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

Judgement delivered on: 23rd November, 2015

+ **CRL.M.C.3925/2010 & Crl. M.A. No.19349/2012**

RAVI KARUMBIAH Petitioner

Represented by: Mr.S.K.Sharma,
Mr.Puneet Relan &
Mr.Ygant Kuhar, Advs.

Versus

STATE & ANR Respondents

Represented by: Mr.Mukesh Kumar, APP
for the State.
Respondent No.2 in
person.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. By way of present petition under Section 482 of the Code of Criminal Procedure, 1973, (hereinafter referred as 'Cr P C') petitioner seeks direction thereby quashing the summoning order dated 06.05.2010 passed by learned Additional Chief Metropolitan Magistrate, Karkardooma Courts, Delhi for the offence punishable under Section 506 of the IPC with respect to case FIR No.21/2008 registered at police station New Ashok Nagar, Delhi against him.

2. Further seeks direction thereby setting aside the impugned order dated 31.07.2010 passed by learned Additional Sessions Judge, Karkardooma Courts, Delhi whereby Criminal Revision Petition

No.52/2010 filed by petitioner against order of learned Trial Court was dismissed.

3. Also seeks direction to quash the FIR mentioned above, against him.

4. It is pertinent to mention at the outset that petitioner and respondent No.2 *inter-se* have a long history of litigation.

5. Learned counsel appearing on behalf of petitioner submitted that the petitioner had entered into a lease agreement with the spouse of respondent No.2 on 11.10.1994 in respect of building bearing No.1027, 100 Feet Road, II Stage, Indra Nagar, Bangalore. Till date, petitioner is staying in the said premises despite various litigations between the parties. The wife of respondent No.2 had filed suits for eviction before City Civil Courts, Bangalore against petitioner and his wife. Due to harassment tactics adopted by respondent No.2 and his wife and to force the petitioner and his wife to vacate the leased premises without due process of law, a complaint dated 28.06.2006 was lodged by petitioner against respondent No.2 and his wife. In retaliation to said complaint, respondent No.2 filed a false complaint against petitioner and his wife alleging for the criminal trespassing etc before the Courts at Bangalore. Thereafter, again on 13.09.2006, another complaint was lodged by respondent No.2 and his wife alleging theft of certain iron grills etc of the premises leased out to the company of the petitioner as well as his wife. When respondent No.2 and his wife failed to get the said premises vacated with due process of law, the present FIR has

been lodged by respondent No.2 based on false and frivolous allegations.

6. Learned counsel submitted that alleged incident reported in the FIR took place on 07.12.2007, but the respondent No.2/complainant lodged the report with the police only on 18.01.2008 i.e. after 1½ month. Leave aside; the petitioner joined the investigations on 30th and 31st May, 2008 at Bangalore. Thereafter, petitioner was also called by the police at Delhi to join the investigations on 10.06.2008. Thereafter, petitioner applied for the anticipatory bail which was granted by learned Additional Sessions Judge vide order dated 12.06.2008.

7. He further submitted that on a bare perusal of the FIR it is clear that it does not disclose commission of any offence whatsoever even under Section 506 of the IPC. The petitioner being aggrieved of the aforementioned FIR, filed a quashing petition vide CrI M C No.3883/2008, which was dismissed as infructuous vide order dated 17.11.2009 consequent to filing of a closure report under Section 169 Cr P C by the State with liberty to the petitioner to take appropriate steps in accordance with law.

8. Thereafter, respondent No.2 filed a protest petition being CC No.35/2009 in FIR No.21/2008 before the ACMM, Kakardooma Courts, Delhi. The ACMM vide order dated 06.05.2010, without any material or evidence on record, rejected the closure report filed by the police and took cognizance and summoned the petitioner for the offence punishable under Section 506 of the IPC.

9. Learned counsel further submitted that respondent No.2 earlier also tried to rope the petitioner in false case, however could not succeed and the Karnataka High Court observed strictly against respondent No.2 in W.P. No.3111/2011 and Criminal Petition No.3208/2011. The present case against petitioner is to put pressure and get the premises vacated without due process of law, thus, it is the misuse of the judicial process as respondent No.2 succeeded in the present case. It is also pertinent to mention here that the father of respondent No.2 was in influential position at Delhi, therefore, he adopted all tactics to pressurise the investigating agency through various agencies to book the petitioner, but petitioner could save his skin from the Court of law.

10. The present case against the petitioner is that the petitioner being the director of M/s Carpenter Classic Exim Private Limited, Bangalore had entered into a lease agreement with the wife of respondent No.2 on 11.10.1994 in respect of the building mentioned above. Respondent No.2/ complainant received two threatening calls made on 23.11.2007 and 07.12.2007 which were received on his landline phone number 22711141. Accordingly, police registered the case FIR mentioned above under Section 387/506 of the IPC. After investigation, police filed the status report wherein it was submitted that there is no evidence available to prove that respondent No.2 had received threatening calls at his landline number from petitioner. However, learned Trial Court on considering the protest petition filed by respondent No.2, took the cognizance in the FIR in question for the

offence punishable under Section 506 of the IPC against petitioner.

