

S.M. Zulfiqar Alam vs State & Ors on 21 February, 2024

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.M.C. 1520/2019
S.M. ZULFIQAR ALAM

STATE & ORS.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

% 21.02.2024

1. The present petition is filed, under Section 482 of the Code of Criminal Procedure Code, 1973 ('CrPC'), challenging order dated 29.01.2019 (hereafter 'impugned order dated 29.01.2019'), passed by the learned Additional Sessions Judge ('ASJ'), Karkardooma Courts, Delhi, in CR No. 07/2018. The petitioner also challenges the order dated 11.12.2017 (hereafter 'impugned order dated 11.12.2017'), passed by the learned Chief Metropolitan Magistrate ('CMM'), North East District, Karkardooma Courts, Delhi, in CC No.1115/2017.

2. The learned ASJ, by the impugned order dated 29.01.2019, had dismissed the revision petition filed by the petitioner and upheld the impugned order dated 11.12.2017, whereby the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 22/03/2024 at 20:33:36 learned CMM had declined to direct registration of FIR under Section 156(3) of the CrPC.

3. The brief facts of the present case are as follows:

3.1. The petitioner allegedly entered into an Agreement to Sell dated 24.02.2016 with Respondent No.2 in respect of the first and second floor of the property bearing no. E-82, Gali No.4, Chand Bagh, Delhi (hereafter 'the subject property'), for a total sale

consideration of 52,85,000/-. It is alleged that the said Agreement stipulated that Respondent No.2 would make sure that ground floor parking would only be used by the petitioner and the other occupants were to only have motor cycle parking privilege. It is alleged that Respondent No.2 demanded the entire sale consideration in cash, but the petitioner paid some portion of the sale consideration by way of cheques and the rest by cash to Respondent Nos. 2 and 3. It is alleged that Respondent No.2 issued receipts and possession letter after receipt of the sale consideration.

3.2. It is alleged that the petitioner kept some of his belongings, including computers, legal books, chairs, tables, etc, in the subject property and locked the same. He also applied for electricity connection from BSES in respect of the subject property.

3.3. It is alleged that Respondent Nos. 2 and 3 raised illegal construction on the property up to 6th floor and also sold the parking area allotted to the petitioner to a third party, who is allegedly running a tailoring and stitching shop. 3.4. It is alleged that when the petitioner raised question against the same, Respondent Nos. 2 and 3 abused him and threatened him with dire consequences.

3.5. It is alleged that the petitioner visited the property on This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 22/03/2024 at 20:33:36 25.03.2017 and found the room opened and all the articles missing. It is alleged that the petitioner also saw some muscle men sitting there with Respondent No.2. It is alleged that Respondent No.2 broke the locks put by the petitioner on the subject property and took possession of the same. 3.6. It is alleged that Respondent Nos. 2 and 3 are illegally keeping possession of the subject property by force and have misappropriated the consideration amount paid by the petitioner. 3.7. The petitioner initially made a complaint dated 26.10.2016 to the Deputy Commissioner, MCD, North-Shahdra, Delhi alleging that Respondent No.2 (referred to as the "builder" in the complaint) was trying to sell the ground floor, that is, the parking area allotted for the subject property, to shops for commercial use, in collusion with MCD officials.

3.8. Further, the petitioner sent an application dated 02.03.2017 to the Deputy Commissioner, MCD, North-Shahdra, Delhi, for sealing off the ground floor/ parking and 5th and 6th floor of the subject property, alleging that Respondent No.2, in collusion with MCD officials, had raised the structure up to 6 floors and was also trying to sell the ground floor for commercial purpose. 3.9. The petitioner made a complaint dated 27.03.2017 to the Deputy Commissioner of Police, North-East District, Shahdra, Delhi against Respondent No.2 alleging that he had broken the lock, committed theft of the petitioner's materials in the subject property. It was also alleged that Respondent Nos. 2 and 3 had committed offences under the MCD Act by constructing the building in question up till the 6th floor and misusing the parking for commercial purposes.

3.10. The petitioner made another similar complaint to the SHO, Police Station Gokulpuri, Delhi on 08.06.2017.

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3.11. The petitioner thereafter filed CC No.1115/2017 along with an application under Section 156(3) of the CrPC for registration of FIR for the offences under Sections 341, 380, 406, 420, 448, 503, 506, 120B of the Indian Penal Code, 1860 ('IPC'), Sections 332, 333, 334, 343 and 347 of the Municipal Corporation of Delhi Act, 1957 ('MCD Act') and Section 135(1)(e) of the Electricity Act, 2003.

