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

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Reserved on: February 14, 2024

Decided on: February 29, 2024

+ **CRL.M.C. 902/2019 & CRL.M.A. 3604/2019**

PURAN MAL GUPTA

..... Petitioner

Through: Mr. J.K. Sharma, Advocate

V

STATE & ANR

..... Respondents

**Through: Mr. Utkarsh, APP for
State/R-1 with SI Ramesh
Kumar, P.S. Lodhi Colony
Mr. Havish Katyal and
Mr. Vardaan Gupta,
Advocates for R-2**

+ **CRL.M.C. 1278/2019 & CRL.M.A. 5075/2019**

PARMOD GUPTA

..... Petitioner

**Through: Mr. J.K. Sharma, Advocate
with petitioner in person**

V

STATE & ANR

..... Respondents

**Through: Mr. Utkarsh, APP for
State/R-1 with SI Ramesh**



Kumar, P.S. Lodhi Colony
Mr. Havish Katyal and
Mr. Vardaan Gupta,
Advocates for R-2.

CORAM
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

1. The present petitions are filed under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as **“the Code”**) for quashing of the order dated 07.01.2019 (hereinafter referred to as **“the impugned order”**) passed by the court of Sh. Sandeep Yadav, Additional Sessions Judge–02, South East, Saket (hereinafter referred to as **“the revisional court”**) in Criminal Revision bearing no 204830 / 2016 titled as **Pradeep Sethi V State & others**.

2. The factual background of the case is that Pradeep Sethi/the respondent no 2 filed a complaint under section 156(3) of the Code titled as **Predeep Sethi V Puran Mal Gupta & others** against Puran Mal Gupta (petitioner in Crl. MC No. 902/2019 and hereinafter referred to as **“Puran Mal Gupta”**), Pramod Gupta (petitioner in Crl. MC No 1278/2019 and hereinafter referred to as **“Pramod Gupta”**), Usha Rani (mother of the respondent no 2, Ravi Kant Sethi and Rajinder Sethi (brothers of the respondent no 2) and Nafeez. The



respondent no 2 alleged that the respondent no 2 was occupant of shop cum residence bearing no 3, Main Market, Lodhi Colony, New Delhi (hereinafter referred to as **“the premise in question”**) which was allotted to A. P. Sethi, father of the respondent no 2 as licensee. Puran Mal Gupta and Pramod Gupta are in illegal possession of the premise in question. The respondent no 2 on 21.02.2005 at about 08:00 am was asked by Sanjeev Kaushal, one of the relatives of the respondent no 2 to visit the premise in question. The respondent no 2 immediately rushed to the premise in question and noticed hole in the back door of the premise in question. Rajinder Kumar Sethi was found standing near the stairs and Vipin Kaushal, one if the relatives of Rajinder Sethi was bringing household articles from the first floor to the ground floor. Nafeez, who was known to Ravi Kant Sethi and Rajinder Sethi, was also found present there. The respondent no 2 came back to his place. On 22.02.2005, the respondent no 2 along with his wife went to the premise in question to conduct routine business but he was restrained by the Usha Rani, Ravi Kant Sethi and Rajinder Sethi to enter into premise in question as locks were put on front and rear gates of the premise in question. The respondent no 2



reported matter to the local police but the local police did not take any action and also threatened the respondent no 2 to implicate in false case. The respondent no 2 in evening of 28.02.2005 was dispossessed from the premise in question by abovementioned persons including Puran Mal Gupta and Pramod Gupta and they also removed various articles which were lying in both floors of the premise in question. The respondent no 2 also made complaints to various authorities and subsequent reminders. The respondent no 2 being aggrieved filed the present complaint. The court of Metropolitan Magistrate, South-East, Saket vide order dated 11.04.2008 directed concerned SHO to register FIR against proposed accused by observing that cognizable offences are made out against the proposed accused. Accordingly FIR bearing no 0099/2008 was got registered at police station Lodhi Colony under section 379 IPC. The charge sheet after completion of investigation was filed against Puran Mal Gupta and Pramod Gupta for offences punishable under sections 380/120B/448 IPC. However no sufficient incriminating material could be collected against Usha Rani, Rani Kant Sethi, Rajinder Kumar Sethi and Nafeez.



3. The court of Sh. Ravindra Kumar Pandey, Metropolitan Magistrate-01, South-East, Saket (hereinafter referred to as “**the trial court**”) vide order on charge dated 16.07.2016 discharged Puran Mal Gupta and Pramod Gupta for the offences punishable under sections 380/120B/448 IPC.

