

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 20th March, 2015
Judgment Pronounced on: 23rd April, 2015

CRL.REV.P. 139/2006

VED PARKASH JAIN

..... Petitioner

Through: Mr.Satender Sharma, Advocate

versus

STATE, GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Feroz Khan Gazi, APP with
ASI Jai Prakash, PS:Samai Pur
Badli

Mr. J.P. Sengh, Senior Advocate
with Mr. Mayank Yadav,
Advocates for Respondents 3 to 5

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. Aggrieved by the order dated 26.11.2005 passed by the learned Metropolitan Magistrate accepting the closure report filed by the police and releasing respondent Nos.3 to 5 for the offence under Sections 448/380/34 IPC, the present revision petition has been filed by the petitioner.
2. Factual matrix, as emerges from the record, is that the petitioner was a tenant under Respondent No.3. The Petitioner is stated to have opened copper wire factory under the name "Vishvesh Wire"

and installed heavy machinery, which was financed from the State Bank of India ('SBI'), which was hypothecated to the said bank. The Petitioner was arrested for power theft and an FIR No.686/97 dated 21.9.1997 was registered against the Petitioner under Sections 39/44 of the Indian Electricity Act and Section 379 IPC at PS Samaipur Badli. The said factory was closed on 25.9.1997 because of the said FIR. The factory was later sealed by the Pollution Department, Government of NCT of Delhi.

3. The Petitioner was informed on 10.9.2001 by the Manager, SBI regarding removal/sale of the hypothecated machinery to one Rajiv by respondent no.4, stated to be the relative of Respondent No.3 and was allegedly found in the factory. The Petitioner further alleged forcible dispossession and trespass along with theft of machinery. On 28.9.2001, SHO, Samaipur Badli handed over the inquiry to SI Om Prakash, who endorsed the complaint for registration of case u/s 448/380 IPC on 29.9.2001 against Respondents 3 and 4. Section 506 IPC was added later on the same day against respondent no.5, the son of respondent No.3. Certain recoveries were also allegedly made on 29.9.2001.
4. After conclusion of investigation, the charge-sheet under Section 173 Cr.P.C. was filed showing respondent nos.3 to 5 in Column No.2 as not sent up for trial. The learned Metropolitan Magistrate accepted the closure report and released the respondents. Feeling aggrieved by the order of the learned Metropolitan Magistrate, releasing the respondent nos.3 to 5, the petitioner has preferred the

present revision petition to set aside the impugned order dated 26.11.2005. Written synopsis was filed by the petitioner.

5. Learned counsel for the petitioner has submitted that an agreement to sell of the theft items was executed by the accused; there was no ground for cancellation of the case; complainant was kidnapped by the accused persons; the learned MM considered the defence of the accused persons while accepting closure report; the affidavit of the complainant was attested by SDM, Model Town but the complainant was not the resident of that area.
6. FIR of the present case was registered on the basis of written complaint filed by the petitioner with the allegations that the respondent Mahender Yadav was the landlord of the premises at Gali No.A1, Samaipur Badli. The petitioner was inducted as tenant since November, 1995. He opened a copper wire factory at the tenanted premises and installed heavy machinery after getting it financed from State Bank of India. An FIR No.686/1997 PS Badli was registered against the petitioner for power theft under Section 39/44 of the Indian Electricity Act and under Section 379 IPC. The factory of the petitioner was sealed by the Pollution Department. It was alleged that on 10.09.2001, the petitioner was informed by the Manager of State Bank of India that the respondent Brijesh removed/sold the hypothecated machinery to some Rajiv. It was also alleged that illegal trespass in the factory and theft of machinery was done by the accused persons/respondent no.3 to 5.

