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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 2nd September, 2015

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CRL.M.C. No.3962/2015

BABU RAM

..... Petitioner

Represented by: Mr.Ajayinder Sangwan, Mr. B.
N.Sharma, Mr. Amit Sharma,
Ms. Rishina Parashar,
Mr. Narendra Singh and
Mr.Anjali Rathi, Advocates.

Versus

STATE GOVT. NCT OF DELHI AND ORS

..... Respondents

Represented by: Mr.Ravi Nayak, Additional
Public Prosecutor for the State
with SI Mukesh Kumar, P.S.
Bindapur.
Mr. Y.P.Singh, Ms. Adity and
Mr.Sandeep, Advocates for
Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), petitioner seeks directions thereby setting aside the impugned judgment and order dated 08.07.2014 passed by the learned Additional Sessions Judge, Dwarka Court, New Delhi, in CR No. 154/2013. Also seeks directions thereby directing the SHO Bindapur to register a FIR against the respondents No.2 to 11 under Sections 323/395/397/

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398/452/455/506/120-B IPC.

2. The petitioner filed an application under Section 156 (3) Cr.P.C. before the Trial Court, however, the same was dismissed by the learned Metropolitan Magistrate vide order dated 03.06.2013 by recording that the alleged accused persons are known to the complainant and have been specifically named in the complaint. As per the averments made in the complaint, CCTV footage of the incident is within the power of the complainant and has been appended with the complaint. Thus, the identity of the accused persons can easily be established or ascertained from the CCTV footage and no investigation is required for ascertaining identity of the accused. CCTV footage is the best evidence in the matter and same is within the power and possession of the complainant. In the peculiar circumstances of the case when the complainant came to know about the theft of his articles five days after the incident, the recovery of the articles itself is a moot point. Nothing is to be recovered from the accused persons. Furthermore, the entire evidence is even otherwise within reach of the complainant himself. Thus, no investigation is required for gathering evidence in the present matter.

3. Being aggrieved the petitioner challenged the same by filing Criminal Revision No. 154/2013 before the learned Additional Sessions Judge. The same was dismissed vide order dated 08.07.2014 by recording that the learned Trial Court has exercised its discretion under Section 156(3) Cr.P.C. in a judicious manner and it cannot be said that the said exercise was arbitrary or without application of mind. Further if the revisionist (petitioner herein) has a strong case,

then he can bring sufficient material in his pre summoning evidence before the learned Trial Court.

4. In action taken report filed by the SHO concerned on 08.07.2014 before the learned Additional Sessions Judge in the revision noted above, it was stated that on 07.05.2013 four PCR calls regarding tress-pass and theft in House No. RZ 71, Jain Colony Part 2nd, Shani Bazar Road, Uttam Nagar, New Delhi and quarrel, were received vide DD Nos. 14A, 45B, 61B, 65B at Police Station Bindapur, which were marked to ASI Leela Ram for inquiry, who reached at the spot and no house hold articles were found scattered outside and a property dispute was pending between both the parties and no alleged offence was found committed at all. Thus, the calls were found fake and fabricated.

5. Whereas in the status report filed before this Court, it is stated that a quarrel had taken place between the petitioner and Adesh Tyagi regarding a property dispute but no offence as alleged in calls was found committed. One Pooja wife of Sher Singh Meena R/o RZ-71B, Jain Colony, Uttam Nagar, Delhi, was shifted to DDU Hospital from the spot by PCR after sustaining injuries in the quarrel. The Investigating Officer reached the hospital and collected the MLC No.11202, whereby nature of injury was stated to be J/o Blunt which was later on opined as 'simple'. The injured had left the hospital; therefore, his statement could not be recorded.

6. Thereafter, vide order dated 28.05.2015, the State was directed to file status report about the photographs available at page Nos. 54 to 58.

7. Accordingly, as per the status report dated 31.07.2015, it is

specifically mentioned that all the photographs mentioned above are of the ground floor of the property in question. As regards three photographs on page No.54, first is of broken mirror above wash basin in lobby, second is of a broken window in lobby and third is of main gate of the property. As regards three photographs on page No.55, first depicts floor of drawing room, second is of CCTV camera installed outside the house near main gate and third is of a water tank outside the house near main gate. Regarding three photographs on page No.56, first is of main gate pillar taken from outside, second is of gate from drawing room towards bedroom and third is of a window of drawing room which opens in the lobby. Regarding three photographs on page No.57, first is of floor of lobby near main gate, second is of broken glasses of window in drawing room, mentioned at third photo of page No.56, and third photo is of main gate taken from inside the house. All the three photographs on page No.58 are of the window of drawing room mentioned at third photo of page No. 56.

8. It is pertinent to note that in the status report dated 23.09.2014, the CCTV footage produced by the petitioner was examined and the following activities have been noticed:-

“ Date 07.05.2013 at 11.08 am as seen in camera No. 1 (installed outside main gate of house) police party reached at the gate of the petitioner and knock the door but nobody opened the door inspite of trying several minutes.

At 12.02 pm camera No. 1 was broken by someone. At 12.03 pm camera No. 4 (installed outside main gate) was also broken by someone. In camera No.2 (installed inside main gate) at 12.02 pm movement of family members of the

petitioner is seen who were seen shifting lathis and dandas from lobby/front varanda to room inside the home. At 12.04 pm Aadesh Tyagi alone with his family members and others were seen carrying lathis and dandas in their hands who knocked the door and when the door was not opened they broke open the door and moved upstairs and broke the camera No. 02 and thereafter there is no footage."

9. For my satisfaction, the Compact Disc of the CCTV Footage filed by the petitioner has been played on the Desktop of the Computer installed in the Court Room of this Court, wherein it is found that some persons having dandas and lathis in their hands are forcibly entering in the gate and damaging the property on the ground floor and thereafter moving towards the first floor. Admittedly, the petitioner is staying on the ground floor.

10. In view of the above noted facts, I am of the considered view that investigation is required in the present case. Therefore, I hereby set aside the order dated 03.06.2013 passed by learned MM and order dated 08.07.2014 passed by the learned Additional Sessions Judge.

11. Accordingly, the SHO concerned is directed to lodge an FIR against the culprits and take action in accordance with law.

12. With these observations, the present petition is allowed.

13. The Registry of this Court is directed to send a copy of this order to the concerned SHO for compliance.


SURESH KAIT
(JUDGE)

SEPTEMBER 02, 2015
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