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IN THE HIGH COURT OF DELHI AT NEW DELHI



CRL.M.C. 3467/2019

Date of Decision: 12.01.2022

IN THE MATTER OF:

T. HARISH KUMAR

..... Petitioner

Through: Mr. Kailash Vasudev, Sr. Advocate with
Mr. Navneet Dugar, Advocate

Versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Hirein Sharma, APP for State with SI
Harshvardhan, PS Vivek Vihar

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
(VIA VIDEO CONFERENCING)

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of the present petition filed under Section 482 Cr.P.C., the petitioner has sought quashing of FIR No.349/2018 registered under Section 188 IPC at Police Station Vivek Vihar, Delhi arising out of Complaint Case No.1256/2019, and consequential proceedings including the charge sheet and the order dated 20.03.2019 passed by the learned CMM, Shahdara District, Karkardooma Courts, Delhi, vide which cognizance of the offence was taken.

2. Brief facts, as mentioned in the petition, are:-

i) The petitioner, alongwith his wife, is the joint owner of flat property bearing No. A-40, Vivek Vihar, Phase-II, 2nd Floor, Delhi-110095 (hereinafter, referred to as '*the flat*').

ii) Vide registered Rent Deed dated 03.05.2018, the petitioner and his wife had rented out the flat to Leela Ambience Delhi Convention Hotel (hereinafter, referred to as '*the Hotel*'), acting through its Authorized



Signatory *Ms. Parul Jain*, for a period of 36 months initially. The flat was rented out for Residential purpose, i.e. for accommodation of lady staff members of the Hotel exclusively, and for no other purpose.

iii) Subsequent to execution of the aforesaid Rent Deed, the Hotel, vide letter dated 25.06.2018, had provided a list of 8 persons to the petitioner who were their employees and were to occupy the flat. Alongwith the list, duly filled tenant verification forms of those persons were also handed over. On execution of the Rent Deed, the petitioner forwarded the aforesaid forms to the concerned Police Station, which were duly received therein on 29.06.2018 and 02.07.2018.

iv) On 05.07.2018, a complaint came to be filed on behalf of the residents occupying other floors of the property bearing No. *A-40, Vivek Vihar, Phase-II, Delhi-110095*, to the effect that the occupants of the flat used to come late in the night and were a source of disturbance and security concerns to the complainants, as main entrance doors of the property would sometimes be left open in late night.

v) On becoming aware of the concerns shown by the other occupants of the property/building, the petitioner immediately sent a notice to the Hotel on 09.07.2018 seeking to terminate the tenancy and asking that peaceful possession of the flat be handed over back to him and his wife.

vi) In pursuance of the aforesaid notice, the vacant possession of the flat was handed over by the Hotel to the petitioner on 10.08.2018. In between however, on 16.07.2018, the present FIR came to be registered on the complaint of *Head Constable Kapil Kumar* alleging that during spot inspection, two ladies namely *Bhadri Maya Gurang* and *Rinchen Lhamo* were found to be tenants of the flat, in respect of whom no police verification had been carried out in terms of the order No.7308-7407/R-ACP/Vivek Vihar Delhi dated 11.12.2017.



3. Mr. Kailash Vasudev, learned Senior Counsel appearing for the petitioner, while referring to the contents of the Rent Deed, submits that the flat was rented out to the Hotel for the purpose of accommodation of its lady staff. He further submits that in pursuance of the rent agreement, a list of 8 persons, alongwith their tenant verification forms, was forwarded by the Hotel to the petitioner, which documents were duly submitted to the concerned Police Station for verification on 29.06.2018 and 02.07.2018. He also submits that as per the information disclosed by the occupants of the flat, only the 8 persons named in the letter dated 25.06.2018 of the Hotel were residing in the flat. Learned Senior Counsel has submitted that on becoming aware of the issues faced by the other residents of the property/building, the petitioner vide notice dated 09.07.2018 immediately terminated the tenancy and sought vacant possession of the flat which was delivered on 10.08.2018. He further submitted that on 16.07.2018, the petitioner had also given copies of the Rent Deed, the tenant verification forms as well as the notice dated 09.07.2018 to the concerned SHO. Lastly, it is submitted that neither were the aforesaid two ladies tenants of the petitioner, nor did *Constable Sanjeev Kumar* and/or *Head Constable Kapil Kumar* meet him on 16.07.2018 at 7:30 p.m. as alleged.