7. On the basis of complaint of the petitioner, FIR under Section 448/380 IPC was registered and later on Section 506 IPC was added.
8. It was alleged against respondent Brijesh Yadav was seen in the factory of the petitioner on 10.09.2001. It is not the case of the petitioner that he visited his factory premises on 10.09.2001 when the respondent Brijesh Yadav was allegedly seen then. The said allegations were based on the information given by the Manager of State Bank of India, Samaipur Badli. As per investigation report, the petitioner visited his factory on 19.11.2001 with Inspector Jagbir Singh and found that the machinery in his factory premises was intact. No machinery allegedly stolen was found to be missing from the factory. There is no allegation of presence of respondent Mahinder Yadav and Devender Yadav on 10.09.2001 when the alleged theft of machinery had taken place.
9. It also revealed during investigation that on 10.09.2001, respondent Brijesh Yadav, friend of the petitioner met the bank officials at the factory premises. Even the petitioner had handed over another set of keys of his factory to the respondent Brijesh Yadav.
10. It has come on record during investigation that on 10.09.2001, respondent Mahinder Yadav and Devender Yadav were not present in the factory premises of the petitioner, so there is no basis in the allegations that they had committed any forcible entry in the factory of the petitioner what to say commission of theft of machinery.

The allegation against respondent Brijesh Yadav that he was found present in the factory on 10.09.2001, but as per the investigation report, the petitioner had himself handed over keys of his factory to his friend respondent Brijesh Yadav. So, there was also no basis in the allegations against respondent Brijesh Yadav also that he had forcibly entered the factory premises or committed the theft of machinery, when the petitioner himself found that no theft of machinery had taken place.

11. Statements of work contractors of the complainant, namely Ram Chander and Dinesh Chander further show that no machinery or articles were found missing or stolen from the factory of the petitioner. Even otherwise, the petitioner stated before the SDM on 01.10.2001 by way of an affidavit that he had made the allegations of trespass and theft against the respondents due to some extraneous pressure and actually no such incident had taken place.
12. In ***Lalita Kumari vs. Govt. of U.P. and ors. AIR 2014 SC 187***, the Hon'ble Apex Court has held that the investigating officer is having an authority to file a final report after investigation. Relevant portion from the judgment reads as under :

“Besides, the Code gives power to the police to close a matter both before and after investigation. A police officer can foreclose an FIR before an investigation under Section 157 of the Code, if it appears to him that there is no sufficient ground to investigate the same. The Section itself states that a police officer can start investigation when he has a 'reason to suspect the commission of an offence'. Therefore, the requirements

of launching an investigation under Section 157 of the Code are higher than the requirement under Section 154 of the Code. The police officer can also, in a given case, investigate the matter and then file a final report under Section 173 of the Code seeking closure of the matter. Therefore, the police is not liable to launch an investigation in every FIR which is mandatorily registered on receiving information relating to commission of a cognizable offence.”

13. In ***Sanjaysinh Ramrao Chavan vs. Dattatray Gulabrao Phalke MANU/SC/0040/2015***, the Hon’ble Apex Court has held that once it is found that there is no material on record to connect an accused with the crime, there is no meaning in prosecuting him. It would be a sheer waste of public time and money to permit such proceedings to continue against such a person. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the revisional court is not justified in setting aside the order, merely because another view is possible. Relevant para from the judgment reads as under:

“Cognizance is a process where the court takes judicial notice of an offence so as to initiate proceedings in respect of the alleged violation of law. The offence is investigated by the police. No doubt, the court is not bound by the report submitted by the police Under Section 173(2) of Code of Criminal Procedure. If the report is that no case is made out, the Magistrate is still free, nay, bound, if a case according to him is made out, to reject the report and take cognizance. It is also open to him to order further investigation Under Section 173(8) of Code of

Criminal Procedure. In the case before us, the learned Magistrate went through the entire records of the case, not limiting to the report filed by the police and has passed a reasoned order holding that it is not a fit case to take cognizance for the purpose of issuing process to the Appellant. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the revisional court is not justified in setting aside the order, merely because another view is possible. The revisional court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. Revisional power of the court Under Sections 397 to 401 of Code of Criminal Procedure is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.”

14. In view of discussion made above, as per the investigation report, there is not enough material against the respondent nos.3 to 5 to proceed against them. The allegations levelled by the petitioner have not been substantiated during investigation and that was the reason closure report was filed by the police. It was not a fit case to take cognizance and summon the respondent nos.3 to 5 as accused persons. From no stretch of imagination the order dated 26.11.2005

passed by the learned Metropolitan Magistrate cannot be said to be not sustainable in the eyes of law and deserve to be upheld.

15. The present revision petition is disposed of accordingly. File of the trial Court be sent back.

P.S.TEJI, J.

April 23, 2015
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