

(2009) 08 DEL CK 0246

In the Delhi High Court

Case No : Criminal M.C. No. 1064 of 2006

Syed Amin Choudhary

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 31-08-2009

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 200, 482
Penal Code, 1860 (IPC) — Section 406, 409, 447, 448

Citation : (2009) 08 DEL CK 0246

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Bahar U. Barqui, for the Appellant; Rakesh Kumar and Santosh Kumar for R-2 and O.P. Saxena, A.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By this petition filed u/s 482 Cr.P.C. read with Article 227 of the Constitution of India the petitioner seeks quashing of complaint dated 12th December, 2005 filed by respondent No. 2 u/s 200 Cr.P.C. read with Section 406/409/447/448 IPC. The facts as set out by the petitioner and relevant for deciding the present petition are as under:

2. The petitioner is a tenant of respondent No. 2 in respect of the residential premises bearing property No. 15, First Floor, Siri Fort Road, New Delhi @ Rs. 10,000/- per month which was to be adjusted against the amount of Rs. 5,00,000/- alleged to have been spent by the petitioner so as to make the dilapidated premises of respondent No. 2 into habitable conditions. Respondent No. 2 filed a civil suit bearing case No. 174/2005 against the petitioner seeking eviction, possession and recovery of Rs. 7,00,000/- as damages on the alleged ground of unauthorized occupation of the petitioner in the said premises bearing property No. 15, First Floor, Siri Fort Road, New Delhi and on account of depreciation, misuse and mesne profits. The petitioner filed his written statement

and also raised his counter claim against the said claim of the respondent No. 2. Respondent No. 2 filed replication to the written statement and the counter claim. During the pendency of the civil proceedings, respondent No. 2 filed a complaint u/s 200 Cr.P.C. read with Sections 406/409/447/448 IPC dated 12th December, 2005 before the Metropolitan Magistrate. Taking cognizance of the said complaint the Ld. M.M. summoned the petitioner. Feeling aggrieved from the order of summoning the petitioner has preferred the present petition.

3 . Mr. Bahar U. Barqui, counsel appearing for the petitioner contends that the petitioner had been inducted as a tenant by respondent No. 2 in respect of the residential premises bearing property No. 15, Siri Fort Road, New Delhi @ Rs. 10,000/- per month. According to the civil proceedings the Hon'ble Supreme Court filed by respondent No. 2 the petitioner handed over the said property to respondent No. 2. Counsel for petitioner also submits that the petitioner has in addition also paid the damages for use and occupation of the said premises @ Rs. 10,000/- per month. Counsel further submits that a bare perusal of the averments made in the complaint would establish that no offence against the petitioner is made out either, u/s 406 or Section 448 IPC. Contention of counsel for the petitioner is that as respondent No. 2 has already accepted the charges @ Rs. 10,000/- from the petitioner, therefore, respondent No. 2 has recognized the possession of the petitioner in the said premises as a legal and valid one. Counsel also submits that respondent No. 2 in the said complaint has alleged the grabbing of the said property by the petitioner and the said allegation of grabbing of the said property will not constitute an act of criminal breach of trust. Contention of the counsel for the petitioner is that once the possession of the petitioner was recognized by respondent No. 2 in the said residential premises then it does not lie in the mouth of respondent No. 2 to impute breach of trust against the petitioner. Counsel, therefore, urges that the ingredients of Section 406 are not satisfied in the facts of the present case.

4. Refuting the said submissions of counsel for the petitioner, counsel appearing for the respondent submits that respondent No. 2 is the owner of premises bearing property No. 15, Siri Fort Road, New Delhi, but the said property was never occupied by respondent No. 2 due to the construction of the said premises by the builder in violation of Building Bye Laws. Counsel thus states that the said property was lying vacant and the petitioner was given the permission at his request to use the said address of the premises merely for the purpose of his business but, betraying the trust and his understanding with the respondent No. 2 the petitioner shifted to the said property along with his family members and started using the same for the residential purposes. Counsel for respondent No. 2 thus submits that the petitioner had trespassed into the said property and also breached the trust as was imposed upon him. Counsel thus states that offence under Sections 406 and 448 IPC are clearly made out on the face of the averments in the complaint.

5. I have heard learned Counsel for the parties at considerable length.

6. It is a settled legal position that power u/s 482 should be exercised sparingly in rare cases and that too with circumspection. No doubt that the powers exercised by this Court u/s 482 Cr.P.C. are very wide but the very fact of the plenitude of such wide powers itself cautions the Court to exercise the same in a case where there is apparent miscarriage of justice. Many disputed question of facts have been raised by the petitioner and the same cannot be gone into by this Court while exercising the jurisdiction u/s 482 Cr.P.C. Such disputed question of facts can only be gone into by the Trial Court during the trial.

