

Manika & Anr vs. Mamta & Ors
CC No. 19646/2016
PS Patel Nagar

The matter has been taken up for pronouncement of order by way of video conferencing (CISCO Webex Meetings) on account of lockdown due to COVID-19. The counsel was already intimated by Ahlmad/ Asst. Ahlmad regarding the date and time of pronouncement of order.

18.05.2020

Present: Ms. Payal Jain, Learned Counsel for the complainant through video conferencing

The matter is fixed for order on summoning of the accused persons.

Written arguments were filed on behalf of the complainants. In written arguments, it is stated that in April 2015, tenant expressed readiness to vacate the property and it was mutually decided that the keys be given to Mamta Nagpal. Tenant Manish gave keys to Mamta with clear understanding that Mamta would not take any step regarding the property without consent of the complainants. In September 2015, the complainants came to know that some girls were in possession of the property. Written complaint was filed as the property was entrusted to Mamta and she was obtaining wrongful gain without consent of the complainants.

This Court has considered the submissions of Learned counsel and perused the record.

The complainant NO. 1 has examined herself as CW1 and the complainant No. 2 examined herself as CW2. In pre summoning

evidence, the complainant No. 1 has stated that she alongwith her sisters Baruna Madan and Mamta Nagpal were joint owner of the property bearing no. 3rd Floor, Cottage Property no.6, West Pate Nagar, New Delhi. She and Baruna had given the NOC in favour of Mamta to install the electricity connection and to take care of the property as Mamta was living in Delhi. The said property was let out to one Ms. Pooja and her son Sh. Manish on 06.03.2010 by Sh. Baldev Raj Madan, father and SPA of the complainant(s). After the death of Sh. Baldev Raj Madan, the electricity connection was installed in the name of Mamta Nagpal. The complainant No.1 and her two sisters Baruna and Mamta wanted to partition the properties belonging to their father as well as the aforesaid property. She and Baruna decided to sell the aforesaid property and Mamta Nagpal showed her interest to purchase the same. Emails dated 15.04.2015 and 26.04.2015 was exchanged.

CW1 has further stated that during meeting, it was mutually agreed that Mamta would collect the rent from February 2015 and share the rent amount equally amongst all three sisters and Mamta would also give bid of the property to purchase the same. In the month of April, 2015, Manish was asked to vacate the premises and he handed over the keys to Mamta Nagpal on 14.05.2015. On 24.09.2015, the complainant no.1 and Baruna came to know that the property was occupied by few girls. On next day i.e. 25.09.2015 when the complainant no.1 and Baruna reached the property, they found two girls living there. On inquiry from said girls, they came to know that the girls were living as paying guest and they took it on rent from one Naresh Garg. Naresh Garg was contacted by the complainant No.1 and Baruna.

The complainant filed the police complaint. Naresh and accused No. 2 Rajeshwar Nagpal came to the PS where Naresh stated that he was employee of one Sh. Anup Singh. Accused Rajeshwar Nagpal also stated that he alongwith Mamta had let out the flat to the two girls.

CW1 has further stated that accused Mamta is Councillor of MCD and the police did not take any action against her. Accused Mamta Nagpal in connivance with other accused persons had criminally misappropriated the property in order to grab the same. Stay in respect of the property was granted in the month of July, 2015 and at that time the property was lying vacant. The complainant no.1 also came to know that Mamta and her husband Rajeshwar Nagpal got manufactured false rent agreement with Anup Singh with back date.

CW2/ complainant NO. 2 has also made similar averments in her pre summoning evidence.

The complainants have alleged offences punishable under section 403/406/120-B IPC.

Section 403 IPC provides punishment for dishonest misappropriation of property. Illustration (c) to that section is as follows:

"A and B, being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But, if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section."

Further, Explanation I of Section 403 IPC provides that a dishonest misappropriation for a time only is a misappropriation with

the meaning of this section. The illustration and explanation shows that a co-owner may also criminally mis-appropriate property which he owns jointly with others and the misappropriation could be for limited time also.

In the present case, CW-1 has specifically stated that stay was granted in the month of July, 2015 when the property was lying vacant and during pendency of the same, the property was let out and false rent agreement with back date was manufactured.

The complainants have placed on record copy of order dated 07.07.2015 passed by Hon'ble High Court vide which the parties were directed to maintain status quo in respect of title and possession of the property. The complainants have also placed copy of 10.09.2018 passed by Hon'ble High Court wherein Hon'ble Court has observed, *"Since in the present case the conduct of the defendant no.1/applicant has not been above board and she has been remiss in protecting the estate and property jointly owned by the parties, this Court is of the view that it should not exercise its direction in the present case."*

The observations made by Hon'ble High Court also *prima facie* show that the accused No.1 was negligent in the protecting the jointly owned property. The complainants have made allegations that accused Mamta was not given any authority / consent to let out the property after status quo order and after the property was vacated by tenant Manish. However Mamta let out the property without consent or without information to the complainants/ joint owners.

