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

Judgment delivered on: 8th September, 2015

+ **CRL.M.C. 2544/2015**

SANT PRASAD OJHA Petitioner

Represented by: Mr. R.M. Sinha, Advocate.

Versus

STATE NCT OF DELHI AND ORS Respondents

Represented by: Ms.Meenakshi Chauhan,
Additional Public Prosecutor
for the State.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl.M.A. No.9056/2015 (for delay)

Keeping in view the averments made in the instant application and the submissions made by learned counsel for the petitioner, the delay of 55 days in filing the petition noted above is condoned.

The application stands disposed of.

CRL.M.C. 2544/2015

1. Vide the present petition, the petitioner has assailed the order dated 15.10.2014 passed by the learned Additional Chief Metropolitan Magistrate (ACMM), New Delhi, and the order dated 30.01.2015 passed by the learned Additional Special Judge, CBI, Delhi.

2. Consequently, seeks directions to register an FIR enquiring as to whether the respondents and the police adopted due process of law

in enforcing the eviction orders dated 25.02.2010 and 15.03.2010.

3. Brief facts of the case are that the petitioner was residing at Quarter No.14/179, New Birla Lines, Kamla Nagar, Delhi-110007 alongwith his family members since 1976. M/s Taxmaco Limited filed a complaint against the petitioner in respect of the aforesaid quarter in the court of the learned ACMM, Delhi, in which case, vide order dated 25.02.2010, the petitioner was convicted under Section 630 of the Companies Act, 1956 (hereinafter to be referred as the 'Act') and he was directed to vacate the aforesaid quarter. The petitioner challenged the aforesaid order by filing an appeal under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as 'Cr.P.C.'), which was also dismissed by the Court of Sessions on 30.04.2010.

4. Though the petitioner was having legal right to file a Criminal Revision before this Court within 90 days of the dismissal of an appeal, however, he failed to do so.

5. On 03.06.2010, the petitioner was informed telephonically that the respondents with criminal conspiracy and common intention broke open the locks of the aforesaid quarter and committed dacoity and took away cash of Rs.35,000/- – Rs.40,000/- and jewellery of Rs. 5-6 lakhs, which was kept in Almirah and boxes in the quarter and thrown out the household articles on road and took the possession of the house illegally.

6. The petitioner informed the police, however, no action was taken. Thereafter, he filed a complaint bearing CC No.241/K/10

under Section 200 Cr.P.C. In pre-summoning evidence, the petitioner has examined himself as CW-1, Sh. Kali Kant Jha as CW-2 and Sh. Pankaj Kumar, LDC record room (Criminal), Tis Hazari Courts, Delhi, as CW-3. Thereafter, the pre-summoning evidence was closed.

7. The learned Trial Court rejected the complaint of the petitioner vide its order dated 15.10.2014 on the ground that the testimony of the petitioner regarding taking the cash amount and the jewellery from the house appears to be motivated and has no substance. There is no particular or details of the jewellery mentioned and even the source of the cash is also not mentioned. Even there is no mention about the cash or the jewellery in the complaint Mark-G given by the petitioner made to the higher police officers through telegram on 05.06.2010. Accordingly, the learned Trial Court opined that the testimony of the CW-1/petitioner appears to be highly improbable as when he had to go to Allahabad for looking after his case and for the purpose of the delivery of his son's wife, why he would leave such an huge amount of cash at home and would not take it with him for meeting out the expenses.

8. It is pertinent to mention here that vide judgment dated 25.02.2010 and order on sentence dated 15.03.2010, the petitioner was convicted for the offence punishable under Section 630 of the Act and was directed to hand over the vacant possession of the property in question to M/s Taxmaco Company.

9. On the institution of the complaint noted above, the learned Trial Court called for the action taken report from the SHO of PS

Roop Nagar as to why the FIR was not registered on the complaint of the petitioner. Pursuant thereto, the said SHO filed the action taken report and submitted therein that the possession of the quarter was taken as per the compliance of the order of the learned Trial Court dated 25.02.2010 and after execution of the court order, a compliance report was also submitted in the court.

