

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

% Decided on: 5th October, 2016

+ **CRL.M.C. 3748/2016**

JASMEET SINGH MARWAH Petitioner

Represented by: Mr. Arvind Singh, Adv.

versus

STATE OF NCT OF DELHI & ORS Respondents

Represented by: Mr. Hirein Sharma, APP for the
State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. 15697/2016

Exemption allowed, subject to all just exceptions.

Crl.M.C. 3748/2016

1. The petitioner filed a complaint being CC No.82/2/15 along with an application under Section 156(3) Cr.P.C. before the learned Metropolitan Magistrate, who dismissed the application as also the complaint by detailed order noting that since no criminality can be read into the complaint, no prima facie case is made out even for conducting any examination under Section 200 Cr.P.C. thus declining to take cognizance on the complaint.
2. Challenging the said order, the petitioner filed a revision petition which was dismissed by the learned Additional Sessions Judge vide the impugned order dated 11th August, 2016 also noting that the role of the petitioner himself was under question and the facts do not prima facie disclose commission of any cognizable offence. Further the issues of title

and possession were already under consideration in Civil Suit (OS) No.1948/2014 wherein a status quo order had been passed. Learned Additional Sessions Judge also noted that the application under Section 156(3) Cr.P.C. appears to be an attempt to give a colour of criminal case to an already existing dispute between the parties which was essentially civil in nature.

3. In the complaint the petitioner claimed himself to be the owner and in possession of the property bearing No.1, Ashok Avenue, DLF, Chhatarpur, New Delhi (in short 'the property') having purchased the same vide registered sale deed No.3661 dated 13th May, 1992 from one Mrs. Pushpa Kakkar. The petitioner alleged that some persons fraudulently got sale deed executed in favor of M/s Nuway Organics Natural India Ltd. (in short 'Nuway') and got it registered with the Sub-Registrar fraudulently, for which he filed a criminal complaint at PS Rajinder Nagar and thereafter before the concerned Court. In the status report filed before the learned Metropolitan Magistrate having jurisdiction over PS Rajinder Nagar it was stated that the petitioner was in possession of the property. It is alleged that on 14th July, 2015, two persons claiming themselves to be representatives of Nuway visited the property and inquired whether the petitioner was available. However they did not disclose their identity and left the property on the pretext that they will contact the petitioner after fixing an appointment. Thus, the petitioner deployed security persons through M/s Checkmate Security Services Pvt. Ltd. The security personnel were to be deployed from the evening of 16th July, 2015 however, before that 5-6 unknown persons visited the property and threatened the gardener working on the farm house who got scared. On the advice of the petitioner, the gardener made a police

complaint. It is alleged that on 16th July, 2015 at 7.00 pm when the petitioner reached the property, he found that none of the gardeners except a lady representing to be the wife of one of the gardeners was present. At about 8.00 PM, four guards along with their supervisor from the security agency arrived at the property. They were briefed and deployed whereafter the petitioner left the property at 8. 30 pm. On 17th July, 2015 when the petitioner tried to contact the guards, neither the guards nor the supervisor picked up the phone. Even the manager of security company was not aware of the facts. Later the manager informed the petitioner that during midnight, some 6-7 persons came in a car whose number could not be recognized and threatened the guards misrepresenting that the property belonged to Nuway and the petitioner was wrongly occupying the same. The guards were threatened that if they stayed at security even they would be killed. It is alleged that due to the threat, the security personnel who had taken charge of the property left the place however they did not make report of any of these events despite asking of the petitioner. Even the caretaker of property informed that there was no guard inside the property nor was there any gardener as they were very scared. As per the caretaker even on 18th July, 2015 no call was picked up by the gardener. Finally on 19th July, 2015 the petitioner sent one Raju Lohia to the property when he came to know that 3-4 unknown persons were at the property and not allowing anyone to enter into the property. A civil suit in this regard was also filed.

4. In the status report dated 24th August, 2015 filed before the learned Metropolitan Magistrate by the Enquiry Officer SI Anand Kumar duly forwarded by SHO PS Mehrauli further time was sought and it was submitted:-

“It is submitted that a local complaint was filed by complainant Mr. Jasmeet Singh Marwah at PS Mehrauli vide DD No.48B dated 19.07.2015 and same was marked to undersigned for enquiry. Gist of the complaint is that the complainant has been lawful owner of property admeasuring 9 Bighas and 3 Biswas, bearing Khasra No.1364 (4-7) and 1365 (4-16) situated in Village Chhattarpur, Tehsil Mehrauli, New Delhi, vide registered sale deed No.3661 dated 13/05/1992 in additional book No.1, Volume 7370 at pages 126-140. The said property is now known as 1, Ashoka Avenue, DLF, Chhattarpur, New Delhi and said property is mutated in the name of the complainant in revenue records vide order dated 03.08.1992 and was entered into jamabandi. The name of the complainant continues to be maintained in the jamabandi of revenue records till date. Similarly, all khasra girdawari, since 1992 continues to be in the name of the complainant as owner, bhumidar till date. The said property is also assessed/mutated in the name of the complainant in the records now available with South Delhi Municipal Corporation of Delhi and the complainant is meeting all property related tax liabilities till date. He further submitted that certain persons having got a sale deed fraudulently registered in the office of Sub Registrar-V, New Delhi in favour of one Nuway Organics Natural India Limited. Upon coming to know the same the complainant made all his efforts with Mr. Manminder Singh, the Managing Director of the said company to get the said sale deed cancelled but after not getting the positive response, the complainant got a legal notice issued to the said company and Mr. Manminder Singh through his counsel vide dated 24.10.2014.