11. Respondent No.2 appeared in person and submitted that lease agreement with the petitioner had expired in June 1998 and was not renewed because of the DRI/Income Tax raid on the leased premises in the months of October / November, 1997, which was sealed by them when petitioner and his wife both collected incriminating documents in the portion in which the petitioner had occupied for themselves for residential and personal use. After such raid, the petitioner initiated litigation against respondent No.2 and his wife in June 1999 by instituting an injunction suit which was dismissed in the year 2004 and further continued with his criminal activities in the form of criminal trespass and theft of building property etc. Finally, respondent No.2 and his wife were constrained to file eviction suit in the month of June, 2005 which is still pending for quantification of the damages / mesne profits as the petitioner and his wife stopped paying the rental. Moreover, the petitioner had tried to rob the respondent No.2 and his wife in false cases, however, he could not succeed. Thereafter, he made threatening calls on 23.11.2007 and 07.12.2007 to which respondent No.2 approached the police and same has culminated in to registration of FIR No.21/2008. The concerned Investigating Officer of the case was hand in glove with the petitioner, therefore, the police filed the closure report showing that there was no evidence against the petitioner. However, respondent No.2 filed the protest petition. Accordingly, learned Trial Court vide order dated 06.05.2010 issued summons against petitioner under Section 506 of the IPC.

12. I have heard learned counsel for parties as well as respondent No.2, who appeared in person, at length.

13. The police investigated the matter with respect to call details of five numbers though many numbers were given to them by respondent No.2. As far as the investigation is concerned, the police is of the view that since no clue came out with respect to these call details, no case is made out against the petitioner. However, it is not the case that some adverse evidence is found in favour of petitioner which denies the probability of commission of crime and due to that reason closure report was filed. The police has also not come to the conclusion that respondent No.2 filed untrue complaint against the petitioner.

14. It is not in dispute that petitioner and respondent No.2 have been litigating since long and both had filed cases against each other, but from that it cannot be presumed that complaint filed by respondent No.2 is untrue without any basis and veracity thereof can be decided during trial after leading evidences by respective parties. Accordingly, learned Trial Court vide order dated 06.05.2010 despite having closure report under Section 169 Cr P C, found sufficient material to proceed against the petitioner under Section 506 of the IPC and summoned him.

15. Feeling aggrieved, petitioner filed the Criminal Revision Petition No.52/2010 before learned Additional Sessions Judge, Karkardooma Courts, Delhi which was also dismissed vide order dated 31.07.2010.

16. The case of the petitioner is that two threatening calls were made

on 23.11.2007 and 07.12.2007 which were received on telephone number 22711141. In the present case, there is complaint written by respondent No.2 to the police specifying the threats given by the petitioner and accordingly, learned Trial Court has summoned the petitioner under Section 506 of the IPC.

17. It is not in dispute that there are litigations pending between the petitioner and respondent No.2, who filed protest petition against the closure report of the police and thereon learned Trial Court has taken cognizance and same has been confirmed by learned Revisional Court. The action resorted to by petitioner is not permissible under law unless the orders are illegal or perverse. No doubt, the powers can be exercised under Section 482 Cr P C if the proceedings are manifestly attended with malafide and maliciously instituted as held by the Apex Court in the case of *State of Haryana v Ch.Bhajan Lal & Ors : AIR 1992 SC 604* as under:-

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7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

18. However, the relevant contents of the complaint dated 18.01.2008 made to the SHO, PS New Ashok Nagar, Delhi are as under:-

“Mr.Karumbaiah called our Tel No.22711141 on 07-12-2007 at about 03.40pm and threatened me while using abusive language, that “Mr.Rao, I am

warning you, withdraw the criminal cases, you cannot get your property back ... my goondas in Delhi will kill you, ... your family's life is also in danger, I have international connections ... they will break all your bones, you will not be left in one piece.. you better give up your property to me or give me 3 crores....” He had previously called on 23-11-2007 at 05.50pm and made similar threats, the phone call was attended by wife Mrs.Padmanlini G. Rao.”

19. As alleged by the petitioner, there are disputed questions of facts which can be considered by learned Trial Court during trial. The petitioner will get the liberty to defend his case, but at this stage the trial cannot be stopped by quashing the proceedings, as sought by petitioner. Moreover, the petitioner has failed to establish any illegality or perversity in the orders passed by learned Trial Court as well as learned Revisional Court. Therefore, I am not inclined to exercise inherent powers under Section 482 Cr P C of this Court.

20. Finding no merit in the instant petition, same is accordingly dismissed with directions that petitioner shall remain exempted from personal appearance before learned Trial Court through counsel until called by the Court to personally appear for the purpose of trial or any other contingency.

21. Before parting with the instant order, it is also relevant to note that vide order dated 11.10.2012, Trial Court Record was requisitioned and is available in this Court. The FIR pertains to the year 2008 and summoning order is dated 06.05.2010 and matter was pending for consideration on the application under Section 173(8) Cr P C. In the

facts of the case, learned Trial Court is expected to proceed with the matter as expeditiously as possible.

22. Both the parties are directed to appear before learned Trial Court/Successor Court on 08.12.2015 for further directions.

23. Registry to remit the both TCRs with copy of this order.

Crl. M.A. No.19349/2012 (u/Sec 340 Cr P C by R2)

Dismissed as infructuous.

**SURESH KAIT
(JUDGE)**

November 23, 2015
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