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THE HIGH COURT OF DELHI AT NEW DELHI

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Crl. MC No.4041/2009

Reserved on:23.11.2011

Pronounced on: 29.11.2011

Sarabjit Singh & Anr.

..... Petitioners

Through: Mr. Mohit Mathur, Advocate with
Mr. S. Singh, Mr. T.Akhtar,
Advocate

Versus

State & Anr.

..... Respondents

Through: Ms.Fizani Husain, APP for R-1
Mr. Subhash C. Buttan, Advocate
for R-2

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This is a petition under Section 482 Cr.P.C preferred by the petitioners seeking setting aside of the summoning order dated 29.08.2008 and quashing of complaint in CC No.1695 of 2006 and proceedings arising therefrom against the petitioners/accused persons namely Sarabjit Singh Anand and Amarjit Singh Anand whereby the petitioners were summoned by the learned MM under Sections 341/506/448/323/380/34 IPC.

2. The aforesaid criminal complaint was filed against the petitioners by Mr. Sudesh Kumar and three other persons who purchased the property bearing number 6, Cavalry Lane, Mall Road, Delhi-110007 from one Manjeet Singh Anand, the step brother of the petitioner herein.

According to the complainants, they got possession of the portion of the aforesaid property as shown in the site plan filed along with the complaint. They employed one chowkidar and started renovation work thereon. The remaining part of the said property was in possession of the petitioners. The allegations are that on 24.8.2006 at about 9 p.m. both the petitioners in furtherance of their common intention started quarreling with the complainant and asked his labours to stop renovation work. The work was stopped and the matter was reported to the police by the complainant vide DD No.64 B on 24.8.2006 at about 11.45 p.m. The area SHO and the ACP had also visited the site and assured the complainant to look into the matter. A written complaint was also made to the police on 25.8.2006 at about 5.45. pm vide DD No. 48B with copies sent to concerned ACP and DCP of the area. It is alleged that though the SHO asked both the parties to maintain status quo, but he did not allow the complainant party to go inside the premises. The SHO and staff went inside the premises and gave beatings to the chowkidar and harassed and misbehaved with his wife and they were thrown out of the premises by the police in connivance with the petitioners herein. Two PCR calls were made and the telegrams were also sent to the Commissioner of Police as well as Lt. Governor narrating the incident and behavior of the SHO and that the police was threatening the complainant party to compromise the matter with the petitioners. It is alleged that the complainant was called several times to the police station by the police and despite the complainant having made the above complaint, case was not registered by the SHO, rather the complainant was threatened to withdraw the complaint. He also alleged having made

several complaints against the SHO to higher authorities, but without any action. In support of his complaint, the complainant examined himself as CW1 and his co-purchaser as CW2, Manjit Singh as CW3, Ramjeet Singh as CW4 and ACP Shri M.N. Tiwari as CW5 as his witnesses for the purposes of summoning the petitioners as accused persons.

3. The learned MM vide the impugned order recorded that he has perused the statements of the complainant's witnesses CW1 to CW5 and the documents and was of the opinion that prima facie case was made out against the petitioners under the aforesaid provisions of law. The aforesaid order has been assailed by the petitioners' counsel on the ground that civil suits were pending inter se parties in respect of the property in question and hence the complaint was not maintainable. It is also submitted that from the averments as made in the complaint and the examination of the witnesses as examined by the complainant before the learned MM, there was no case made out against them. It is also submitted that the allegations were against the SHO, but he has not been made a party and hence no case was made out against them. It was then submitted that since there was no case made out against the petitioners, the learned MM declined to register an FIR under Section 156(3) Cr.P.C.

4. Learned counsel for the respondent no.2 (the complainant in the said complaint) and the learned APP for the State submitted that from the statements of the complainant as well as his witnesses, the offences under the aforesaid provisions of law were made out. With regard to the learned MM not passing order under Section 156(3) Cr.P.C it was

submitted that the learned MM in his wisdom had taken the cognizance on the complaint of the complainant and chose to conduct an enquiry himself. It was further submitted that CW5 Mr. M.N.Tiwari, ACP had conducted enquiry and submitted his report to his seniors recommending registration of the FIR for dispossession of the complainant from the premises in question, but the SHO was in collusion with the petitioners and did not do so and this complaint against him was filed to his higher authorities. It was not denied that the civil suits regarding the said property were pending, but it was stated that no case was pending against the complainant and that all the cases which were pending were inter se between the petitioners and their step brother Manjit Singh. In any case, pendency of the said civil suits was stated to be not relevant with regard to the offence which were independently committed by the petitioners for trespassing and dispossessing the complainant from the said premises. It was then submitted that the complaint could not be thrown out at the threshold and the defence of the petitioners, if any, could be taken by them at the stage of framing of charges or during trial.