4. The respondent no 2 being aggrieved from order on charge dated 16.07.2016 filed criminal revision bearing no 204830/16 titled as **Pramod Sethi V State & others** which was decided by the revisional court and the revisional court vide impugned order set aside order on charge dated 16.07.2016. The relevant portion of the impugned order is verbatim reproduced as under:-

9. Both the respondents were discharged U/s. 448 IPC on the premise that at the time of incident Smt. Usha Rani was licensee of the premises and she was having authority to sub-licence the premises; the petitioner was not the licence holder of the premises, so even if both the respondents occupied the premises at the instance of Smt. Usha Rani, their occupation of the premises cannot be termed as criminal trespass as defined U/s. 441 IPC. There was no material before the Ld. MM-01 to come to the conclusion that Smt. Usha Rani being licensee had authority to sub-licence the premises to the respondents. The crucial document in this regard is the information dated 09.04.2009 furnished by New Delhi Municipal Corporation to the SHO PS Lodhi Colony. As per this information the shop is still under the occupation of the respondents and their case for revocation of licence/allotment and transfer is still pending



with NDMC considering the status-quo orders as well as the pending litigation. SHO PS Lodhi Colony was further informed by NDMC through this letter that the present occupants will continue to be deemed as unauthorized occupant till their pending request is finalized. The information provided in the letter dated 9.4.2009 by the NDMC to the SHO PS Lodhi Colony was sufficient to frame the charge U/s 448 IPG against the respondents. The witnesses namely Rajeev Mittal and Vinod Kumar Goel were examined during the investigation have stated that the petitioner has been practicing astrology from shop No.3, Main Market, Lodhi Colony. The factual position is on today is that the petitioner is not in possession of the said shop, hence the respondents who are in unauthorized possession of the shop bearing No. 3, Main Market, Lodhi Colony as per information provided by NDMC to SHO PS Lodhi Colony are liable to be charged U/s. 448 IPC.

10. However, there was no material before the Ld. Magistrate to frame the charge of conspiracy against the respondents. Accordingly, the impugned order dated 16.07.2016 is set aside and revision petition is disposed of with direction to the trial court to frame charge U/s. 448 IPC against both the respondents i.e. 2 & 3 namely Pooran Mal Gupta and Pramod Gupta. The trial court is further directed to frame charge U/s. 380 IPC against respondent No.3 Pramod Gupta only.

5. The petitioners Puran Mal Gupta and Pramod Gupta being aggrieved by the impugned order filed the present petitions to challenge the impugned order dated 07.01.2019. The Puran Mal Gupta and Pramod Gupta pleaded that A.P. Sethi, father of the respondent no 2 was allotted premise in question on license by New



Delhi Municipal Corporation (hereinafter referred to as “NDMC”).

The premise in question was transferred in name of Usha Rani Sethi (mother of the respondent no 2) after demise of A. P. Sethi. Usha Rani Sethi on 16.09.2004 entered into a partnership vide partnership deed with Puran Mal Gupta and Pramod Gupta and partnership firm was substituted in the records of NDMC. Usha Rani Sethi in December 2004 resigned from the partnership and intimation of the dissolution was given to the concerned authority. Puran Mal Gupta and Pramod Gupta challenged impugned order primarily on the grounds that the revisional court has failed to appreciate that regularizing of the allotment of the premise in question in favour of Puran Mal Gupta and Pramod Gupta is still pending before the NDMC. NDMC opined Puran Mal Gupta and Pramod Gupta to be unauthorized occupants in the premise in question till the disposal of application for regularisation of the premise in question. Puran Mal Gupta and Pramod Gupta were brought into the premise in question by Usha Rani Sethi who was admittedly the licensee in respect of the premise in question. A civil dispute is pending between the concerned parties in respect of premise in question. The revisional



court did not appreciate the distinction between an unauthorized occupant whose possession is capable of being regularized and a person who commits the offence of criminal trespass. The impugned order was passed in mechanical manner while misinterpreting the documents filed along with the charge sheet. Puran Mal Gupta and Pramod Gupta were treated unequally as the family of the respondent no 2 were not summoned. The respondent no 2 did not have any *locus standi* to file the present complaint. Usha Rani Sethi who was having possessory rights over the premise in question by virtue of license from the NDMC allowed Puran Mal Gupta and Pramod Gupta to use the premise in question. The respondent no 2 never resided in the premise in question. Puran Mal Gupta and Pramod Gupta prayed that the impugned order be set aside.

