

(2022) 03 DEL CK 0045

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 2120 Of 2018, Criminal Miscellaneous Application No. 7553 Of 2018, 10827 Of 2021

Anjani Gupta

APPELLANT

Vs

State (Nct Of Delhi) & Anr

RESPONDENT

Date of Decision : 08-03-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 397, 482

Indian Penal Code, 1860 — Section 34, 379, 380, 406, 447, 448, 453, 454, 498A

Citation : (2022) 03 DEL CK 0045

Hon'ble Judges : Chandra Dhari Singh, J

Bench : Single Bench

Advocate : Arvind Varma, Abhishek Chhabra, Raghuvinder Varma, Puneet Goel

Final Decision : Allowed

Judgement

Chandra Dhari Singh, J

1. The instant petition under Section 482 of the Code of Criminal Code, 1973 (hereinafter "Cr.P.C") has been filed by the Petitioner against the impugned order dated 17th March, 2018 passed by the learned Special Judge (PC ACT) CBI, East District, Karkardooma Courts, New Delhi in Revision Petition No. 30/2018 arising out of Summoning Order dated 20th June, 2015 passed in CC. NO. 901/13 titled as 'Om Prakash Gupta vs. Anjani Gupta' registered at Police Station Preet Vihar for offence punishable under Section 380 of the Indian Penal Code, 1860 (hereinafter "IPC").

FACTUAL MATRIX

2. The background of the case is discussed as under: -

(i) Marriage between the Petitioner and the son of the Respondent No. 2, Alok Gupta, was solemnized on 30th January, 1990 according to Hindu rites and rituals and Respondent No. 2 is the father-in-law of the Petitioner.

(ii) The relationship between the Petitioner and her in-laws was cordial in the beginning, however, it started to deteriorate with time. It has been alleged by the Petitioner that her husband used to continuously torture, harass and humiliate her for dowry and other issues since the very beginning of marriage and was maltreated by him and his family members.

(iii) The Petitioner alleges that her husband was having an illicit relationship with his office receptionist, which was supported by his family members, but objected to by the Petitioner. It was alleged that she was subjected to continuous torture, cruelty and inhumane treatment and was thrown out from her matrimonial house on 16th September, 2011.

(iv) Eventually, as the relationship between the Petitioner and her in-laws strained, both the parties filed cases against each other. One of the cases, which has given rise to the instant petition, is the case filed by the Petitioner under the Protection of Women from Domestic Violence Act, 2005, (hereinafter "DV Act"), registered as No. V-275/12. The said matter was heard by the learned Metropolitan Magistrate, Mahila Court, East District, Karkardooma Courts, New Delhi, and after consideration of arguments the learned Metropolitan Magistrate passed the Order dated 1st November, 2013, wherein it was observed that the husband of the Petitioner is 50 percent owner of the co-owned house, bearing no. A-41, Swasthiya Vihar, Delhi- 110092, the Petitioner was residing on the first floor of the said matrimonial home till the day she was dispossessed from the house, that is on 16th September, 2011 and that there was a prima facie case that the husband of the Petitioner was having an illicit affair. The learned Metropolitan Magistrate held that, in view of the above facts, the Petitioner herein was entitled to the right of residence in the first floor of the abovementioned property. It was further directed by the learned Metropolitan Magistrate that the Petitioner was restrained from interfering in the affairs of the Respondents at the ground floor and similarly, the said Respondents were also restrained from interfering in the physical possession or enjoyment at the first floor of the property of the Petitioner. Respondent No. 2 filed a Revision Petition against the aforesaid Order, however, the same was dismissed by the learned Sessions Court vide Order dated 5th December, 2013.

(v) On 4th July, 2015, the Petitioner came to know that a notice of summons was issued by learned Additional Chief Metropolitan Magistrate, East District, Karkardooma Courts, New Delhi, against her vide Order dated 20th June, 2015, in a complaint case filed by Respondent No. 2 titled 'Om Prakash Gupta vs. Anjani Gupta', CC No. 901/12 PS Preet Vihar, Delhi, under Section 380 of the IPC for allegedly removing certain letters from the deemed possession of the Respondent No. 2, while he was not present at his house at the aforementioned address.

(vi) Aggrieved by the said Order, the Petitioner filed a Criminal Petition, which was disposed by a coordinate bench of this Court vide Order dated 12th January, 2018, with liberty to file a Revision Petition against the Order of summoning. The

Petitioner then preferred a Revision Petition against the Order dated 20th June, 2015 which was also dismissed by the learned Sessions Court on 17th March, 2018.

