
(2007) 09 DEL CK 0021

In the Delhi High Court

Case No : Criminal M.C. No. 1481 of 2007

Smt. Krishna Dwivedi

APPELLANT

Vs

Sh. Surender Kumar

RESPONDENT

Date of Decision : 07-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 323, 34, 427, 452, 506

Citation : (2007) 09 DEL CK 0021

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Y.K. Mishra, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—By way of the present petition filed u/s 482 Cr.P.C. petitioner has sought the quashing of the proceedings arising out of the complaint case pending in the Court of Metropolitan Magistrate since 2004.

2. The respondent/complainant in his complaint has alleged that he is a tenant under the petitioner in respect of rear portion of 248, Sant Nagar, East of Kailash, New Delhi. On 1st March, 2004, the petitioner came to the premises of the complainant and started threatening his workers and asked them to leave the place and also gave beating to his workers and threw away all the belongings of the complainant on the road and also put a revolver on the head of the chawkidar's wife.

3. After recording the pre-summoning evidence, the Magistrate found a prima-facie case, u/s 452/323/506/427/34 IPC against the present petitioner and vide order dated 5th March, 2005 summoned the petitioner to face trial in the Court.

4. Now, in the present petition, it is being alleged that the complaint filed by the respondent is false and the premises in question had been demolished by the MCD and is completely unusable and the witnesses cited in the complaint were

interested witnesses as they were already in litigation with the petitioner being the tenants in the same property and as such their statements should have not been given weightage and furthermore civil litigations have been pending between the parties and despite being no material on record worth summoning the petitioner, the learned Magistrate for reason best known to him has summoned the petitioner and as such the summoning order is liable to be quashed.

5. Section 482 Cr.P.C. reads as under:

482. Saving of inherent power of High Court- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

6. This Section envisages three circumstances under which the inherent jurisdiction may be exercised, namely:

- (i) to give effect to any order under the Code,
- (ii) to prevent abuse of the process of Court, and
- (iii) to otherwise secure the ends of justice,

7. Further to seek interference under this Section, three conditions are to be fulfilled ,namely:

- (1) the injustice which comes to light should be of a grave and not of a trivial character;
- (2) it should be palpable and clear and not doubtful; and
- (3) there exists no other provision of law by which the party aggrieved could have sought relief.

8. Keeping in view these circumstances, it has to be seen as to whether present petition is at all maintainable or not.

9. All the pleas taken in the present petition are the defense of the petitioner, which he can take during the course of trial and this Court is not the forum to conduct trial between the parties.

10. Moreover, the summoning order was passed on 5th March, 2005, however nothing has been mentioned as to why the petitioner waited for more than two years to challenge the summoning order and there is no Explanation for this delay. It is well settled that the benefit of this Section should not be extended to those persons who do not approach the Court at the earliest opportunity.

11. The present petition under these circumstances is nothing but an abuse of process of law and has been filed to waste the time of this Court and the same is

liable to be dismissed with heavy costs. Accordingly the present petition is hereby dismissed with costs of Rs. 5,000/-.

12. The petitioner is directed to deposit the costs with the trial court within one month from today, failing which the trial court shall recover the same in accordance with law.

13. A copy of the judgment be sent to the trial court.