4. Learned APP for the State, on the other hand, has opposed the petition. He submitted that the petitioner had rented out the flat without getting requisite police verification done, and thus, had violated the order No.7308-7407/R-ACP/Vivek Vihar Delhi dated 11.12.2017.

5. I have heard learned counsels for the parties and have also gone through the Trial Court Record, which was requisitioned on the previous date.

6. A plain reading of the FIR in question would show that the same was registered in furtherance of *Head Constable Kapil Kumar's* visit to the flat



on 16.07.2018 at about 7:30 p.m. It was stated in the FIR that the Head Constable, alongwith *Constable Sanjeev Kumar*, had met the petitioner, who stated that two ladies, namely *Bhadri Maya Gurang* and *Rinchen Lhamo*, were his tenants in respect of whom necessary police verification had not been carried out. It was also mentioned that the petitioner himself resided at property bearing No. 89, *Kiran Vihar, 3rd Floor, Delhi-110092* and that he was aware of the order dated 11.12.2017, but could not get the verification done out of greed, thereby violating the said order.

7. On the basis of the aforesaid, the FIR was registered on 16.07.2018 and the charge sheet came to be forwarded two days later, i.e. on 18.07.2018, without carrying out any further investigation.

8. Insofar as the submission of the learned Senior Counsel is concerned, that in terms of the Rent Deed it was the responsibility of the Hotel to provide to the petitioner a list of the occupants alongwith their duly filled tenant verification forms, it is noted that vide letter dated 25.06.2018 a list of 8 persons/occupants, alongwith their tenant verification forms, was sent by the Hotel to the petitioner. It is an admitted case that the aforesaid 8 tenant verification forms were duly sent by the petitioner for verification to the concerned police station on 29.06.2018 and 02.07.2018. Further, in the FIR and the statement of *Constable Sanjeev Kumar* recorded under Section 161 Cr.P.C., there is not a whisper as to whether any verification was conducted with respect to those 8 tenant verification forms. The FIR is also silent as to on what basis the complainant/*Head Constable Kapil Kumar* came to the conclusion that the two ladies namely *Bhadri Maya Gurang* and *Rinchen Lhamo* were tenants at the flat whose tenant verification was not done in terms of the order dated 11.12.2017.

9. Admittedly, the complainant had visited the flat on 16.07.2018 for the first time but he neither collected any material to show that the



aforesaid two ladies were tenants of the ~~petitioner~~ ~~complainant~~ ~~respondent~~ ~~statement~~ of any other occupant to the effect. On the contrary, the complainant stated in the FIR that on account of his greed for rent, the petitioner had not gotten the police verification done with respect to the aforesaid two ladies.

10. A reading of the Rent Deed would show that the monthly rent in respect of the flat was fixed and it was upto the Hotel to place its lady staff members in the flat as occupants. In fact, the petitioner was not even a resident of the property/building of which the flat is a part.

11. Further, there is no document relating to the aforesaid two ladies on the record, in the form of any ID card/residential proof, to show that they were tenants at the flat. Neither the statements of the aforesaid two ladies nor the statement of any other occupant of the building or the security guard was recorded. Mere presence of the aforesaid ladies in the flat, even if proved, by no stretch of imagination can form the basis to establish that they were tenants. Suffice it to say, the charge sheet in the present case came to be filed hurriedly, within two days of the registration of the FIR, without proper investigation.

12. Based on the foregoing, this Court is of the view that there is no material on record to support the allegation that the two ladies, namely *Bhadri Maya Gurang* and *Rinchen Lhamo*, were tenants at the flat whose police verification was not done in terms of the aforementioned order.

13. The Supreme Court in State of Haryana and Others v. Bhajan Lal and Others reported as **1992 Supp (1) SCC 335**, while summarizing the principles of law governing the exercise of the inherent powers under Section 482 Cr.P.C., to prevent abuse of the process of Court, or otherwise to secure the ends of justice, has held that such power could be invoked to bring an end to the criminal prosecution in cases where “*the uncontroverted allegations made in the FIR or complaint and the evidence*



collected in support of the same do not neutralise the effect of an offence and make out a case against the accused”.

14. Keeping in view the facts and circumstances of the case and the exposition of law outlined hereinabove, this Court is of the considered opinion that the ingredients of the offence alleged are not made out against the petitioner. Consequently, the petition is allowed and the FIR and all other consequential proceedings are quashed.

15. With the above directions, the petition is disposed of.

16. A copy of this order be communicated to the concerned Trial Court.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 12, 2022

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