



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

% **Pronounced on: 22nd July, 2022**

+ **CRL.M.C. 6101/2018, CRL.M.A.48622/2018**

MOHINDER PAL SINGH Petitioner

Through: Mr. Sujan Puri, Advocate

versus

RIMA GULSHAN Respondent

Through: Mr. H.S. Bhullar, Ms. Shelly Dixit
and Ms. Puja Singha Roy,
Advocates

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, “Cr.P.C.”) by one of the accused summoned by the learned Metropolitan Magistrate, Saket Courts, Delhi vide orders dated 22nd October, 2017 to face trial in Complaint Case bearing No.27/01/13 filed by the respondent under Sections 442/506 IPC against him and another accused.

2. It may be mentioned here that the respondent/complainant had filed a complaint on 25th March, 2013 along with an application under Section 156(3) Cr.P.C. for registration of an FIR alleging that the petitioner had trespassed into her house and had also extended threats. The application under Section 156(3) was disallowed on the ground that the allegations



could be proved by oral testimony and accordingly, the learned MM directed the respondent/complainant to lead pre-summoning evidence. Accordingly, she got four witnesses examined, namely, herself (CW-1), Sh. Vijay Mukhiya (CW-2), Sh. Ashutosh Gaur (CW-3) and Sh. Ranjan Gaur (CW-4). On the basis of the complaint and evidence, the learned MM summoned the petitioner and his son-in-law (Vishal Saluja) for facing trial under Sections 442/506 IPC. This order dated 22nd October, 2017 was challenged in revision before the Sessions Court and vide impugned order dated 30th October, 2018, the learned ASJ dismissed the revision petition, also opining that there were specific allegations of trespassing and threatening in the testimonies of the witnesses.

3. The present petition has been filed under Section 482 Cr.P.C. praying that the order dated 30th October, 2018 of the learned Sessions Judge be set aside and consequently, the summoning order dated 22nd October, 2017 be also quashed.

4. It is the contention of Mr. Sujan Puri, learned counsel for the petitioner that the dispute was materially in the nature of a civil dispute and that too, between his son-in-law (Vishal Saluja) and the respondent, who were brother and sister. The property in question, being H.No.G-3, South Extension, Part-II, New Delhi, belonged to the parents of the respondent and son-in-law of the petitioner, in which, upon their demise, the respondent claimed a share to the extent of 83.3% recognizing that the petitioner's son-in-law was entitled to the remaining 16.7% share. Therefore, relying on the judgment of the Supreme Court in *State of Haryana & Ors. Vs. Bhajan Lal & Ors.* 1992 Supp(1) SCC 335, it was



contended that no criminal offence was made out and the complaint was liable to be quashed.

5. It is further contended that the witnesses have assigned no role to the petitioner and that he has been roped in only to pressurize his son-in-law to arrive at some kind of settlement with the respondent. In any case, learned counsel for the petitioner submitted, that whatever evidence had come on record was only hearsay evidence, which had no evidentiary value, and therefore, no charge would be substantiated against the petitioner. Learned counsel for the petitioner submitted that the witnesses have only claimed to have heard some noise and to have then investigated, to find out that a fresh lock had been placed on the door of the premises. The testimony of the servant, who claimed to have seen the trespass occurring, as also the theft of a black bag containing Rs.90,000/- and jewellery, was unreliable and was clearly a planted witness. CW-3 and CW-4 were not the eye-witnesses, so also the complainant, who has testified to having been informed of the occurrence. In addition, it was submitted that the learned Trial Court ought to have deferred issuance of process under Section 202 Cr.P.C. as the co-accused did not reside within the jurisdiction of the learned Trial Court as he was a resident of the USA.

6. With regard to the alleged trespass, it was contended that since the property belonged to the son-in-law of the petitioner, there could be no trespass. Furthermore, the order passed in the civil suit filed by the respondent No.2 directing *status quo*, was not communicated to the petitioner till 5 p.m., whereas the visit to the premises was around 4.30 p.m.. The email placed on the record would also indicate that the brother



and sister were in discussion. Thus, it was submitted that the petitioner, being a senior citizen aged about 73 years, ought not to be subjected to criminal prosecution.

7. It may be noted here that pursuant to the last order, while the respondent has filed a written note, the petitioner has not taken advantage of the opportunity, as extensive oral arguments had already been submitted, as noted above.

8. Mr. H.S. Bhullar, learned counsel for the respondent, submitted that there was no error in the summoning order, or the orders of the learned ASJ dismissing the revision, and that therefore, there is no merit in the petition. Also, in the written note, it has been submitted that the inherent powers of this court under Section 482 Cr.P.C. should not be arbitrarily exercised and could be exercised only to set right a patent defect or an error of jurisdiction or law, or if a finding was recorded based on no evidence, or material evidence was ignored, or judicial discretion was exercised arbitrarily or perversely.

9. Relying on the judgment of the Supreme Court in *State of Bihar and Anr. v. K.J.D. Singh* 1994 SCC (Cri) 63, it was urged that the normal process of a criminal trial ought not to be cut-short by invoking the inherent powers of the court.