7. Contention of counsel for the petitioner that a bare perusal of the complaint would disclose that no offence is made out is far from satisfactory. Reading of paras 7, 8, 9, 10, 11 and 12 prima facie disclose that the complainant has laid down the foundation for the commission of offence u/s 406 and Section 448 IPC. Relevant paras are reproduced as under:

7. That the Defendant, taking advantage of the benevolence and the trust won over the complainant, successfully persuaded the complainant by his consistent urges, requests and beseeching to allow him to use the address of the premises above named on the pretext that he needed a prestigious address to get renewal of his export license for manpower as his two bedrooms DDA flat at Mayur Vihar (which the Accused sold away after unlawfully occupying the suit premises as his intention was malafide) address was too humble a location for the said purpose.

8. That on persistent pestering and beseeching of the defendant, the complainant agreed to allow the accused to use the prestigious address of Premises bearing No. 15, Siri Fort Road, (First Floor) New Delhi. The said permission was merely temporary and transitory and without any consideration and out of sheer compassion. Simultaneously the complainant as a matter of caution executed a caretakers/choukidar/darban Affidavit, which was counter signed by the defendant. The same was duly submitted in the office of the MCD so the accused cannot misuse the permission to use the address of the premises as granted by the complainant.

9. That at the time of grant of said permission, it was made clear to the accused that the above said permission is only temporary liable to be withdrawn unilaterally and also that the accused will use the said premises for purpose of address only and will not use the same as residence or for any other purpose. But to the utter surprise of the complainant, the accused taking benefit of the facts that the complainant ordinarily resides in an Ashram in Haridwar and he is an octogenarian, the accused shifted to the suit premises with his family members and started using the same for residential purpose and thus grabbed. The complainant failing to persuade the accused to vacate the premises despite repeated efforts, served him legal notice dated 8.7.2005 through his counsel seeking the vacation of the premises forthwith or in any case without a period of 15 days from service of the legal notice as he is in illegal occupation of the premises and as he has no authority to use the suit premises for any purpose other than for address and even that permission has been withdrawn vide above

said legal notice. The accused till date has not vacated the premises and he is in illegal and unlawful occupation of the same without any right or authority.

10. That to utter shamelessness and ingratitude, the accused in reply dated 20.8.2005 sent by him through his advocate in response to the legal notice date 8.7.2005 made frivolous and malicious claim that he is a tenant in the premises since year 2002 at a monthly rent of Rs. 10,000/- per month for residential and commercial purposes and he has spent more than Rs. 5 lacs (Rupees five lacs) for renovation and furnishing of the premises in question and claimed entitlement to occupy the premises for 405 years. Such reply to the notice of vacation is not only absurd but malicious in nature as well as the story of spending Rs. 5 lacs (Rupees Five Lacs) upon new and unoccupied premises that too without any authority is concocted and afterthought with malicious intention to create false defense.

11. The complaint receiving reply to the legal notice dated 08.07.2005 came to know the malice of the accused and his malafide design to grab the suit property consequently the complainant on 24.10.2005 made complaint to the SHO P.S. Defence Colony and the Commissioner of Police Delhi for taking cognizance of offences of criminal breach of trust and criminal trespass etc. committed by the accused.

12. That the accused first won the trust of the complainant under a mischievous design to grab his property and thereafter grabbed the same; thus has committed criminal breach of trust. The accused has also committed offence of criminal trespass as he entered into the house property of the complainant without any authority and did not vacate the same despite demand notice seeking vacation of the premises and instead has made malicious claims. The accused is committing continuing offence of criminal trespass as he is occupying the premises of complainant forcefully and without any right and authority.

The case of the respondent/complainant in the said complaint is that the petitioner had taken the advantage of benevolence and trust of the complainant to win over him, for the purposes of allowing him to use the said address of the premises to get renewal of his export licence but afterwards the petitioner betrayed the said trust and shifted to the said premises with his family to use the same for residential purposes. I, therefore, do not find any substance in the argument of counsel for the petitioner that no offence is made out on bare perusal of the averments made in the complaint. So far the contention of the counsel for the petitioner is concerned, that he had been paying a sum of Rs. 10,000/- towards use and occupation of charges the same in itself would not mean that he did not betray the trust of the respondent. In any case, without expressing any view on the merits of the case the questions raised by the petitioner can only be gone into trial. There is no merit in the writ petition. The same is hereby dismissed.