10. Being aggrieved by the aforesaid order, the petitioner challenged vide Criminal Revision No.01/2015 on the ground that the said order is contrary to law and has been passed without application of judicial mind. The learned Trial Court has caused miscarriage of justice by not following the provisions of Sections 82 and 83 Cr.P.C., which were necessary for getting the possession of the quarter in question. The petitioner even otherwise was never declared as 'Proclaimed Offender' and is suffering from various ailments. Thus, the learned Trial Court has overlooked the reply filed by the SHO, PS Roop Nagar to the application under Section 156 (3) Cr.P.C. Cr.P.C.

11. It is not in dispute that the complaint under Section 630 of the Act was filed against the petitioner before the learned ACMM, Delhi, alleging that he was allotted one quarter for convenience and for exigencies attached to his job, as he was working in the Mill of the Company. After service of the petitioner came to an end with the said Company, he was asked to vacate the said quarter which he did not. Therefore, the Company was forced to file an application under Section 630 of the Act.

12. The learned Revisional Court dismissed the revision of the

petitioner vide order dated 30.01.2015 and opined that since the quarter of the Company has been got vacated by the order of the learned ACMM, pursuant to the judgment dated 15.03.2010, whereby the petitioner was convicted under Section 630 of the Act and even the appeal preferred by the petitioner was also dismissed thereafter. Since the petitioner had exhausted all his legal remedies which were available to him as per law and was not appearing despite issuance of NBWs against him, therefore, the learned Trial Court was fully justified in ordering the police officials to get the quarter vacated in compliance of order dated 15.03.2010. As per the report of police officials, inventory of articles, which were found there at the time of vacation of the quarter in question, was prepared. Moreover, the learned Trial Court was not under an obligation to issue process under Sections 82 and 83 Cr.P.C. for getting the said house vacated.

13. Learned counsel appearing on behalf of the petitioner submits that the petitioner was convicted under Section 630 of the Act, therefore, the learned trial Court ought to have adopted the procedure as prescribed under the provisions of Sections 630 and 634 of the Act. Instead of taking recourse of the aforesaid provisions, the learned Trial Court directed the police to get vacated the quarter in question from the petitioner. Thus, the order dated 15.10.2014 passed by the learned Trial Court is illegal. Consequently, the order dated 30.01.2015 passed by the Revisional Court is also illegal and perverse.

14. Admittedly, the petitioner did not raise above issue before the two Courts below, therefore, at this stage, it is not available to the

petitioner.

15. During the arguments, learned counsel for the petitioner does not dispute the order dated 25.02.2010, whereby the petitioner was convicted under Section 630 of the Act. Though the said order attained finality after availing the remedies available to the petitioner, he did not vacate the premises in question. Therefore, the learned Trial Court vide order dated 25.02.2010 directed the concerned SHO to file the compliance report after taking possession of the quarter. Accordingly, the concerned SHO made the inventory of the articles found therein and taken the possession.

16. Two options were available before the learned Trial Court either to proceed with the provisions prescribed under Sections 630 and 634 of the Act or the procedure as adopted by the learned Trial Court.

17. Moreover, after the order of conviction dated 25.02.2010 and order on sentence dated 15.03.2010 passed by the learned Trial Court, the petitioner had no right to stay in the quarter in question. However, despite the aforesaid orders and dismissal of the appeal against the same, the petitioner failed to handover possession of the said quarter to the Company. In such an eventuality, I am of the considered opinion that the learned Trial Court has rightly and properly directed the SHO concerned to take possession of the quarter in question, which was taken accordingly.

18. In view of the discussion above, I find no illegality in the orders passed by two Courts below.

19. Accordingly, finding no merit in the petition, same is dismissed with no order as to cost.

**SURESH KAIT
(JUDGE)**

SEPTEMBER 08, 2015
Sb/RS