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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(CRL) 561/2018, CRL.M.A. 4979/2018
SUKHBIR SINGH CHAUDHARY & ORS Petitioners
Through: Mr. Akshay Singh, Mr. Tasha Singh,
Mr. Vanshdeep Dalmiya and Mr. Rajat Mathur,
Advocates alongwith petitioners in person.
Versus

STATE (NCT OF DELHI) Respondent
Through: Mr. Amit Chadha, APP for Ms. Richa
Kapoor, ASC alongwith Ms. Amita Sachdeva,
Advocate for State with Insp. Sukhdev Singh, PS-
Vasant Vihar and Insp. S.S. Maan.
Insp. Rajesh Dahiya, DIU/SWD.
Mr. Mukul Talwar, Senior Advocate with Ms.
Sima Gulati, Mr. Sumit Saini, Advocates for
Impleader in CRL. MA 7594/2018.
Mr. Subhash Kumar, Advocate for purchaser.
Mr. Gurpreet Hora, Advocate for J.S. Chaudhary
and Mr. R.P. Choudhary.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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19.09.2018

CRL.M.A. 7594/2018 (for impleadment)

For the reasons mentioned in the application, it is allowed. The parties mentioned in the application are impleaded as respondent no. 2 and 3. Amended Memo of Parties be filed during course of the day.

The application is allowed and disposed-off.

W.P.(CRL) 561/2018, CRL.M.A. 4979/2018

A Status Report has been handed over by the learned Additional Public Prosecutor for the State, according to which, the persons alighting from the vehicle, were not allowed to enter into the premises by the guards

posted by Romy Garg and Kapil Garg and appropriate action has been initiated against them. He submits that Kalandara has been initiated against both the parties.

This petition seeks transfer of the case either to the Crime Branch or the CBI as the petitioners are aggrieved by what they perceive as inadequate action and incomplete investigation into the complaint, which is now registered in FIR No. 343/2017; the said FIR was registered after a complaint made before the Court concerned under section 156(3) of the Cr. PC. He refers to the order directing registration of the complaint which quotes portions of the ATR, showing alleged certain error in the conclusion. The ATR levelled allegations against the complainant himself something which would ordinarily not be mentioned in an ATR.

The Trial Court has noted *inter alia*:-

“5. ATR was called in this matter along-with records of D.D.No.71B dated 25.11.2016, of complaint dated 08.12.2016, same was filed by enquiry officer Inspector Urgesh Kumar on 05.07.2017, records of D.D.No.71B were taken on record, queries were made from Ld. Counsel of the noticee Titu Sethi, arguments of Ld. Counsel for the complainants on application under Section 156(3) of Cr. PC. and ATR were heard and matter was reserved for orders at 04:00 pm, however at about 04:30 pm, at the time when the matter was considered for decision, this Court deem it appropriate to call further report regarding utility connections as alleged to be got installed by the complainants and other remaining records of the present matter for just disposal of the application. Further status report along-with all requisite records were filed by enquiry officer on 22.07.2017. It is submitted in gist vide ATR dated 05.07.2017 that the complainants were joined inquiry, but they were not able to produce medical documents regarding injuries received by them, enquiry was conducted from

proposed accused no.01 and 02 who stated that they have already fulfilled their obligations, however, the complainants and co-owners did not discharge their obligations as per agreement, raised various objections, deliberately did not cooperate in furnishing necessary documents. The proposed accused no.02 is ready and willing to deliver the possession, the complainants may get completed the remaining work from any agency at his cost provided, they transfer the title in respect of first floor of property in his favour or in favour of his nominee. The complainants performed pooja around Diwali, took pictures, videos etc. of pooja ceremony to which they do not object, but their claim that they took possession is false. The complainants are leveling false allegations as he reached at the spot after receiving information at his mobile phone. The complainants do not want to fulfill their contractual obligations of transferring the title of first floor portion in his favour and are trying to deprive them of their legitimate rights and are attempting to entangle the property in frivolous litigation. It is also submitted in said ATR that enquiry was also conducted from the spot from which it is revealed that complainants used to visit site regularly. Complainants and their family performed pooja at the time of Diwali for one day only., They never resided at 3rd floor. On 08.12.2016, the complainant no.02 came to the premises, asked for remote from supervisor which was handed over to him, thereafter, he opened the main gate, brought one tempo and two Safari cars loaded with goods, entered into the house and he further took away the keys from supervisor. The wife and other relatives of complainant also reached at the property. Police also reached at the spot. After some little interaction, both parties were taken to PS by police. It is further concluded in the enquiry that the dispute between both sides arose due to more and more alteration demands made by complainants which increased the cost of work and it also delayed the work. On 08,12.2016, both sides were taken to PS where they compromised the matter, on request of complainant

no.02, keys were handed over to proposed accused no.03. Enquiry was also conducted from proposed accused no.06 who denied to have happened any incident of beating and forcing the complainants to sign any agreement. It is submitted that the allegations of the complainant are that they started living at 3rd floor and of incident dated 25.10.2016 are not true. It is concluded by enquiry officer that the dispute between both sides is regarding value of incomplete work, payment of penalty which is purely a civil dispute.

6. The said ATR report perused. Further report and documents called for disposal of application filed on 20.07.2017 also perused. Submissions considered.

