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

+ **CRL.L.P. 629/2016**

KARTIC CHANDRA GIRI

..... Petitioner

Through: Mr. Pramod Kumar, Advocate

versus

STATE AND OTHERS

..... Respondent

Through: Mr. Mukesh Kumar, APP

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

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28.11.2016

Crl.M.A. No. 18554/2016

By this application, the petitioner seeks condonation of two days delay in filing the leave petition. For the reasons stated, the delay is condoned and the application is allowed. The application stands disposed of.

CRL.L.P. 629/2016

The petitioner has preferred the present petition to seek leave to appeal against the judgment dated 08.09.2016 passed by the learned ACMM, South West Distt. Dwarka Courts in CC No.291/2013, whereby the respondent/accused have been acquitted of the charges levelled against them. The petitioner was the complainant in the aforesaid case.

In short, his case was that his wife is the owner and in possession of

the property bearing No.D-34, Bharat Vihar, Part-II, Village Kakrola situated at Plot No.111-112 out of khasra no.30/6. The petitioner/complainant alleged that the accused persons were interfering in the physical possession of the complainant and his wife since the year 2006. He claimed that the accused have put pucca construction on the property on 30.04.2006. He claimed that several attempts have been made by the accused to dispossess the complainant from the said property. He claimed that on 09.05.2006, the accused persons and his associates have taken him to some unknown place and coerced to write some documents on the dictation of the accused persons. The accused have also threatened him to dispossess from the property.

Application under Section 156(3) Cr PC was dismissed by the learned Magistrate on 02.05.2009 and opportunity was granted to the complainant to lead pre-summoning evidence. He examined himself as CW-1, Kishan as CW-2 and Jagmohan Yadav as CW-3. Consequent upon recording of evidence, the accused were summoned for the offence punishable under Section 447/506(1) IPC vide order dated 06.02.2010. Notice was framed against the accused and they pleaded not guilty and claimed trial.

The petitioner examined himself, ASI Umesh Tiwari as CW-4 and Ct. Parminder as CW-5. Statement of the accused was recorded on 12.04.2016. The accused also examined two witnesses , namely, Rajesh Kumar as DW-1 and Ram Prakash Gupta as DW-2. They stated that the property in question belonged to the accused Bajrang Lal. DW-1 was residing in the said house as a tenant of the accused and DW-2 was a neighbour.

The Trial Court relied upon *Amitabh Aadhar v. NCT of Delhi*, 2000 CrI LJ 4772, wherein it has been held that mere threat whereby no alarm is

caused does not attract offence under Section 506 IPC. The Trial Court relied upon the testimony of CW-1 and his cross examination to hold that there is no evidence of any alarm being caused and thus the offence under Section 506(1) is not made out.

So far as the offences u/s 447 IPC concerned, the Trial Court observed that the basic ingredients required to be proved is that the accused persons had entered into the property which was in possession of the complainant. Upon appreciation of evidence, the trial court held that the complainant did not produce any ownership document of the property in question and also admitted that he would not produce any such document. He did not lead in evidence any document to show his possession such as the electricity bill, water bill, election ID card or Aadhar card.

On the other hand, DW-1 stated that he was a tenant of the accused for the last 6 years and he also produced a copy of his election ID card and Aadhar card. Consequently, the trial court concluded that the offence u/s 447 IPC was also not made out and acquitted the accused.

The submission of counsel for the petitioner is that the petitioner's wife had earlier preferred W.P.(Crl.) No. 1352/2001, wherein a status report had been filed by the SHO, PS Dwarka. In the said report, the SHO had stated that the petitioner was still in possession of the plot and the local police never obstructed from her carrying out construction in the said plot of land. Thus, the factum of possession of the petitioner stood established. Learned counsel further submits that CW-4 had exhibited the letter Ex. CW-4/A which was a complaint given by the petitioner with regard to the threat issued by the accused. He submits that the CW-5 had stated that the relevant record upto 31.12.2008 had been destroyed.

Having heard counsel for the petitioner, perused the impugned judgment and the testimonies of the witnesses, I do not find any merit in this petition. It cannot be said that the impugned order suffers from perversity which calls for interference therewith by grant of leave.

So far as offence u/s 506(1) is concerned, there is no evidence brought on record to establish the raising of any alarm. The trial court has rightly relied upon *Amitabh Aadhar* (supra) in this regard. It is not the case of the petitioner that Ex. CW-4/A demonstrates the raising of any alarm on account of the threats allegedly issued by the accused.

So far as the offence u/s 447 IPC is concerned, the mere status report filed by the SHO in the case could not be taken as conclusive evidence against the accused. The petitioner could not produce any document to claim possession of the property. On the other hand, the accused led credible evidence of DW-1, who stated that he was a tenant of the accused for 6 years. He placed his copy of election ID card and Aadhar card on record to support his possession as a tenant in the property for 6 years. On the other hand, the complainant did not produce any document such as electricity bill, water bill, ID cards etc. to show his possession over the property in question. Thus, the benefit of doubt had to be given to the accused as it could not be said that the guilt was proved beyond reasonable doubt.

Dismissed.

VIPIN SANGHI, J

NOVEMBER 28, 2016

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