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

+ CRL.M.C. 7803/2024 & CRL. M.A.29773/2024

RAMASHISH

.....Petitioner

Through: Ms. Pallavi Garg, Advocate
(DHCLSC) with Ms. Vijya Pandey,
Advocates.

versus

STATE OF NCT DELHI & ORS.

.....Respondents

Through: Mr. Nawal Kishore Jha, APP for State
with SI Sonu Kumar PS Sultan Puri,
Delhi.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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04.10.2024

1. By way of present petition, the petitioner seeks setting aside of the order dated 15.05.2024 passed by the learned ASJ- 03 (North west) , Rohini Courts in Criminal revision No. 207/2019. Vide the impugned order, the learned Revisional Court upheld the order of the Trial Court dated 05.09.2019 dismissing the complaint made by the petitioner.

2. Learned counsel for the petitioner submits that the Revisional Court failed to appreciate that the Trial Court erred in coming to the conclusion on the basis of pre summoning evidence that there were no sufficient grounds to summon the accused persons.

It is contended that both the Courts below failed to appreciate that at the stage of issuing summons, the Magistrate only needs to be satisfied with a prima facie case and whether there are sufficient grounds for proceeding further and he is not required to see whether there is sufficient material to record a conviction. It is submitted that at the stage of summoning, a mini



trial cannot be conducted.

It is contended that the petitioner had adduced evidence in the form of several complaints filed before various authorities, coupled with his testimony, where he has consistently levelled allegations of threats, and use of casteist slurs. In the complaint, specific allegations had been made against the respondents.

3. He further submits that the respondents No. 2 and 3, who are neighbours of the petitioner, in connivance with other accused illegally encroached upon the eastern side wall of his house and demolished the same.

It is also submitted that on 28.05.2012, the respondents No. 2 to 6 came to the house of the petitioner and made casteist remarks against him and threatened him and his family members with dire consequences. It is also alleged that on 31.05.2012 the respondents again raised unauthorised construction on the said wall and when the petitioner objected, they verbally abused him and made casteist remarks.

It is contended that respondent No.7, who is an S.I. with Delhi Police, is hands in glove with the rest of the accused persons as he refused to act on the complaint of the petitioner and moreover, he forced the son of the petitioner to sit in the police station for three hours and pressurised him with threats and physical violence.

4. Learned counsel for the petitioner submits that the Trial Court failed to take into account the site plan and photographs which clearly show the encroachment done by the respondents on the wall belonging to the petitioner.

It is further submitted that the Trial Court failed to appreciate that the



petitioner had also placed on record the caste certificate of his brother, *Virender Ravidas*, to show that he belonged to the SC community.

Lastly, it is submitted that existence of civil proceedings between the parties is no bar to initiation of criminal proceedings when the ingredients of the offences alleged are made out and it is trite law that civil and criminal proceedings can proceed simultaneously.

5. Learned APP for the State submits that both the Courts below have come to the conclusion that the petitioner did not lead sufficient evidence as to warrant the summoning of the accused persons. He further submits that in so far as the allegation that respondent No.7, who is an SI, forced the son of the petitioner to sit in the police station for three hours is concerned, the same is not supported by any evidence and the petitioner has also chosen not to examine his son which may have brought the true facts on record.

6. I have heard the learned counsel for the petitioner as well as learned APP for the State and have also gone through the records.

7. The case of the petitioner is that he, being a member of SC/Jatav community, was subject to insult, humiliation and intimidation at the hands of respondent No. 2 to 6. As per the complaint, respondents No. 2 and 3, who are neighbours of the petitioner, in connivance with other accused illegally encroached upon the eastern side wall of his house and demolished the same.

It is alleged that on 28.05.2012, the respondents No. 2 to 6 came to the house of the petitioner and made casteist remarks against him and threatened him and his family members with dire consequences. On 31.05.2012 the respondents again raised unauthorised construction on the said wall and when the petitioner objected, they verbally abused him and



made casteist remarks. The petitioner filed a complaint on 04.06.2012 before the Joint Director SC/ST/OBC Commission, Vikas Bhawan, ITO regarding the Respondent no. 2-6 abusing the Petitioner on the basis of his caste.

It is pertinent to note that the petitioner had, prior to the alleged incident, on 07.05.2012, filed a complaint before the Deputy Commissioner of MCD-,Sector 5, Rohini alleging encroachment of the eastern side wall of his property by the Respondents no. 2 and 3 in connivance with Respondents nos. 4-6 and the said civil proceedings were pending at the time when the complaint came to be filed.

The petitioner had also filed an application under Section 156(3), however, the same came to be dismissed observing that the initial complaint was only with regard to illegal construction and caste based allegations were levelled later.

8. At the time of pre-summoning evidence, petitioner had examined himself as CW1, and one Dinesh Chander Gupta, neighbour of both the petitioner and the respondents No. 2 and 3 as CW2. He had also relied on various complaints made to the police, a caste certificate stated to be belonging to his brother, and a site plan of the property.

The Trial Court observed that the petitioner failed to bring forth any photographs or documents to substantiate his averment of encroachment and unauthorised construction. He had also made averments of the respondent No.7 and other police officers harassing and torturing the son of the petitioner. However, the petitioner chose not to examine his son nor did his name come up in the list of witnesses.

9. In so far as the alleged casteist remarks are concerned, the petitioner did not produce his caste certificate, and rather produced the certificate of



one *Virender Ravidas*, who he claimed to be his brother. However, no evidence was laid to prove the said relation.

With respect to the allegations of the petitioner and his family members being threatened, the Revisional Court held that ingredients of Section 506 IPC are not made out since the petitioner had nowhere mentioned that the words uttered by the respondents caused any alarming effect on him. The Revisional Court held that no patent error had been committed by the Magistrate to warrant exercise of Revisional jurisdiction.

10. An accused cannot be summoned in a criminal case in a mechanical manner. The initiation of criminal proceedings against any person leads to possible penal consequences and the accompanying social stigma. Summoning of the accused ought to be done after due application of mind by the Magistrate. It is also evident from Section 202 Cr.P.C., that a Magistrate may postpone the issue of process against the accused person and either inquire into the case himself or direct an investigation to be made by a police officer. The purpose of such inquiry or investigation is to ascertain whether there are sufficient grounds to proceed against the accused. This by itself is evident of the intention of the legislature to ensure that a person is not summoned without proper application of mind.

11. In this regard, The Supreme Court in the case of Pepsi Foods Ltd. v. Special Judicial Magistrate, reported as **(1998) 5 SCC 749** holds as follows:-

28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient



for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

29. No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial...

Thus, the law is clear that the summoning of the accused has to be compulsorily preceded by the application of mind on the part of the Magistrate.

12. Considering that the petitioner has failed to show any material on record in support of the alleged encroachment, chosen not to examine his son as a witness, led no evidence to establish his relation with *Virender Ravidas* whose caste certificate he was relying on, and the fact that civil disputes were already pending between the parties, the Magistrate did not err in coming to the conclusion that there was not sufficient evidence to proceed against the accused persons. Hence, the impugned order cannot be said to suffer from any infirmity.

13. In view of the above, the present petition is dismissed alongwith the pending application.

MANOJ KUMAR OHRI, J

OCTOBER 4, 2024/rd