

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

+ CRL. M.C. 4394/2012

% Reserved on: 13th July, 2016
Decided on: 25th July, 2016

NAVDEEP KUMAR

..... Petitioner

Through: Mr. Sameer Chandra, Mr. Pratush
Sharma & Mr. Naveen Sarena, Advs.

versus

SUNITA JAIN

..... Respondent

Through: In person.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. A criminal complaint was filed by the petitioner for summoning the respondent, his wife for offence punishable under Sections 380/448/451/506 IPC. In the complaint it was stated that the petitioner had purchased a property bearing No.32-A, Top Floor, Gali No.4, Mohan Park, West Guru Angad Nagar, Delhi (in short 'the property') in his own name by his own resources vide registered general power of attorney dated 4th June, 2004, Will, possession letter and receipt. The vacant possession of the property was handed over to the petitioner on 4th June, 2004. Since differences had arisen between the petitioner and the respondent, the petitioner and respondent both agreed to seek divorce by mutual consent and in this regard a petition for divorce by mutual consent was filed before the learned Additional District Judge wherein statements for first motion were recorded on 7th September, 2010. According to the petitioner, on 30th April, 2011 he came to know that somebody had entered the property and when he went there he found the respondent having illegally trespassed into the property.

The petitioner did not find kitchen articles and luggage lying in the property. The respondent further threatened the petitioner. The petitioner was sure that the matter would be amicably settled as the parties had already got recorded their statements for first motion for divorce by mutual consent. However on 2nd May, 2011 at about 7.00 PM the respondent went to the petitioner's office and humiliated him. In this regard, he made a complaint on 3rd May, 2011 to Police Station Shakarpur but no action was taken. Alleging that the respondent had illegally taken possession of the property and sold away the articles lying therein, the petitioner filed a complaint before the learned Metropolitan Magistrate.

2. Vide the order dated 28th May, 2012 the learned Metropolitan Magistrate dismissed this complaint of the petitioner after recording his statement on oath on the ground that the basic allegations of the petitioner were that the respondent illegally occupied the property belonging to petitioner and was still in occupation of the same. Learned Metropolitan Magistrate noted that civil litigation was pending in this regard before learned Additional District Judge and considering the fact that when the respondent allegedly entered the premises, she was still the wife of the petitioner as divorce had not been granted, thus no offence was made out. It held that the respondent cannot be held to be a trespasser in the property of the petitioner.

3. A revision petition filed by the petitioner was also dismissed vide the impugned order dated 5th October, 2012. Learned Additional Sessions Judge also reiterated that though the complainant stated about the first motion having been granted but there was no averment that the parties were divorced and thus the respondent cannot be held to have trespassed the

property. The dispute being civil in nature, there was no illegality in the order of learned Metropolitan Magistrate.

4. The Supreme Court in the decision reported as (1997) 4 SCC 241 Krishnan & Anr. Vs. Krishnaveni & Anr. laid down the rule of caution to the High Court while exercising jurisdiction under Section 482 Cr.P.C. as under:

“10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person — accused/complainant — cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justice can be ensured only when trial is conducted expeditiously.

5. Following the decision in Krishnan (supra) the Supreme Court in (1999) 6 SCC 326 Rajnathi Vs. G. Ganeshan held:

“11. In the present case, the High Court minutely examined the evidence and came to the conclusion that the wife was living separately without any reasonable cause and that she was able to maintain herself. All this the High Court did in exercise of its powers under Section 482 of the Code which powers are not a substitute for a second revision under sub-section (3) of Section 397 of the Code. The very fact that the inherent powers conferred on the High Court are vast would mean that these are circumscribed and could be invoked only on certain set principles.”

6. Before this Court, learned counsel for the petitioner urges that since pursuant to the settlement, the respondent had already been given one property, she was not entitled to trespass into the property owned by the petitioner. Pendency of the civil suit between the parties does not absolve the respondent of the offence of criminal trespass and theft committed by her.

7. Indubitably pendency of a civil suit does not absolve a person if the facts proved constitute an offence. In the present case, the allegation of the petitioner is that he found that the respondent had entered the house and some of the articles were found missing. No material or evidence was placed on record during his examination as to what articles were lying in the house which were missing and that the articles which were alleged to be missing were actually lying in the house. Bald averment of the complainant with no other evidence is not sufficient to summon the respondent for the offence of theft. Even if the respondent had entered into the house, it cannot be said that the same was with the intention to commit an offence.

Moreover, the respondent was the wife of the petitioner at the time of alleged incident and there being unity of possession due to subsisting marriage, offence punishable under Section 448 IPC cannot also be said to be made out.

8. As regards the contention of the petitioner that his suit under Section 6 of the Specific Relief Act has been allowed, it may be noted that the same has been allowed for the reason the respondent had failed to lead defence evidence. The respondent who was present in Court and addressed arguments gave the explanation that at the relevant time, the son of the petitioner and respondent was unwell and she had taken him for treatment to Kolkata. Thus, due to her absence she could not lead defense evidence and the order was passed by the learned Civil Court.

9. In view of the statement of the petitioner recorded on oath and the facts of the case, I find no infirmity in the two impugned orders holding that offences as alleged have not been made out.

10. Consequently the present petition is dismissed.

(MUKTA GUPTA)
JUDGE

JULY 25, 2016
‘v mittal’