

I- 21 & 23

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

Date of Decision: September 01, 2015

(i) + **CRL.M.C. 4168/2014 & Crl.M.A.No.813/2015**

B.S. MOR & ANR. Petitioners

Through: Mr. Trideep Pais and Ms. Seema
Misra, Advocates

versus

GOVT OF NCT & ANR.Respondents

Through: Mr.Vinod Diwakar, Additional
Public Prosecutor for respondent-
State with SI Satyender Gulia & SI
Narender Sherawat
Mr. Vikas Arora and Mr. Dheeraj
Manchanda, Advocates for
respondent No.2

(ii) + **CRL.M.C. 5537/2014 & Crl.M.A.No.18922/2014**

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CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

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JUDGMENT
(ORAL)

In SC/ST/35/2011, *Jitender Singh Harit Vs. B.S.Mor & anr.*, petitioners' application to summon seven witnesses in defence has been rejected by the trial court vide order of 11th August, 2014, which is under challenge in the above captioned first petition [Crl.M.C.No. 4168/2014].

Petitioners' application for placing on record certified copies of pleadings in CS (OS) No.2240/2011 stands rejected by the trial court vide order of 15th November, 2014, which is under challenge in the above captioned second petition [Crl.M.C.No. 5537/2014].

Since the above captioned two petitions arise out of SC/ST/35/2011, *Jitender Singh Harit Vs. B.S.Mor & anr*, therefore, with the consent of learned counsel representing both sides, the above captioned two petitions are heard together and are being disposed of by this common judgment.

At the hearing, learned counsel for petitioners submits that the aforesaid two applications have been erroneously declined by the trial court, as it is the defence of petitioners that respondent No.2 was trying to illegally usurp the property in question. It was pointed out by learned counsel for petitioners that FIR No.51/2003, registered against respondent No.2 herein, is at the final stage of hearing and the instant complaint is a counter blast to the aforesaid FIR. It is asserted by petitioners' counsel that the property in question belongs to '*Whig Family*' and respondent No.2 herein is infact a trespasser. It was asserted by petitioners' counsel that the pleadings of the aforesaid civil suit has a bearing on the complaint case in question and therefore, documents of the said suit are

necessary to rebut charge under Section 448 of the IPC, and so these documents deserve to be brought on record in order to effectively defend petitioners' in the complaint case in question.

Reliance was placed upon decisions in *Bhagwan Singh Vs. The State of Punjab (I)* AIR 1952 SC 214; *Rakkappan Vs. State through The Inspector of Police* 2009-1-LW (Crl) 1004; *Jaswant Singh Vs. Gurdev Singh & ors.* (2012) 1 SCC 425 and *Guhati Sub-Divisional Market Committee Vs. Suresh Sikaria* 2013 (4) GLT 486 to submit that certified copies of pleadings of the civil suit are *per se* admissible and so, trial court has erred in not permitting petitioners to place the certified copies of documents in the suit proceedings.

Reliance was also placed upon decisions in *Sudhir Kumar Dutt Vs. The King* AIR 1949 FC 5; *B K Lingana & ors. Vs. State of Mysore* AIR 1954 Musore 12; *V K Seetharama Rao Government of Mysore* AIR 1954 Kant 9; *Ronald Wood Mathams Vs. State of West Bengal* (1995) 1 SCR 216; *Fazal Khan Vs. State of (NCT) of Delhi* 2013 (2) CC 963; *Natasha Singh Vs. Central Bureau of Investigation* (2013) 5 SCC 741 and *Lalit Kumar Paigrahi Vs. State of Chattisgarh* 2014 Crl.L.J. 2794 to submit that the importance of defence witness cannot be discounted and a fair opportunity ought to be granted to petitioners to establish their stand before the trial court. Thus, it is submitted that impugned orders deserve to be quashed in order to ensure fair trial.

Both these petitions are strongly opposed by learned counsel for respondent No.2, who submits that the civil litigation is of the year 2011 whereas the incident herein is of the year 2003 and neither the evidence of witnesses sought to be led nor the documents sought to be brought on

record has any relevance and petitioners, by way of these two applications, are seeking to bring in the civil litigation into criminal proceeding just with a view to delay the criminal proceedings and that decisions relied upon by petitioners have no application to the facts of the instant case and so, the impugned orders deserve to be sustained.

Upon hearing both the sides and on perusal of the impugned order, material on record and decisions cited, I find that petitioners in their statement under Section 313 of Cr.P.C. have taken a stand that they had gone to the property in question to clean its front portion, which was lying vacant and they had seen *J.S. Harit* and two other persons had broken locks. The categorical stand of petitioners is that they had gone to the front portion of the house in question for routine maintenance.

Considering the stand taken by petitioners in the statement under Section 313 Cr.P.C., as referred to herein above, the afore-noted decisions are of no avail to the case of petitioners and petitioners' application in respect of civil suit, which was filed in the year 2011, has been rightly declined by the trial court, as the stand taken in the civil proceedings cannot be permitted to be entertained in criminal proceedings as there is no relevance between the two proceedings.

Finding no palpable error in the impugned orders, the above captioned two petitions and applications are dismissed while not commenting on the merits of the case, lest it may prejudice petitioners before the trial court.

(SUNIL GAUR)
JUDGE

September 01, 2015

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