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

% *Date of Decision : September 08, 2016*

+ **CRL.M.C. 892/2015**

ATUL TALWAR Petitioner
Represented by: None

versus

STATE Respondent
Represented by: Mr.Amit Ahlawat, APP

CRL.M.C. 908/2015

BACHHAN SINGH & ORS Petitioners
Represented by: None

versus

STATE (GOVT OF NCT OF DELHI) Respondent
Represented by: Mr.Amit Ahlawat, APP

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J. (Oral)

1. The complainant Rajiv Nangia filed a complaint dated January 19, 2004 before the Metropolitan Magistrate naming Atul Talwar as A-1. Bachhan Singh as A-2. Harihar as A-3. Satish Jain as A-4. M.P.Gautam as

A-5. As per the complaint the father of the complainant i.e. Sh.V.N.Nangia, is the owner of the basement and ground floor of building bearing Municipal No.B-1, Masjid Moth, Greater Kailash, New Delhi and Atul Talwar A-1 is the owner of the Ist, IInd and IIIrd floor of the said building. That on January 19, 2004 all the accused acting in concert came to the property in question. A-4 and A-5 held his father at gun point and threatened to kill him if he did not sign on stamp papers relating to the property in question.

2. The version of Atul Talwar A-1 is that on January 19, 2004 a verbal altercation between ensued between him and V.N.Nangia, the father of the complainant because V.N.Nangia prevented him from obtaining a separate water line to his house and at that time A-2 to A-5 who were plumbers and their labour were present. He pointed a toy gun at the complaint and his father.

3. It is not in dispute that police personnel from PS Chitranjan Park reached the site of the quarrel and prepared a kalandara under Section 107/151 of the Cr.P.C.

4. The complainant filed a written complaint with the local police on January 19, 2004 stating his version of the altercation, on the basis of which an FIR was registered.

5. It is not in dispute that the Special Executive Magistrate, vide order dated January 29, 2004 recorded that the dispute between the parties was of a civil nature and ordered that no proceedings under Section 107 of the Cr.P.C. should be initiated.

6. Thereafter, the complainant approached the Metropolitan Magistrate under Section 156(3) of the Cr.P.C. In response the local police affirmed the version put forth by A-1. However, the learned M.M. vide order dated

January 01, 2005 directed the local police to register an FIR for an offence under Section 506 of the IPC on the ground that it had been acknowledged by the local police that the accused had been present at the site of the altercation and A-1 had been in the possession of a gun.

7. Vide order dated December 12, 2013, MM-09/South East, Saket Courts framed charges for offence under Sections 387/506/34 of the Penal Code. Thereafter, A-1 to A-4 preferred a revision against the order dated December 12, 2013, which has been rejected by the learned District & Sessions Judge vide order dated December 24, 2014.

8. Learned counsel for the State does not dispute that when the police personnel of CR Park reached the spot whereas seizure of a toy pistol from A-1 was effected, no stamp papers were seized and very fairly concedes that under the circumstances charge for the offence punishable under Section 387 of the Indian Penal Code cannot be sustained.

9. Learned counsel for the State further concedes that the toy pistol seized from A-1 was a harmless toy.

10. Aforenoted facts show that the complainant's father is the real bully who prevented A-1 from installing a water supply line to the floors owned by him. When the complainant and his father accosted the plumbers and their labour who were working at the site, A-1 took out a harmless toy pistol.

11. In my opinion Section 95 of the Penal Code would be attracted for the reason no person of ordinary sense and temper would feel intimidated if a toy pistol is pointed towards him.

12. Allowing the two petitions I quash FIR No.95/2005 PS Chitranjan Park as also the order framing charges against the accused for offences

punishable under Section 387/506/34 IPC.

CrI.M.A.No.3373/2015 in CrI.M.C.No.892/2015

CrI.M.A.No.3410/2015 in CrI.M.C.No.908/2015

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 08, 2016

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