

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 4603/2015**

Date of Decision: 10th May, 2016

K K RAO Petitioner

Through: Mr. M.L. Yadav, Mr. K.K. Rao,
Advocates

versus

STATE (NCT OF DELHI) & ORS Respondents

Through: Ms. Manjeet Arya, Additional Public
Prosecutor for the State

AND

+ **CRL.M.C. 4604/2015**

K K RAO Petitioner

Through: Mr. M.L. Yadav, Mr. K.K. Rao,
Advocates

versus

STATE (NCT OF DELHI) & ORS Respondents

Through: Ms. Manjeet Arya, Additional Public
Prosecutor for the State

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. Vide a common order, I shall dispose of two Crl.M.C.

Nos.4603/2015 & 4604/2015.

2. The present petitions have been filed under Section 482 Cr.P.C. seeking setting aside of the order dated 30.06.2015 passed in Crl.Revision Petition Nos.06/2014 & 07/2014 vide which the Revisional Court has upheld the impugned order dated 17.02.2014 passed by the Trial Court in Criminal Complaint No.163/1/13 and 161/1/13 titled 'K.K.Rao v.Baljit Singh & Ors'.

3. The brief facts of the case are that the petitioner was inducted as tenant by one of the respondents namely Sh.I.P.Nangia in his premises bearing No.AN-1/D, Shalimar Bagh, New Delhi in the year 1983. In the year 1992, some dispute occurred between landlord and tenant, accordingly, tenant had made a complaint to police whereafter compromise was arrived at between landlord and tenant. As per the allegations, tenant had given the payment of Rs.51,000/- and in lieu thereof landlord had given an undertaking in favour of tenant that if he intended to sell the property, he would give first preference to the tenant and if tenant refused to purchase the said premises and he communicates the same to the landlord in writing only in that situation, landlord would be entitled to sell the premises to any other person.

4. It was alleged that in the year 1995 landlord had made a futile attempt to take possession of the said plot and he succeeded in removing some of the documents/articles including the said undertaking from the premises, consequently, tenant had lodged an FIR

against the landlord i.e.FIR No.565/95, which is pending in the Court of concerned learned Metropolitan Magistrate.

5. It is alleged that later on, the landlord had sold the said premises to co-accused Baljit Singh without giving any preference to the tenant/petitioner herein. Mr.Baljit Singh had filed an eviction petition against the tenant and obtained an eviction order and thereafter he had also succeeded in obtaining an execution order under Section 14(1)(e) of the Delhi Rent Control Act. It was alleged that the tenant had filed a petition before the Apex Court and Apex Court was pleased to maintain status quo vide its order dated 01.08.2003. It is alleged that Mr.Baljit Singh had obtained an execution order from the Court of concerned Additional Rent Controller by concealing the fact that Apex Court had passed the status quo order. Thereafter, the petitioner filed a Criminal Complaint No.161/1/13 alleging that on 09.07.2003, bailiff along with Baljit Singh and about 20 other anti social elements including ladies came to the premises of revisionist at about 3 PM and they attacked the petitioner and pushed the petitioner whereas some ladies pushed his mother and threatened her not to raise any alarm and locked her in a room. It was alleged that thereafter all the persons ransacked the house. In the meanwhile, the petitioner called the police and on seeing the police, Mr.Baljit Singh and his associates threw the luggage and took away tape recorder, digital camera make Canon, wrist watch make Rolex and suitcase. It is alleged that the bailiff informed the police that he had to take a statement of the petitioner regarding whether he was not interested in handing over the

possession of the premises in question. However, SHO refused to provide any aid in the absence of Court order. It is alleged that the petitioner informed the SHO and bailiff that in view of the orders of Apex Court, warrant of execution could not be executed. It is alleged that this was witnessed by Mr.Vishu Reddy and Koteswar Rao as they were staying with the petitioner at that time. It is alleged that thereafter SHO at the instance of bailiff registered FIR No.400/2003 against the petitioner for causing obstruction in the discharge of official duty of bailiff. It is stated that thereafter he approached various authorities and filed a petition before this Court where he was permitted to raise pleas before the Trial Court and thus Complaint Case No.161/1/13 was filed.

