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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 9th July, 2018

+ CRL.M.C. 4706/2015

TEXMACO INFRASTRUCTURE AND HOLDING LIMITED
..... Petitioner

Through: Mr. Lokesh Chopra, Advocate

versus

STATE & ORS. Respondents

Through: Mr. Mukesh Kumar, APP for the State
Mr. P.P. Singh Rana, Adv. for R-2.
Mr. Abhay Kumar, Adv. with
Ms. Sunita, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The second and third respondents are facing criminal proceedings against the backdrop of the report filed pursuant to investigation into case FIR No.107/2009 of Police Station Roop Nagar involving offences punishable under Sections 448/34 of the Indian Penal Code, 1860 (IPC) respecting property bearing No.79-A, Shivaji Line, Shakti Nagar, Delhi-110007, which, the petitioner herein claims to be the property belonging to it.

2. It is the case of the petitioner that one Dashrath Upadhyay had been inducted in the said premises on account of his employment in the mill of the company, and that he having failed to vacate, after his services had come to an end, prosecution for the offence under Section

630 of the Companies Act, 1956 was initiated, which led to he being held guilty and convicted and directed to restore the possession, which order was complied by the said person on 15.05.2004. It is the allegation of the complainant (the petitioner) that the second and third respondents had illegally trespassed into the said premises on 13.02.2009, in which regard the present FIR was registered leading to the criminal action for the offence punishable under Section 448/34 IPC.

3. The petitioner company had moved the application before the Metropolitan Magistrate seeking a direction to the afore-mentioned respondents to hand over the vacant possession, seeking to invoke jurisdiction of the said court under Section 452 of the Code of Criminal Procedure, 1973 (Cr.P.C.). The Metropolitan Magistrate declined to pass such an order observing, *inter alia*, that the matter was still pending trial and there was no occasion for order under Section 452 Cr.P.C. to be passed since such jurisdiction would arise “*at conclusion of trial*”. The petitioner challenged the said order by criminal appeal No.14/2015, which, however, has been dismissed by the court of Sessions by judgment dated 21.09.2015. It is the said consistent view of the two courts below which is sought to be assailed by the petition at hand.

4. At the hearing, it was pointed out by the counsel for the respondents (private party) that a civil suit is also pending vis-à-vis their right as to the subject premises.

5. Be that as it may, there is no error or illegality in the view taken by the two courts below as to the non-application of section 452 Cr.P.C. at the stage when the application was moved. The case is still pending trial and it is yet to be proved by the prosecution (complainant) that the second and third respondents have committed criminal trespass into the subject premises.

6. The petition is dismissed.

R.K.GAUBA, J.

JULY 09, 2018

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