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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 23.01.2018

+ CRL.M.C. 5313/2017

SANJEEV KUMAR

..... Petitioner

versus

STATE & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Vinay Kumar, Advocate.

For the Respondents : Mr. Akshai Malik, APP for the State.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

23.01.2018

SANJEEV SACHDEVA, J. (ORAL)

Crl.M.A. 20836/2017 (exemption)

Exemption is allowed subject to all just exceptions.

CRL.M.C. 5313/2017

1. The petitioner impugns order dated 13.07.2017, passed by the Revisional Court, dismissing the revision petition filed by the petitioner against order dated 22.03.2017, passed by the Trial Court, dismissing the complaint of the petitioner after recording pre-summoning evidence.

2. The allegation of the petitioner was that on 07.03.2010 at about 12:15 pm his wife had gone to take a bath and on return after 10 to 15 minutes, she found that the almirah was lying opened and on checking the almirah, she found that a gold chain weighing 2 and ½ tola and two artificial *karas* were missing. However, a sum of Rs.40,000/- lying in the almirah was untouched.

3. In the complaint, it is contended that the respondent No.2; a tenant in a room just opposite the premises had access to the premises of the complainant and there being a common main entry door of the entire premises and there was no possibility of anyone coming from outside; she committed the theft.

4. The Trial Court after recording of the pre-summoning evidence noticed that a complaint had been filed by the respondent No.2 against the petitioner under Section 354 IPC for alleged sexual assault. It was noticed that the complaint was lodged under Section 354 IPC after about eight days of the alleged incident. On account of disturbance in public tranquillity, *Kalandara* under Section 107/151 IPC was prepared against the complainant. Further, it was noticed that in the FIR registered under Section 354 IPC, the petitioner was acquitted by the Trial Court observing that, in the circumstances of the case, filing of the said complaint under Section 354 IPC as counterblast to the theft complaint could not be ruled out completely. The Trial Court, however, on the complaint of the petitioner found that the complainant

had failed to substantiate the allegations and merely because the respondent No.2 was a tenant of another portion of the same property, which is not owned by the petitioner, was not sufficient to indict the respondent No.2.

5. The Revisional Court, after noticing the facts and the evidence led by the parties, held as under:-

“9. In the given situation, firstly, wife of the complainant was a material witness, but the complainant did not examine her.

Secondly, in the complaint addressed to the police and in the criminal complaint filed in the court, it was alleged that his wife had found the almirah lying opened, but while making statement in the court, he has stated that on checking, "he" had found the aforesaid items missing from almirah. He did not state as CW1 that his wife had found these articles missing from the almirah.

Thirdly, it is not the case of the complainant that he or his wife had seen Ms. Naureen committing theft. The complainant in his complaint Ex.CW1/1 and also while making statement in court levelled allegations against Ms. Naureen only on suspicion and that too simply on the ground that she used to reside in the room in front of room of the complainant.

Fourthly, there is nothing on record to suggest that complainant reported the matter to PCR, so that PCR or local police could reach the spot at once, and conduct immediate search of the room of Ms. Naureen. There is no explanation as to why PCR staff or local police was not informed immediately.

Fifthly, it is significant to note that in complaint Ex.CW1/1, the complainant alleged that he suspected all the occupants of the house but while appearing in court as CW1, the complainant did not state so in court.

Sixthly, when the complainant suspected even other occupants of the house, it cannot be said that suspicion raised by the complainant against Ms.Nureen-respondent was strong enough.

Seventhly, simply because a person resides in a room in front of the house of a complainant, it cannot be said that theft, if any, must have been committed by the person residing in the said room.

10. In the impugned order, Ld. Metropolitan Magistrate was required to observe all these material aspects. It is true that Ld. Metropolitan Magistrate took into consideration some additional facts also while dismissing the complaint, in view of the above discussion, court finds that from the evidence led by the complainant, it cannot be said that there were sufficient grounds to proceed against Ms.Naureen for the allegation of theft.

As a result, the petition deserves to be dismissed. Same is hereby dismissed.”

6. It may also be noticed that the petitioner prior to filing the complaint under Section 200 Cr.P.C. had given a written complaint to the SHO contending that his wife had seen the almirah open and the gold chain missing. Further, it is stated in the written complaint that respondent No.2 was in her own room at the time of the alleged incident and the petitioner suspected all members, living in the said house, of having committed the offence.

7. As noticed above, the Revisional Court has found that as per the complaint given to the police and also under Section 200 Cr.P.C., the person who discovered the alleged theft was the wife of the petitioner. She was never produced as a witness to substantiate the commission of the offence and involvement of any person. Further, it is noticed by the Revisional Court that there was discrepancy in the statement made by the petitioner in support of his complaint. Though, in the complaint given to the SHO and under Section 200 Cr.P.C, the contention was that the wife of the petitioner had discovered the alleged theft, however, in his statement, the petitioner stated that he wife had found the articles missing from almirah. The Court has noticed that it was not the case of the petitioner that the respondent No.2 was seen committing the theft, and in the statement made to the Court, the allegations were levelled on the respondent No.2 merely on the basis of suspicion and on the ground that she resides in a room in front of the room of the complainant. The Court has further noticed that no call was made to the PCR informing about the theft so that a search could have taken place immediately of the entire property to ascertain if the alleged missing articles were available in possession of any occupant of the property. It was also noticed that there was a discrepancy in the complaint lodged to the SHO as well as the statement made to the Court.

8. Further contention of the learned counsel for the petitioner that the allegations were not only qua theft but also with regard to

abetment to register a false case against the petitioner under Section 354 IPC committed by one judicial officer.

9. Perusal of the entire record shows that there is no name of any individual or allegations against any individual of having abetted or instigated the respondent No.2 for lodging a complaint under Section 354 IPC. Further, it may be noticed that the complaint filed by the petitioner under Section 200 Cr.P.C. alleges commission of offence only under Section 379, 406, 442 IPC. Further, the impugned order also records that the petitioner had pressed the revision petition only in respect of the occurrence dated 07.03.2010, i.e. the allegation of theft levelled against the respondent No.2.

10. In view of the above, the contention of the learned counsel for the petitioner is completely unsubstantiated from the record.

11. Reliance placed by the learned counsel for the petitioner on the judgment of the Supreme Court in *Bhushan Kumar vs. State Government NCT of Delhi*: 2012 5 SCC 424 to contend that at the stage of taking cognizance, the Magistrate has to be satisfied whether there is a sufficient ground for proceedings and not whether there is a sufficient ground for conviction, is not applicable to the facts of the present case.

12. In the present case, both the Trial Court as well as the Revisional Court has found that the petitioner has failed to discharge

the initial onus to satisfy the Court that there is a sufficient cause to even proceed to take cognizance of the offence.

13. In view of the facts that the petitioner has failed to produce the only material evidence i.e. his wife who is stated to have discovered the alleged theft and has failed to establish anything beyond a mere suspicion against the respondent No.2, I find no infirmity with the view taken by the Trial Court as well as the Revisional Court.

14. In view of the above, I find no merit in the petition. The petition is, accordingly, dismissed.

JANUARY 23, 2018
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SANJEEV SACHDEVA, J