6. It is stated that thereafter the petitioner filed another Criminal Complaint No.163/1/13 alleging that on 14.11.2003 he along with his ailing mother had left for Bangalore and requested the neighbor to contact Mr.Nayar in case of emergency. It is alleged that on 25.11.2003, he received a call from Mr.Nayar that some person had broken open the lock of the house and they were trying to forcibly enter the premises. At that time, another friend Mr.V.R.Reddy was also present there. Mr.Nayar informed that when they asked about their identity, the said persons asked them to mind their own business and not to interfere otherwise they would have to face the consequences. It is alleged that those persons had broken open the Godrej almirah and removed documents including cash of Rs.5,000/- and a golden statue of Lord Ganesha weighing 10 tolas. On asking, Mr.Baljit Singh informed that they were executing Court orders.

However, they failed to provide the list of articles which were taken away by the bailiff. It was alleged that on his instruction, Mr.Nayar had attempted to lodge an FIR with SHO, PS Shalimar Bagh, but he refused, consequently, the petitioner reached Delhi on 28.11.2003 and approached the Executing Court and requested to return the said articles. Thereafter, petitioner approached various authorities for redressal of his grievances and at last he filed the instant complaint on 09.11.2006. In other words, he had filed criminal complaint after about three years from the earlier Criminal Complaint No.161/1/13 dated 09.07.2003.

7. In order to prove the allegations, petitioner examined himself in both the cases as CW1 and his friends namely Mr.Vishnu Reddy as CW2 and Mr.S.Ananthanarayan @ Nayar as CW3 in both the cases.

8. After appreciating the evidence, the Trial Court dismissed both the complaints. Aggrieved by the same, the petitioner filed Criminal Revision Nos.06/2014 & 07/2014. The grounds raised in the revision were that the Trial Court had failed to appreciate the evidence led by the petitioner/revisionist in right perspective. It was contended that from the deposition of witnesses in right perspective, prima facie case is made out against the respondents. It was further contended that no sanction under Section 197 Cr.P.C. is required against the bailiff as it was not his duty to commit robbery or theft while executing the warrant of possession. It was further contended that since Apex Court passed status quo order in the presence of respondents on 01.08.2003, bailiff was otherwise not supposed to execute the order.

9. On the contrary, learned counsel appearing for the respondents refuted the said contentions by vehemently arguing that the criminal complaints were filed to pressurize the respondents and to extract money from them. It was alleged that there is no substance in the allegations made by the petitioner in his complaints. On the contrary, petitioner had raised all kinds of obstruction when bailiff went to the premises for execution of warrant of possession. It was contended that all the witnesses are false and fabricated and due to that reason, no criminal complaint was filed by the petitioner immediately, rather same were filed after huge gap of three years and more. It was further contended that on the contrary, police had registered an FIR against the petitioner on the complaint of bailiff as he had prevented him from discharging his official duty.

10. It was observed by the Revisional Court that though CW2 is a resident of Hyderabad, he was available at the place in question on both the occasions, but he failed to disclose why he visited the petitioner/complainant on the days of alleged incidents. Similarly, CW3 is a resident of Janakpuri, but, surprisingly, he also was available at both the occasions but he failed to furnish any reason of his visit at both the occasions.

11. In Criminal Complaint No.163/1/13, it was alleged by the petitioner that he had left for Bangalore on 14.11.2003 along with his ailing mother after giving instruction to his neighbor that in case of any emergency, they should contact their friend namely Mr.Nayar. In other words, he was not in Delhi during 14.11.2003 to 25.11.2003 when the alleged incident had taken place.

12. CW2 did not support the above said averments as in his deposition he deposed that he came to Delhi on 24.11.2003 and stayed with the complainant. Though he also deposed that the complainant and his mother were in Bangalore but he failed to disclose when they left for Bangalore. If petitioner/revisionist had left for Bangalore on 14.11.2003 as alleged in the complaint, it was highly improbable for CW2 to be staying with the complainant on 24.11.2003 as complainant was not in Delhi on that day.

