

(2012) 08 DEL CK 0057

In the Delhi High Court

Case No : Writ Petition (Criminal) 733 of 2009

Girraj

APPELLANT

Vs

State N.C.T. of Delhi and Others

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 107, 151, 154, 154(3), 156(3)

Citation : (2012) 6 AD 393 : (2012) 4 JCC 2292

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : S.D. Wadhwa, for the Appellant; Dushyant Kumar with Ms. Charu Dalal, Advocates for Mr. Saleem Ahmed, Additional Standing Counsel. IO/SI Laxmi Chand, PS GK-I, New Delhi. Mr. K.K. Sud with Mr. Harendra Singh, Advocate for R-6, 7 and 9 Mr. Sunil Satyarthi, Advocate for R-8, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—Present writ petition has been filed under Article 226 of the Constitution of India read with Section 482 of Code of Criminal Procedure for issuance of a writ of mandamus seeking a direction to the respondents to place the petitioner back in possession of premises bearing No. C-27A, Greater Kailash Enclave-I, New Delhi from where he is alleged to have been forcibly dispossessed. The petitioner has also prayed for action/enquiry against the accused persons and errant police officials who are alleged to have conspired, colluded and connived in dispossessing the petitioner. The prayer clause of the petition is reproduced hereinbelow:

(i) In the above premises, it is, therefore, respectfully prayed that this Hon'ble Court may graciously be pleased to issue the Writ of Mandamus directing the respondents to put the petitioner back in the premises wherefrom the petitioner was illegally dispossessed.

(ii) It is further prayed that inquiry against the accused persons and errant police officials who conspired, colluded and connived with the accused persons for unlawfully dispossessing the petitioner.

(iii) Any further order and relief as is deemed fit and proper in the facts and circumstances may kindly be passed in favour of the innocent petitioner and against the accused persons who have committed unimaginable atrocities on the petitioner.

The facts as stated by the petitioner are that he was in peaceful and exclusive possession of a vacant plot with one pucca room, a temporary tuck-shop and a temporary shed at C-27A, Greater Kailash Enclave-I, New Delhi. Petitioner alleged that he was in occupation of the aforesaid property with the express permission of respondent no. 6 and his local representative who is respondent no. 8.

2. Mr. S.D. Wadhwa, learned counsel for the petitioner stated that on the night intervening 13/14 March, 2009, respondent nos. 8 and 9 in collusion with anti-social elements and local police officials not only dispossessed the petitioner but also abducted him to an unknown destination. Mr. Wadhwa further stated that the respondents thereafter not only demolished the petitioner's temporary tuck shop but also removed his articles from the aforesaid premises. Mr. Wadhwa reiterated that petitioner had been given the room in the aforesaid premises for residential purpose and also for running of the tuck shop in the year 2002-2003 by the predecessor landlord, Late Shri Hem Raj and the said permission was continued by respondent no. 6. He further stated that as the police officials refused to take action despite a number of complaints filed by the petitioner, the present writ petition had been filed.

3. On the other hand, Mr. K.K. Sud, learned senior counsel appearing for respondent nos. 6, 7 and 9 stated that the petitioner's claim of permissive possession was false and baseless. He stated that petitioner was not in possession and was never dispossessed as alleged. He contended that the present petition had been filed with a view to blackmail the owner of the premises in question, namely, respondent no. 6 since the petitioner wanted to hold the rightful owners to ransom by abuse of the process of Court. He further stated that under the stress of false complaint to the police, petitioner was successful in obtaining Rs. 1,44,000/- from respondent no. 6 on 14th March, 2009 and thereafter he again turned dishonest by further claiming ransom by casting clouds on the right of the said respondent over the aforesaid property.