Complainant has also filed a criminal complaint before the police station Rajinder Nagar, New Delhi and is pending before the court of Ld. Metropolitan Magistrate, Tis Hazari, Delhi. It is submitted that upon filing of the said complaint before the Ld. MM, Tis Hazari, Delhi, the police is directed to file status report upon which, the police station, Rajinder Nagar made detailed enquiry and filed its Action Taken report. In this regard, enquiry was conducted by SI Rajan Singh and his statement was recorded as well as relevant documents were taken on file. As per the

enquiry conducted by SI Rajan Singh on 07.05.2015 he visited the PIQ, where three persons namely Parmanand, Amarnath and Raju Yadav met and their statement recorded by him and as per statement of abovesaid persons, the PIQ is in the possession of the complainant.

That the complainant has also filed a civil suit before the Hon'ble High Court of Delhi for cancellation of the alleged fraudulent sale deed and the same is pending adjudication in when the Hon'ble High Court, on 10th July, 2015, issued summons returnable on 12.10.2015 and also notice on the applications returnable by 5th August, 2015. The said matter further came up on 10.08.2015 when, while taking time to file reply to the suit and applications, M/s Nuway Organics Naturals Limited and Mr. Manminder Singh undertook not to create any third party interest in the property, meanwhile. The complainant further informed that immediately after issuance of summons by the Hon'ble High Court on 10.07.2015, the untoward activities at the property increased manifold. In fact, on 14th July, 2015 two persons claiming themselves to be representatives of Nuway Organics Naturals India Limited visited the land/property of the complainant at Chhattarpur and inquired if the complainant was available. On being asked, they did not disclose their identity and left the land/property on the pretext that they will contact the complainant and fix an appointment.

On 16.07.2015, Gardener Ram Milan also made a complaint in the Police Station vide Diary No.49-A that he is working at the PIQ as Gardener and some about 5-6 persons has come to the property at about 06.00 pm that day and threatened the gardener. He has also stated in the complaint that the complainant is the owner of the PIQ. Having come to know the said fact, the complainant considered it proper to deploy security personnel at the said property and accordingly, on 15.07.2015, contacted M/s Checkmate Services Pvt. Ltd. having their office at #138, Phase-4. Udyog Nagar, Gurgaon, Haryana namely Bijender Singh and he stated that on 16.07.2015 he along with two security guards Ram Manoj and Anil Kumar reached at the PIQ with

complainant Jasmeet Singh Marwah. They were deployed at the PIQ by the complainant and took charge of security of the said property at 08.00 PM. In the night of 16.07.2015, at about 11.30 PM, some 5-6 unknown persons visited the Farm House and threatened the guards working at the farm who got very scared and the security guards ran away from plot after at about 12.30 am in the night after informing their field officer.

During course of enquiry, I visited the PIQ where I could not meet any of the old gardeners. Two security guards, Deepak Sharma and Brijesh Kumar were present at plot who declined to have any knowledge about them and stated that they have been deployed at above said plot from Five Force Security Agency w.e.f. 17.07.2015. Also two gardeners namely Shyam Lal and Hari Ram were present at abovesaid plot. Shyam Lal told that he is working there for last about three years six months whereas Hari Ram stated to have been working for last about two months. They also told that owner of the farm house is Mr. Angad.

During course of enquiry notice was issued to the complainant which was received by his father as it was informed that the complainant is out of country. Reply of notice has been received from his father S.S. Marwah enclosing therewith the copy of Jamabandi, Khasra Girdawari, MCD records, legal notice and reply thereto. The copy of Jamabandi, khasra Girdawari and MCD record contains the name of the complainant as owner of the property in possession. Alleged party Sh. Manminder Singh and Angad Singh were also contacted on their mobile phone for joining the enquiry but till date they have neither joined the enquiry nor filed any report. It appears that they are avoiding to join enquiry. From the above, it is apparent that the two security guards, Deepak Sharma and Brijesh Kumar at the PIQ are only from 17.07.2015 which corroborates the claim of the complainant from the enquiry made out till date. Since Manminder Singh and Angad Singh not join the enquiry the facts and circumstances revealed in the enquiry could not be cross checked. It will be in the interest of fair enquiry to give at least one more chance to

clarify the possession. It is humble request to hon'ble court to give some more time.