(vii) In the instant Petition, the Petitioner has impugned the Order dated 17th March, 2018 by way of which the learned Sessions Judge observed that a prima facie ground had been made out to allege that the Petitioner committed theft of the letters in possession of the Respondent No. 2 as well as the Order dated 20th June, 2015, wherein summons were issued to the Petitioner under Section 380 of the IPC.

SUBMISSIONS

3. Mr. Arvind Varma, learned senior counsel assisted by Mr. Abhishek Chhabra, appears on behalf of the Petitioner and submits that while passing both the Orders the learned Additional Chief Metropolitan Magistrate and learned Sessions Court failed to appreciate that the Respondent No. 2 did not come before the Courts with clean hands. It is submitted that the Respondent No. 2 had been in a habit of filing false and frivolous complaints and cases against the Petitioner with the intention to torment and harass her.

4. It is submitted by learned senior counsel that the Petitioner sought the relief of Right to Residence in her matrimonial home, from which she was thrown out after 21 years of living there, and the said right was granted by the learned Metropolitan Magistrate vide Order dated 1st November, 2013 after elaborate appreciation of facts before it. The said Order was passed with the directions to the Station House Officer of the concerned Police Station to render assistance in compliance of the Order. The Petitioner on several occasions tried to enter the premises, for which a due right was granted to her, the Respondent No. 2 and his family members restrained her from entering and deliberately locked the premises and went away. It is, further, submitted a key maker was called to peacefully open the door of the premises but the Petitioner could not enter the premises.

5. Thereafter, FIR bearing No. 430/13 was lodged under Section 406/498A/34 IPC at the Police Station DGB Road against the Respondent No. 2 and his family members. An investigation was carried into the matter for recovery of stridhan and other articles of the Petitioner that were lying at the said premises and at the part of the house where the Respondent No. 2 was residing. However, even the Police officers were restricted to enter into the room where valuables of the Petitioner were lying and eventually, the Respondent No. 2 and his wife (now deceased) locked the room and left the premises. The Petitioner tried to enter her residence on other occasions but was unable to enter and then she sought the assistance of the local police to enter the premises.

6. Learned senior counsel for the Petitioner submitted that the allegations made by the Respondent No. 2 of theft under Section 380 of the IPC have no ground and are false. Courts below have wrongly opined that allegedly taking of certain

letters belonging to the Respondent No. 2 from her own matrimonial home amounted to theft.

7. It is submitted that the Courts failed to appreciate that the appeal filed by the Respondent No. 2 against the Order granting Right of Residence, was dismissed in favour of the Petitioner and the Order of learned Metropolitan Magistrate was upheld by the learned Additional Sessions Judge/Special Judge (NDPS), East, Karkardooma Courts, New Delhi yet, when the Petitioner tried to enter her matrimonial home, in pursuance of the right granted to her by the learned Metropolitan Magistrate in the first floor of the premises in question, she was not allowed to take possession of the portion of the property.

8. The Revision Petition was dismissed solely on the basis of the testimony of two witnesses, neighbours, which concealed the fact that the Police assistance was sought for execution of the Order granting Right of Residence.

9. Learned senior counsel for the Petitioner relied upon the judgment of Hon'ble Supreme Court in *Pepsi Food & Ors vs. Special Judicial Magistrate & Ors*, AIR 1998 SC 128, and submitted that the summoning of an accused is a serious matter and while issuing summons the Magistrate has to carefully scrutinize the evidence brought on record and find out the truthfulness of the allegations to determine whether the alleged offence is *prima facie* committed by the accused.

10. It is further submitted on behalf of the Petitioner that the Respondent No. 2 was never the owner or even the tenant of the premises in question and the same was in the name of the son and wife of Respondent No. 2. Therefore, it cannot be said that the Respondent No. 2 was in possession of the subject property when he was not present at the premises. Further, since the Petitioner was residing at the premises for 21 years and was subsequently, granted the Right of Residence, it could not have been presumed that all letters put in the mailbox of the premises belonged to the Respondent No. 2 or were in his exclusive possession. It is submitted that even at the stage of pre-summoning evidence, the Respondent No. 2 was not able to establish that the post mails belonged to him and further, he was not able to give a description of the said letters.

