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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 21st February, 2019

+ CRL.M.C. 1482/2018

Dr. S.P. KAUSHAL

..... Petitioner

Through: Mr. Rajesh Gogna and Mr.
Upendra Sai, Advocates

versus

ANIL KUMAR MISRA & ANR

..... Respondents

Through: Mr. Kunal Kalra, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner has been a tenant in the premises described as bearing no.B-1/502, Janak Puri, New Delhi, statedly since 1984 at the initial rent of Rs.1,200/- p.m., which he admits was increased to Rs.1,500/- p.m., the late father of the respondents herein being the person who had so inducted him being the landlord. The respondents, having stepped into the shoes of their father after his death, instituted a suit for possession and recovery of arrears of rent / damages with interest, *pendente lite* and future, against the petitioner, *inter alia*, pleading the rent to have been subsequently increased to Rs.4,000/-

p.m. The suit (no.838/2011) was contested. It was eventually dismissed by the Civil Judge, by judgment dated 22.09.2014, rejecting the plea of the respondents about the rate of rent having been increased to Rs.4,000/- p.m., also declining to accept the evidence to that effect sought to be adduced by two documents, Ex. PW1/8 and PW1/9.

2. The petitioner had presented an application under Section 340 of the Code of Criminal Procedure, 1973 (Cr. PC) seeking criminal action against the respondents, alleging that by claim to above effect, sought to be supported by affidavit tendered in evidence and the documents referred to earlier, they had committed offences punishable under Sections 193, 195, 196, 202, 209 and 211 of Indian Penal code, 1860 (IPC). The Civil Judge having considered the said application (Misc. case 40/2014 – new No.59824/2016) by order dated 21.12.2016 declined to initiate any such action or make any such complaint as is envisaged under Section 195 Cr. PC. referring *inter alia* to the ruling of the Supreme Court in *Iqbal Singh Marwah and Anr. vs. Meenakshi Marwah and Anr.*, AIR 2005 SC 2119.

3. The petitioner challenged the above-said decision by appeal (RCA 04/2017 – new No.73/2017) in the court of the Additional District Judge, the appeal being under Section 341 Cr. PC. The appellate court affirmed the view taken by the Civil Judge, and thus, dismissed the appeal by judgment dated 03.11.2017.

4. The petition at hand invokes the jurisdiction of this court under Article 227 of the Constitution of India read with Section 482 Cr. PC

to bring yet another challenge to the said two consistent orders of the courts below, reliance being placed on *R.S. Sujatha vs. State of Karnataka, 2011 (5) SCC 689* and *Sciemed overseas Inc. vs. BOC India Ltd. and others, 2016 (3) SCC 70* as also a decision rendered on 12.02.2018 by a division bench of this court in *Ashwini Shourie vs. Directorate of Estates and Anr., 2018 SCC Online Del 7105*.

5. Having heard the learned counsel on both sides and having gone through the record, this court finds no substance in the petition. The pleadings of the parties before the civil judge had given rise to issues of facts which were adjudicated upon on the basis of evidence led by both sides, the test essentially being of “*pre-ponderance of probabilities*.” It appears there were certain receipts relied upon by the petitioner which showed acceptance of rent at the rate of Rs.1,500/- p.m. which did not seem to gel with the claim about the rent having been increased to Rs.4,000/- p.m. The defendants came up with some explanation about acceptance of rent at the previous rate notwithstanding their claim about increase in the rent for the later period. Their explanation was not found to be satisfactory and on overall scrutiny of the evidence tendered, the Civil Judge found it difficult to grant any relief vis-à-vis the claim based on increased rate of rent. The two receipts on which the respondents (as plaintiffs in the civil suit) had relied upon (i.e. Ex. PW1/8 and PW1/9) did not bear the signatures of the tenant (the petitioner herein). They apparently were documents unilaterally executed by the first respondent purporting to be copies which had been retained at the time of acknowledgement of

the rent received from the tenant. The failure to satisfy the Civil Judge on the basis of such material does not necessarily mean that the said result of the civil case must invariably and mandatorily be followed by a criminal action to be initiated by the court under Section 195 read with Section 340 Cr. PC.

6. It has to be borne in mind that initiation of criminal action by the court under such jurisdiction as above is one of great responsibility. The presiding judge of the civil court must be fully satisfied that a clear case is made out to bring home the charge of criminal offences, beyond all manner of doubts against the party in whose respect such criminal action is sought. Both the courts below have consistently been of the view that, in the given facts and circumstances, it is not expedient in the interest of justice that such complaint be initiated by the court. This court finds no good reason to interfere with the said conclusion arrived at properly in exercise of judicial discretion vested in the said fora.

7. The petition is dismissed.

R.K.GAUBA, J.

FEBRUARY 21, 2019

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