts. It is also stated by him that in the month of October-November, 2007, the present petitioner occupied one additional room which was being used by the respondent for the purpose of storing the fodder of the cattle. On learning this fact, the respondent is stated to have asked the present petitioner to vacate the said plot of land which was evaded by him for one reason or the other.

7. On 15.7.2008, the respondent is stated to have received summons from the Court of Ms. Charu Aggarwal, learned Civil Judge where the present petitioner filed a suit with regard to the ownership of the said plot of land.
8. Certified copy of the complaint and the other documents were placed before the learned Magistrate and are duly exhibited. It was stated by him that as and when the respondent wanted to go on to plot of land, he was being threatened for which a complaint was made to the SHO P.S. S.Vihar also, on the basis of which no action was taken. Since no action was taken by the police, the respondent was constrained to file the complaint for the aforesaid offence.
9. The learned Magistrate after hearing the parties formed an opinion that the offence under Section 409/446/448/506/ IPC is not made out. However, as the prima facie case under Section 406 IPC for breach of trust was made out, summons were directed to be

issued against the present petitioner.

10. The present petitioner feeling aggrieved by the said order, has assailed the order of summoning and prayed for quashing of the complaint on the ground that the learned Magistrate has not taken into consideration the fact that the present petitioner has already initiated an action raising the ownership of the disputed plot of land and his possession has been protected by the interim order passed by the Civil Court. It has also been contended by him that since the petitioner is the owner of the disputed land, therefore, there is absolutely no question of offence of breach of trust being made out.
11. I have heard the learned counsel for the petitioner as well as perused the record. I have carefully considered the submissions made by the petitioner. I do not find any merit in the contention of the learned counsel for the petitioner that merely because the petitioner has filed a civil suit claiming himself to be the owner of the disputed land and the fact that he has obtained a restraint order against the respondent no.2 against his dispossession makes out a prima facie case for quashing a case against him under Section 406 IPC.
12. The learned Magistrate has taken into consideration the pendency of the civil litigation has taken a definite view and has accordingly not summoned the petitioner for offence under Section

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409/446/448/506 IPC and rightly so. So far as the offence under Section 406 IPC is concerned, the respondent has made a definite statement claiming himself to be the owner and entrusting the said property to the petitioner which the present petitioner has failed to vacate. Accordingly on the basis of the statement of the complainant, the petitioner has been charged for the offence under Section 406 IPC.

13. An offence under Section 405 IPC defines the breach of trust, two things are required to be satisfied; firstly there must be an entrustment of the property and secondly, the property must be used by the person so entrusted to the detriment of the person, who has entrusted the property and it need not be necessarily for his own benefit.
14. In the instant case, at the stage of summoning only prima facie view is to be taken and one does not have to conduct meticulous dissection of the statements for the purpose of summoning or framing of charge against the accused. Therefore, I do not find an infirmity in the summoning order passed by the learned Magistrate.
15. So far as the question of quashing of the complaint is concerned, if one goes through the grounds mentioned in the petition, all the grounds have been prefaced by using the word that 'Magistrate has failed to 'appreciate''. The very fact that the grounds have been

prefixed by the words 'appreciate' it necessarily refers to appreciation evidence and it becomes a disputed question of fact. Something which is a disputed question of fact cannot be a basis for quashing of an FIR or a complaint. Apart from the fact the quashing power has to be exercised very rarely and sparingly. Reliance in this regard can be placed on judgment of the Supreme Court in **State of Haryana & Ors. Vs. Bhajan Lal & Ors.** AIR 1992 SC 604.

16. For the reasons mentioned above, I feel that the present petition for quashing the summoning order as well as the complaint is without any merit, vexatious and accordingly, the same is dismissed.



V.K. SHALI, J

MAY 23, 2011

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