6. The respondent no 1/State filed the Status Report wherein stated that it was revealed during investigation that the premise in question is a licensee shop allotted in the name of Usha Rani Sethi who is stated to be mother of the respondent no 2. The respondent no 2 was practicing astrology from the premise in question till the premise in question was unauthorized occupied by Puran Mal Gupta and Pramod



Gupta. NDMC termed Puran Mal Gupta and Pramod Gupta as unauthorised occupants in respect of the premise in question. No sufficient incriminating material could be collected during investigation against Rajinder Sethi, Ravi Kant Sethi, Usha Rani Sethi and Nafees.

6.1 NDMC in reply to queries in FIR no 0099/2008 vide letter D-1012/Estate dated 09.04.2009 regarding legal status of ownership/possession in respect of the premise in question responded that the premise in question was allotted to Anand Prakash Sethi (A. P. Sethi) on 14.11.1952 vide Resolution no 156 dated 08.10.1952 for running doctor clinic. The premise in question after death of Anand Prahash Sethi was allotted to Usha Rani Sethi on 30.03.1966 on legal heir basis as per Reso. No. 53 dated 14.10.1966. Usha Rani Sethi entered into partnership deed with Puran Mal Gupta and Pramod Gupta on 16.09.2004 which was subsequently dissolved on 29.12.2004. The orders of cancellation were issued on 07.11.2005 due to carrying out certain types of work. The premise in question is still occupied by Puran Mal Gupta and Pramod Gupta. The case for revocation of licence/allotment is still pending with NDMC. It was



also informed that NOC of Rajinder Sethi dated 14.06.1966 in favour of Usha Rani Sethi was also submitted and thereafter Usha Rani Sethi also submitted NOC dated 29.12.2004 in favour of Puran Mal Gupta and Pramod Gupta. It was further submitted that the premise in question is still in possession of Puran Mal Gupta and Pramod Gupta.

6.2 The respondent no1/State filed Status Report in the court of Sh. Sanjeev Kumar, Patiala House Courts wherein stated that it was revealed during investigation that the respondent no 2 used to reside in the premise in question along with wife, mother and brother till December, 1999 and thereafter moved to house of Rajinder Sethi on rent agreement but left some of the articles in the premise in question. It was also revealed during investigation of Rajinder Kumar Sethi that Usha Rani Sethi handed over possession of the premise in dispute to Puran Mal Gupta and Pramod Gupta on 21.02.2005. The respondent no 2 in complaint also mentioned about registration number of two trucks which were allegedly used in commission of theft. It was revealed from statement of truck owner that his truck was hired for purpose of transportation of house hold goods and articles from premise in question but driver of the truck who actually



transported the goods could not be traced. The articles of the respondent no 2 were stated to be lying in the premise in question when Usha Rani Sethi and Rajinder Kumar Sethi disappeared from the premise in question.

7. The respondent no 2 filed replies to the petitions filed by the Puran Mal Gupta and Pramod Gupta. The respondent no 2 stated that premise in question is actually owned by NDMC but was allotted to his father as licensee in the year 1952 for running/operating medical shop or activities related to medical facilities. The premise in question was in actual physical possession of A.P. Sethi till his demise. Usha Rani Sethi after demise of A. P. Sethi applied for transfer of license in her favour on behalf of legal heirs of A. P. Sethi. The premise in question cannot be sold and can only be transferred by NDMC as per their bylaws. Usha Rani Sethi was not having right, title or interest in the premise in question which can be transferred to the Puran Mal Gupta and Pramod Gupta who made a fraudulent transaction with Usha Rani Sethi in respect of premise in question and had taken the possession from the respondent no 2 in illegal



manner. NDMC already stated that Puran Mal Gupta and Pramod Gupta are unauthorised occupants in the premise in question.

7.1 The respondent no 2 further stated that FIR bearing no 0099/2008 was got registered. Puran Mal Gupta and Pramod Gupta were found to be guilty of forcibly removing the goods/article/belongings of the respondent no 2 from the premise in question in active connivance of Usha Rani Sethi and others. The revisional court has considered all relevant facts at time of passing impugned order. Puran Mal Gupta and Pramod Gupta had occupied the premise in question in illegal manner after throwing out the respondent no 2 who was in actual physical possession of the premise in question. NDMC did not allow the transfer of the premise in question in any manner and cannot permit change in use of premise in question. Puran Mal Gupta and Pramod Gupta entered into partnership business with Usha Rani Sethi on 16.09.2004 and subsequent dissolution deed dated 29.12.2004 clearly reflects the presence of the respondent no 2 in the premise in question. The respondent no 2 also raised other contentions.

