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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 12th December 2022

+ CRL.M.C. 4720/2017 & CRL.M.A. 18798/2017

VIKRAM VERMA

..... Petitioner

Through: Mr. S.S. Panwar, Advocate with Ms. Nimidita Panwar, Advocate, Ms. Rani Panwar, Advocate, Mr. Rajendra Kumar Kamti, Advocate and Ms. Punam Singh, Advocate.

versus

STATE AND OTHERS

..... Respondents

Through: Mr. Satinder Singh Bawa, APP for the State.
Mr. Thakur Sumit, Advocate for respondent Nos.2 and 3.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

(Judgment released on: 21.12.2022)

ANUP JAIRAM BHAMBHANI J.

By way of the present petition under section 482 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner impugns order dated 11.09.2017 made by the learned Additional Sessions Judge in CRL. REV.P No.289/2017 titled *Rakesh Kadwal & Anr. vs. Vikram Verma & Anr.*, whereby the revisional court has set-aside order dated 29.06.2017 made by the learned Metropolitan Magistrate in CC No.46/1/2015, by which notice had been framed under section 448 of

the Indian Penal Code 1860 ('IPC') against respondents Nos.2 and 3. By reason of the impugned order, respondents Nos.2 and 3 have been discharged in the matter.

2. The essential basis of the disputes is the petitioner's allegation that respondents Nos.2 and 3 have trespassed onto the terrace/roof of a shop bearing No. 800-A, Main Bazaar, Chirag Delhi ('subject premises') which is claimed to be in the petitioner's possession, by laying a concrete slab to connect the roof of the neighbouring building with the roof of the petitioner's building.
3. Notice on this petition was issued on 16.11.2017; consequent to which respondents Nos.2 and 3 have filed reply dated 21.08.2018; and the petitioner has filed rejoinder thereto. The State has however not considered it necessary to file any status report.
4. Mr. S.S. Panwar, learned counsel for the petitioner submits that the learned ASJ has erroneously held that the criminal offence of trespass is not made-out against the said respondents, based on the decision in a civil suit, in which the petitioner had claimed recovery of possession of the subject premises from the said respondents, which suit was dismissed by the learned Civil Judge. Counsel submits that though judgment dated 20.09.2016 dismissing the suit was subsequently upheld by the first appellate court in R.C.A. No. 8930/2016, since a second appeal bearing C.C No. 46/1/2015 is still pending consideration, the decision in the civil matter has not yet attained finality.
5. Mr. Panwar, submits that the decision in the civil matter will have no bearing on the criminal case; and even the evidence led in the civil suit

cannot be read in the criminal prosecution. Mr. Panwar also places reliance upon *Kishan Singh (dead) through LRs vs. Gurpal Singh and Others*¹ and *Vishnu Dutt Sharma vs. Daya Sapra (Smt.)*² to urge that civil and criminal proceedings are separate and distinct; and the decision of a civil court is not binding upon a criminal court.

6. On the other hand, Mr. Thakur Sumit, learned counsel appearing for respondents Nos.2 and 3 submits that on fundamental principles, once the petitioner's suit seeking recovery of possession of the subject premises has been dismissed by the learned Civil Judge, holding that the petitioner has not been able to show exclusive possession to the subject premises, the offence of criminal trespass can never be made-out.
7. A perusal of the impugned order shows that the decision of the learned ASJ proceeds on the following basis, as reflected in the extracted portions of the order:

“10. The dispute is found to be use of the roof/terrace of shop bearing No. 800A of the complainant. The complainant lodged the present complaint for unauthorizedly using the said terrace by the accused persons. The complainant filed the complaint against the entire family of accused persons, however two accused ie Rakesh and Jatin were summoned. During proceedings, an ATR was also called by police, police on inquiry filed report by observing that the said terrace is being used by the accused party since long thus no criminal offence is made out, and the matter is found to be civil in nature. While passing the summoning order dated 10.12.2015, Ld. Trial court also considered the said report, however not relied upon the said report because no documents were given to the police by the accused persons. The complainant of the present, case has also filed a civil suit over the same issue. The said civil suit was filed on

¹ (2010) 8 SCC 775

² (2009) 13 SCC 729

25.03.2015 and the same was dismissed on 20.09.2016. The complainant, however not disclosed the factum of filing of the civil suit over the same issue even in his pre summoning statement dated 17.08.2015.

11. Though at this stage, defence of the accused cannot be considered, however **there is sterling material on record ie the judgment of civil court by which the Issue regarding, the possession of present roof/terrace is decided against the complainant.** The said civil suit was filed by complainant and complainant Is duty bound to disclose the said fact himself before this court but not opted to do so (sic). The said fact is also necessary to see whether element of civil dispute exists or not. The police during investigation also found that the matter is of civil nature. **For making an offence u/s 448 IPC, a prima facie intention to trespass must be disclosed, however, the use and the possession of the said terrace/roof is found disputed issue.** Material on record suggest that the **said terrace is not in exclusive use and occupation of the complainant.** In these facts and circumstances, it cannot be held that prima facie accused persons had any intention to have criminal trespass over the said roof/ terrace. Criminal proceeding can't be used to settle civil disputes. Hence, the impugned order dated 29.06.2017 is set aside and the applicants stands discharged from the case. Revision petition allowed accordingly. It is clarified nothing in this order shall prejudice civil proceedings pending between parties.”

