

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

+ **CRL.L.P. No.111/2007**

Date of Decision : 03.06.2011

SURJIT KAUR

..... Petitioner

Through: Petitioner in person

Versus

D.S. KAPOOR & ORS.

..... Respondents

Through: Mr.Sudhir Kumar, Adv.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | NO |
| 2. | To be referred to the Reporter or not ? | NO |
| 3. | Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J. (oral)

1. This is a criminal leave to appeal against the order passed by the learned Metropolitan Magistrate on 05.06.2007 acquitting all the four respondents for an offence under Section 506/452/323/34 IPC. This leave to appeal has been filed by the appellant in person in respect of an alleged incident purported to have taken place more than 27 years ago. The matter has already gone right up to the Apex Court on two occasions and still the appellant has felt dissatisfied and has been pursuing the matter.
2. Briefly stated the facts of the present case are that one Waryam Singh husband of the appellant Surjeet Kaur filed a complaint against the respondents namely, D. S. Kapoor,

Manjeet Kapoor, Raj Kapoor, and Javed Ahmed. It was alleged that all the four accused persons forcibly entered into the house of Waryam Singh bearing No. Z-2, Hauz Khaz, New Delhi and gave beatings to him and his wife and thus committed an offence under Section 452/323/506 read with section 120B IPC. The appellant/complainant in support of her case has examined the six witnesses at the pre summoning stage. Vide order dated 13.12.1986 all the aforesaid four accused persons were summoned to face the trial. After the respondents put in their appearance, pre charge evidence was adduced and Waryam Singh (complainant – since deceased) got himself examined as PW-2 and his wife Amrit Kaur as PW-1. Thereafter, Waryam Singh expired and vide order dated 06.09.1997 the present appellant Surjeet Kaur was permitted to be brought on record to pursue the case and she was examined afresh as CW-1 at the pre charge stage. The learned Magistrate discharged all the four accused persons vide order dated 16.07.1999.

3. It may be pertinent here to mention that standard of proof which is required in a complaint case, for the purpose of framing of charges is much higher than for the purpose of framing charges then in a State case. While as in the State case, the prosecution has to show only a prima facie case but in a complaint case the nature of evidence, which is adduced

at the pre charge stage, must be of such a nature that would if left un rebutted it would lead to their conviction.

4. It was on the basis of the aforesaid facts and the quantum of proof required in a criminal complaint that the learned Magistrate had discharged all the four accused persons.
5. The appellant feeling aggrieved by the said order of discharge of all the four respondents herein, preferred a revision petition in the Court of Sessions which was dismissed vide order dated 16.07.1999 qua the respondent nos. 1 to 3 i.e. D.K. Kapoor, Manjeet Kapoor and Raj Kapoor. So far as the respondent no. 4 accused Javed Ahmed is concerned, it was allowed with the direction that a charge against him be framed for the aforesaid offence. The present appellant preferred a fresh petition against the order dated 16.7.1999 discharging the three accused respondents. So far as the respondent no. 4 accused is concerned, he also preferred a revision petition in the High Court against the order of the Court of Sessions directing the framing of charge. The revision petition which was filed by the appellant was dismissed and a cross revision petition was filed by the respondent no. 4 accused which was dismissed as withdrawn before the High Court.
6. The appellant feeling aggrieved from the order of the High Court preferred a Special Leave Petition (Crl.) bearing no. 111/2001 against the dismissal order of her revision in the

High Court. The SLP (Cri.) was dismissed by the Supreme Court on 28.09.2011 and thus it attained finality, so far as the discharge of respondent nos. 1 to 3 is concerned. However, the Apex Court while dismissing the special leave petition had observed that in case during the recording of evidence by the learned Trial Court any evidence comes on record justifying the proceedings against the respondent nos. 1 to 3 then the Trial Court would take appropriate action against the respondent nos. 1 to 3/accused persons in accordance with law.

