

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 681/2018

Date of decision: 12th March, 2021

IN THE MATTER OF:

SAPNA

..... Petitioner

Through Mr. K.G. Seth, Advocate

versus

STATE (NCT OF DELHI) & ORS

..... Respondents

Through Ms. Kusum Dhalla, APP for State
S.I. Suraj, P.S. Sangam Vihar
Mr. S.C. Chawla, Advocate for
respondents

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This revision petition filed under Section 397/401 Cr.P.C is directed against the order dated 08.05.2018, passed by the Additional Session Judge-02, (South), Saket Courts, New Delhi in Criminal Appeal No.27/2017 where by the Additional Session Judge has dismissed the appeal filed by the petitioner and has affirmed the order dated 08.11.2016, passed by the Metropolitan Magistrate, Saket Courts, New Delhi. The learned Metropolitan Magistrate, New Delhi by order dated 08.11.2016 has acquitted the respondents No.2, 3 and 4 for offences under Sections 323/448/34-IPC arising out of FIR No.368/09, dated 10.10.2009, registered at Police Station Sangam Vihar, New Delhi.
2. The petitioner states that she is the owner of the property bearing

H.No. 1125, Gali No. 19, Sangam Vihar, Delhi. It is stated that she is in possession of the said property since June, 2004. It is stated in the revision petition that on 01.10.2009, the accused and his associates broke open into the house of the petitioner and threw away the household goods of the petitioner in her absence and took away the jewellery and other articles and documents. It is stated that on her return the petitioner went to the Police Station. However, the records indicate that FIR bearing No. 368/09 was registered on 10.10.2009 at Police Station Sangam Vihar, Delhi for offences under Sections 448/323/34 IPC. After investigation charge-sheet has been filed. On being summoned the accused entered appearance, they pleaded not guilty and claimed trial.

3. Proceedings were initiated against the accused. In order to prove the guilt, prosecution examined 5 witnesses.

- i. PW-1 (Sapna) is the complainant.
- ii. PW-2 ASI Gajraj Singh duty officer was examined to prove the copy of FIR and endorsement on *rukka*.
- iii. PW-3 Head Constable Nathi Lal deposed that he alongwith Constable Sarvan went to the spot on receiving DD N0.33A, regarding quarrel on 09.10.2009.
- iv. PW-4 Constable Sarvan was examined to prove the arrest memos and personal search memos.
- v. PW-5 SI Ram Kishan was examined to prove the site plan and personal search memo of one of the accused.

4. The learned Metropolitan Magistrate after hearing both sides came to

the conclusion that the prosecution has not been able to establish its case. The learned Metropolitan Magistrate held that for the purpose of establishing offence under Section 323 IPC it has to be proved that the accused caused hurt to the complainant and that the accused persons acted in furtherance of their common intention within the meaning of section 34 IPC. The learned Metropolitan Magistrate found that the entire case of the prosecution rests upon the testimony of PW-1, complainant/petitioner herein. The learned Metropolitan Magistrate after analysing the deposition of the complainant/petitioner herein held that the complainant has given contradictory answers to the question put by the Defence counsel. The learned Metropolitan Magistrate found that the FIR is dated 10.10.2009 whereas according to the complainant/petitioner herein the alleged incident took place on 09.09.2009. It is also found that she has filed Civil Suit against the accused wherein the complainant/petitioner had stated that the date of incident is 01.10.2009. The learned Metropolitan Magistrate did not accept the version of the complainant/petitioner that even though the incident took place on 01.10.2009 the complaint was not recorded by the Police Officer and the FIR was registered only on 10.10.2009. The learned Metropolitan Magistrate found that the complainant was changing her stance at every stage and that the statement of the complainant is not believable. The learned Metropolitan Magistrate by its order dated 08.11.2016 acquitted the accused.

5. The matter was taken up in appeal by the complainant. The learned Additional Session Judge perused the record and found that the order of acquittal does not require any interference. The learned Additional Session

Judge observed that in the Civil case filed by the complainant/petitioner it was stated that the date of incident was 01.10.2009 but the *rukka* mentions the date of incident as 09.10.2009. The learned Additional Session Judge found that there has been inconsistency in the statement of the complainant/petitioner as to when the incident took place as at some places the complainant/petitioner has mentioned that the incident took place on 01.10.2009 whereas in other places she has mentioned that the date of the incident was 09.10.2009. The learned Additional Session Judge held that there is nothing to demonstrate that the petitioner was in possession of the property on 09.10.2009. The Additional Session Judge noted that if the facts stated in the civil suit are correct and the complainant/petitioner was dispossessed on 01.10.2009, then she cannot be in possession of property on 09.10.2009 and therefore no case of criminal trespass could be made out against the accused. The Additional Session Judge dismissed the appeal. It is this order which is under challenge in the instant petition.