5. I have heard the learned counsel for the parties and perused the record.

6. The major part of the petition talks about only civil suits which are pending inter se parties and the proceedings as held in those cases. Admittedly, a civil suit being CS No.76/2006 was filed by Manjit Singh against the petitioners for seeking possession of the property and also for recovery of mesne profits alleging petitioners herein to be merely permissive users and licensees. There was no dispute with regard to the

fact that the sale deed of the property was in the name of Manjit Singh who was claiming to be the owner of the said property and the petitioners, his step brothers in possession, he had filed the said suit for possession alleging them to be permissive users and licencees and having no role after the demise of their father Shri Sucha Singh Anand. The pleas which were taken by the petitioners with regard to service of notice etc., forging of postal receipts etc. in the said suit were of no consequence to be seen at this stage. On the other hand, petitioners had also filed a civil suit being CS(OS) No.1593 of 2006 in this Court seeking partition and permanent injunction. However, before filing of this suit on 18.8.2006, the property in question was already purchased by the complainant and others by way of registered sale deed on 31.7.2006. It is worthwhile to note that in the sale deed it was specifically mentioned that the petitioners were only the permissive users of the said property and Manjit Singh Anand was its true and absolute owner. In the said suit which was filed by Manjit Singh Anand being CS No.76/2006, the Vendee became parties under Order XXII Rule 10 CPC vide order of the Court dated 25.8.2006. It was on 13.9.2006 that the petitioners filed another suit being CS(OS) 1791/2006 before this Court seeking declaration of the said Sale Deed dated 31.7.2006 in favour of the complainant and others as null and void. On the other hand, on 23.2.2007, the Vendees have also filed a suit for injunction and possession against the petitioners. The petitioners have also filed one FIR No.76/2009 against the Vendees and their advocates under Sections 420,468, 471 with Police Station Subzi Mandi on the

allegations of their fraudulently and deceitfully forging the stamps of the post office.

7. From the averments as contained in the complaint, it would be seen that the petitioners have tried to highlight the various litigations pending between them and step brother Manjit Singh Anand. After execution of the sale deed by Manjit Singh Anand in favour of complainant and others, the litigation has arisen between them and the vendees. From the undisputed facts and the material on record, it prima facie comes out that Manjit Singh Anand was the registered owner of the property which he had sold by way of registered sale deed to the complainant and others and that at the time of execution of the sale deed, the petitioners were in possession of some portion of the property in dispute and some part was given to the vendees by Manjit Singh Anand. The allegations against the petitioners are that they trespassed in the portion of the premises, the possession of which was given to the vendees and having dispossessed them from there in collusion with the police. From the statement of ACP, Shri M.N. Tiwari examined as CW5, it is seen that he had conducted the enquiry as directed by DCP and had submitted his report recommending registration of the FIR against the petitioners. Since the FIR was not registered by the SHO against whom there were allegations of having connived with the petitioners herein and regarding which complaints were made to higher authorities, cognizance of the offence was taken by learned MM. From the statements of complainant and his witnesses examined by him at the stage of pre-summoning stage, I do not see any substance in the pleas raised by the petitioners that there were no sufficient grounds to proceed

against them and the FIR be quashed. I consider that whatever defence the petitioners have cannot be gone into at this stage of summoning. At this stage, what is required to be seen is as to whether from the complaint and the statements of the witnesses examined in support thereof, there were sufficient reasons to proceed against the petitioners. In the present proceedings, the evidence could not be weighed and scrutinized, nor a fishy enquiry could be done to see as to whether the present complaint would ultimately lead to conviction of the petitioners or not. The offences alleged against the petitioners are warrant trial and the petitioners would have sufficient opportunities before the trial court to raise their defence and pleas at the time of consideration of charge under Section 245 Cr.P.C.

8. Keeping in view the fact that the complainant had examined himself and four other witnesses including the chowkidar and the DCP to substantiate his complaint, it cannot be said that the learned MM has not applied his mind and has passed the order in a routine and mechanical manner.

9. It is to be remembered that it is neither possible nor desirable that the complainant has to aver in the complaint each and every minute details of the incident. The evidence which may be led in support of the complaint is not required to be detailed in the complaint. What is to be seen is that if the complaint and the material and the evidence led in support thereof is such that there were reasons to proceed against the accused person. If that was so, the Magistrate was competent and within his powers to issue process against the accused persons. I have

gone through the complaint and the statements of the witnesses and I do not see any reason that the learned MM passed any mechanical order or remained a mute spectator.

10. In the case of ***K.M. Mathew v K.A. Abraham & Others*** [2002(3) JCC 1523], the Hon'ble Supreme Court held that when a Magistrate before issuing process has come to the conclusion that the complaint prima facie makes out the offence, the High Court shall be reluctant in exercising its inherent powers to quash the proceedings. Undisputedly, powers under Section 482 Cr.P.C has to be used sparingly and with great caution and only in those cases where this Court comes to the conclusion that there was manifest injustice or there was abuse of process of the court. In ***State of Bihar v Rajendra. Agrawalla*** [(1996) 8 SCC 164], the Supreme Court held thus:

“.....So far as the order of cognizance by Magistrate is concerned, the inherent power can be exercised when the allegation in the “first information report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the offence alleged. At that stage, it is not open either to sift the evidence or appreciate the evidence and come to the conclusion that no prima facie case is made out.

In the case of ***Santosh De & Anr. v Archana Gupta & Ors*** [(1994) 2 SCC 420], the Supreme Court held thus:

“...Unless grave illegality is committed, the superior courts should not interfere. They should allow the court which is seized of the matter to go on with it. There is always an appellate court to correct the errors. One should keep in mind that principle behind Section 465 Cr.P.C. Any or every irregularity or infraction of a procedural provision cannot constitute a ground for interference by a superior court unless such irregularity or infraction has caused irreparable prejudice to the party and requires to be corrected at that stage itself. Frequent interference by superior courts at the interlocutory stage tends to defeat the ends of justice instead of serving those ends. It should not be that a man with enough means is able to keep the law at bay. That would mean the failure of the very system.”

11. Having regard to the above facts and circumstances, I do not see any illegality or infirmity in the impugned order. The petition is hereby dismissed. No costs.

M.L. MEHTA, J.

November 29, 2011
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