IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Criminal Misc. No.M-45405 of 2017 (O&M)
Date of Decision: October 30, 2019

Radha Mohan Goswami

.....PETITIONER(s).

VERSUS

Mukund Madhav Goswami

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Gaurav Chopra, Advocate
for the petitioner (s).

Mr. S.S. Pathania, Advocate
for the respondent.

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SURINDER GUPTA, J.

This is petition under Section 482 Code of Criminal Procedure seeking quashing of complaint titled as "*Mukund Madhav Goswami Vs. Kamal Goswami & Another,* bearing No.3751 dated 15.04.2015 (Annexure P-16) filed by the respondent-complainant for the offences punishable under Sections 430 and 441 of Indian Penal Code (for short-IPC) and order dated 10.04.2017 (Annexure P-18) passed by Addl. Chief Judicial Magistrate, Chandigarh, summoning the petitioner along with Kamal Goswami to face trial for the offence punishable under Section 430 IPC along with all consequent proceedings arising therefrom.

Heard.

Respondent filed a complaint against petitioner and Kamal

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Goswami levelling two types of allegations in para 7 to 9, which are reproduced as follows:-

> "7. That just to make the life of the complainant and his family miserable, the accused No.1 & 2 had forcibly occupied the front verandah of the house and established a kitchen in the verandah. Access to the bedroom, kitchen & bathroom on the ground floor has also been blocked. The accused No.1 had stopped the water supply to the bathroom and kitchen on the ground floor and bathroom and kitchen on the first floor since 23.10.2014.
>
> 8. That accused No.1 had been requested to stop the nuisance of stoppage of water and restore the water supply but of no avail.
>
> 9. That even legal notice dated 19.3.2015 was attempted to be served upon accused No.1 but the accused No.1 evaded the service."

In support of his contention, complainant appeared as CW1 and the copy of his statement has been produced as Annexure P-17 (Colly).

Learned counsel for the petitioner submits that not even a single line has been uttered by the complainant against the petitioner.

Learned trial Court while passing the summoning order, made a specific observation that complainant has not been able to make out a case that the accused persons have trespassed in second floor of the house in question forcibly and put their lock in the said portion. He also failed to prove that they have forcibly occupied the front verandah of the house and established a kitchen there so as to make out a case for the offence punishable under Section 441 IPC. The above observation clearly makes out that no offence as alleged in the complaint against the petitioner was

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found to have been committed. Learned Additional Chief Judicial Magistrate, however, observed that the water supply on the first floor has been obstructed and proceeded to summon both the accused for the offence punishable under Section 430 IPC despite there being no allegation in the complaint that petitioner, in any manner, had created nuisance by stopping the water supply.

Learned counsel for the petitioner has drawn my attention to the initial complaint made by respondent-complainant to the police (Annexure P-19), wherein he has not levelled any allegation against the petitioner. The complaint filed by the petitioner to the police before filing of the complaint in Court reads as follows:-

> "1. I am staying on the first floor of the House No.70 Sector 27, Chandigarh (UT) with my family comprising of 91 years old father, son and daughter-in-law.
>
> 2. That Kamal Goswami my younger brother & his family are staying with Sh. Radha Mohan Goswami and had made the life miserable for me as well as my family by resorting to nuisance.
>
> 3. That though the second floor belongs to my father Sh. Madan Mohan Goswami but Kamal Goswami has forcibly locked it and is in his possession since long with the result that he has got control over and exclusive access to water tanks placed on the roof of second floor.
>
> 4. That since last Diwali that is 23-10-2014, he has closed/blocked the water supply to the portion on the first floor and ground floor in which I am residing with my family comprising of 91 years old father, son and daughter-in-law, which has resulted in stoppage of water to bath-room & kitchen on the first floor as well as on

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the ground floor.

5. That Kamal Goswami has been requested so many times to open the water supply but it appears that he don't have any intention of doing so because of his habit of causing nuisance and harassment to me & my family comprising of 91 years old father, son and daughter-in-law.

6. That every act of stoppage of water supply to the portion of house under my occupation as well as under occupation of my father is an act which is a mischief being done by Kamal Goswami just to create a nuisance.

7. A notice under register post was also given to him through my lawyer on March 20, 2015 to restore the water supply to the portion of the house occupied by me as well as my father within 24 hours but all in vain.

You are requested to register FIR, investigate and initiate appropriate action as per law."

Learned counsel for respondent has argued that summoning order is a preliminary order based on evidence produced before the Court, as such, cannot be interfered at this stage. However, despite repeated queries, he could not point out any averment in the complaint about the commission of offence of stoppage of water to the first floor by the petitioner or allegation to this effect in the statement of complainant made before the Court, what to talk of allegations against him in the complaint (Annexure P-19). There is an inter se dispute between the parties over the title and possession over the portions of house in question, which is a separate issue to be decided in appropriate proceedings before the Court. The complaint against the petitioner and his summoning order without looking into the allegations and the evidence on record is a sheer misuse of

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the process of Court calling for quashing of complaint against the petitioner.

This petition is allowed. Complaint titled as "*Mukund Madhav Goswami Vs. Kamal Goswami & Another,* bearing No.3751 dated 15.04.2015 (Annexure P-16) and summoning order dated 10.04.2017 (Annexure P-18) passed by Addl. Chief Judicial Magistrate, Chandigarh along with all subsequent proceedings qua the petitioner are quashed. Trial Court is directed to expedite the trial of the complaint against accused Kamal Goswami and try to dispose of the same expeditiously, preferably within a period of six months.

(SURINDER GUPTA)
JUDGE

October 30, 2019
Sachin M.

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***

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