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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of hearing and Order: August 12, 2016

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CRL.M.C. 2221/2013

ASHOK KUMAR

..... Petitioner

Through: Mr. Santosh Banerjee, Advocate

versus

NCT OF DELHI & ORS.

..... Respondent

Through: Mr. G.M. Farooqui, Additional Public
Prosecutor for the State with Sub-
Inspector Rajpal, Police Station Uttam
Nagar, Delhi
Mr. Mukesh K. Verma, Mr. Harish C.
Pant, Advocate for respondent No. 3

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

12.08.2016

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P.S.TEJI, J. (Oral)

1. By this petition filed under Section 482 of Cr. P.C. the petitioner seeks to challenge the order dated 31.01.2013 whereby the learned Additional Sessions Judge dismissed the Crl. Revision No.76/2012 filed by the petitioner against the order dated 06.04.2010 passed by learned Metropolitan Magistrate in FIR No. 889/2001 Police Station Uttam Nagar, Delhi.

2. The facts leading to the present case are that on 20.04.2000 the

petitioner had purchased a plot measuring 190 sq. yds. from the owner Shri Ram Kumar and sold 100 sq. yds of the same back to him. Accordingly the petitioner was left with 90 sq. yds of the plot. On 25.07.2001 and 17.08.2001, the petitioner came to know that the respondent Nos. 2 and 3 have encroached upon his property and after taking possession thereof, they were carrying out digging work. The petitioner lodged a complaint in Police Station Uttam Nagar. Consequently the FIR No. 889/2001 was registered. For the purpose of protecting his rights, the petitioner instituted a Civil suit No.228/2001 against respondent No. 3, which was compromised and it was decided that respondent No. 2 and 3 would hand over the possession of the plot to the petitioner and the petitioner will cooperate in quashing of the FIR registered against them. Neither, FIR was quashed nor respondent No. 2 and 3 handed over possession of the plot to the petitioner.

3. Petitioner again instituted a fresh suit which was dismissed by the learned Civil Judge, Tis Hazari courts, Delhi on 27.04.2012. Aggrieved by that order, the petitioner preferred an appeal bearing No.50/2012, which is pending adjudication. On the other hand, petitioner came to know that in a case registered against respondent Nos. 2 and 3 vide FIR No. 889/2001, the learned Metropolitan Magistrate had discharged respondent No. 2 and 3 and against which the petitioner preferred revision petition before the learned Additional Sessions Judge, which was ultimately dismissed vide order dated 30.01.2013. Now, the petitioner is before this Court by way of the present petition under Section 482 of Cr.P.C.

4. Mr. Santosh Banerjee, learned counsel for the petitioner contended that the petitioner is a bonafide owner of the plot measuring 90 sq. yds at Khasra No.44/25, at Village Hastal, Delhi known as Mohan Garden, Block L-1, New Delhi. It is further contended that immediately upon coming to know that the respondent No. 2 and 3 got illegal possession of the plot of the petitioner, he lodged the FIRs and also filed civil suits against them. First civil suit was dismissed as compromised and when the terms of settlement could not be acted upon, the petitioner filed another civil suit for declaration and possession, which was also dismissed. Appeal against the order of dismissal is pending adjudication. Later, the petitioner also came to know that the respondent No. 2 and 3 have been discharged by learned Metropolitan Magistrate against which the Revision petition filed before the learned Additional Sessions Judge was also dismissed.

5. Learned counsel for the petitioner has contended that the possession of the property was never handed over by respondent No. 2 and 3 to him, therefore the FIR registered against them was not quashed. Learned counsel for the petitioner contended that the Trial Court has committed error in holding that *'the property that is required to be complained of should be in undisputed possession of a person who had complained of the said trespass'*. That the petitioner was in absolute possession of the plot in question, as stated in FIR as well as statement recorded under Section 161 of Cr.P.C. It was further contended on behalf of the petitioner that mere pendency of a civil litigation, does not mean that there cannot be any case of trespass and

the learned Metropolitan Magistrate has wrongly held that '*the pendency of a civil litigation inter-se the parties where the issue of possession of the plot was involved, no case of trespass was made out*'.

6. Learned counsel for the petitioner further contended that the learned Metropolitan Magistrate ought to have directed to carry out further investigation under Section 173(8) of Cr.P.C. in the matter, but rather, the learned Metropolitan Magistrate discharged the accused persons (respondent No. 2 and 3) and that too without affording any opportunity of being heard to the petitioner. In the similar fashion, learned counsel for the petitioner contended that the learned Additional Sessions Judge has dismissed the revision petition preferred against the order passed by learned Metropolitan Magistrate.

