

(2013) 11 DEL CK 0093

In the Delhi High Court

Case No : Criminal M.C. 1783, 2035 of 2012 and Criminal M.A. 6262, 7045 of 2012

Texmaco Ltd. and Others

APPELLANT

Vs

State of Delhi and Another
 Ashok Singh Vs State of
NCT of Delhi and Another

RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Companies Act, 1956 — Section 630

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 156(3)

Penal Code, 1860 (IPC) — Section 34, 380, 448, 452, 506

Citation : (2013) 139 DRJ 375

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Sandeep Sethi, Sh. Vijayender Kumar, Sh. Dhruv Kapoor and Ms. Megha Bansiwala, for the Appellant; Varun Goswami, APP, Mr. Sanjeev Sahay and Ms. Jhum Jhum Sarkar for R-2, for the Respondent

Judgement

J.R. Midha, J.—The petitioners are seeking quashing of FIR No. 81/2012, P.S. Roop Nagar under Sections 380/448/452/506/34 IPC and the complaint bearing No. 335/K/2011 titled Ved Prakash vs. Radhey Shyam Sharma & Others filed by the respondent no. 2 in which the police has been directed to carry out the investigation u/s 156(3) Cr.P.C. Bhure Lal, father of respondent No. 2, was employed with M/s. Birla Cotton Spinning and Weaving Mills Ltd. as back as in 1951, and he was allotted a residential accommodation bearing quarter No. 90-B, Shivaji Lines, Shakti Nagar, Delhi - 110007 on licence basis by virtue of the said employment. The rights of M/s. Birla Cotton Spinning and Weaving Mills Ltd. were acquired by petitioner No. 1 in CrI.M.C. No. 1783/2012 (hereinafter referred to as "Texmaco") by a Scheme of Arrangement with effect from 1st April, 1981.

2. In September, 1995, Bhure Lal, father of respondent no. 2, ceased to be in employment but continued the occupation of the above quarter. Bhure Lal died on 18th January, 1995 whereupon his legal heirs continued the occupation of

quarter No. 90-B.

3. In 1996, Texmaco filed a complaint against the legal representatives of Bhure Lal u/s 630 of the Companies Act which resulted in conviction which was challenged before this Court in CrI.M.C. 80/2011 in which the mother of respondent no. 2 handed over the possession of quarter no. 90-B to Texmaco on 23rd February, 2011.

4. Quarter No. 89-B, Shivaji Lines, Shakti Nagar, Delhi-110007 was allotted to Jai Narain under a service licence similar to that of Bhure Lal and Texmaco instituted a similar complaint against him u/s 630 of the Companies Act which resulted in his conviction in pursuance to which Jai Narain handed over the vacant and peaceful possession of quarter No. 89-B to Texmaco on 11th November, 2010.

5. On 3rd July, 2011, during the inspection, Texmaco found respondent no. 2 in illegal possession of quarter No. 89-B and the matter was reported to the police whereupon respondent no. 2 made a statement to the police that he would vacate quarter no. 89-B on 15th July, 2011. In pursuance to the above statement, respondent no. 2 handed over the possession to Texmaco on 17th July, 2011.

6. On 3rd August, 2011, respondent no. 2 filed a complaint in which he stated that quarter No. 89B was also given to his father. He has further stated that he joined Birla Mills and started living in quarter No. 89B whereas his mother and other family members resided in quarter No. 90B after the death of his father. Respondent No. 2 further stated that security guards of the petitioners illegally dispossessed him from quarter No. 89B on 3rd July, 2011.

7. Vide order dated 10th May, 2012, the learned Metropolitan Magistrate directed the police to investigate the matter in pursuance to which the police registered FIR no. 81/2012, P.S. Roop Nagar under Sections 380/448/452/506/34 IPC and conducted the investigation.

8. During the investigation, respondent no. 2 was repeatedly called upon by the Investigating Officer to produce the document relating to the employment with Birla Mills/Texmaco Ltd.; and the document relating to the allotment/occupation of quarter No. 89B. The copies of the notices dated 3rd September, 2012 and 12th September, 2012 have been placed on record. The learned APP for the State submits that respondent no. 2 has neither produced any document to show his employment with the petitioner/Birla Mills Ltd. nor the allotment of quarter No. 89B to him.

9. The police has completed the investigation and has filed the final report that no offence is made out against the petitioners and therefore, the case be closed. The police has confirmed that quarter No. 89B was allotted to Jai Narain who handed over the possession to Texmaco on 11th November, 2010 after conviction u/s 630 of the Companies Act; respondent no. 2 illegally entered into the said quarter which came to the notice of the petitioners on 3rd July 2011 whereupon

they reported the matter to the police and respondent no. 2 made a statement to the police that he would vacate the quarter on 15th July, 2011; and respondent no. 2 handed over the vacant possession to Texmaco on 17th July, 2011.