3.12. The Status Report of the police filed before the learned Trial Court stated that it was found that the petitioner had only paid the sum of 15,50,000/- to Respondent No.2. It was found that Respondent No.2 had the possession of the subject property and no one verified the petitioner's possession over the same. 3.13. The learned CMM, by the impugned order dated 11.12.2017, dismissed the application under Section 156(3) of the CrPC. The learned CMM observed that the facts and circumstances of the case were within the knowledge of the petitioner and there was no requirement of collection of evidence by the police. It was also noted that if collection of evidence by the police was required at a later stage, then the petitioner could resort to the remedy under Section 202 of the CrPC. 3.14. The learned ASJ, by the impugned order dated 29.01.2019, had upheld the impugned order dated 11.12.2017.

4. Respondent No.2 filed a complaint case against the petitioner, wherein the learned Trial Court directed lodging of an FIR. This resulted in registration of FIR No. 528/2017 dated 13.09.2017, at PS Gokulpuri, for offences under Sections 420/467/468/471/120B of the IPC against the petitioner herein. It is alleged in the said FIR that the petitioner had fraudulently taken the signatures of Respondent No.2 on the General Power of Attorney, Agreement to Sell and receipt. It is further alleged that This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 22/03/2024 at 20:33:36 the petitioner, without making the payment of the balance consideration of 37,35,000/-, forged the possession letter dated 20.10.2016 and got electricity connection in the subject property.

5. The petitioner also filed Writ Petition (Civil) No. 1748/2019 before this Court against the illegal construction on the subject premises. The petitioner had also alleged therein that that Respondent No.2 had taken forceful possession of the subject property after receiving full consideration for the same. This Court vide order dated 20.02.2019 had noted that it was not inclined to examine the allegations regarding offences under IPC. This Court, however, directed EDMC to immediately inspect the subject property and take necessary action in accordance with law within four weeks.

6. The learned counsel for the petitioner submits that the impugned orders erroneously rejected the petitioner's application, by accepting the version of Respondent No.2 as absolute truth, without any enquiry or investigation.

7. He submits that the learned ASJ failed to note that the Status Report erroneously mentions that the entire sale consideration was to be paid by way of cheques, even though, the Agreement to Sell had no such stipulation.

8. He submits that the impugned orders are erroneous in law as they don't consider that the petitioner has specifically alleged commission of cognizable offences. He relied upon the judgment in the case of Lalita Kumari v. Govt. of U.P. : (2014) 2 SCC 1.

9. He submits that Respondent Nos. 2 and 3 wrongly trespassed on the subject property and stole the petitioner's belongings. He submits that the said respondents had threatened and abused the petitioner. He submits that police intervention is crucial for recovery the petitioner's belongings.

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10. He submits that while the possession letter is under dispute, any allegation regarding forgery of the same has to be investigated before considering the version of Respondent No.2 as the absolute truth.

11. The learned counsel for Respondent Nos. 2 and 3 submits that the present petition is not maintainable as the same is essentially a second revision, in the garb of the petition under Section 482 of the CrPC.

12. He further submits that the petitioner has not filed any proof of his possession of the subject property and neither has he furnished any record to show he had purchased the computers and law books that he allegedly kept in the subject property.

13. He submits that the petitioner had not paid the remaining consideration amount of 37,35,000/- and Respondent No.2 had thus not handed over possession of the subject property.

14. He submits that the petitioner only made the complaint to the Deputy Commissioner of Police on 27.03.2017, two days after he found out that his articles had been allegedly looted.

15. He submits that the learned ASJ has correctly noted that the provisions of Section 154 of the CrPC are not complied with as the petitioner erroneously filed the complaint to the DCP first and thereafter to the SHO, rather than filing his complaint under Section 154(1) of the CrPC to the SHO followed by a complaint under Section 156(3) of the CrPC to the DCP.

16. He submits that the present case was merely a counter blast to FIR No. 528/2017 that was registered at the instance of Respondent No.2.

17. The learned counsel for the petitioner counters the aforesaid contention and states that the petitioner had made multiple complaints, to MCD and police, prior to the registration This is a digitally signed order.