4. According to him, a perusal of the petitioner's complaints dated 30th July, 2008, 2nd September, 2008, 18th September, 2008, 25th September, 2008, 30th October, 2008, 13/15th March, 2009 and 21st March, 2009 would reveal that the petitioner had been consistently improving the allegations to lay a false claim and extort money without there being any semblance of any right. He stated that in this process, petitioner had taken contradictory stands from stage

to stage. In this connection, Mr. Sud has drawn attention of this Court to the letters dated 30th July, 2008 and 18th September, 2008 both written by the petitioner to SHO, PS G.K. The relevant portions of the aforesaid letters are reproduced hereinbelow:

A) Letter dated 30 July, 2008

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Sir, I was appointed a caretaker/guard of the above vacant plot 5-6 years back by one Mr. Ujjagar Singh of Chandigarh who was then accompanied by the aforesaid Mr. Brar without any remuneration, but I was allowed to construct one room with the roof of asbestos sheets for the purpose of my residence along with my wife & 3 kids.

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B) Letter dated 18th September, 2008

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3. That truck loads of dust have been got unloaded right near the door of my bed room so that a pavement is raised and rain water enters my room and I am forced to live miserably. Why no case U/s. 427 to do mischief and causing damage to my property has not been registered against him apart from taking preventive action against him U/s. 107/151 CRPC.

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5. Mr. Sud further submitted that the present petition was based upon falsehood and the petitioner had not approached the Court with clean hands and as such, was not entitled to any relief.

6. Mr. Sud also submitted that prayer seeking enquiry against accused and errant police officials was untenable in law. According to him, no direction or writ could be issued by this Court in writ proceedings for registration of an FIR. In this connection, he relied upon judgments of the Supreme Court in *Aleque Padamsee and Others Vs. Union of India (UOI) and Others*, *R.P. Malik Vs. State (NCT of Delhi)*, 2001 (3) CCR 62 (SC). The relevant portion of the *Aleque Padamsee & Ors.* (supra) is reproduced hereinbelow:-

6. 4. When the information is laid with the police but no action in that behalf is taken, the complainant [can u/s 190 read with Section 200 of the Code lay] the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into the offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint u/s

203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and [could] issue process to the accused.

These aspects have been highlighted by this Court in *All India Institute of Medical Sciences Employees Union (Regd.) v. Union of India*, SCC p. 583, para 4. It was specifically observed that a writ petition in such cases is not to be entertained. The above position was again highlighted in *Gangadhar Janardan Mhatre v. State of Maharashtra*, *Minu Kumari v. State of Bihar* and *Hari Singh v. State of U.P.*

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7. Whenever any information is received by the police about the alleged commission of offence which is a cognizable one there is a duty to register the FIR. There can be no dispute on that score. The only question is whether a writ can be issued to the police authorities to register the same. The basic question is as to what course is to be adopted if the police does not do it. As was held in *All India Institute of Medical Sciences* case and reiterated in *Gangadhar* case the remedy available is as set out above by filing a complaint before the Magistrate. Though it was faintly suggested that there was conflict in the views in *All India Institute of Medical Sciences* case, *Gangadhar* case, *Hari Singh* case, *Minu Kumari* case and *Ramesh Kumari* case, we find that the view expressed in *Ramesh Kumari* case related to the action required to be taken by the police when any cognizable offence is brought to its notice. In *Ramesh Kumari* case the basic issue did not relate to the methodology to be adopted which was expressly dealt with in *All India Institute of Medical Sciences* case, *Gangadhar* case, *Minu Kumari* case and *Hari Singh* case. The view expressed in *Ramesh Kumari* case was reiterated in *Lallan Chaudhary v. State of Bihar*. The course available, when the police does not carry out the statutory requirements u/s 154 was directly in issue in *All India Institute of Medical Sciences* case, *Gangadhar* case, *Hari Singh* case and *Minu Kumari* case. The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to their notice show that cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Section 190 read with Section 200 of the Code. It appears that in the present case initially the case was tagged by order dated 24-2-2003 with WP (C) No. 530 of 2002 and WP (C) No. 221 of 2002. Subsequently, these writ petitions were delinked from the aforesaid writ petitions.

8. The writ petitions are finally disposed of with the following directions:

(1) If any person is aggrieved by the inaction of the police officials in registering the FIR, the modalities contained in Section 190 read with Section 200 of the Code are to be adopted and observed.

(2) It is open to any person aggrieved by the inaction of the police officials to adopt the remedy in terms of the aforesaid provisions.