8. It is reflecting that the premise in question was allotted to A. P. Sethi as a licensee in the year 1952 for medical activities who



remained in the possession of the premise in question till his death. Thereafter, the premise in question was transferred as a licensee in favour of Usha Rani Sethi by NDMC. Usha Rani Sethi entered into a partnership with Puran Mal Gupta and Pramod Gupta on 16.09.2004 and Usha Rani Sethi in the month of December, 2004 resigned from the partnership and thereafter, Puran Mal Gupta and Pramod Gupta became partners in the said partnership deed. Puran Mal Gupta and Pramod Gupta are stated to be in possession of the premise in question by virtue of partnership firm created on 16.09.2004. Puran Mal Gupta and Pramod Gupta have not been granted licensee in respect of the premise in question by NDMC and as per the NDMC Puran Mal Gupta and Pramod Gupta are unauthorized occupants in respect of the premise in question. The respondent no 2 is also claiming his right, title and interest in respect of the premise in question and a civil suit is also stated to be pending between the concerned parties in respect of the premise in question. The respondent no 2 claimed that on 28.02.2005, he was dispossessed from the premise in question by Puran Mal Gupta, Pramod Gupta, Usha Rani Sethi, Ravi Kant Sethi Rajinder Sethi and Nafees. On



21.02.2005 his articles which were stated to be lying in the premise in question were removed by the above said persons. The respondent no 2 was stated to be doing astrology consultation in the premise in dispute till December 1999 and thereafter, he moved to the house of Rajinder Sethi on rent agreement. The possession of the premise in question was stated to be delivered to Puran Mal Gupta and Pramod Gupta on 21.02.2005. After conclusion of the investigation the charge sheet was filed for the offences punishable under sections 448/380/120B IPC wherein Puran Mal Gupta and Pramod Gupta were implicated as accused and Usha Rani Sethi, Ravi Kant Sethi, Rajinder Sethi and Nafees were not charged for any offence.

9. The counsel for Puran Mal Gupta and Pramod Gupta argued that no offence punishable under sections 448/380 IPC has been made out against Puran Mal Gupta and Pramod Gupta and Puran Mal Gupta and Pramod Gupta were put into possession in respect of the premise in question by Usha Rani Sethi as reflected from the letter dated 09.04.2009 issued by NDMC. It is further argued that Usha Rani Sethi who was the licensee in respect of the premise in question, has put Puran Mal Gupta and Pramod Gupta in possession of the premise



in dispute on the basis of partnership firm, and as such Puran Mal Gupta and Pramod Gupta cannot be said to be the unauthorized occupants. It is also the admitted case of NDMC that the premise in question could not be regularized in favour of Puran Mal Gupta and Pramod Gupta due to the ongoing litigation. There is also no evidence that Puran Mal Gupta and Pramod Gupta have removed articles of the respondent no 2 from the premise in question in the five trucks. The revisional court has passed the non-speaking order as no offence is made out against Puran Mal Gupta and Pramod Gupta. The impugned order is liable to be set aside.

9.1 The Additional Public Prosecutor for the respondent no1/State argued that, the prosecution is able to establish *prima facie* case against Puran Mal Gupta and Pramod Gupta for offences under sections 380/448 IPC. The impugned order was passed by the revisional court after proper appreciation of the material collected during evidence and cannot be set aside. The present petitions are liable to be dismissed.

9.2 The counsel for the respondent no. 2 argued that the respondent no. 2 was dispossessed from the premise in question on 28.02.2005



by Puran Mal Gupta, Pramod Gupta, Usha Rani Sethi, Ravi Kant Sethi and Rajender Kumar Sethi. The trial court has discharged Puran Mal Gupta and Pramod Gupta for offences punishable under sections 380/448 IPC, however, the revisional court set aside the order passed by the trial court on charge and directed for framing of the charges for offences punishable under sections 380/448 IPC against Puran Mal Gupta and Pramod Gupta. Usha Rani Sethi was not having any right title or interest in the premise in question and as such she could not have transferred any right, title or interest in favour of Puran Mal Gupta and Pramod Gupta by virtue of partnership which is a sham transaction. Puran Mal Gupta and Pramod Gupta as per NDMC are unauthorized occupants in respect of the premise in question. The respondent no. 2 was thrown out of the premise in question illegally and by use of force. The premise in question was allotted to A. P. Sethi only for running the medical activities and the premise in question cannot be used for any other purpose and the petitions are liable to be dismissed.

