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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 24th January, 2019

+ CRL.M.C. 342/2016 and Crl.M.A.1454/2016

RAJ KUMAR SINGH & ANR. Petitioners

Through: Mr. V.P. Katiyar, Advocate with
Mr. Puneet Verma, Advocate

Versus

BRAHAM DUTT TIWARI Respondent

Through: Mr. Ravinder Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On the criminal complaint (CC No.26/2001) of the respondent presented on 07.12.2001, the petitioners along with one another were summoned by the Chief Metropolitan Magistrate (CMM), by his order dated 17.01.2015, to answer the accusations of offences punishable under sections 427/448/380/506/34 of Indian Penal Code, 1860 (IPC). The said order was challenged by the petitioners in the court of sessions by criminal revision petition No.17/2015. The revisional court dismissed the said challenge by order dated 03.11.2015. Challenging both the said consistent orders of the two courts below, the present petition was filed invoking the inherent jurisdiction of this

court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.).

2. The petition is resisted by the respondent (complainant). The complainant has alleged that he was in possession of a certain plot of land forming part of khasra No.360 in village Gazipur, Delhi, he having raised construction of one room thereupon wherein he had placed some personal property, he being engaged in the process of further construction on 04.11.2001. He alleged that on 08.11.2001, the petitioners with certain others had converged on the said plot and had forcibly demolished the structure that he had developed and physically assaulted his wife stealing some of his moveable property. Reference was made to temporary injunction granted by the civil court in some litigation which was initiated around the same time. He alleged that the report to police on 22.11.2001 followed by another complaint dated 26.11.2001 had not evoked any meaningful response.

3. The complainant had examined himself (CW-2) and his wife (CW-1) in the pre-summoning inquiry, also examining his son Brijesh Kumat Tiwari (CW-3). It is on that basis that the summoning order was passed which has been upheld by the revisional court.

4. It is the argument of the petitioners that the complaint case has been set up on false accusations, it being a counter-blast to the FIR that had been registered vide No.413/2001, involving offences punishable under sections 452/448/342/506/34 IPC. It appears that on the complaint of the first petitioner, the said FIR was registered, his case being that he was in possession of the subject property, attempt

having been made by the respondent and his wife with certain others to commit illegal trespass. The said State case is presently under trial.

5. The fact that the police had registered the FIR at the instance of the first petitioner is no reason why the case of the respondent is to be disbelieved without giving him an opportunity to prove his version. It may be that the civil suit was not pursued and was suffered to be dismissed in default. But, the evidence on the basis of which summoning order has been passed cannot be trashed only on such account. The complaint of the respondent has given rise to a cross case which, in the given facts and circumstances, will have to be tried and decided simultaneously with the State case of the opposite party, i.e., the petitioners.

6. In the above facts and circumstances, no case is made out for any interference by this court at this stage.

7. The petition and the application filed therewith are dismissed.

JANUARY 24, 2019

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R.K.GAUBA, J.