
(2013) 01 DEL CK 0221
In the Delhi High Court
Case No : Crl. M.C. No. 3920/2010

Narender Kukreja

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 08-01-2013

Acts Referred:

Citation : (2013) 2 AD 181 : (2013) 197 DLT 363

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.K. Bhasin, J.—This petition has been filed by the petitioner-accused u/s 482 of the Code of Criminal Procedure, 1973 for quashing of the order dated 15th July, 2010 passed by the learned Metropolitan Magistrate in a criminal complaint (being C.C. No. 34/1/10) filed by respondent no. 2 whereby he has been summoned as an accused for the commission of the offence punishable u/s 209 of the Indian Penal Code. The petitioner is the tenant under the complainant-respondent no. 2 in a part of property no. K-146, Krishna Park Extension, New Delhi. The respondent no. 2 filed a petition in the Court of Rent Controller for the eviction of the petitioner u/s 14(1)(e) of the Delhi Rent Control Act, 1958. On receipt of the notice of that eviction petition the petitioner sought leave to defend the same by filing an application and his affidavit stating therein the facts which according to him entitled him leave to defend the eviction petition. The respondent no. 2 filed his reply to the petitioner's application for leave to defend and refuted the averments made therein. However, before the learned Rent Controller could take any decision on the petitioner's leave to defend application the respondent no. 2 filed a criminal complaint u/s 200 of the Code of Criminal Procedure, 1973 against the petitioner and one other person to whom the rented premises had been allegedly sub let by the petitioner. In the complaint commission of the offences punishable under Sections 193/199/209/34 IPC by the petitioner was alleged because of his having sought leave to defend the

eviction petition on false pleas.

2. The learned Magistrate after recording the pre-summoning statements of the complainant/respondent no. 2 herein) and his son passed the impugned order summoning the petitioner herein only as an accused for the commission of the offence u/s 209 IPC. Feeling aggrieved by that order the present petition was filed by the petitioner.

3. Learned counsel for the petitioner had argued that the impugned order is liable to be quashed since the filing of the complaint itself was an abuse of the process of law/court by the respondent no. 2 having been filed before the Rent Controller could give any decision whether the petitioner herein had made any case for grant of leave to defend or not.

4 On the other hand, learned counsel for respondent no. 2 supported the impugned order and submitted that there was no bar against taking cognizance of the offence by the Magistrate even before taking of any decision by the Rent Controller.

5. After having heard the counsel for the parties this Court is of the view that in the facts and circumstances of this case the very filing of the criminal complaint by the respondent no. 2 against his tenant, the petitioner herein, against whom he had filed eviction petition in which the petitioner had sought leave to defend that petition and the Rent Controller was yet to form even a prima facie view whether the tenant had raised any pleas which entitled him to get the leave to contest the petition amounted to abuse of process of Court/law. That complaint, at the stage when it was filed, can certainly be said to have been filed by the respondent no. 2- landlord with the object of deterring and preventing his tenant from pursuing his leave to defend application. Therefore, on this ground alone the impugned order is liable to be set aside. This ground was considered by the Supreme Court also in "State of Haryana vs. Bhajan Lal", AIR 1992 Supreme Court 604 to be one of the grounds on which High Court can quash any criminal proceedings. The learned Magistrate while summoning the petitioner as accused did not consider aspect of the matter. This petition is, therefore, allowed and the impugned order of the learned Metropolitan Magistrate is set aside. It is, however, made clear that quashing of the criminal complaint against the petitioner at this stage would not be considered by the Rent Controller at the time of disposal of his leave to defend application, if it is still pending, or at any subsequent stage also if leave has already been granted as any expression of opinion on the merits of the petitioner's pleas in the eviction proceedings and the Rent Controller shall take a decision in accordance with law.