
(2011) 01 DEL CK 0289

In the Delhi High Court

Case No : Criminal M.C. 4569-70 of 2005

Dhabalendu Samantha and Another

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 12-01-2011

Acts Referred:

Citation : (2011) 1 AD 746 : (2011) 1 JCC 400

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : J.M. Kalia, for the Appellant; M.N. Dudeja, APP for State, for the Respondent

Judgement

Hima Kohli, J.—The present petition is filed by the Petitioners u/s 482 of the Cr.PC praying inter alia for quashing of the Complaint Case No. 1180/2004 lodged by Respondent No. 2, pending in the Court of learned Metropolitan Magistrate, Karkardooma Courts and quashing of the order of summoning dated 25.04.2005.

2. Counsel for the Petitioners states that the basis of the complaint lodged by Respondent No. 2 against the Petitioners as also the three others is a flat bearing No. A-2/603, Glaxo Apartments, Mayur Vihar, Phase-I, New Delhi. It is submitted that Respondent No. 2 had executed a lease deed in respect of the aforesaid flat in favour of one Mr. Sudhir Saran, the then Dean of M/s IILM Academy of Higher Learning on 25.11.2002. The present Petitioners claimed to be the guests/ caretaker of Mr. Sudhir Saran at the premises in question for a short while. It is the stand of the Petitioners that in April 2004, Respondent No. 2 tried to take forcible possession of the aforesaid flat in the absence of Mr. Sudhir Saran, seeing which one of the neighbours namely, Mrs. Pavni Sinha, W/o. Mr. Amitabh Sinha informed the Police and FIR No. 152/2004 was registered against Respondent No. 2 and other accused persons, who were removed from the disputed flat. In November 2004, as a counterblast to the aforesaid FIR, Respondent No. 2 allegedly lodged the aforesaid criminal complaint against the

Petitioners, who were residing in the same complex and Mrs. Pavni Sinha and her husband, Mr. Amitabh Sinha, apart from Mr. Sudhir Saran and his wife. All the persons named in the complaint were summoned by the learned Metropolitan Magistrate in February 2005. Simultaneously, Respondent No. 2 filed a suit for possession and recovery of arrears of rent, mesne profit and damages against M/s IILM Academy of Higher Learning, Mr. Sudhir Saran, Mr. Amitabh Sinha and Petitioner No. 1, registered as Civil Suit No. 234/2005.

3. It is submitted that during the pendency of the aforesaid proceedings, the parties arrived at a settlement. Counsel for the Petitioners draws the attention of this Court to the documents filed by him on 21.04.2008. The said documents include a certified copy of the plaint in Civil Suit No. 234/2005, copies of the applications jointly filed by Respondent No. 2 (Plaintiff therein), Dr. Sudhir Saran (Defendant No. 2 therein) and Mr. Amitabh Sinha (Defendant No. therein), under Order XXIII Rule 3 of the CPC, recording the compromise arrived at between them and copies of the statements of the parties and the order dated 03.02.2007 passed by the learned ADJ recording the aforesaid settlement. A perusal of the aforesaid documents reveal that Respondent No. 2 (Plaintiff in the aforesaid suit) arrived at a settlement with Defendants No. 2 and 3 therein, in terms of which it was agreed that Mr. Sudhir Saran would hand over vacant physical possession of the aforesaid flat to Respondent No. 2/Plaintiff, subject to the latter's co-operating in quashing of the criminal complaint filed against Defendants No. 2 and 3, their wives, drivers and all others.

4. Counsel for the Petitioners states that the vacant physical possession of the flat was subsequently handed over by the aforesaid persons to Respondent No. 2. He also draws the attention of this Court to the order dated 08.12.2006 passed in entitled Smt. Pavni Sinha and Anr. v. The State and Anr., whereby the summoning order dated 23.02.2005 issued by the learned Metropolitan Magistrate in the complaint filed by Respondent No. 2, was quashed qua the Petitioners therein. It is stated by the counsel for the Petitioners that in view of the fact that the dispute between the landlord and the tenants that is, Mr. Sudhir Saran and M/S IILM Academy stands settled, there is no reason to continue with the complaint qua his client, which is also liable to be quashed, apart from setting aside the summoning order.

5. Notice in the present petition was issued on 16.09.2005. Thereafter appearance was entered on behalf of Respondent No. 2. However, as none appeared for Respondent No. 2 on a number of subsequent dates, vide order dated 05.08.2008, court notice was issued to the counsel for Respondent No. 2 as also to Respondent No. 2 himself. On 11.08.2009, the presence of the counsel for Respondent No. 2 was recorded. As he had stated that he had not received any instructions from his client, the Vakalatnama of another counsel on the record was taken note of and notice was also issued to the said counsel, Smt. Chitra Markandya. Respondent No. 2 as also his counsel were duly served for 15.10.2009. However, none appeared on behalf of Respondent No. 2. Thereafter,

the submission on behalf of the Petitioner was recorded in the order dated 30.11.2009 that as the dispute between Respondent No. 2 and his tenant was amicably resolved, the present petition was also liable to be allowed. Counsel for the Petitioners reiterates the aforesaid submissions today.

6. Having regard to the aforesaid facts and circumstances of the case and in view of the fact that the landlord tenant dispute between the parties already stands amicably resolved, this Court deems it appropriate to quash the summoning order dated 25.04.2005 qua the Petitioners as issued by the learned Metropolitan Magistrate in Complaint Case No. 1180/2004.

7. The petition is disposed of.