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

Date of Decision: July 20, 2015

+ **CRL.M.C. 2342/2014**

NARESH MITTAL & ORS Petitioners
Through: Mr. M.L. Yadav, Advocate

versus

STATE & ANR Respondents
Through: Mr. Navin Sharma, Additional
Public Prosecutor for respondent-
State

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**
(ORAL)

Impugned order of 16th April, 2014 directs summoning of petitioners in a complaint for the offences under Sections 147/148/149/452/504/506/34/120-B of IPC.

The facts which are required to be noticed, as culled out from the trial court's order of 15th October, 2013, are as under:-

Briefly stated, the averments of the complainant are that the latter is the owner of the Third Floor of the property bearing no.165-166 and 203 to 232, Coronation Building, Om Bhawan, Fatehpuri, Delhi – 11006, while the accused no.1 and 2 are husband and his wife, who are landlord / owner of Second Floor of the above said building. It has been alleged that accused no.1

and 2 started raising unauthorized constructions on the Second Floor of the above said property as shown in the registered sale deed, due to which the complainant has filed a case of permanent and mandatory injunction on 26.03.2012 which is still pending before the Ld. Civil Judge at Tis Hazari Courts, Delhi.

It has been further alleged by the complainant that on 28.05.2013 at about 09:00 AM, the accused persons armed with deadly weapons trespassed in the property of the complainant with criminal conspiracy and extended threats to the complainant. The accused persons allegedly gave beatings to the complainant and also threatened to implicate him in false cases if the complainant fails to withdrawn his complaint filed by him before the Commissioner of Police as well as Commissioner of MCD. The complainant thereafter made a complaint in PS Lahori Gate but the police officials failed to register his complaint and hence the present complaint case has been filed on 15.10.2012.

Trial court vide impugned order of 15th October, 2013 has refused to summon petitioners as accused and has dismissed respondent's complaint while relying upon Action Taken Report which says that the allegations against petitioners are totally motivated/baseless and far from truth. Trial court has also found that the eye-witness has nowhere stated that petitioner-Naresh Mittal was not carrying knife and respondent-complainant claims that he was beaten up by petitioners but the MLC report or any other documentary evidence is not forthcoming to

substantiate this allegation, which raises serious doubts on the credibility or trustworthiness of complainant's version.

At the hearing, learned counsel for petitioners submits that respondent-complainant claims to be the owner of third floor of the property in question but as per Action Taken Report, there is no room on the third floor of the property in question. It is submitted that number of litigations are pending between the parties and the instant complaint is motivated. Lastly, it is submitted that the trial court's order was perfectly justified and the impugned order erroneously sets it aside.

With the assistance of learned counsel for petitioners and Mr. Navin Sharma, learned Additional Public Prosecutor for respondent-State, I have gone through the deposition of the complainant (*CW-1*) as well as the complaint in question and I find that so far as petitioner No.3-*Major Singh* is concerned, the only averment in the complaint is that he is a local police official and so, the complaint of respondent-complainant was not entertained whereas, in the pre-summoning evidence, respondent-complainant has categorically asserted that he was taken to Church Mission Road Police Post and was confined there for five hours and his signatures were obtained on blank papers by SI Major Singh. Not only this, respondent-complainant had stated in pre-summoning evidence that he was humiliated and tortured for more than five hours and he was given tight slap on his face by petitioner-*Major Singh*.

In view of the afore-noted contradiction, which goes to the root of the matter, revisional court's order directing summoning of petitioner-*Major Singh* cannot be sustained and is hereby quashed.

So far as the summoning of petitioners-*Naresh Mittal* and *Savita*

Mittal is concerned, I find that at this stage, pre-summoning evidence of the complainant has to be taken on the face of it and the falsity or the veracity of the allegations is not to be considered at this stage, as a fair opportunity ought to be granted to respondent-complainant to be cross-examined regarding not getting the MLC made or about there being no construction on the third floor of the property in question. Perhaps, respondent-complainant can give plausible answers to these questions.

Consequently, impugned order *qua* petitioners No.1 and 2 is sustained and this petition is disposed of while not commenting upon merits of this case lest it may prejudice petitioners No.1 and 2 before the trial court.

(SUNIL GAUR)
JUDGE

JULY 20, 2015

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