10. The petitioners have placed on record the following documents:-

(i) Judgment dated 28th July, 2010 in Texmaco Ltd. v. Kusum Lata (mother of respondent no. 2) whereby the learned ACMM convicted Kusum Lata (widow of Late Bhure Lal and mother of respondent no. 2) u/s 630 of Companies Act for wrongfully withholding quarter No. 90B after the death of her husband, Bhure Lal who ceased to be the employee of M/s. Birla Cotton Spinning and Weaving Mills Ltd. from September, 1985.

(ii) Order dated 3rd August, 2010 passed by the learned ACMM whereby fine of Rs. 37,200/- was imposed on Kusum Lata and she was directed to hand over the vacant possession of quarter No. 90B on or before 2nd September, 2010 failing which she would undergo simple imprisonment for two years.

(iii) Order dated 23rd February, 2011 passed by this Court in Crl. M.C. No. 80/2011 in which the mother of respondent no. 2 prayed for reduction of fine on the ground that she was ready and willing to hand over the vacant and peaceful possession of quarter No. 90B in pursuance to which the fine was reduced from Rs. 37,200/- to Rs. 10,000/- on her undertaking to hand over the vacant possession.

(iv) Judgment dated 29th July, 2010 in Texmaco Limited v. Jai Narain whereby the learned ACMM convicted Jai Narain for wrongfully withholding quarter No. 89B despite cessation of employment on 30th November, 1996.

(v) Order of sentence dated 3rd September, 2010 in which Jai Narain undertook to hand over the vacant and peaceful possession of quarter No. 89B to Texmaco by 31st October, 2010.

(vi) Possession letter dated 11th November, 2010 whereby Jai Narain handed over the vacant and peaceful possession of quarter No. 89B to Texmaco.

(vii) Handwritten letter dated 3rd July, 2011 written by respondent no. 2 in which he stated that he was living in house No. 90B which was vacated under the order of this Court whereupon he kept his articles in quarter No. 89B. Respondent no. 2 stated that he has kept his articles in the verandah and he would vacate the same on 15th July, 2011.

11. In State of Haryana and others Vs. Ch. Bhajan Lal and others, , the Supreme Court laid down the following principles for quashing of the complaint/FIR:-

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if

any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

12. On careful consideration of the material placed before this Court, this Court is of the view that no offence whatsoever is made out against the petitioners for committing trespass into quarter No. 89B on 3rd July, 2011 and respondent no. 2 has filed an absolutely false complaint before the Court. This case squarely covered by the principles laid down in *State of Haryana v. Bhajan Lal* (supra) as the allegations made in the complaint as well as the FIR are absurd and inherently improbable as well as mala fide and the proceedings appear to have been maliciously instituted with an ulterior motive. Respondent no. 2 could not have been in possession of the said quarter by any stretch of imagination since Quarter No. 89B was allotted to Jai Narain who ceased to be in employment on 30th November, 1996 but he failed to return the possession to the company whereupon complaint u/s 630 of the Companies Act was filed against him which resulted in the conviction vide judgment dated 29th July, 2010. Jai Narain gave an undertaking before learned ACMM on 3rd September, 2010 to hand over the vacant and peaceful possession and in pursuance thereto, he handed over the possession on 11th November, 2010. Respondent No. 2 was never allotted or handed over the possession of quarter No. 89B. However, respondent no. 2 appears to have illegally occupied quarter No. 89B which came to the notice of the petitioner on 3rd July, 2011 when they reported the matter to the police and respondent no. 2 made a statement to the police to hand over quarter No. 89B on 15th July, 2011. Respondent no. 2 handed over the possession to the

petitioner on 17th July, 2011. The documents filed by the petitioners detailed in para 11, more particularly, the judgment and order mentioned in para 11(iv) and (v) convicting Jai Narain for wrongfully withholding quarter No. 89B and undertaking of Jai Narain to vacate quarter No. 89B rule out any possibility of there being any truth in the averments made in the complaint.

13. In the facts and circumstances of this case, this Court is of the opinion that the complaint No. 335/K/2011 as well as FIR No. 81/2012, P.S. Roop Nagar under Sections 380/448/452/506/34 IPC are liable to be quashed.

14. The petitions are allowed and complaint No. 335/K/2011 as well as FIR No. 81/2012, P.S. Roop Nagar under Sections 380/448/452/506/34 IPC are hereby quashed. All pending applications are disposed of.