(3) So far as non-grant of sanction aspect is concerned, it is for the Government concerned to deal with the prayer. The Government concerned would do well to deal with the matter within three months from the date of receipt of this order.

(4) We make it clear that we have not expressed any opinion on the merits of the case.

7. Learned counsel appearing for State took this Court extensively through the status report filed by the Police. Since he laid considerable emphasis on the status report, the same is reproduced hereinbelow for ready reference :

Brief facts of the case, on the basis of the various enquiries conducted so far, are that Sh. Giriraj s/o Late Khem Chand r/o 14/145, Dakshin Puri, New Delhi (a native of Kosi Kalan, Mathura), the petitioner, was employed as Chowkidar (Guard) to guard the property in question i.e. a vacant plot bearing No. C-27A, Greater Kailash-I, New Delhi, in 2003 by the then owner of the plot Sh. Khem Raj R/O Vill. Chirag Delhi, New Delhi. The present owner of the plot Sh. Ujjagar Singh Sidhu (a resident of 139, Sector-9B, Chandigarh), Respondent No. 6, purchased this plot in 2003 and continued the services of this chowkidar Giriraj for guarding the plot, as he permanently resides at Chandigarh. The petitioner continued to remain there at the plot as a chowkidar on a monthly agreed salary of Rs. 1500/-per month. However, there is no documentary proof regarding the employment of Giriraj as chowkidar or about his salary. In due course and with the passage of time, Giriraj called his family i.e. wife Maya & 2 Children to stay with him at the plot and he himself started selling tea and pan-biri, Cigarette from a make-shift Khokha at the gate of the plot with the prior permission of the owner of the plot. In June/July 2008, the owner of the plot told Giriraj that he no more required his services as he wants to built the plot, but Giriraj did not accept his advice and instead started making complaints.

On 25.7.08, a PCR call was received at PS Greater Kailash-I, New Delhi with regards to a quarrel at C-27A, Greater Kailash Enclave, which was registered vide DD No. 47-B and the same was entrusted to HC Dinesh Kumar for necessary action. The Enquiry Officer visited the spot, conducted enquiries and also recorded the statement of the petitioner which revealed that no quarrel had taken place and, thereafter the call was filed.

Again, on 30.7.2008, a PCR call was made by the petitioner, which was registered vide DD No. 9A and the same was marked to ASI Inderjeet Singh for necessary action, who upon receipt of the same, visited the spot and conducted enquiries. He found that Plot No C-27A belongs to one Ujagar Singh Sidhhu and the petitioner was employed as Chowkidar to guard the above said property. From the enquiries conducted at the spot, it was revealed that no cognizable offence had taken place and, therefore, the call was filed. It is further submitted that the petitioner had made another PCR call on the same day which was also filed as no cognizable offence was made out and the matter was of civil in nature. Inspector Dharam Vir Joshi, the then SHO Greater Kailash-I, had also

visited the spot and lodged a detailed report vide DD No. 28A, dated 30.7.08.

The petitioner and the respondent Shri Ujagar Singh Sidhu have been making complaints to the local police. While enquiries at local level were in progress, petitioner Shri Giriraj made a written complaint to the DCP/South-East District on 7.10.08 and the same was enquired into by the Inspector, P.G. Cell (Vigilance)/South-East District. Inspector, PG Cell, after conducting a thorough enquiry, concluded in his report dated 13.10.08 that, "...Girraj was kept as chowkidar or to look after the plot by the land lord who later on started to live there along with his Wife and children with some ulterior motive even though he is having previously a jhuggi and now a house under construction at 145/14, Dakshin Puri, Delhi. Now he wants that a handsome amount should be paid by the land lord only then he will vacate the plot i.e. C-27A, GK. Enclave-I.