7. In response to the present petition, respondent No. 3 has filed her reply stating therein that the present matter is purely of a civil nature and there is no illegality in the order passed by learned Metropolitan Magistrate. It is further stated that the petitioner had filed multiple cases against her. However, there is no mention of her name in the complaint filed by the petitioner. However, after making statement in Civil Suit No.228/2001 nothing remains against the respondent. It is contended that the orders passed by learned Metropolitan Magistrate as well as learned Additional Sessions Judge are reasoned orders and the same have been passed after considering the material evidence and applying the principles of law. Therefore,

the present petition is liable to be dismissed.

8. I have heard the rival submissions made on behalf of both the sides and have also gone through the impugned orders passed by the learned Metropolitan Magistrate and the learned Additional Session Judge discharging respondent No. 2 and 3.

9. Upon perusal of the contents of the petition, impugned orders and the material placed on record, this Court observes that the learned Metropolitan Magistrate held that the offence complained of is one of house trespass punishable under Section 448 of IPC. While arriving at the conclusion, the learned Metropolitan Magistrate has observed that Section 442 deals with 'house trespass' and relates to the premises which is used as a 'human dwelling' or for custody of the property. It was opined by the Trial Court that Section 442 of Cr.P.C. is not attracted in the present case as the property which alleged to be trespassed was not the 'dwelling house'. Though, the counsel for the petitioner contended that there were four walls and one room was situated at the property but admittedly the said room was vacant, therefore, it cannot be termed as 'dwelling house'.

10. Apart from the aforesaid, learned Metropolitan Magistrate observed that the property has to be in an undisputed possession of a person upon whose property and with respect to whose property, offence under consideration ensues. There should be an intention of a person entering or remaining in possession to commit an offence or to intimidate, insult or annoy the person in possession of property. The

basic ingredients of the offence of criminal trespass were not found by learned Metropolitan Magistrate. It is also an admitted fact that the complainant/ petitioner was not in an undisputed possession over property in question. Rather, he was aware of the claims made by accused persons over the property and the basis of those claims. Civil litigation concerning the property is also pending adjudication and another criminal matter is also pending. In such a situation, the Trial Court, after considering the material placed on record, opined that if the case is further proceeded or the accused is put to trial, then the same would be a futile exercise, which could not be culminated into conviction. Finding no prima facie case against the accused person, the Trial Court discharged the respondents from the offence punishable under Section 448 of IPC. The relevant extracts from the order of learned Metropolitan Magistrate is reproduced herein below :

“The property has to be in an undisputed possession of a person upon whose property and with respect to whose property, offence under consideration ensues. Then comes the intention of a person entering or remaining in possession to commit an offence or to intimidate, insult or annoy the person in possession of property. The basic ingredients of offence of Criminal Trespass have to be prima facie satisfied before delving and adding on to further requirements as per offence under consideration.

In the present matter, complainant was not in an undisputed possession over property in question. Complainant was aware of the claims made by accused persons over the property and the basis of those claims. This factum further dents in inference of any prima facie intention of accused persons to commit an offence or to

insult, intimidate or annoy the complainant. Civil litigation concerning the property is pending adjudication. Another criminal matter is also pending adjudication, which, at this stage, appears to be source of other disputes with the incident in question only another manifestation. Further, it is settled tht court after considering material on record, must go on to snub or nip the proceedings in the bud, if taking the case further or putting the accused to trial appears to be a futile exercise and which cannot culminate into conviction.”

11. This Court also perused the order passed by learned Additional Sessions Judge in criminal revision preferred by the petitioner against the order passed by learned Metropolitan Magistrate, wherein the learned Additional Sessions Judge was of the opinion that since the complainant was not in possession of the property and was aware of the claims of the respondents over the property, apart from the fact that other criminal case is pending and the dispute being primarily for the possession, no case under Section 448 of IPC was found to be made out against the respondents and accordingly, while upholding the order of learned Metropolitan Magistrate, the learned Additional Sessions Judge dismissed the revision preferred by the petitioner.

12. In view of the aforesaid discussion and the facts and circumstances of the present case, the order dated 06.04.2010 passed by learned Metropolitan Magistrate and order dated 30.01.2013 passed by learned Additional Sessions Judge are upheld as the same do not suffer from any serious legal infirmity and rather it was eminently a just and fair order and this Court finds no reason to take a different

view from the said order. However, the petitioner would be at liberty to take appropriate legal remedies as available under the law.

13. Finding no merit in the present petition the same is hereby dismissed.

(P.S.TEJI)
JUDGE

AUGUST 12, 2016
pkb

