



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 13th August, 2024

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Pronounced on: 30th September, 2024

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CRL.M.C. 1755/2024

RADHA NATH NANDY

S/O Late Ram Chandra Nandy

Aged about 69 years,

Occupation Accredited Press Reporter,

Resident of 572, Jessore Road Now

39/1, Block-A, Green Park, P.S.Lake Town, Kolkata-

700055, West Bengal.

.....Petitioner

Through: Petitioner in person

versus

RAJPAL

Occupation Sub Postmaster,

Resident of Malviya Nagar Post Office,

New Delhi-110017.

.....Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

CRL.M.A. 6718/2024 (delay in refilling)

1. The Application under Section 482 of the Code of Criminal Procedure (*hereinafter referred to as 'CrPC, 1973'*) has been filed on behalf of the petitioner for condonation of delay of 115 days in refiling the accompanying Petition.
2. For the reasons stated in the Application and in the interest of justice, the delay of 115 days in refiling the accompanying Petition, is condoned.
3. The Application is allowed and disposed of accordingly.



CRL.M.C. 1755/2024

4. The present *Petition under Section 482 of the CrPC, 1973*, has been filed on behalf of the petitioner for setting aside the Impugned Order dated 11.09.2023 of the learned ASJ.

5. **Briefly stated**, the Complaint was filed by the *Petitioner/Radha Nath Nandy* before the learned Metropolitan Magistrate wherein it was stated that on 18.09.2013, while complainant was in Kolkata, some unidentified persons forcibly entered into his house despite the objection taken by his wife, Smt. Manjusha Nandy and they abused and manhandled her without any reason. On inquiry, Smt. Manjusha Nandy came to know that all the persons had been sent by the *Respondent No. 1/Rajpal*, Sub Post Master, Malviya Nagar Post Office. They also talked to the complainant on his mobile number and asked him to pay a sum of Rs.1,50,000/- failing which adverse consequences would follow. It was only with the intervention of some neighbours that Smt. Majusha Nandy could be saved. The complainant also received similar call on the next date i.e. 19.09.2013 on his mobile phone as well as the landline number.

6. The matter was reported to the Police for taking action against the respondent No. 1 and his associates but to no avail. Feeling aggrieved, the petitioner filed a Complaint under Section 200 CrPC.

7. In the pre-summoning evidence, the complainant examined himself, as well as, his wife as **CW-1** and **CW-2** respectively. Learned Metropolitan Magistrate dismissed the Complaint under Section 203 CrPC *vide* the order dated 23.05.2017.

8. Aggrieved by the Order of the learned Metropolitan Magistrate dated 23.05.2017, the petitioner preferred a *Criminal Revision Petition No.*



291/2017 wherein the learned ASJ discussed the detailed statements of CW-1, the petitioner and CW-2 Smt. Manjusha Nandy and concluded that there was no infirmity in the Order of the learned Metropolitan Magistrate and dismissed the Revision *vide* Impugned Order dated 11.09.2023.

9. The petitioner has thus, filed the present Petition under Section 482 CrPC for quashing the impugned Order, on the ground that the muscleman of respondent No. 1 had trespassed into his house on 18.09.2013 and had taken law in their hands by ransacking the house, the offence of criminal house trespassed was thus, committed.

10. Despite the Police Report on 02.10.2013 and to the DCP, District South-East on 07.10.2013 and to the SHO on **02.01.2014**, no case has been registered. The petitioner has further submitted that the Indian Postal Authority, Sub-Division had sent a Letter dated 22.08.2017 for settlement of excess amount of Rs.1,48,000/- *vide* DD No. 110408 dated 09.07.2017 even though there is nothing due from the petitioner.

11. It is asserted that the petitioner *herein* has clean antecedents and is a credited Press Reporter enjoying good reputation in the Society and has never been involved in any criminal cases, which have not been looked into by the Court and has jumped to the conclusion that guilt of the respondent is not established. The wilful default declaration made against the petitioner already stands withdrawn by the Indian Postal Authority. The cause of action against the petitioner is spent force.

12. Learned ASJ has committed a jurisdictional error since a reference has been made to '*No Due Certificate*' dated 22.08.2017 from SSP, South District, New Delhi but no such document has been exhibited on record. The petitioner has filed the present Petition in person, to challenge the aggrieved



impugned Order, which is caused serious prejudice to him and is violative of principle of natural justice and fair trial.

13. Furthermore, the accused has not been examined under Section 319 of CrPC by the learned trial court whereby committing a jurisdictional error. Reliance has been placed on Ramesh Kumari vs. State (NCT of Delhi) & Ors., 2006(1) Crimes 229 and Manager, ICICI Bank Ltd. vs. Prakash Kaur & Ors. on 26102/200T SLP(CRI)IS of 2007.

14. It is, therefore, submitted that the Order of the learned Metropolitan Magistrate upheld by the learned ASJ, be set-aside.

15. Submissions heard and record perused.

16. The petitioner had filed a Complaint under Section 200 Cr.P.C. alleging that the respondents had committed an offence under Section 449/450/451/120B and 506(2) read with Section 34 of the Indian Penal Code (*hereinafter referred to as 'IPC, 1860'*) on the allegation that some unidentified persons, who had been sent by the respondent, had forcibly entered in his house and manhandled the wife, Smt. Manjusha Nandy and ransacked the house. On inquiry, he came to know that those unidentified persons had been sent by the respondent, Post Master Malviya Nagar. The testimony of the petitioner/CW-1 was supported by CW-2, Smt. Manjusha Nandy, who had deposed that five persons had come to her house on 18.09.2013 and enquired about her husband and also demanded a sum of Rs.1,50,000/-. She stated that those persons were unknown to her but stated that a threat was also extended to her husband/petitioner.

17. The learned ASJ had observed that admittedly, the petitioner was not at his residence on 18.09.2013 when allegedly five unidentified persons trespassed in their house. While CW-1 had stated that the money had been



demanded from him at the instance of respondent, this fact was conspicuously missing from the testimony of CW-2. Further, while CW-1, the complainant had deposed about ransacking of the house, there was not a word whispered by CW-2, in her statement. Further CW-1, the complainant had claimed that the said persons had entered their house with weapons, about which nothing was stated by CW-2.

18. In view of these contradictory statements, the testimony of CW-1 and CW-2 does not inspire any confidence. The allegations made by the petitioner about the threats and demand for money or of ransacking the house, did not find any corroboration.

19. Hence, the conclusions arrived at by the learned Metropolitan Magistrate and upheld by the ASJ that in view of the contradictory statements made by the petitioner *prima facie* no offence was disclosed thereby dismissing the Complaint under Section 200 CrPC, does not suffer from any infirmity and illegality.

20. The petitioner is also aggrieved by not summoning the accused and recording his statement, however, it was pre-summoning evidence and there is no provision in the entire CrPC for summoning the proposed accused person at the stage of pre-summoning. The grievance of the petitioner in this regard, is not tenable under law.

21. There is no infirmity in the Impugned Order dated 11.09.2023 and the present Petition is hereby dismissed and disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMEBR 30, 2024/RS