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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : April 26, 2017

DECIDED ON : MAY 30, 2017

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CRL.M.C. 1821/2011

SAVITRI KAUSHAL & ANR

..... Petitioners

Through : Mr.Ajayinder Sangwan, Advocate
with Mr.Tarunesh Kumar, Mr.Rohan
Sharma, Ms.Sweety Chattopadhyay &
Mr.V.P.Singh, Advocates.

versus

STATE & ANR

..... Respondents

Through : Mr.G.M.Farooqui, APP.
Counsel for respondent No.2
(appearance not given)

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Present petition under Section 482 Cr.P.C. has been preferred by the petitioners for quashing of FIR No.243/1998 registered under Sections 448/380/201/34 IPC at Police Station Sarojini Nagar. The petition is contested by respondent No.2- Jasbir Singh @ Jassi (hereinafter referred to as 'the respondent').

2. I have heard the learned counsel for the parties and have examined the record. The FIR in question was lodged on 3.7.1998 on the

basis of statement made by 'the respondent' in the Police Station. In the complaint, 'the respondent' informed that his sisters Amar Kaur and Hardev Kaur had purchased the second floor of property bearing No.A-178, Arjun Nagar, New Delhi and its possession was handed over to them on 12.6.1997. The sisters had executed a power of attorney in his name in December, 1997. They had put their household articles in the suit property. Savitri Devi, who lived on the ground floor disconnected the water and electricity connections. She told them that the builder J.L. Arora had not fulfilled the terms and conditions of the agreement and she had instituted arbitration proceedings against him. Since there was no electricity and water facility after its disconnection by Savitri Devi, lock was put and he started living at a different locations in a rented accommodation. It was alleged that Savitri Devi and her sister-in-law (Bhabhi) and son Akash inducted a tenant after breaking open the lock of the second floor of the house on 1.7.1998. Upon completion of investigation, a charge-sheet was filed against Savitri and Manjula Sharma in the court for commission of offences under Sections 448/380/201/34 IPC. Charge for commission of aforesaid offences under Sections 448/380 IPC was framed against the petitioners by an order dated 8.10.2010. 'The respondent' has been examined partly as PW-1 so far.

3. Allegations against the petitioners are that on 1.7.1998, they along with Akash (not arrested) committed house trespass by breaking locks of the second floor of house No. A-178, Arjun Nagar, New Delhi and committed theft of various household articles lying therein. Apparently, the complainant/'the respondent' was to establish that or on before 1.7.1998, possession of the second floor of the said property was with him.

4. The petitioners have placed on record copy of the judgment dated 26.4.2005 of learned Civil Judge, Delhi in Suit No.312/2013 titled *Smt.Amar Kaur and Anr.Vs.Madan Gopal Kaushal & Ors.* for permanent injunction. The said suit was filed by the respondent's sisters through him as their General Attorney. Issue No.1 and 2 were decided in favour of 'the respondent' whereby the court was of the considered view that 'the respondent' was duly appointed attorney of the plaintiffs therein and the power of attorney (Ex.PW-1/1) was not a forged document. Issue No.3, however, was decided against 'the respondent' and categorical findings were recorded by the Civil court that 'the respondent' or his 'sisters' were not in possession of the suit property since 23.6.1997. Accordingly, the suit filed by the respondent's sisters through him was dismissed. Nothing is on record if the findings recorded in the said suit were challenged in appeal. The findings seemingly have attained finality.

5. It is further relevant to note that subsequently, 'the respondent' filed Civil Suit No.270/2011 against Savitri Kaushal and Ors. for recovery of possession of suit property on 18.2.2011. Copy of the judgment dated 4.2.2013 by which the said suit was dismissed is on record. It was held in the said suit that that the respondent's sisters were not in possession of the suit property after 23.6.1997 and 'the respondent' had claimed 'ownership' of the suit property on the basis of sale deed registered on 24.9.2008. It was further held that 'the respondent' could not have claimed possession of the suit property on the basis of his previous possession of the suit property. Again, nothing is on record to show if the said judgment dated 4.2.2013 was challenged. It was noted that the remedy for the respondent was to file a suit for declaration and possession or a suit for specific performance.

6. Since the Civil Courts in the above referred matters have returned categorical findings that ‘the respondent’ or his sisters were not in possession of the suit property on 1.7.1998, the instant FIR for committing house trespass cannot be sustained. No useful purpose will be served to continue with the criminal proceedings in view of specific findings of the Civil Court on the identical issue between the parties. Observations of Supreme Court in *K.G.Premshankar vs. Inspector of Police & Anr.* (2002) 8 SCC 87 are relevant to the issues involved in the present petition:

“Further, the judgment, order or decree passed in a previous civil proceedings, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by A on B’s property, B filed a suit for declaration of its title and to recover possession from A and suit is decreed. Thereafter, in a criminal prosecution by B against A for trespass, judgment passed between the parties in civil proceedings would be relevant and the court may hold that it conclusively establishes the title as well as possession of B over the property. In such case, A may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, the first question which would require consideration is - whether judgment order or decree is relevant, if relevant- its effect. It may be relevant for a limited purpose such as, motive or fact in issue. This would depend upon the facts of each case.”

7. In view of the above discussion, the petition is allowed and FIR No.243/1998 registered under Sections 448/380/34 IPC at Police Station Sarojini Nagar and all the proceedings emanating therefrom are quashed.

8. The petition is disposed of accordingly.

9. Trial Court record (if any) be sent back forthwith along with the copy of the order.

10. It is made clear that 'the respondent' will be at liberty to avail other legal remedies (if any) available to him in law and observations in the order shall have no impact therein.

(S.P.GARG)
JUDGE

MAY 30, 2017/sa

