

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

DECIDED ON : 30th July, 2013

+ CRL.M.C. 1766/2013

KULBHUSHAN MITTAL Petitioner

Through: Mr. D.N. Goburdhan, Mr. Balendu
Shekhar & Mr. Aayush Chandra, Advs.

versus

ANSHUMAN RASTOGI & ANR Respondents

Through: Mr. M.N. Dudeja, APP for the State.

**CORAM:
MR. JUSTICE S.P.GARG**

S.P.GARG, J. (ORAL)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. for setting aside orders dated 14.08.2012 and 26.02.2013 whereby the complaint case filed by him against the respondents was dismissed.

2. I have heard the learned counsel for the petitioner and have examined the file. Counsel urged that the Trial Court did not discuss the evidence adduced by the petitioner in the impugned order. The witnesses examined by him categorically deposed that the tenancy was transferred in the name of the petitioner, his mother and minor son Shivam and rent

receipt Mark B dated 01.04.2005 was issued. Ren of ₹1944/- paid for the whole year by cheque No.75525 dated 11.08.2005 drawn on Bank of Baroda was encashed on 07.09.2005. Subsequently the respondents in criminal breach of trust and fraud after accepting illegal gratification of ₹2 lacs from his father Ram Kumar Mittal changed the tenancy in the name of his mother and issued rent receipt dated 08.10.2005 in her name alone and deleted his name and that of his son Shivam. At the stage of issuance of summon under Section 200 Cr.P.C. the Trial Court was required to take a prima facie view. The scope of inquiry under Section 202 Cr.P.C. is extremely limited. At that stage, the court is called upon to see whether there was sufficient ground for proceeding with the matter and not, whether there was sufficient ground for conviction of the accused. The respondents had no legal right to dispossess him from the premises in question without due process of law. Reliance was placed upon *Nagawa vs.Veeranna* (1976) 3 SCC 736; *S.K.Sinha vs.Videocon Ltd.* (2008) 2 SCC 492; *Sashi Jena vs.Khadal* (2004) 4 SCC 236; *Adalat Prasad vs.Rooplal* (2004) 7 SCC 338 and *Indian Oil corp.vs.NEPC* (2006) 6 SCC 736.

3. I have considered the submissions. The complaint does not disclose as to when the petitioner was dispossessed of the premises in question. It also does not disclose as to what steps were taken by him that

time to challenge dispossession. Para 5 of the complaint reveals that a civil suit filed was not pursued. The petitioner did not place on record any proceedings in civil case despite time sought on 3rd May, 2013. It is unclear as to when the civil proceedings were initiated and what were its outcome. The instant complaint case was lodged in 2009. The complainant did not explain the inordinate delay in filing the complaint case. The complaint does not disclose specific allegations under Section 406/420 IPC against any of the respondents. Originally, the petitioner's mother was a tenant in the premises in question. Subsequently one rent receipt was issued in the joint name of the petitioner, his son Shivam and his mother Harbhaji Devi. The cheque for the sum of ₹1944/- was issued by the petitioner which was got encashed. The petitioner did not issue any subsequent cheque to make any payment as 'tenant'. Status report reveals that the name of the petitioner and his son was included as the petitioner furnished NOC from his mother. When his mother came to know about it, she informed the respondents that she had not given any such NOC. The status ante was restored and the rent receipt was issued in her individual name. The petitioner has not impleaded her as a respondent. The allegations that the respondents changed the rent receipt in the name of his mother alone after accepting the illegal gratification of ₹2 lacs are vague

and uncertain. The learned Metropolitan Magistrate did not commit any irregularity while upholding that the complaint did not show any criminality. The petitioner filed revision but it did not find favour with the Revisional Court. Since the dispute on the face of it is of civil nature, I find no illegality in the impugned orders and need no interference.

4. In the light of the above discussion, the petition is unmerited and is dismissed.

(S.P.GARG)
JUDGE

JULY 30, 2013
sa