10. As mentioned hereinabove, Usha Rani Sethi became the license holder in respect of the premise in question after the death of the



original allottee as licensee i.e. A.P. Sethi. The respondent no. 2 was one of the legal heirs of A. P. Sethi and was never allotted the premise in question and his name was also never entered as a licensee in the records of NDMC. Puran Mal Gupta and Pramod Gupta were brought into the possession of the premise question by the lawful allottee i.e. Usha Rani Sethi by virtue of the partnership deed dated 16.09.2004, it is also the stand of NDMC that Puran Mal Gupta and Pramod Gupta are in possession of the premise in question although as an unauthorized occupant as their name has not been recorded with NDMC as lawful allottee. As per police investigation as referred hereinabove, the respondent no 2 remained in occupation of the premise in question till December, 1999 and thereafter, he shifted to the house of Rajinder Sethi on rent agreement. There is no material on record which can reflect that on the date of the alleged incident i.e. 28.02.2005 the respondent no. 2 was in actual physical possession, use of the occupation of the premise in question. It may be true that the some of the articles as detailed in the complaint made by the respondent no. 2 were lying in the premise in question but there is no evidence or material stated to have been collected during



investigation that Puran Mal Gupta and Pramod Gupta have removed those articles. It is for NDMC to take decision whether the premise in question can be lawfully allotted in favour of Puran Mal Gupta and Pramod Gupta according to the bylaws, rules and regulations.

10.1 The trial court has rightly observed in order on charge dated 16.07.2016 that on 28.02.2005, Puran Mal Gupta and Pramod Gupta were not present at the spot and no recovery was affected at their instance. The trial court has also rightly observed that there is no evidence or material collected during the investigation that the articles from the premise in question were loaded in trucks at the instance of Puran Mal Gupta and Pramod Gupta. The trial court on the basis of reasoning given in the order dated 16.07.2016 has rightly observed that Puran Mal Gupta and Pramod Gupta were in occupation of the premise in question at the instance of the lawful allottee/licensee Usha Rani Sethi and as such it cannot be said that they have criminally trespassed into the premise in question as per section 441 IPC. The trial court as such rightly discharged Puran Mal Gupta and Pramod Gupta for the offence punishable under sections 380/448 IPC.



10.2 The revisional court was not justified in relying on the statement of Nand Kishore recorded under section 161 of the Code to opine that the *prima facie* case under section 380 IPC is made out against Puran Mal Gupta and Pramod Gupta. The statement of Nand Kishore recorded as under section 161 of the Code only reflects that Pramod Gupta was present at the spot when the goods were allegedly removed from the premise in question. Even otherwise also, mere removal of the goods from one premise does not attract the offence punishable under section 380 IPC. The revisional court was also not justified while observing that there was no material before the trial court to come to the conclusion that Usha Rani Sethi being the licensee had the authority to sub licence the premise in question to Puran Mal Gupta and Pramod Gupta. The issue whether Usha Rani Sethi was having any authority to put Puran Mal Gupta and Pramod Gupta in possession of the premise in question is to be considered by the allotting authority i.e. NDMC and is not sufficient to charge Puran Mal Gupta and Pramod Gupta for the offence punishable under section 448 IPC. Puran Mal Gupta and Pramod Gupta as per the NDMC may be an unauthorized occupant in respect of the premise in



question but mere alleged unauthorized occupation is not sufficient to constitute criminal trespass in respect of the premise in question. There is a difference between unauthorized occupancy and criminal trespass. The counsel for the petitioner justified in his arguments that there is a difference between unauthorized occupant and criminal trespassing. It is pertinent to mention that a civil suit is also stated to be pending between the concerned parties in respect of the premise in question. The revisional court was not justified in holding that Puran Mal Gupta and Pramod Gupta are liable to be charged for offence punishable under section 448 IPC. The arguments advanced by the counsel for the respondent no 2 are without any legal and factual basis.

10.3 In view of the above discussion, the impugned order cannot sustain and is liable to be set aside. Accordingly, the impugned order is set aside and Puran Mal Gupta and Pramod Gupta are discharged for the offences punishable under sections 380/448 IPC. However, it is made clear that nothing in this order shall affect the merit of the civil suit stated to be pending between the parties (particulars no mentioned in record.)



11. The present petitions bearing no. CRL.M.C. 1278/2019 & CRL.M.C. 902/2019 are accordingly allowed and pending applications, if any, stand disposed of.

DR. SUDHIR KUMAR JAIN
(JUDGE)

FEBRUARY 29, 2024
SK/ABK