(emphasis supplied)

8. It is further noticed that in judgement dated 20.09.2016 whereby the civil suit filed by the petitioner was dismissed, the learned Civil Judge, Saket returned the following *findings* as regards the petitioner’s claim to title of the subject premises:

“9. In order to prove this issue plaintiff was required to establish his ownership over the suit property i.e. terrace and thereafter the illegal possession of the same by the defendant. With respect to the ownership plaintiff has relied upon a document Ex.PW-1/1 i.e. sale deed. Defendant has raised the contention that the vendor Chandu Lal Bhardwaj from whom plaintiff has purchased the suit property does not have any title or

interest in the suit property so he could not transfer the title to the plaintiff. In view of the contention raised by defendant, testimony of PW-2 Chandu Lal Bhardwaj becomes relevant. In the cross examination of PW-2, it has come out that PW-2 does not have any documentary evidence of family settlement by virtue of which he got the ownership of the suit property. He even failed to mentioned the date, month or year as to when such family settlement has taken place amongst his family members. Admittedly, there is no chain of documents that can show the deriving of title of the suit property by Chandu Lal Bhardwaj nor any such chain of documents have been filed on record by the plaintiff. Only a document Mark A pertaining to MCD has been relied upon by the witness which does not confer any title. It is a settled principle of law that no body can transfer a better title than he himself has. No Govt. official from the concerned department has been examined as witness to prove the chain of transfers and the genuineness of execution of sale deed by Chandu Lal Bhardwaj in favour of plaintiff. Once, it is established that Chandu Lal Bhardwaj does not have any title over the suit property so any transfer by way of sale deed of the suit property by him cannot confer title upon the plaintiff. Hence, it can be safely concluded that plaintiff is not the rightful owner or valid title holder in the eyes of law so he cannot seek recovery of possession of the suit property.

(emphasis supplied)

9. As observed above, this finding of the learned Civil Judge has been upheld by the 1st Appellate Court. Insofar as the question of the 2nd appeal being pending, suffice it to say that a second appeal would in any case proceed upon a substantial question of law and will not interfere with the factual findings upheld by the 1st Appellate Court.
10. At this point a brief reference to the position of law as to the effect of civil proceedings on a criminal case, where both arise from same factual matrix would be necessary. Reference in this regard may be made to the decision of the Supreme Court in ***K.G. Premshanker vs.***

*Inspector of Police*³ where this aspect has been succinctly delineated in the following paragraph of the judgment:

“31. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by A on B's property, B filed a suit for declaration of its title and to recover possession from A and suit is decreed. Thereafter, in a criminal prosecution by B against A for trespass, judgment passed between the parties in civil proceedings would be relevant and the court may hold that it conclusively establishes the title as well as possession of B over the property. In such case, A may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, the first question which would require consideration is — whether judgment, order or decree is relevant, if relevant — its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case.

11. The aforesaid is exactly the position in the present case except that in the present case, in the civil suit, the petitioner has failed to make-out a case of exclusive use and occupation of the subject premises; by reason whereof, the finding (in the civil suit) is that the petitioner is “...*not in exclusive use and occupation*” of the subject premises, which finding would be relevant and would enure to the benefit of respondents Nos. 2 & 3, thereby negating the allegation of trespass.
12. Other things apart, it also prevails with this court that the petitioner has failed to cross the *lower evidentiary threshold* of preponderance of probabilities since he has failed to establish his claim of exclusive possession before the civil court. Accordingly the question of the

³ (2002) 8 SCC 87

petitioner being able to cross the *higher evidentiary threshold* of proof beyond reasonable doubt in a criminal court, on the issue of exclusive possession, cannot arise.

13. To specifically answer the petitioner's contention that civil and criminal proceedings are separate and distinct and the decision of the civil court would not bind a criminal court, that principle, though otherwise unimpeachable, has no application to the present case, since *as a matter of judicial determination - even if in a civil proceedings - the petitioner has failed to establish exclusive possession of the subject premises*; and as a result the essential ingredients of the offence of criminal trespass are not made-out. It is not as if the petitioner will succeed in establishing exclusive possession in a criminal proceeding, having failed to do so in civil proceedings.
14. In this view of the matter, this court is satisfied that the impugned order dated 11.09.2017 does not suffer from any infirmity that would warrant interference by this court.
15. The present petition is dismissed; and disposed-of accordingly.
16. Pending application, bearing Crl. M.A. No.18798/2017, also stands disposed-of.

ANUP JAIRAM BHAMBHANI, J

DECEMBER 12, 2022

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