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Conclusion

18. At the outset, it is relevant to note that while it is settled law that a second revision cannot be filed in terms of the bar under Section 397 of the CrPC, the inherent power of this Court under Section 482 of the CrPC has a wide ambit and can be exercised in the interest of justice. The Hon'ble Apex Court, in the case of *Krishnan v. Krishnaveni* : (1997) 4 SCC 241, had observed as under:

"8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order."

(emphasis supplied)

19. The Hon'ble Apex Court, in the case of *Lalita Kumari v. Govt. of U.P.* (supra), categorically held that FIR ought to be registered when the allegations clearly disclose commission of a cognizable offence. The relevant portion of the judgment is set out below:

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 22/03/2024 at 20:33:36 "119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence.

In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

xxxx xxxx xxxx 120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation."

20. It is equally true that that it is not mandatory for the Magistrate to direct registration of an FIR merely because allegations disclose the commission of a cognizable offence, unless investigation is required. The Magistrate, after application of mind, can also decide to take cognizance and proceed under Section 202 of the CrPC instead of issuing directions under Section 156(3) of the CrPC (Ref. Kailash Vijayvargiya v. Rajlakshmi Chaudhuri : 2023 SCC OnLine SC 569).

21. From a bare perusal of the complaint, it is seen that it has This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 22/03/2024 at 20:33:37 been specifically alleged that Respondent No.2 had broken the lock put by the petitioner on the subject property and Respondent Nos. 2 and 3 had forcibly taken possession of the same. It is alleged that the said respondents thereafter changed the locks on the subject property. It is also alleged that the objects put by petitioner in the subject property, including computers, legal books, chairs, tables, etc., were also stolen from the subject property. It is also alleged that Respondent Nos. 2 and 3 have illegally constructed the concerned building up till 6th floor, that is, they have built two additional floors and sold the ground floor, that is allegedly allocated for parking, to a third party for commercial use. The allegations clearly disclose the commission of cognizable offences.

22. The status report filed before the learned Trial Court mentions that Respondent No.2 had possession of the subject property. Specific allegations have been made that Respondent Nos. 2 and 3 forcibly took possession of the subject property. Specific allegations have also been made regarding the theft of the articles.

23. In the present case, it is pertinent to note that the learned CMM has erroneously noted that the identity of the accused persons is known to the applicant. The offences of theft and house trespass

have been alleged to have been committed in the present case. It is specifically alleged that when the petitioner went to the subject property he saw Respondent No.2 there with some muscle men. The identity of such muscle men, who also allegedly were party to the theft and trespass, is unknown to the petitioner. Moreover, investigation is required qua petitioner's belongings as well. In view of the same, this Court is of the opinion that investigation is required in the present case.

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24. It is also relevant to note that the learned ASJ noted that the provisions under Section 154 of the CrPC were not complied by the petitioner before filing of the application under Section 156(3) of the CrPC. It seems that the petitioner has made complaints under the relevant provisions of Section 154 of the CrPC in the wrong order, where he made the complaint under Section 154(3) before making the complaint under Section 154 (1) of the CrPC. It is correct to suggest that the mandate under Section 154 of the CrPC is indispensable, however, the same is for the purpose of ensuring that the complainant approaches the Magistrate under Section 156(3) of the CrPC only if the police does not entertain the application. Even though, evidently, there is an anomaly in the present case, the same, in the facts of the case, is not fatal to the maintainability of the application filed by the petitioner under Section 156(3) of the CrPC.

25. It is pertinent to note that another FIR has already been lodged by Respondent No. 2 against the petitioner regarding a dispute stemming from the subject property. It is alleged by Respondent Nos. 2 and 3 that the version of the petitioner is false and the possession of the subject property was never handed over to the petitioner. The Court is, however, of the opinion that the same is a matter of investigation. At the stage of registration of an FIR, the defence of the accused persons is not a relevant factor.

26. This Court is of the opinion that this is a fit case for exercise of the jurisdiction under Section 482 of the CrPC.

27. In view of the aforesaid discussion, the impugned orders are set aside and the SHO, Police Station Gokulpuri is directed to register an FIR under the appropriate sections and investigate the matter as per law.

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28. A copy of the order be sent to SHO, Police Station Gokulpuri for necessary compliance.

AMIT MAHAJAN, J FEBRUARY 21, 2024 /ssh This is a digitally signed order.

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