11. Learned senior counsel appearing on behalf of the Petitioner submitted that in the alleged CCTV footage, relied upon by the Respondent No. 2, the Petitioner was seen approaching the house under the Police protection which was made permissible by the Order dated 1st November, 2013, and under such assistance and presence of the Police officials, neither parties could have removed the belongings of each other. It is submitted that by merely picking up certain letters lying at the premises, the offence of theft under Section 380 of the IPC could not have been made out. Given that the Petitioner too had been living there for more than 20 years, there is a high probability that any letter being received at the premises could have belonged to her. The Respondent No.2 failed to establish that the contents of any of these letters were such that their absence caused any

loss or harm to him.

12. It is submitted by learned senior counsel for the Petitioner that in light of the above arguments, the impugned Order dated 17th March, 2018, arising out of the summoning Order dated 20th June, 2015, is bad in law, erroneous, unreasonable and suffering from patent illegality and is liable to be set aside.

13. Per Contra, Mr. Puneet Goel, learned counsel appearing on behalf of Respondent No. 2 vehemently opposed the present Petition and submitted that the learned Sessions Court has rightly upheld the Order of summoning dated 20th June, 2015 and there is no error in either of the Orders passed.

14. Learned counsel appearing on behalf of the Respondent No. 2 submitted that the Order passed by the learned Metropolitan Magistrate dated 1st November, 2013, granting the Right of Residence was limited to the first floor of the premises in question and its further use and occupancy, the right, however, did not subsist in breaking the locks of the house and enter forcefully. The Petitioner had brought about a key maker to the premises and broke into the house which was in no manner, whatsoever, permitted by the Order of the learned Metropolitan Magistrate.

15. It is submitted that on 23rd November, 2013, the Petitioner broke into the premises of the Respondent No. 2 while he and his wife (now deceased) were out of the Delhi. The neighbours of the Respondent No. 2 called the Police officials upon which the Petitioner put her locks on the front gate of the house. Further, on 24th November, 2013, the Petitioner again visited the house of the Respondent No. 2, broke open the lock of the second door and again the Police was called. Before leaving the premises, the Petitioner removed postal letters from the post box of the Respondent No. 2 which contained valuable documents that were lying in the gallery of the house. The same was also recorded in the CCTV installed in the house and the footage was also produced before the learned Additional Chief Metropolitan Magistrate. Hence, the Petitioner was liable of offences under Section 379/380/447/448/454/453 of the IPC.

16. Learned Additional Chief Metropolitan Magistrate observed that after perusal of the CCTV footage it was found that the Petitioner took in her hands postal letters lying on the ground floor and took few letters with her. The letters being on the ground floor, the part of the house belonging to the Respondent No. 2, and in the post box of the Respondent No. 2 were in his deemed possession and removal of the same without his consent and knowledge amounted to theft. Moreover, the dishonest intention of the Petitioner was reflective in the fact that she did not take the assistance of the police or any other legal authority for removing the letters in question.

17. It is submitted by learned counsel appearing on behalf of Respondent No. 2 that there is no error in the Order dated 17th March, 2018 arising out of Summoning Order dated 20th June, 2015 and the instant petition is liable to be dismissed for being devoid of any merit.

FINDINGS AND ANALYSIS

18. Heard learned counsel for the parties and perused the record. I have perused the impugned Order dated 17th March, 2018 as well as Order dated 20th June, 2015, whereby summons were issued against the Petitioner.

19. It is settled position of law that while issuing summons to the accused the concerned Court has to be prima facie satisfied of the charges alleged against the accused. Hon'ble Supreme Court in *Pepsi Foods Ltd. v. Special Judicial Magistrate* (Supra), has observed as under: -

"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 scrutinize 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."

20. Further, in the matter of *Fiona Shrikhande v. State of Maharashtra*, AIR 2014 SC 957, it was observed as laid down under:-

"11. We are, in this case, concerned only with the question as to whether, on a reading of the complaint, a prima facie case has been made out or not to issue process by the Magistrate. The law as regards issuance of process in criminal cases is well settled. At the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused and it is not the province of the Magistrate to enquire into a detailed discussion on the merits or demerits of the case. The scope of enquiry under Section 202 is extremely limited in the sense that the Magistrate, at this stage, is expected to examine prima facie the truth or falsehood of the allegations made in the complaint. Magistrate is not expected to embark upon a detailed discussion of the merits or demerits of the case, but only consider the inherent probabilities apparent on the statement made in the complaint."

21. It can therefore, be reasonably inferred that while issuing summons, a prima facie appreciation of evidence coupled with application of judicial mind needs to be carried out for a summoning order to be just and legal. In the present matter, the Revisional Court as well as the learned Additional Chief Metropolitan Magistrate were to examine whether the very basic tenets and ingredients of

provision of theft under the IPC were being met by the Petitioner or not, while prima facie making out a case against her.

