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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 13th July, 2018

+ CRL.M.C. 4995/2015 and Crl. M.A. 17971/2015

VIRAG TIWARI & ANR

..... Petitioners

Through: Mr. Avadh Kaushik, Advocate

versus

STATE & ANR

..... Respondents

Through: Mr. Mukesh Kumar, APP for the
State with ASI Badlu Ram, PS Janak Puri

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioners are siblings to each other, both being children of late Sh. P.N. Tiwari, the second respondent being their sister-in-law (wife of their brother), each of them living at different floors of property bearing no.B-1/150, Janakpuri, New Delhi-110058. Admittedly, they are involved in a dispute with regard to the right, title, possession and use of the property, which is subject matter of the civil suit statedly now pending in the District Court.

2. On 20.02.2015, the second respondent had filed some complaint against the first petitioner, it being subject matter of DD no.41B of police station Janak Puri. On 09.06.2015, DD no.65B was recorded in police station Janak Puri against the backdrop of complaint of the second respondent. This led to initiation of proceedings before the

Special Executive Magistrate (West District) vide *kalandara* no.77AB/15 presented on 11.08.2015 for initiation of action under Section 107 read with Section 150 of the Code of Criminal Procedure, 1973 (Cr. PC) both against the second respondent and the petitioners, they having been reflected in such proceedings as “first party” and “second party” respectively.

3. It is own case of the petitioners that an inquiry report had been submitted by the SHO, PS Janak Puri before the Special Executive Magistrate for initiation of such preventive action, and the Special Executive Magistrate, before proceeding further, had recorded the statement of the investigating officer on 25.08.2015. By order dated 25.08.2015, show cause notices were issued to both parties by the Special Executive Magistrate observing in the corresponding order that having heard the investigating officer and recorded his statement, he was satisfied that on the information thus received vide DD no.65B and the facts brought before him, there were sufficient grounds to proceed against the parties in question including the petitioners under Sections 107, 150 Cr. PC. He directed the show cause notices to be issued in terms of Section 107/ 111 Cr. PC and the matter to come up before him on 08.09.2015.

4. Concededly, the petitioners, as indeed the other party, were served with formal notices whereby they were called upon to appear before the Special Executive Magistrate on 08.09.2015 to show cause against the proposed action. On 08.09.2015, the petitioners were present but the second respondent did not appear. The Special

Executive Magistrate issued bailable warrant against the second respondent while directing the petitioners to come up with surety bonds by 05.11.2015.

5. The present petition invoking the inherent jurisdiction of this court under Section 482 Cr.PC was filed to challenge the legality of the order dated 25.08.2015 praying for the proceedings under Sections 107 / 150 Cr. PC against the petitioners to be quashed, reliance being placed on the rulings of the single Judges of this court in *Asha Pant Vs. State & Ors*, Crl. M.C. 2077/2006, decided on 17.03.2008 and *Manish Chhabra Vs. State and Anr.*, Crl. M.C. 3605/2010, decided on 23.05.2011.

6. Having heard the learned counsel for the petitioners and having gone through the record, this court finds the petition to be devoid of substance. There is no parity with the cases cited at bar. No printed form has been used in the present case. The Special Executive Magistrate has taken care to follow the necessary procedure before initiating action and issuing the show cause notices. He not only had the inquiry report available to him based *inter alia* on the complaint made to the Station House Officer of police station Janak Puri but also the relevant police record submitted therewith. He took care by recording the statement of the investigating officer. The satisfaction recorded for initiating the process by the impugned order dated 25.08.2015 is only tentative in nature and is not a final conclusion reached. All that was done by the said order was to issue notice to the petitioners to appear and show cause against the proposed action.

Concededly, on the appointed date, in response to the show cause notice, the petitioners did appear but did not submit any reply to the show cause notice. The Special Executive Magistrate did not conclude the inquiry on account of such default. He adjourned the matter for further date, though issuing the necessary directions to regulate the presence and conduct of the petitioners during the interregnum. The attempt by the present petition is to stall the said inquiry which ought not be permitted.

7. The petition and the application filed therewith are found to be devoid of substance and are dismissed.

R.K.GAUBA, J.

JULY 13, 2018

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