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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 21.05.2019

+ CRL.REV.P. 536/2015

JAGDISH KAPILA

..... Petitioner

versus

RAJ KUMAR & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Aditya Madaan, Advocate.
For the Respondent : Mr. Subodh Kumar Pathak, Advocate for R-1.
Mr. Hirein Sharma, APP for the State with SI
Shubhendu Sharma, PS Sarojini Nagar.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns charge framed against the petitioner on 13.12.2013 whereby petitioner has been charged of an offence under Section 447 IPC.

2. Learned counsel for the petitioner submits that the Trial Court has erred in framing a charge and not appreciating that petitioner was the allottee and in possession of the subject shop and there is no document or material to show that respondent/complainant was ever in possession of the shop.

3. Learned counsel further submits that the continuance of proceedings would be a harassment of the petitioner who is admittedly the recorded lessee of the petitioner from NDMC and on a mere bald statement, the FIR has been registered. He further submits that petitioner had filed a suit for permanent injunction seeking a restraint on the complainant from interfering in the peaceful possession of the petitioner and from dispossessing him from the property and said suit has been decreed by judgment dated 05.05.2015.

4. Learned counsel for the respondent/complainant submits that respondent had paid a sum of Rs.50,000/- for taking the shop on rent and possession of the same was delivered to the respondent by the petitioner on 18.01.2011 and complainant was in the process of renovating the same when petitioner trespassed into the shop on 27.02.2011.

5. The shop in issue is in Palika Bhawan, R.K.Puram, New Delhi which is a NDMC market. Petitioner is admittedly the allottee of the said shop from NDMC. Respondent had filed a complaint under Section 200 contending that petitioner had agreed to rent out the shop to the respondent and had demanded a sum of Rs.50,000/- to be paid in advance. It is alleged that Rs.50,000/- was paid as advance and keys were delivered on 18.01.2011. It is alleged that petitioner had assured that he would give a receipt for the same and would also remove his articles from the said shop.

6. The complaint alleges that petitioner did not remove his articles lying in the shop with malafide intention and after lapse of around 20-25 days, the complainant started woodwork in the shop. On 27.02.2011, when the carpenter was on leave, the petitioner is alleged to have broken the locks and trespassed into the shop.

7. It is conceded by the complainant that there is no document to evidence the fact that any amount was paid by the respondent to the petitioner or possession was handed over by the petitioner to the respondent by the said shop.

8. Admittedly the petitioner is the allottee of the shop from NDMC. Even the complainant concedes that there is no documentary evidence to corroborate the fact that there was ever any discussion between the petitioner and the complainant with regard to renting of the shop or that money was paid in advance by the respondent to the petitioner. There is further no documentary evidence to corroborate that any tenancy was created in favour of the respondent or possession handed over. On the contrary the complaint itself alleges that there were certain articles of the petitioner lying in the shop i.e. one table and chair and one side rack, which it is alleged he agreed to remove within a day or so.

9. The complaint is silent as to when the petitioner actually removed his articles and handed over the peaceful vacant possession of the shop to the respondent. The complaint rather shows that

petitioner continued to retain possession of the said premises as his articles continued to remain there. Further record reveals that petitioner had made a complaint to the police on 26.02.2011 and then on 07.03.2011 that the complainant along with four other shop keepers was harassing him and was pressurizing him to part with the possession of his shop.

10. The petitioner had also filed a civil suit for perpetual injunction arraigning the complainant and those four individuals as the ones who were pressurizing him and seeking an injunction restraining them from dispossessing the petitioner. The suit filed by the petitioner stands decreed on 05.05.2015, though ex parte. Despite the petitioner annexing a copy of the petition in these proceedings and the respondent being served, admittedly no challenge has been made by the respondent to the order dated 05.05.2015 which has become final.

11. The admitted factual position that emerges is that petitioner is the allottee of the shop from NDMC and has a decree in his favour and against the complainant restraining him from forcibly dispossessing the petitioner from the said premises. Further it is an admitted position that there is no documentary evidence to show any discussion with regard to renting out of the shop by the petitioner, payment of money by the respondent, vacation of the shop and handing over of the vacant peaceful possession to the respondent.

12. The alleged eye witnesses cited by the respondents were all

made defendants in the civil suit filed by the petitioner and even they did not come forward to controvert the case of the petitioner and decree has been passed against them also.

13. Section 447 is punishment for Criminal Trespass which is defined under section 441 to be committed when a person enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property. The impugned order clearly is erroneous in as much as the Trial Court has framed the charge on the presumption that the complainant was in possession of the shop at that time. As there is no material to show that possession was parted with by the petitioner or handed over to the complainant, petitioner could not have been charged with the offence under section 447 IPC.

14. In view of the above, I am of the view that charge framed against the petitioner on 13.12.2013 is not sustainable. In view of the above, petition is allowed. Impugned order dated 13.12.2013 framing charge against the petitioner under section 447 IPC is set aside.

15. Petitioner is discharged.

16. Order *dasti* under signatures of the Court Master.

MAY 21, 2019
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SANJEEV SACHDEVA, J