On the night intervening 14/15.3.2009, a PCR call was received at 1.50 AM with regards to kidnapping of the petitioner and petitioner's wife namely Maya which was registered vide DD No. 23-A at PS Greater Kailash-I and the same was marked to SI Laxmi Chand for enquiry. He immediately rushed to the spot and ACP/Lajpat Nagar, who was working as "Night Gazetted Officer" of the District, along with Inspr Harpal Singh of PS Greater Kailash-I also reached the spot. During the course of the enquiry, statements of Manjesh S/o Shri Malkhan Singh, Shrikant Tiwari and Benjamin (Security Guards of colony) were recorded, who denied to have seen any incident of kidnapping. In this regard, it is submitted that the petitioner himself appeared at Police Station later in the day and his statement was recorded who, among other things, stated that at about 11.30 PM (14.3.09), 4/5 persons came in two vehicles and forcibly made him, his wife and a rickshaw-puller to sit in these vehicles and took them to Kosi, near Mathura (UP) -this is the native place of the petitioner -and snatched Rs. 1000/-from him and Rs. 10,000/-from his wife and Rs. 3000/-from Ramesh, the rickshaw-puller. As they had not snatched his mobile phone no. 9268132299, he made a call to Shri S.D. Wadhwa, Advocate, who in turn informed the police. He could not explain in his statement as to why he had not made a call to police when he was having mobile phone. His statement was found untrue and he also refused to go for his medical examination.

It has also transpired that the respondent Shri Sidhu had served a notice on 4.2.09 upon the petitioner Giriraj to the effect that the petitioner has been removed from his services and to vacate the plot. Subsequently, on 14.3.09, the petitioner received Rs. 1,44,000/-as the outstanding salary for four years and also executed an Iqararanam that he has received the dues and was vacating the plot with his family. Enquiry further revealed that this call was made from telephone No. 26242717 which belongs to Mr. S.D. Wadhwa, Advocate. It is necessary to point out that wife of the petitioner is working as maid servant in the house of Mr. S.D. Wadhwa. There were marked differences in the statements of various persons, which falsify the kidnapping story.

It is most respectfully submitted that in the entire gamut of this matter, no

cognizable offence is made out and, therefore, no police action is required. The petitioner is now running a tea shop on the pavements, a little away from his earlier shop and is reportedly residing with his family at Dakshin Puri, New Delhi. The enquiries reveal that the petitioner is making various complaints and has also filed the instant petition before this Hon"ble Court in order to "negotiate" with the Respondent No. 6. The local police has nothing to do with this negotiation and the petition may kindly be dismissed.

Submitted please.

(emphasis supplied)

8. In rejoinder, Mr. Wadhwa not only reiterated his arguments but also submitted that this Court in writ jurisdiction could restore possession of the petitioner's premises. In this connection he relied upon the judgments of this Court in Anju Devi Vs. Commissioner of Police & Ors., 55 (1994) DLT 167 (DB) and Vijay Khanna & Anr. Vs. Union of India, 78 (1999) DLT 619 (DB). The relevant portion of Anju Devi (supra) is reproduced hereinbelow:

13. In the light of the aforesaid facts the Court is not helpless in coming to the aid of the petitioner simply because the suit filed by her for possession is pending in the Civil Court. The suit was filed by the petitioner during the pendency of the writ petition since limitation period of six months was expiring and if not filed suit would have become time barred. It is only in exceptional cases and sparingly this Court would direct delivery of possession while exercising extraordinary jurisdiction under Article 226 of the Constitution but we cannot accept the argument that this Court has no such power. When the facts are so glaring as in the present case the Court is not powerless and has rather obligation and duty to direct restoration of possession. The availability of other efficacious remedy knowing well that the said remedy i.e. suit will take considerable time cannot always be used as a weapon of defense to deny relief to the aggrieved person. It is true that generally power under Article 226 would not be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary process of courts, civil and criminal but there is no bar in exercise of that power and where and when it is required to be exercised would depend upon the facts and circumstances of each case. The present case is not of two individuals, one having dispossessed the other, but is a case where a helpless lady has been thrown out of the house where she was living for about four years, in whatsoever capacity, as a result of collusion and connivance of the police, In such circumstances, this Court, to do complete justice between the parties, has wide and ample powers to pass appropriate orders including orders for restoration of possession. On the facts like the present it is the duty of the Court to come to the aid of person who is oppressed and is in disadvantageous position and, therefore, it is necessary to make innovations and forge new tools when atrocities are committed by those who are required to enforce the rule of law. The alleged offender cannot be permitted to take advantage of delay in justice delivery system. The contention that they may have prima facie