Submitted please.”

5. Finally a report was filed by SHO, PS Mehrauli, as under:-

“In continuation of previous report, it is further submitted that during course of enquiry documents related to property in question i.e. sale deed dated 02.12.1998 executed between Sh. Jasmeet Singh Marwah and M/s Mohinder Papers Limited have been verified from the office of the Sub Registrar-V, Old Tehsil Building Mehrauli and found genuine. Telephone connection installed at the PIQ is also verified from MTNL office and found that telephone no.26803203 is registered on the name of M/s Nuway Organic Naturals Pvt. Ltd. and was installed on 07.08.2015. Electricity meter vide CA No.100055747 is installed at the PIQ. Detail of the electricity meter installed at the PIQ is obtained from BSES office, Saket, New Delhi. As per the report of BSES office, Saket, installed electricity meter is on the name of Ms. P. Kakkar and last bill was paid by alleged Manminder Singh on dated 11.08.2015. Manminder Singh has also provided copies of receipts dated 31.10.2013, 19.03.2012, 09.04.2013 of payment of electricity bills of property in question. During course of enquiry the documents provided by the alleged Manminder Singh i.e. Mutation paper of property, assessment of property in question were sent to the Assessment & Collection Deptt. SDMC 20th Floor Civic Centre N.D. for verification of mutation documents of property No.1, Ashoka Avenue, DLF, Chhattarpur, New Delhi of which reply is still awaited but officer of the Assessment & Collection Deptt. Civic Centre has verbally stated that Letter No.Tax/HQ/LPN/C-IV/2010/14943 dated 11.03.2010 & Self Assessment Property Tax Form (2009-10) is genuine but copy of report will be supplied after taking approval from their senior officers. During course of enquiry SI Anand Kumar visited the office of Chhattarpur Farms Welfare Society DLF, Chhattarpur and as per the record of register maintained by association Farm No.1, Ashoka Avenue is on the name of Manminder Singh and

annual subscription for the year 2011 to 2016 paid by Mr. Manminder Singh on 01.08.2015. Despite repeated efforts, Jasmeet Marwah could not be contacted and is stated to be outside India. Counsel for the complainant was contacted and asked to produce the witnesses namely Parmanand, Amarnath and Raju Yadav but he did not produce the said persons. Counsel of the complainant told he does not know them, only complainant knows them and now he is out of country.

It is further submitted that a civil suit No.1948/15 & I.A. No.14514/2015 pending before the Hon'ble High Court of Delhi and next date of hearing fixed for 13.10.2015.

Hence, as per the local enquiry and documents verification report it appears that property in question is already in the possession of alleged Manminder Singh and his Gardener and other staff residing at abovesaid property and matter is civil in nature.”

6. From the written statement filed to the civil suit it was revealed that the property in question was sold by the complainant to M/s Mohindra Papers Ltd. for lawful consideration which was acquired by M/s Nuway Organic Naturals India Ltd. by transfer of equity of the functionaries of M/s Mohindra Papers Ltd. in the year 2003. The property had been mutated in the record of MCD on 11th March, 2010 and pursuant thereto the defendant has been paying property tax. Thus, Nuway was claiming ownership and possession of the property being bona fide purchaser for lawful consideration and the pleas of loan of ₹75 lakhs and repayment thereof in cash stated by the complainant was controverted. Thus the Court came to the conclusion that the complaint/petitioner had not been able to prima facie establish to be in exclusive possession of the property in question which is pre-requisite for offence of trespass and that he had not come to Court with clean hands

having concealed all these facts having concealed all these facts which have been gathered from the status report filed by PS Mehrauli and written statement of the respondent filed before the High Court.

7. To prima facie establishing the offence of trespass, the petitioner was required to show documents showing his possession in the property which he failed to do and from the documents collected during enquiry it is apparent that the petitioner was trying to give colour of cognizable offence but it was primarily a civil dispute. In the decision reported as (2015) 6 SCC 287 Priyanka Srivastava & Anr. Vs. State of UP & Ors the Supreme cautions the Courts from directing registration of FIR on an application under Section 156(3) Cr.P.C. in a routine and casual manner without applying the judicial mind. Reiterating the judgment of the Constitution Bench in the decision reported as (2014) 2 SCC 1 Lalita Kumari Vs. State of U.P. noting that a preliminary enquiry may be conducted in cases relating to matrimonial disputes/family disputes, commercial offences, medical negligence cases, corruption cases and cases filed after abnormal delay which categories were only illustrative and not exhaustive, the Supreme Court held that preliminary enquiry is required to be made to find whether any cognizable offence is made out or not. Since the petitioner himself is not able to show prima facie possession on the property, it cannot be held that a case of criminal trespass was made out.

8. Finding no infirmity in the two orders, the petition is dismissed.

(MUKTA GUPTA)
JUDGE

OCTOBER 05, 2016
‘v mittal’