

\$~66

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

+ CRL.REV.P. 524/2016

STATE (NCT) OF DELHI

..... Petitioner

Through: Ms.Manjeet Arya, APP.

versus

JAG ROSHNI

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

% **10.08.2016**

Crl.M.A.No.12351/2016

Allowed subject to just exceptions.

The application stands disposed of.

Crl.Revision Petition No.524/2016 and Crl.M.A.No.12350/2016

1. The present petition has been filed under Section 397 read with Section 401 Cr.P.C. and Section 482 Cr.P.C. for setting aside the order dated 17.02.2016 passed by the learned ASJ in Crl.Revision Petition No.44/2016 arising out of FIR No.374/2006 registered under Section 448/506/34 IPC at PS: Nand Nagri and for upholding the order dated 27.07.2015 passed by the learned MM whereby a

direction was passed for framing charges under Sections 451/506/34 IPC and charges were framed under the said Sections against the respondent.

2. The facts of the case in a nutshell are that the complainant/Sh.Madan Lal Arora had purchased the property in question in village Mandoli from one Sh.Dharamvir on 19.08.2003 and since then he was in possession of the same along with two tenants. On 11.04.2006 both the tenants of the complainant were out of station and the property was locked when four persons namely Gaje Singh, Anis Kumar, Jahid and Salim broke open the lock and entered in the property. The complainant informed the police and the possession was restored to him. On 12.04.2006, the same persons again came there and forcibly entered the property. They gave threats to the complainant to capture his property forcefully. The complainant was beaten up by the accused persons and the accused threw away his household articles. Again the complainant called the police and the accused persons were taken away by the police. On 17.04.2006, the complainant filed a complaint with ACMM, Shahdara along with an application under Section 156 (3) Cr.P.C. A direction was given to

police to register a case. Finally charge sheet was filed in the matter against the respondent and Gaje Singh under Sections 448/506/34 IPC.

3. Vide order datd 27.07.2015, the learned MM framed charges against both the accused persons for the offences punishable under Sections 451/506/34 IPC.

4. Aggrieved with the said order, the accused persons preferred a revision petition being Crl.Revision No.44/2016. The said revision petition was disposed of vide order dated 17.02.2016 with the finding that both the complaint as well as the charge sheet are silent about the physical appearance of the respondent at the place of incident. Thus there was no question of the respondent being involved in the incident. Also, there were no allegations against the respondent of extending any threat to the complainant and that still she was charge-sheeted for the offence under Section 506 IPC. The revisional court thus directed that charges be framed against accused Gaje Singh only for the offence under Section 451/506 IPC and the respondent was discharged in the same.

5. The learned APP for the State has raised the following grounds

in support of the petition that the learned ASJ erred in completely ignoring the statements under Section 161 Cr.P.C. dated 25.02.2008 and 08.06.2009 of the tenants of the complainants namely Pappu and Gopal as they have made specific allegations against the respondent regarding the incident dated 12.04.2006; that the learned ASJ failed to appreciate the conclusion arrived after investigation in the charge sheet that the respondent along with her husband took possession of over the entire piece of land measuring 300 square yards by use of force and criminal intimation; that the IO, as alleged by the revisional court, has not the job of a civil court as he has categorically stated in the charge sheet that PCR calls were being received by the police on and off and proceedings under Section 107/150 Cr.P.C. were also instituted to maintain peace pending the decision of Gram Sabha as to the entitlement of the disputed land; that at the time of framing of charge, the probative value of the material on record has not been gone into; and that the truth, veracity and effect of the evidence which the prosecution proposed to adduce were not to be meticulously judged and no weight ought to have been given to the probable defence of the accused.

6. I have heard the learned APP for the State and perused the record.

7. I am in agreement with the finding arrived at by the Revisional Court to the effect that both the complaint as well as the charge sheet are silent about the physical presence of the respondent at the place of incident. Also, there are no allegations against the respondent of extending any kind of threat to the complainant, either in the complaint or in the statement of the complainant or the other witnesses (tenants) of the complainant and still she has been charge sheeted for the offence under Section 506 IPC. The fact that she was found to be residing in the property cannot be a sole ground for framing a charge against her as the wife normally resides with her husband and therefore for want of any overt act on the part of wife, she cannot be impleaded as an accused for offence which is allegedly done by her husband.

8. Also, the present petition is barred by limitation as the same has been filed with a delay of 50 days and CrI.M.A.No.12350/2016 has been moved in this regard. I have gone through the same and I do not

find that any sufficient cause as stipulated under Section 5 of the Limitation Act, 1963 has been shown for condoning the delay. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. Thus, the application seeking condonation of delay is dismissed and in view of detailed discussion in the preceding paragraphs, I do not find any infirmity or illegality with the impugned orders and the present petition is also dismissed.

P.S.TEJI, J

AUGUST 10, 2016/dm