7. The present appellant, accordingly, filed an application before the learned Trial Court after examining herself as CW-1 whereupon the learned Trial Court on 22.11.2002 summoned respondent nos. 1 to 3 as accused persons to face the trial. Vide order dated 22.07.2004, the charges, were framed.
8. After completing the evidence of the complainant/appellant, the statement of the respondents under Section 313 Cr.P.C. were recorded on 20.01.2007. None of the respondents/accused persons adduced any evidence. The learned Trial Court after hearing the arguments of both the sides acquitted all the four accused persons of the offences under Section 452/323/506/34 IPC. It may be pertinent here to mention that so far as the respondent nos. 1 to 4 are concerned, all of them were charged for an offence under Section 452/323/34 IPC but the offence of criminal

intimidation under Section 506 IPC was not levelled against the accused respondent no. 4 Javed Ahmed. The learned Trial Court after examining the definition of the criminal trespass as given in Section 441 IPC and house trespass under Section 452 IPC, analyzed the evidence adduced by the appellant and her witnesses including that of testimony of PW-2 Waryam Singh, (since deceased) and came to the conclusion that there was a great deal of variation in the averments made in the complaint as compared to what has been testified on oath by Waryam Singh PW-2 and the appellant PW-1. It may be worthwhile to reproduce the analysis of the evidence, which the learned Trial Court has done in this regard of the matter in order to see as to whether the offence of criminal trespass with a view to cause hurt, assault or wrongful restraint is made out or not. This has been given in para 13 to 18 of the impugned judgment which reads as under:

“13. All the complainant witnesses deposed before the Court to substantiate the allegations as leveled in the complaint. The crux of the matter is contained in para No.9 and 11 of the complaint which is reproduced as under:

Para9 “That on 7.5.83 all the accused persons assembled in front of the house of the complainant and began to abuse the complainant and his family members after the departure of SI AK Saxena and they said that they will see Sardarjee.”

Para11. “That at about 5:30 p.m. the complainant and his wife was

present in the house then all the accused persons came armed with Dandas and Shri D.S. Kapoor said, “Sardar Tanu Aaj Vekh Lenge” and Zaved also repeated the same words alongwith Manjit Singh and Mrs. Raj Kapoor. Mrs. Raj Kapoor pulled the hairs of Smt. Surjit Kaur then Shrimati Surjeet Kaur ran into the interior portion of the house but all the accused persons forcibly entered in the house and dragged her out of the kitchen by breaking the gate. The complainant hearing the said words came there and he was attacked by D.S. Kapoor and his son (Manjeet Singh) got hold his hands while Zaved Ahmed gave blows and kicks to the complainant and his wife also saying Zan Se Mar Do. In the meanwhile S.S. Bhoria came and Shir Akar Singh, Rajinder Singh alongwith Shri Amrit Kaur also came and rescued the complainant and his wife from the clutches of the accused persons.

14. A perusal of testimony of PW2 Waryam Singh recorded on 15/9/93 reveals that he deposed that on 8/5/1983 at evening time Mr. D.S. Kapoor, Devika Kapoor, Manjeet Kapoor and Javed Ahmed broke open the jaali door of the kitchen and thereafter they entered into the house of the complainant whereas, para No.11 of the complaint narrates the incident as that the accused persons came armed with dandas and Mrs. Raj Kapoor pulled the hairs of Smt. Surjeet Kaur who ran into the interior portion of the house. It is further mentioned that all the accused persons forcibly entered in the house and dragged Surjeet Kaur out of the kitchen by breaking the gate.

15. It is clear that the testimony of PW-2 Waryam Singh contradict the sequence of events as mentioned in the complaint. The averments of the complaint indicate that the accused persons had entered into the house and thereafter they dragged Surjeet Kaur by breaking open the jaali door of the kitchen whereas PW-2 Waryam Singh categorically

deposed that the accused persons broke open the jaali door of the kitchen and then entered into his house. Apparently his deposition does not corroborate the allegations leveled in the complaint regarding manner of entry by the accused persons in the house. On the other hand, the testimony of Smt. Surjeet Kaur recorded on 16.11.1998 contains the fact that in the evening of 8.5.1983, the accused persons entered into the house by breaking the door and gave beatings to her. She had not deposed anything regarding breaking open of any jaali door of the kitchen by the accused persons.

16. In these circumstances, it is not clear as to how the accused persons entered into the house of the complainant. Admittedly the place of occurrence was not photographed by the complainant so as to make the position amply clear nor any site plant has been annexed with the complaint.

17. It is also relevant to refer to document EXP-2/4 i.e. a letter written by the complainant to the then Prime Minister of India about the alleged incident. A perusal of the same also reveals that only the name of the accused Javed Ahmed is mentioned therein as the person responsible for breaking upon the door of the house and beating of the complainant and his wife. The document EXP-2/4 was written on 11.5.1983 i.e. after three days of the alleged incident but even then the contents of the same are in stark contradiction with the allegations as leveled in the complaint. In these circumstances, a doubt has been created as far as the allegation pertaining to house trespass by all the accused persons is concerned.