6. Mr. K. G. Seth, learned counsel for the petitioner states that the petitioner is the owner of the said address and she purchased the same by paying Rs. 2,00,000/- to the previous owner in June 2004. The petitioner was handed over the possession and has been living in the said address since June, 2004. He states that on 01.10.2009, the accused came with his associates and threw the household goods of the petitioner in absence of the petitioner and took away the jewellery and other article and documents. The petitioner was in a Jagran in old Delhi and came to know about the incident when she got calls from her neighbour. She returned to her residence and went to the Police Station to lodge an FIR. It is stated by Mr. K.G. Seth,

learned counsel for the petitioner that the complainant made repeated visits to the Police Station to register the FIR but the Police registered the FIR only on 10.10.2009. Mr. K.G. Seth, learned counsel for the petitioner contends that the petitioner has been forcefully dispossessed from her premises. Mr. K.G. Seth, learned counsel for the petitioner vehemently contends that the husband of the petitioner died as he was not able to take the shock of being forcefully dispossessed. Learned counsel for the petitioner also state that the accused have no document to substantiate that they are the owners of the premises. He would rely on the judgment of Supreme Court in Suraj Lamp Industries v. State of Haryana, **2012 (1) SCC 656**, to contend that the documents given by the accused to substantiate their ownership are not sufficient to confer title. Mr. K.G. Seth, learned counsel for the petitioner would also rely on the judgement of Supreme Court in Nar Singh v. State of Haryana, **2015 (1) SCC 496**, to support his contention that the omission on the part of the Court to put questions under Section 313 Cr.P.C cannot give benefit to the accused.

7. Heard Mr. K.G. Seth, learned counsel appearing for the petitioner, Ms. Kusum Dhalla, learned APP appearing for the State and Mr. S.C. Chawla, learned counsel appearing for the respondent Nos.2, 3 and 4 and perused the documents.

8. A perusal of the deposition of PW-1, the complainant/petitioner who is the sole eye-witness and on whom the entire case of the prosecution rests, shows several contradictions. In her chief examination the complainant/petitioner herein states that she does not remember the exact date of the incident but the incident occurred nine days before Diwali. She

states that on that day at about 8:00 AM she along with her three children went to a temple at Lal Kuan to attend *Ratri Jagran*. It is stated in her chief examination that she was informed by her neighbour that the accused and their family members had ransacked the entire household articles and thrown them out and had demolished the house. She further states that she returned back at around 02:30 P.M. It is stated in her chief examination that when she asked the accused as to why they threw her household articles and demolished her house, the accused told her that they were the owners of the house and that she was a tenant and she has not been paying the rent and that was the reason she has been evicted from the said house. It is stated in her chief examination that all the accused persons started beating the complainant/petitioner herein with iron pipe after confining her inside the said house. It is stated in her chief examination that at about 2:00 AM in the morning the accused took her to a forest area and confined her there for a month and thereafter deserted her in the ridge area of Prahladpur. It is stated in the Chief examination that she was rescued with the help of some passerby and thereafter she informed the Police about the incident but no action was taken.

9. In her cross-examination she accepts that in the civil suit filed by her she had stated in the plaint that she had been dispossessed on 01.10.2009. In the cross-examination she also states that on 09.09.2009 she lodged a complaint with the Police on which date the incident took place.

10. While specifically asked a question as to whether the incident took place on 01.10.2009 or 09.09.2009, the complainant/petitioner herein reiterated that the correct date is 09.09.2009. She further stated that she had

not given any complaint to the Police on 10.10.2009 nor signed any document on 10.10.2009. She has further stated that no statement was recorded on 10.10.2009.

11. PW-3 Head Constable Nathi Lal had deposed that he received DD No.33A on 09.10.2009. He reached the spot at 5:00 AM where he found the complainant and her household items had been scattered. He states that he sent the complainant to the AIIMS Trauma Centre but when he went to AIIMS, the complainant was not found in the OPD. He also states that the complainant visited the Police Station and gave her statement.

12. There are several contradictions in the chief examination and the cross-examination of the complainant and the courts below are justified in coming to the conclusion that the deposition of PW-1 does not inspire confidence.

13. Reading of the judgments of the Courts below shows that the Trial Court and the first Appellate Court after perusing the documents and analysing the evidence have acquitted the accused. It cannot be said that the judgment of the Courts below are perverse.

14. The scope of the revision petition under Sections 397/401 Cr.P.C. read with Section 482 Cr.P.C. has been explained in Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460, the Supreme Court observed as under:

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for

the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

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20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused.” (emphasis supplied)

15. After two courts have acquitted the accused, this Court while exercising its jurisdiction under Section 397/401 Cr.P.C. cannot substitute its own conclusion to the one arrived at by the Courts below. It cannot be said that the view taken by the Courts below is not a plausible view.

16. The judgment dated 08.05.2018, passed by the Additional Session Judge-02, (South), Saket Courts, New Delhi in Criminal Appeal No.27/2017 is sustained.

17. Accordingly, the revision petition is dismissed along with the pending applications, if any.

SUBRAMONIUM PRASAD, J.

MARCH 12, 2021

Rahul