9. Cognizable offences have been alleged to have been committed in the present matter including offence against womanhood. The police investigation is required in the present matter to unearth the real truth, to unearth the involvement of the persons whose names are only known to complainants, to establish identity of unknown lady alleged to be involved in commission of offences, to establish that the alleged settlement was arrived at under force or compulsion which requires the expertise of a specialized agency like police and which would be beyond the capacity and reach of complainants. The directions also need to be given to SHO concerned for registration of FIR in interest of justice as one of complainant is senior citizen. Hence, considering the totality of circumstances, concerned SHO PS Parliament Street is directed, to register an FIR in the present matter on the complaint of the complainant Court treating it as first information furnished /supplied under appropriate sections against proposed accused no.02, 03, 04, 08, 09, 10, 11 and unknown lady. Since, proposed accused no.05 is a public servant, therefore, this Court cannot direct registration of FIR for offences of The Prevention of Corruption Act, 1988 as per the above cited judgment of "Anil Kumar & Others Vs. M. K. Aiyappa & Others" against proposed accused no.05. Since, Hon'ble Supreme Court of India has already cautioned the

magistracy in above cited judgment of "Mrs. Priyanka Srivastava &Anr. Vs. State of UP& Ors." to be very careful in giving directions to the police for registration of FIR under Section 156 (3) of Cr. P.C. qua allegations leveled against the public servants and further since no medical documents are submitted on record to establish beatings being given by police, therefore, this Court is also not directing registration of FIR against the proposed accused no.06 and 07. The matter be registered and investigated accordingly. Considering the amount of use of utility services from the utility bills collected by the enquiry officer attached with the subsequent report, it is clear that the complainants were in substantial possession of the part of premises alleged (though may not be actually residing) and which is also clear from the photographs of Almira, Kitchen, Kitchen Utensils, Beds, Refrigerator, Sofa etc. (as photographs stands verified/authenticated by ATR's) and since the alleged act of getting compromised the matter between the complainants and proposed accused persons by police was illegally, was arbitrary and beyond its competence and jurisdiction, therefore, the police is advised to restore the complainants to the amount of possession of the premises which they had on day of 28.10.2016 and which is necessary to undo the illegal act of police. It is also noted that the joining of accused persons in inquiry by enquiry officer to bring their version on record was also not in consonance with the law as per above cited judgment of "Union of India & Anr. Vs. W. N. Chadha". It is hereby clarified that any observation made herein shall not tantamount to expression of opinion on the merits of this case. The investigating agency shall form its own opinion after detailed investigation about the matter. The arrests in this matter to be made only if sufficient evidence is found by the police regarding involvement of accused person(s) and that too, if required."

The Court is of the view that the opinion expressed in the ATR was premature. Mr. Amit Chadha, the learned Additional Public Prosecutor for

the State submits that the case is no more being investigated by the Investigating Officer of PS Vasant Kunj in view of the ATR filed by him; instead the case was reviewed by the DCP concerned and he has transferred it to District Investigation Unit (DIU), South-West. Therefore, there can be no cause of anxiety of interference of the local police. Be that as it may, insofar as the ATR itself has taken a premature view, it would be best that the case be transferred to the Crime Branch, which would comprise of officers, not necessarily from that police district.

At this stage, Mr. Mukul Talwar, the learned Senior Counsel for the respondent nos. 2 and 3 submits that he has no objection, if the matter may be transferred to the Crime Branch. The learned counsel for the parties submit that the FIR filed on behalf of the respondent nos. 2 and 3-Romy Garg and Kapil Garg, being FIR No. 494/2017 and the FIR filed on behalf of the purchaser i.e. being FIR No. 143/2018 at the same police station, be also transferred to the Crime Branch. It is so ordered. Mr. Talwar further submits that the restoration of the premises by the police in terms of the order of the Trial Court (para 9), is erroneous and he would be taking appropriate remedial measures in this regard.

Mr. Gurpreet Hora, Advocate for Mr. J.S. Chaudhary and Mr. R.P. Choudhary states that they too are interested parties to the *lis*. Their *lis* is that the petitioners have filed a complaint before the Police Station, Vasant Vihar. He submits that this complaint too be referred to the Crime Branch. It is so ordered.

The investigation by the Crime Branch will be monitored by the DCP concerned.

The petitioners also seek protection of their life, limb and liberty. Mr.

Amit Chadha, the learned Additional Public Prosecutor for the State submits that the matter has been looked into by the SHO of the area concerned and the parties have been sensitized to maintain peace. Additionally, the petitioners shall be provided with telephone numbers of three police officers from the jurisdiction of the concerned Police Station, of which one shall be of a lady police officer. These numbers shall be kept operational at all times so that any exigency can be intimated on either of the numbers by the petitioners. Mr. Chadha further states that any message received on the said numbers or on any other telephone number of the police either by way of a telephone call or SMS shall be immediately responded to. Additionally, the Beat Constable/Division Staff of the area shall regularly visit the residence of the petitioners on a daily basis and report the same in the *Roznamcha*. The safety and security of the petitioners shall be assessed by the SHO on a weekly basis with due endorsement of the same in the *Roznamcha*. The Beat Constable shall record entries in his Beat Book.

No further orders are required at this stage.

The petition stands disposed-off accordingly.

Observation made in this order shall have no bearing on the merits of the case.

A copy of this order be given *dasti* to the learned counsel for the parties under the signature of the Court Master.

NAJMI WAZIRI, J

SEPTEMBER 19, 2018/RW