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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.L.P. 810/2018, CRL.M.A. 49037/2018, CRL.M.A. 49038/2018
GIRISH MITTAL & ORS Petitioners

Through: Mr. Chaitanya Sahoo and Mr. Rohit
Minacha, Advocates.

versus

STATE (NCT OF DELHI) Respondent
Through: Mr. Tarang Srivastava, APP for State.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **06.12.2018**

The petitioners seek leave to appeal against the orders dated 23.07.2018 and 23.10.2018, passed by the learned Metropolitan Magistrate-04, North-West District, Rohini District Court, Delhi, and the learned District and Sessions Judge, Rohini Courts, respectively, dismissing their case under section 426 IPC. The latter judgment had dismissed their petition on the ground of non-maintainability. The petitioners had complained that their neighbour had so structured his property, that it blocked sunlight and air from coming into their house, thereby causing mischief, which was punishable under section 426 of IPC.

The Trial Court has reasoned as under:-

“27. Be that as it may, even if it is assumed that the construction raised by the accused in his premises blocked the sunlight and fresh air to the premises of the complainant, it cannot be lost sight of that the rights to sunlight and fresh air are easementary rights which by their very nature are intangible and cannot be constructed to be property within the meaning of

Section 425 IPC which defines mischief as:-

“ Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits mischief.”

28. The use of the words 'its' in the definition of mischief also indicates that the destruction or change must be in the same property which is either destroyed or whose value is diminished or injuriously affected meaning thereby that the act must be done on the same property which is adversely affected. However, in the present case, the act of raising the building has been done not on the property of the complainant but on the property of the accused himself and hence by the mere raising of the construction in the own property of the accused no. 1, no mischief can be said to have been caused to the complainant.

29 Further, if it is still assumed that the construction raised by the accused in his premises blocked the sunlight and fresh air to the premises of the complainant and also caused changed in situation thereof causing its value to diminish, it was still for the complainant to prove that there was an intention or knowledge of the accused of the likelihood to cause wrongful loss or damage o the complainant herein, it has to be borne in mind that to constitute an offence under Section 425 IPC punishable under Section 426 thereof, the intention/knowledge of the accused is imperative as the offence of mischief imports that the act done must have been done deliberately and in the absence of the element of mens rea, while civil liability may arise, but the person shall not be liable for criminal prosecution. The mere fact that some loss may occur to some person by the exercise of any bona fide

right by the accused is not sufficient to fasten upon the accused any criminal liability for the offence of mischief as it is the intention/knowledge of the offender/accused which is the prime consideration to constitute the offence. However, in the present case, no such evidence has been led by the complainant nor any circumstances have been proved by the complainant from which it could have been the existence of such knowledge or intention of the accused could have been inferred let alone proved.

30. In view of aforesaid facts and circumstances, as the complainant has failed to prove its case beyond reasonable doubt and hence accused Girish Mittal S/o Late Sh. R.M. Mittal, Pankaj Mittal, S/o Sh. Pawan Kumar Mittal and Rattan Lal S/o Sh. Bharose are acquitted for the offence under Section 426/34 IPC in the present case.”

For any prosecution to be maintained under section 426, the mischief must relate to the property to which mischief is caused and it should be in the nature of harm to the complainant. In the present case, the complainant's property is neither damaged nor physically harmed. Their neighbour has raised a construction in his own property; the latter had a sanctioned plan from the Municipal Corporation; for a neighbour constructing on his own property against the building bylaws, a civil action may lie. The learned counsel for the petitioner submits that the impugned order has erred insofar as it has missed out on the Explanation under section 425 IPC. The Court is of the view that, The element of mischief cannot be imputed upon a neighbour simply because he may have erected a structure on his own land, albeit against building bye-laws. Although, an action against the same may be maintainable under the Delhi Municipal Corporation Act, 1957, but for the same an imputation cannot be assumed or imputed that the said construction

was raised to cause deliberate harm to the petitioners' property.

In view of the above, the Court finds no reason to differ with the rational and the conclusion of the impugned order. Accordingly, the petition is dismissed.

DECEMBER 06, 2018

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NAJMI WAZIRI, J