10. It was further submitted that when the petitioner had filed a revision before the Sessions Court, the challenge was to the procedure adopted by the learned MM and it was contended by the present petitioner that the provisions of Section 202 Cr.P.C. were not strictly adhered to and the



process had to be postponed for further inquiry. However, the learned MM had followed the procedure in letter and spirit, which was why the witnesses were examined. Reliance has been placed on the decisions of the Supreme Court in *Adalat Prasad v. Rooplal Jindal*, (2004) 7 SCC 338 and *Vijay Dhanuka v. Najima Mamtaj*, (2014) 14 SCC 638 to submit that the inquiry contemplated under Section 202 Cr.P.C. was not an inquiry that was to be made by a police officer, but included an inquiry by the Magistrate himself.

11. It was further submitted by the learned counsel for the respondent that specific allegations have been made in the complaint in paragraphs No.3, 4 and 5 against the petitioner, including that of conspiracy and threats to the complainant. These specific allegations have also been testified to, by the complainant as CW-1 and CW-2, who saw him enter the premises after breaking the lock. CW-3 had also reached the spot after hearing the banging noise on the first floor and saw the petitioner trying to break open the lock again. Similar specific allegations were made in the email dated 30th November, 2012 that the respondent had addressed to her brother/co-accused Vishal Saluja. Thus, it was submitted that there was sufficient material for the trial of the petitioner, who was rightly summoned by the learned Trial Court.

12. The scope of the inherent powers under Section 482 Cr.P.C., as rightly pointed out by the learned counsel for the respondent, is narrow. It has to be exercised only in rare cases where perversity is writ large in the orders impugned, or the decisions of the courts below have resulted in grave mis-carriage of justice. On this aspect, the pertinent observations of



the Supreme Court in ***Paramjeet Batra v. State of Uttarakhand***, (2013) 11 SCC 673, are apposite:

“12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.” (emphasis added)

13. Similarly, in ***Dhruvaram Murlidhar Sonar Vs. State of Maharashtra***, (2019) 18 SCC 191, the Supreme Court has held as under:-

“8. It is well settled that exercise of powers under Section 482 CrPC is the exception and not the rule. Under this section, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any court or otherwise to secure the ends of justice. But the expressions “abuse of process of law” or “to secure the ends of justice” do not confer unlimited jurisdiction on the High Court and the alleged abuse of process of law or the ends of justice could only be secured in accordance with law, including procedural law and not otherwise.” (emphasis added)



14. In the present matter, the learned counsel for the petitioner has sought to discuss the evidence recorded by the learned Trial Court to submit that the statements of the witnesses were contradictory and were hearsay. It is clear that this Court is not sitting as an Appellate Court to evaluate the evidence. The property was under the lock and key of the complainant/respondent. To say that since the petitioner was the father-in-law of a co-owner of the property in question, who admittedly was not residing in that property, and therefore, had a right to enter the same, is facetious. Even a tenant is protected against trespass by the landlord.

15. A civil suit is no doubt pending to determine the mutual rights between the son-in-law and the complainant/respondent, but the pendency of such a civil suit cannot foreclose the right of the complainant to seek protection against the commission of criminal offences against her. She has alleged trespass and criminal intimidation and has examined herself and her witnesses in support of her complaint. The civil proceedings are for the determination of civil rights and her rights in the property were protected by the civil court issuing an order of *status quo*. By no stretch can the present complaint be described as a civil dispute in the cloak of a criminal complaint. Trespass is alleged after issuance of the order.

16. The question of service of the interim orders of the civil court, even if relevant, would have to be established during trial. The quality of evidence, whether hearsay or covered by the principles of *res gestae*, are all matters for the trial court to consider after the recordal of evidence and not for this Court to consider while dealing with a petition under Section 482 Cr.P.C.. Therefore, it restrains from commenting on the same. Suffice



it to note that this argument of the petitioner does not appeal to the Court and must fail.

17. It is the settled position in law, that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be *prima facie* satisfied whether there are sufficient grounds for proceeding against the accused. The complaint and the testimonies of the complainant's witnesses were found sufficient for that purpose. To say that the inquiry had to be postponed under Section 202 Cr.P.C. because one of the accused was not residing within the jurisdiction of the court, is a misinterpretation of the Section. The provision itself vests the discretion with the Magistrate to call for investigation or to hold an inquiry and for that purpose, postpone the issuance of process. The Magistrate has not issued process on receipt of the complaint, but has postponed the issuance of the process till the inquiry was conducted by him, when the complainant and her witnesses were examined. It is, thereafter, finding sufficient ground for proceeding, that it did not dismiss the complaint under Section 203 Cr.P.C, but issued process under Section 204 Cr.P.C.

18. Thus, there is no error even in the procedure adopted by the learned Trial Court.

19. In the circumstances, it is amply clear that when the learned ASJ dismissed the revision, it was fully justified in doing so. There is no error or perversity in the said order calling for any interference by this Court.



20. The petition is accordingly dismissed, along with the pending application. It is made clear that nothing contained in this judgment will be an expression on the merits of this case.

21. A copy of this judgment be transmitted to the learned Trial Court.

22. The judgment be uploaded on the website forthwith.

**(ASHA MENON)
JUDGE**

JULY 22, 2022

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