13. Likewise, the petitioner alleged that on 25.11.2003 he had received a call from his neighbor and thereafter he reached the premises but CW3 did not depose so in the court. On the contrary, he deposed that he knew the complainant for the last 25 years and on 25.11.2003 at about 3 P.M. he went to the house of complainant and saw the alleged incident. In other words, CW3 did not support the version of the petitioner that he reached the spot on receipt of a call from any neighbor. Moreover, the petitioner failed to examine any of the neighbours to whom he had given the instruction to contact Mr.Nayar in case of any emergency.

14. From the above, even the presence of CW2 and CW3 appeared to the Revisional Court to be quite doubtful. Admittedly, CW2 and CW3 are close friends of complainant for the last 25 years, thus, the possibility that they have been examined being friends cannot be ruled out.

15. In the given circumstances, neighbours of the petitioner could be the best persons to depose whether bailiff and his associates had

committed any kind of offence while he executed the warrant of possession but the petitioner preferred not to examine them.

16. Though CW2 in his deposition deposed that Baljit Singh, bailiff and his associates did not allow him to go inside the house, nor allowed him to take his luggage but surprisingly he deposed that some persons had broken open the Godrej almirah and they had stolen some documents, golden statue of Lord Ganesha and Rs.5,000/-. If he was not inside the house, it was highly improbable for him to have seen the said incident. He further testified that on asking, the persons who had turned up told that they were executing the Court order which shows that the possession was being taken by the bailiff under the Court order.

17. Similarly, CW3 deposed that he and CW2 had arguments with the bailiff and asked him to permit them to take luggage but he refused. Thereafter, he contacted the complainant on phone, who was in Hyderabad at that time and directed Reddy to lodge a complaint with police but refused to record the complaint. If there is any substance in the testimony of CW3, it means that complainant was well aware that CW2 was in his premises but he failed to disclose the same in his complaint. On the contrary, he recited in his complaint that when he left for Bangalore, he requested his neighbours to contact his friend Mr.Nayar in case of any emergency. This shows that the complainant had himself concealed material facts from the Court.

18. Though complainant also examined himself as CW1 in criminal complaint No.163/1/13 but his testimony is not relevant because the alleged incident had not taken place in his presence. Rather his

deposition is based on the information allegedly provided to him by CW2 and CW3 whose presence at the spot is even doubtful.

19. With respect to the order dated 01.08.2013, the Revisional Court observed that the said order was not in the knowledge of the respondents as is reflected from the order itself where the presence of only the petitioner is recorded and thus the submission that respondents knew of the same is contrary to record. During the pre-summoning evidence, petitioner failed to produce any document on record to show that the respondents were aware about the said order at the time of taking possession on 25.11.2003.

20. With respect to the contentions raised in Criminal Complaint No.161/1/13, it was observed that even the presence of CW2 and CW3 at the spot is quite doubtful. However, CW2 in his deposition deposed that he came to Delhi on 06.07.2003 and was staying with the complainant at his house. On 09.07.2003, he left from the house in the morning and returned to the house of complainant at about 2.45 P.M. Similarly, CW3 deposed that on 09.07.2003, he went to the house of complainant at 2.45 P.M. Neither CW2 nor CW3 disclosed the purpose of their visit to the house of complainant. Even CW2 did not disclose where did he go on 09.07.2003 in the morning. Both deposed that they were not allowed to enter the house. It means that when the execution proceedings were going on, they were outside the house. Though both claimed themselves to be close friends of the petitioner and had known him for 25 years, yet on the very same day of the incident, left for Hyderabad despite the fact that police had registered an FIR against him on the complaint of bailiff. Thus, their

conduct is contrary to their claim that they had friendship with the complainant for the last 25 years. If any such incident had taken place or that complainant had been robbed, being close friends they would have certainly rendered their assistance to the complainant by making statements before the police but they preferred to leave for their destination after leaving the complainant at the mercy of police officials.

21. CW1 in his deposition alleged that his mother was locked in a room but he preferred not to examine his mother. He failed to furnish any explanation for not bringing his mother in the witness box.

