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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 1606/2015 & CrI.M.A. 5869/2018**

BRIG. RAJINDER SINGH

..... Petitioner

Through: Mr. Vinay Kr. Garg, Sr. Adv. with
Mr. Neeraj Chaudhari, Mr. Akshay
Chandra, Ms. Saakshi Agrawal, Ms.
Noopur Dubey, Mr. P.N. Upadhyay &
Mr. Akash Sharma, Advocates

versus

STATE & ANR

..... Respondents

Through: Mr. K.S. Ahuja, APP for the State
with Insp. Anant Kumar & SI
Abhishek Kr., PS Amar Colony.
Mr. Bhupesh Narula, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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11.12.2018

The controversy brought to this court by the petition at hand presented under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) read with Article 227 of the Constitution of India concerns the allegations made by the second respondent (the complainant) against the petitioner (the accused) in first information report no. 150/2008 registered by police station Amar Colony on 02.05.2008 for investigation into offence allegedly committed under Section 448 of Indian Penal Code, 1860 (IPC). The premises in respect of which criminal trespass was alleged is actually corner shop forming part of premises described as Shop no. 27, Community Centre, East of Kailash, New Delhi, concededly belonging to the accused. It

appears to be an undisputable fact that the complainant had been inducted and was in use of the said premises as a tenant. The tenant would claim in the FIR that his occupation had continued till on or about 27.02.2008, he indicating in the FIR having received information from one Harish Ahuja also a shopkeeper in the vicinity about the accused having broke open his locks.

During the course of investigation, the accused informed the investigating agency that the vacant possession of the premises had been handed over peacefully on 30.6.1998. No proof of tender or payment of rent has been adduced beyond the said date by the complainant during the course of investigation. After the complaint leading to the registration of FIR had been registered, another facet to the controversy broke out in that the station house officer (SHO) and the Assistant Commissioner of Police (ACP) of the Sub-Division were accused of they having broken the locks of the petitioner (the landlord) and having inducted the complainant (the second respondent) again into the shop. A complaint in this regard was lodged and this led to a vigilance inquiry.

Be that as it may, during the course of investigation, the accused presented to the investigating agency, a number of documents in order to show his exclusive possession after the handing over, referring in this context also to some inspection that had been carried out by Delhi Development Authority against the backdrop of misuser having come to its notice. The police eventually filed a charge-sheet on 11.05.2010 seeking prosecution of the petitioner for offences under Sections 448/380/454 IPC on which cognizance was taken and he was summoned.

When the case reached the stage of consideration of charge, the Metropolitan Magistrate, by her order dated 08.01.2013, concluded that there was no sufficient material to proceed with the trial and in the course of reaching the said conclusion she, referred, *inter alia*, to the vigilance inquiry report.

The said order was challenged by the complainant in the court of sessions by criminal revision no. 67/2014. The revisional court opined that it was improper on the part of the Magistrate to go by extraneous material in the nature of vigilance inquiry report. Reference was also made in the course of the said judgment to certain directions of this Court in criminal writ petition no. 659/2008 which had been filed by the petitioner questioning the role of the SHO and the ACP in inducting the complainant into the premises.

After some hearing, it has been fairly conceded by all sides, including the petitioner, the second respondent and the State, that the investigation into the afore-mentioned FIR has not been comprehensive. It does appear that the document dated 30.06.1998 on which the petitioner places reliance, it being the evidence of, as per his submission he having come into the possession upon the handing over by the tenant, is actually a photocopy, he having taken the position that the original was retained by the tenant at the time of its execution. Whether or not this claim was true called for some investigation. Even if the original has been rendered untraceable, some opinion on the basis of forensic scrutiny as to the authorship of the signatures on this document required to be formed. After all, the law would permit, in certain situations, secondary evidence to be relied upon in the absence of primary document.

Strictly speaking, the observations of the revisional court that the vigilance inquiry report could not have been looked into by the Magistrate is correct. But then, given the fact that the circumstances leading to the said vigilance inquiry have a bearing on the controversy, there is no escape from the material collected in the said inquiry to be also taken into account. Since the vigilance inquiry was also by the police department, ideally it should have formed part of the material which was placed on record with the report under Section 173 Cr.P.C. The evidence gathered and the statements recorded in the said inquiry, it has been shown are at some variance from the version forming part of the material which was presented with the charge-sheet. The explanation for such discrepancies also had to be elicited and considered.

Against the above backdrop, the consensus of all parties being that the matter requires further investigation, the police having indicated through the additional public prosecutor, its inclination to proceed with further investigation in exercise of the power and jurisdiction vested in it under Section 173 (8) Cr.P.C, the appropriate course would be to defer the consideration of the case for framing of charge till further investigation is concluded.

In above view, the impugned orders of the Metropolitan Magistrate and of the revisional court are set aside. The proceedings in the criminal case will be kept in abeyance till the police submits a supplementary report under Section 173 Cr.P.C. on the basis of further investigation. After such report has been submitted, the Metropolitan Magistrate will have the power and jurisdiction to issue further process, requiring the presence of the

petitioner and, thereafter, consider the question of charge. Ordered accordingly.

This disposes of the petition and the application filed therewith.

Dasti under the signatures of Court Master.

R.K.GAUBA, J.

DECEMBER 11, 2018

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