

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of hearing and order: August 09, 2016

+ CRL.M.C. 1350/2016
GAJRAJ SINGH Petitioner
Through: Mr.Amit Kumar, Advocate
versus
MOHINDER SINGH & ORS. Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI
ORDER

P.S.TEJI, J. (Oral)

1. The present petition under Section 482 Cr.P.C. has been filed by the petitioner, for setting aside the order dated 21.01.2016 passed by learned Additional Sessions Judge/ Special Judge, CBI-03, South District, Saket Courts, New Delhi passed in Criminal Revision No.60/2015. The said revision petition was preferred against the order of learned Metropolitan Magistrate dismissing the application of the petitioner to summon the respondents for the offence of theft of water under Sections 379/34 of IPC.

2. The factual matrix of the present case is that one Sh. Pritam Singh S/o Sh. Mange Ram was the owner of the house bearing No.19/186, Dakshinpuri, Dr. Ambedkar Nagar, New Delhi. Sh. Pritam Singh sold his house to the Petitioner vide registered document dated 29.11.2005. At the time of purchase, Respondent No.2 was residing at the ground floor of the said house. She undertook to vacate the house i.e. the ground floor by 10.01.2006. However, instead of vacating the said floor, she filed a suit for permanent injunction. It is the case of the petitioner that the respondents were illegally drawing water from the

water connection No. 16444 of the petitioner and the petitioner did not disconnect the water pipeline or electricity connection of the respondents. That the respondents who were illegally residing in the ground floor of the said property, committed theft of water by using electric motor pump of the petitioner and till 20.10.2011 respondents committed theft of water of 82 kilo liters and till 26.02.2014, 304 kilo liters of water had been consumed by the respondents. The petitioner made a complaint to Ambedkar Nagar Police Station on 23.11.2011 regarding theft of water. The petitioner also has in his possession a bill dated 23.05.2013 pertaining to water connection no. 16444 which shows that the respondents have dishonestly and without the consent of the petitioner used the water to the extent of Rs.16,854/-. It is the case of the petitioner that the respondents have committed the offence of theft of water under section 379 IPC. Further, the respondents have fraudulently and dishonestly deceived the officials of DJB by inducing them not to disconnect the water connection. Thus they have committed offences under sections 418/ 420 IPC.

3. Mr. Amit Kumar, learned counsel for the petitioner contended that on the application filed under Section 156(3) of Cr.P.C. the learned Metropolitan Magistrate directed the police to file ATR in which it has categorically been mentioned that the respondents are unauthorizedly using the water connection of Delhi Jal Board for the last 10 years. In the pre-summoning evidence, the complainant also supported his case and in his support he also examined on oath Shri Naveen Gupta, UDC, DJB, who has also confirmed that the water

connection No.16444 is in the name of the complainant petitioner and the complainant has given a number of applications for disconnection of his water connection but the said water connection is still in use. It is further submitted that despite all this, the learned Metropolitan Magistrate dismissed his application finding no sufficient material to substantiate the allegations of the petitioner. Aggrieved by the said order, the petitioner also preferred revision petition before the learned Additional Sessions Judge who had also dismissed the same while holding that the dispute between the complainant and the respondent is civil in nature and civil remedy has always been available to the petitioner for recovery of the amount paid by him towards water consumption from the respondents.

4. I have heard the contentions raised on behalf of the petitioner and also gone through the impugned order as well as the material placed on record.

5. Admittedly, the petitioner had purchased the property in which possession of the ground floor was given to respondent No. 2 and who had given undertaking to the effect that she will vacate the premises by 10.01.2006. In between, the respondent No. 2 filed a suit for permanent injunction against her father, in which the learned Civil Judge passed an order dated 15.12.2005 directing to maintain status quo in request of the possession of the property. Since then the respondent No. 2 continued to reside at the ground floor portion of the property, in which water as well as electricity connection was installed in the name of the complainant, but the respondent No. 2 did not pay

the electricity as well as water dues. Consequently, the petitioner lodged complaints in concerned departments, but no action was taken since the civil suit was pending and the status quo order was operating in the matter.

6. I have also gone through the impugned order dated 10.09.2015 passed by learned Metropolitan Magistrate wherein it is also indicated that civil suit is still subjudice in respect of the property in dispute, therefore, no ground was made out to summon the accused persons for the offence of theft of water. Accordingly, finding no merit in the case, the same was dismissed.

7. Aggrieved by the aforesaid order, the petitioner approached the learned Additional Sessions Judge, by filing a revision petition, in which the settled principle of law was discussed according to which the dispute of civil nature cannot be legally allowed to become subject matter of criminal proceedings.

8. After considering the aforesaid legal principles, this Court finds no reason to disagree with the findings of the learned Metropolitan Magistrate as well as learned Additional Sessions Judge and finding no ground to interfere in the impugned order, the present petition is dismissed.

(P.S.TEJI)
JUDGE

AUGUST 09, 2016
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