committed the offence of trespass for the purpose of registration of FIR, which maybe registered, and that the law will have its own course after registration of the FIR and at this stage no orders for delivery of possession can be passed, cannot be accepted on the peculiar facts of this case. Of course, the criminal law will have its own course. Of course, the suit would also be decided on its own merits and this order will not prejudice parties in those proceedings but all this does not persuade us to deny the relief of putting the petitioner back into possession. All situations are not alike. What relief deserves to be given in exercise of jurisdiction under Article 226 cannot be placed in a rigid mould. It cannot be put in a straight jacket. The relief is to be moulded as the facts and circumstances of the case and cause of justice may demand. We are thus not persuaded to deny to the petitioner the relief of being put back in possession of the premises in which she has been living for nearly four years prior to 30/08/1993, the years during which her husband and mother-in-law were admittedly living in separate premises. We are not concerned in this case with the question of title of the property but are concerned with the role of the police. Police has no right to take law into their own hands. On the facts and circumstances noticed hereinbefore, it is evident that the police has taken law into their own hands and dispossessed the petitioner in complete, disregard of rule of law. The action of the police has to be just, reasonable and fair. The impugned action of the police shows complete lack of commitment to the society and rule of law. Within the parameters of law, the police has to come to the aid of needy, helpless and the victims. Some bad elements in the Police force bring disrepute to the entire force and good officials and officers, which we hope would be in large number, may also have to suffer sometimes because of few bad elements in the service. The time has indeed come for the Commissioner of Police to take stern action against the erring officers/ individuals. Such officials have to be made accountable for undue interference in the life and liberty of the citizens. We hope that the Government and the Commissioner of Police would think of ways and means of restoring a high degree of confidence of society in police as such type of interference is increasingly coming to the notice of the Court. Some officers in police force are required to be told that the aggrieved person cannot be treated the way the petitioner was treated. The facts are so glaring that it would shock the conscience of anyone.

9. Having heard the parties, this Court is of the view that the present writ petition is not maintainable as the petitioner at the time of filing of the present petition had an efficacious alternative remedy available by way of a suit for possession under the Specific Relief Act, 1963.

10. This Court also finds that the petitioner has been taking contradictory stand ranging from being a security guard to an owner in occupation of tuck-shop. In fact, the petitioner has not been able to place on record any document to show his title in the said premises. On the contrary, the Delhi Police has handed over a photocopy of the Sale Deed executed in favour of respondent no.6 to show that he is the owner of the aforesaid premises. Moreover, as exclusive possession of

the petitioner as a tenant or licensee is disputed, this Court is of the view that the present petition is also not maintainable as it involves disputed questions of fact.

11. Even in *Anju Devi Vs. Commissioner of Police & Ors.* (supra) case, it has been held that it is only in exceptional cases that this Court should direct the delivery of possession of premises while exercising extraordinary jurisdiction under Article 226 of the Constitution of India. In the present case, in view of the status report filed by the Delhi Police as well as the counter affidavit filed by the respondents nos. 6, 7 and 9, this Court is of the view that it does not fall in the "pigeon hole of exceptional cases."

12. Further, the Supreme Court in *Sakiri Vasu Vs. State of U.P. and Others*, has categorically held that writ petition should not be entertained when the petitioner has an alternative remedy available under the Code of Criminal Procedure to get an FIR registered. The relevant portion of *Sakiri Vasu vs. State of U.P. & Ors.* (supra) is reproduced hereinbelow:-

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police u/s 154 (3) Cr.P.C. or other police officer referred to in Section 36, Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate u/s 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition u/s 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint u/s 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition u/s 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, u/s 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint u/s 200 Cr.P.C. and not by filing a writ petition or a petition u/s 482 Cr.P.C.

13. In view of the aforesaid, present writ petition is not maintainable and accordingly, the same is dismissed, but with no order as to costs. However, the petitioner is granted liberty to file appropriate proceedings in accordance with law. Needless to say any proceeding initiated by the petitioner shall be decided on its own merits without being influenced by any observations made by this Court.