22. In his complaint, it was alleged that Baljit Singh and his anti social elements had snatched his money but in his deposition, he did not depose so. Similarly, in his complaint, he alleged that Baljit Singh asked some of his associates to take away his belongings, but in his deposition he deposed that two persons namely Kuldeep Singh and Baljit Singh had given his belongings to another person who took away the said items. This shows that CW1 had made substantial improvement in his version as in his complaint, he did not allege that Kuldeep Singh had given any such articles to his associates. Even in his complaint, he did not allege that Baljit Singh had given any such articles to any of his associates. Rather, he alleged that Baljit Singh asked some of his associates to take away these articles. From the deposition of CW1, it is clear that police officials were present and thus it is highly improbable that in the presence of police officials, any person would remove such type of articles. Admittedly, FIR No.400/2003 has been registered against him on the complaint of

bailiff and he filed a writ petition only in 2006, i.e., three years after the incident. Moreover, his friends did not deem it appropriate to accompany him to the police station. Also, the petitioner/complainant did not deem it appropriate to examine any of the neighbours, who would have been best persons to depose correct facts. Thus, he withheld the best available evidence without any reasonable explanation.

23. Summoning of a person in a criminal matter is quite serious. Mere examination of two witnesses in support of his allegations is not sufficient to set the law into motion.

24. The bailiff was executing the Court order, thus, prima facie, was discharging his official duty, hence sanction under Section 197 Cr.P.C. was mandatory to prosecute the bailiff. Admittedly, the bailiff went to the spot to discharge his official duty i.e. warrant of possession and prima facie, it is also on record that complainant had caused obstructions and prevented bailiff from discharging his official duty, consequently, FIR No.400/2003 was registered against him. There is no iota of evidence on record to prove prima facie that bailiff had committed any offence while discharging his official duty. Rather, when the petitioner/complainant raised objections and refused to hand over the possession, bailiff recorded the statement of the complainant in the presence of police and made a request to the police to provide police protection to him and when SHO refused to provide the same in the absence of any Court order, the bailiff returned from the spot without executing the warrant of possession.

In the case of *The State v. Mariya Anton Vijay and Ors. (2015) 9 SCC 294*, it was observed that :

“101. S.B. Johari's case (supra) was also a case where the High Court had quashed the charge at the instance of accused persons in exercise of its inherent jurisdiction by appreciating the material filed by the prosecution along with charge-sheet. The High Court therein had held that no case was made out on the basis of the contents of the charge sheet and the material filed in support thereof as in the opinion of the High Court, it was insufficient to frame the charge against the accused for their prosecution for commission of offence punishable Under Section 5(1)(d) and (2) of the Prevention of Corruption Act. The accused were accordingly discharged by the High Court without compelling them to face the trial on merits.

102. In an appeal filed by the State against the order of the High Court, this Court allowed the State's appeal, set aside the order of the High Court and upheld the charge sheet and the charges which were framed by the trial court and laid down the law which we have reproduced in para 88 above.

103. Coming back to the facts of this case, the High Court committed the same error which was committed by the High Court in S.B. Johari's case (supra) because in this case also the High Court went into the questions of fact, appreciated the materials produced in support of charge sheet, drawn inference on reading the statements of the accused, and applied the law, which according to the High Court, had application to the facts of the case and then came to a conclusion that no prima facie case had been made out against any of the accused for their prosecution under the Arms Act.

This approach of the High Court, in our considered view while deciding petition Under Section 482 of the Code was wholly illegal and erroneous.”

In the given facts, the Revisional Court held that the sanction under Section 197 Cr.P.C. is essential to prosecute the bailiff and eventually opined that there was no illegality, infirmity or impropriety in the impugned orders and thus dismissed the revision petitions.

25. In view of the above discussion, this Court does not find any merit in the present petitions. The impugned orders passed by the Courts below are well reasoned and do not call for any interference. The petitioner has failed to make out his case for quashing of the order passed by the Revisional Court.

26. Consequently, both the petitions are dismissed.

MAY 10, 2016
dd/dm

(P.S.TEJI)
JUDGE