18. In view of aforesaid discussion, in my considered opinion a serious doubt has been raised in the complainant's version regarding forceful entry by all the four accused persons by breaking upon the door of the house of the complainant."

9. The aforesaid analysis of the evidence by the learned Magistrate is reasonable and plausible. In any case, the appellant does not show beyond reasonable doubt as to how the respondents had entered his house, rather there is a contradiction however, the averments made in the complaint and the evidence which was produced to substantiate charge. The same creates a reasonable suspicion in the mind of any reasonable person.
10. So far as the respondent nos. 1 to 3 are concerned, additionally they were charged for an offence under Section 506 Cr.P.C. that is a criminal intimidation which has been defined in Section 503 IPC and in this regard also the learned Magistrate observed that neither in the entire body of the complainant nor in the testimony of all the witnesses including that of the complainant, there is any specific allegation regarding extending the threat to the complainant with an intention to cause any injury or bodily harm on his or her person.
11. In this regard, the learned Magistrate has analyzed the ingredients of Section 503 and 506 IPC and come to the conclusion since the appellant has not mentioned allegation of causing injury on the appellant or her husband Waryam Singh coupled with the fact that none of them got themselves examined by a doctor despite ample time being at their

disposal clearly shows that the averments were made by the appellant were vague in nature and could not be believed.

12. The learned Magistrate has also referred to the testimony of the present appellant where she has stated on 24.09.1999 that she had sufficient injury on her hand and she had treated by herself by applying Iodex. In the absence of any categorical averments with regard to the sufferance of any bodily pain or the injury, the learned Magistrate observed that it raised a serious doubt regarding the genuineness of the appellant's version of the incident. The same was the observation with regard to the testimony of Waryam Singh, the diseased husband of the appellant.
13. Thus keeping in view the totality of circumstances including the material contradictions in the averments made in the complaint and the testimonies of the appellant and the other witnesses, the learned Magistrate entertained serious doubt, regarding the genuineness of the incident purported to have taken place as a consequence of which the aforesaid complaint came to be dismissed after acquittal of the respondents.
14. The appellant feeling aggrieved by the aforesaid acquittal order has filed the present leave to appeal against the impugned order.
15. I have heard the appellant Surjeet Kaur as well as her son. I have also heard the learned counsel for the respondent.

16. At the very outset, I must very candidly confess that the submissions made by the appellant herself are in the nature of incoherent submissions without any valid and legal support and without understanding the niceties of law and trying to find out as to why the learned the learned Magistrate has disbelieved their testimony and acquitted all the four accused persons/respondents. However, the appellant was permitted by my learned Predecessor to file on record the written submissions on 29.07.2008 which I have gone through the same. I have also gone through the impugned judgment passed by the learned Magistrate acquitting all the four accused persons. The synopsis which is filed by the appellants are more in the nature of questions rather than the submission, which I prima facie find difficult to comprehend and co-relate with the present case.
17. I feel that the present appellant on account of her abject poverty neither has engaged a counsel nor prepared to accept the one, which request was made to her with the condition that it will be provided at the State expense but she wanted to make submissions of her own without trying to understand as to why the learned Magistrate has acquitted all the four accused persons by giving them benefit of doubt. The benefit of doubt which has been given to the respondents is on account of the fact that the version which has been given by the appellant and her deceased husband Waryam Singh, (who

was the original complainant) is completely at variance with the averments made in the complaint. The learned Magistrate has dealt with the same in extenso and referred to the contradictions with regard to the genuineness of the incident, which hit at the root of the matter itself. I feel that the learned Magistrate has rightly disbelieved their testimony. I too after having gone through the said judgment as well as the testimony have absolutely no reason to hold to the contrary what has been observed by the learned Magistrate. The present appellant despite, 27 years having been gone by, seems to be more addicted to litigation then trying to reconcile to the fact that it is not a case worth where leave to appeal ought to be granted because the judgment of the learned Court is detailed, reasoned and quite logical.

18. For the reasons mentioned in above, I feel that there is no merit in the contention made by the learned appellant which may warrant giving leave to file an appeal against the judgment dated 05.06.2007 acquitting all the four accused persons/respondents by the Court. Both the parties are left to bear their costs.

JUNE 03, 2011
KP

V.K. SHALI, J.