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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P. (CRL.)1116/2020

SMT. AARTI

..... Petitioner

Through: Mr. Chander Mani Grover, Advocate.

Versus

THE STATE OF NCT OF DELHI & ORS.

.... Respondents

Through: Mr. Sanjay Lao, ASC for the State.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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24.07.2020

Crl. M.A. Nos.9825/2020 (exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(Crl.) 1116/2020

By way of the present petition, the petitioner impugns order dated 29.01.2020 made by the learned Additional Sessions Judge (ASJ) in Criminal Revision No.10/2019, whereby the learned ASJ has upheld order dated 21.12.2018 made by the learned Metropolitan Magistrate (MM) in CC No.24 MSP/18 dismissing the petitioner's application under section 156(3) Cr.P.C. The petitioner also seeks a direction for registration of an FIR against respondent No.3 based upon the petitioner's complaint dated 27.04.2018.

2. The dispute has arisen from a transaction of sale of immovable property, whereby *vidé* sale deed dated 21.10.2014 the petitioner

purchased what was described as the 'ground floor' of a certain property situate in Village Chandrawali, Shahdara, Delhi. The essence of the grievance is that what was sold to the petitioner as 'ground floor' was in fact 'stilt parking' as per the sanctioned building plans and under municipal bye-laws and regulations; and for this reason, after some 04 years of occupation of the portion, the East Delhi Municipal Corporation (EDMC) has taken action and sealed the portion that the petitioner bought.

3. In this backdrop, the petitioner filed a civil suit which is pending adjudication in the concerned court.

4. The petitioner also filed a complaint dated 27.04.2018 with the police; and thereafter filed an application under section 156(3) Cr.P.C. before the learned MM, which came to be dismissed by order dated 21.12.2018 *inter alia* observing as follows:-

"It is observed that all the documents and evidence are in custody of the complainant and nothing is out of reach of the complainant which requires special investigation through Police. This court is also of the considered view that the complainant is well within the power and in possession of the documents/material/evidence required to prove her case by adducing evidence.

Accordingly, the application of the complainant under Section 156(3) Cr.P.C. is accordingly dismissed. The complainant is given opportunity to prove her case by adducing C.E."

5. The above order was challenged by way of a criminal revision petition, which has now been dismissed by the learned ASJ *vidé* order dated 29.01.2020 in the following words:

“13. Coming to the facts and circumstances of the present case, from the averments made in the application/ complaint of the complainant/revisionist herein, the Court is of the view that the complainant is in control of all the evidence required to be produced in support of her allegation and to prove the same. Even if the allegations of the complainant are accepted as true that the accused did not inform the complainant at the time of execution of Sale Deed dated 21.10.2014 that the impugned ground floor is in fact a stilt parking as per Sanction Plan approved by EDMC, then too, the same can be proved by her through oral and documentary evidence. If at all, any document is in possession of the government agency/ department, the same may be called before the court through legal process. Accordingly, there is no requirement of any investigating including custodial interrogation of the accused by the police.”

6. Mr. Chander Mani Grover, learned counsel for the petitioner has been heard.

7. Mr. Sanjay Lao, learned Additional Standing Counsel (ASC) has also appeared for the State on advance copy; and has made submissions.

8. Evidently, the petitioner's grievance arises from what is essentially a civil transaction of purchase of immovable property, for which a civil suit is already stated to be pending. Although the petitioner has not disclosed the pendency of the civil suit in the petition, nor have the plaint and documents relating to the suit been annexed, upon this being pointed-out by Mr. Lao, Mr. Grover admits that a civil suit was pending as on date of filing of the present petition, though he says it was filed after the police complaint. Moreover, in

substance what the learned MM and learned Sessions Court have said is that there is *nothing to be investigated* in the matter since the evidence required is already in possession of the petitioner, who may accordingly adopt such remedies, even in criminal law, as are available to her *inter alia* by filing a complaint under section 200 Cr.P.C.

9. As matter of fact, in his order dated 21.12.2018, the learned MM has expressly given to the complainant the opportunity to prove her case by adducing complainant's evidence.

10. In view of the above factual matrix, I see no reason to entertain the present writ petition, which is accordingly dismissed.

11. Pending applications, if any, also stand disposed of.

ANUP JAIRAM BHAMBHANI, J.

JULY 24, 2020

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