22. To establish the prima facie offence under Section 380, the relevant provisions of the IPC may be looked into. The same are mentioned hereunder:-

"378. Theft—Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1. —A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2. —A moving effected by the same act which effects the severance may be a theft.

Explanation 3. —A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4. —A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5. —The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied

380. Theft in dwelling house, etc.—Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

A bare perusal of the provision for the offence of theft suggests that the person committing the offence shall firstly, remove any movable property from the possession of a person, secondly, do so without his consent and thirdly, remove such property with dishonest intention. In the instant case, the Petitioner was alleged to have removed certain letters from the premises in question. To prima facie establish the offence of theft against her, the abovementioned essentials need to be met.

23. The keywords used in the provision are "intending to take dishonestly", which provides that there must be an intention which is dishonest to remove the property from the possession of a person. Dishonestly has been defined under the IPC as under:

"24. Dishonestly —Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing

“dishonestly”.

It is clear that the intention must be to cause wrongful gain to one and wrongful loss to another, and in terms of theft, while removing the movable property out of the possession of a person, the person committing theft must have such kind of intention. In the present case, it is a fact that the Petitioner had been living in the premises in question since the day she got married into the family, and it was her matrimonial home. There is a high probability that any letters coming into the home could have been addressed to her. Since, the post box is located at the entrance of the house and not usually on each floor, there is a likelihood of the Petitioner's letters and mail being delivered in the very post box that was located on the ground floor of the house. Moreover, the post also seldom contains generic material such as newspapers, magazines, testimonials, etc. that are common to the household. Therefore, even if the Petitioner picked up the letters lying on the floor of the part of the house in possession of the Respondent No. 2, the dishonest intention, of causing wrongful gain to herself or any other person and wrongful loss to the Respondent No. 2 or anyone else, was not established at the preliminary stage. There is barely any wrongful loss or gain that could not have been caused merely by picking up certain letters lying on the floor of the house.

24. The ingredient of dishonest intention is hence, not found in the actions of the Petitioner. Consequently, a prima facie offence could not have been made out against the Petitioner under Section 380 of the IPC and thereby, the Order dated 20th June, 2015 passed and summons issued to the Petitioner were improper and erroneous to that effect.

25. Further, even the Revisional Court had limited powers while exercising its jurisdiction as has been discussed in the matter of Hindustan Petroleum Corporation Ltd. vs Dilbahar Singh, (2014) 9 SCC 78, by the Hon'ble Supreme Court, which observed as under: -

“43. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out facts recorded by the Court/Authority below is according to the law and does not suffer from any error of law.

... to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the Order impugned before it suffers from procedural illegality or irregularity.”

26. The above-mentioned observation of the Hon'ble Supreme Court read with Section 397 of the Cr.P.C., elucidates that the powers of Revisional Court are

limited to the appreciation of the judgment/ order of the court below to the question whether there is any gross illegality, error apparent on record or error of law. The Revisional Court ought to have appreciated that the Court below did not consider that prima facie an offence of theft was not made out against the Petitioner as the very ingredients of the offence under Section 380 of the IPC were not met. There was an apparent error of law while passing the Order of summons and the Revisional Court wrongly upheld the Order dated 20th June, 2015 vide its Order dated 17th March, 2018.

CONCLUSION

27. The instant dispute has arisen out of matrimonial discord between two people which has also, led to filing of more than 50 criminal and civil cases between not only the husband and the wife but also their family members. It is found that for the sole purpose of harassing the other party such cases are filed by persons with no just cause or reason and substantial ground for allegations. The FIR by the Respondent No. 2 accusing Petitioner of charges of theft seems to be one more such attempt to harass her for making a case out of no substantial instance. Such kind of practices cannot be condoned and are in gross misuse of process of law.

28. Keeping in view, the arguments advanced, facts presented, contents of the impugned Order, and observations of the Courts below, this Court does not find any cogent reason to allow the operation of the impugned Order dated 17th March, 2018 passed by learned Special Judge (PC ACT) CBI, East District, Karkardooma Courts, New Delhi in Revision Petition No. 30/2018.

29. Consequently, the summoning Order dated 20th June, 2015 passed by Additional Chief Metropolitan Magistrate, East District, Karkardooma Courts, Delhi and Order dated 17th March, 2018 passed by Special Judge (PC Act) CBI, East District, Karkardooma Courts, Delhi upholding the summoning Order are set aside. Accordingly, the petition is allowed and disposed of.

30. Pending applications, if any, also stand disposed of.

31. The judgment be uploaded on the website forthwith.