In the email dated 24.04.2015 Ex.CW-1/F, Minky @ Manika has written that Mamta was playing game to take over the property and the rent was also being taken by Mamta.

The allegations of the complainants prima facie show that accused Mamta Nagpal had let out the property without consent of the complainants and she had also allegedly misappropriated the rental income of the jointly owned property. The allegations also prima facie show that accused Mamta was having dominion over the joint property and she has used the property/ let it out for her own benefit. ***The allegations are sufficient to summon accused Mamta Nagpal for offence punishable under section 403 & 406 IPC.***

There is nothing to show that accused Rajeshwar Nagpal or Naresh Garg were entrusted with the property or they misappropriated any property of the complainants. There was entrustment of property only with accused No.1 Mamta Nagpal. ***In these circumstances, accused Rajeshwar Nagpal and Naresh Garg are not summoned.***

Let accused No.1 Mamta Nagpal be summoned on filing of PF and complete set of documents for 18.06.2020.

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**FIR No. 277/12
PS Patel Nagar
State vs Ravi & Ors.**

18.05.2020

Pr. : None

The Ahlmad has reported that, as instructed, he has informed the Ld. Counsel for the accused.

Record shows that the accused have engaged separate counsels and even the counsel for the complainant had also argued the matter. The report of Ahlmad is not clear whether the information has been given to all the counsels. The office is directed to inform all the Counsels and give report.

Be put up for report on 25.05.2020.

**(NEHA)
ACMM (WEST)/THC/18.05.2020**

**FIR No. 386/2018
PS Patel Nagar
State vs Subash & Ors.**

18.05.2020

Pr. : None

The Ahlmad has reported that, as instructed, he has informed the Ld. Counsel for the accused.

Record shows that both accused have engaged separate counsels. The report of Ahlmad is not clear whether the information has been given to both counsels. The office is directed to inform both Counsels and give report.

Be put up for report on 25.05.2020.

**(NEHA)
ACMM (WEST)/THC/18.05.2020**

CC No. 7018/2019
PS Ranjit Nagar
Suresh vs. Baby & Anr

The matter has been taken up for pronouncement of order by way of video conferencing (CISCO Webex Meetings) on account of lockdown due to COVID-19. The counsel was already intimated by Ahlmad/ Asst. Ahlmad regarding the date and time of pronouncement of order.

18.05.2020

Present: Sh. Shiv Dhupia, Ld. Counsel for the complainant through video conferencing

Vide this order I shall decide the application u/s. 156(3) Cr.P.C. filed on behalf of the complainant.

In the application, it is stated that the accused persons are neighbours of the complainant and they are involved in FIR NO 156/12 PS Ranjit Nagar in respect of property No. A-147, Second Floor, DDA Flats, New Ranjit Nagar. The said property was allotted to one Sh Ramlal Pandey by DDA Slum Deptt. The charge-sheet has already been filed in said FIR.

It is further stated that the present complaint is related to fraud in respect of aforesaid property. The two main accused are Om Prakasha and Baby and the IO has not mentioned the name of second accused namely Baby in the chargesheet. During the pendency of the case, second accused Baby had broken the lock of the said property without permission of the concerned department and the accused persons

had entered the property. When the complainant came to know about the acts of the accused persons, the accused persons started threatening the complainant to implicate in false criminal case. The accused persons had tried to destroy important evidence as they have destroyed the main gate of the house. The said property was sealed by JJ Slum department. Complaint was lodged with the SHO PS Ranjit Nagar but no action was taken. Thereafter, the application has been filed before this Court.

Alongwith the application, the complainant has filed copy of complaint lodged with the police. During hearing on the application, the complainant has placed on record copy of reply dated 27.12.2019 to the RTI application whereby the Dy Director(L&L), DUSIB has informed that as per the record, Flat NO. A-147, New Ranjeet Nagar was sealed on 30.04.2014 and was not de-sealed by the Deptt so far.

ATR was called. In the ATR, it is stated that during inquiry, statement of complainant Suresh was recorded and he stated that FIR No 156/12 in respect of the property is pending trial. The property had been sealed by the DDA but alleged Baby had broken the seal and entered the property. Alleged Baby, in her statement, stated that she had purchased the property for Rs. 12 Lakhs from Om Prakash and Om Prakash had given the possession of the property to her. Since 2011, she was in possession of the property and the property was never sealed. Thereafter, Suresh told that he had given Rs. 1 Lakh as Bayana to Om Prakash and now Suresh wanted to grab her property. It is stated in the ATR that the complainant could not produce any document regarding sealing of the property and the matter pertains to Civil dispute.

Learned Counsel for the complainant would argue that the

complaint of the complainant disclosed commission of cognizable offence. Therefore, directions may be issued for registration of FIR.

I have heard the submissions and perused the material on record.

The reply to RTI dated 27.12.2019 placed by the complainant prima facie show that the property no. A-147, New Ranjit Nagar was sealed by the department concerned in 2014. However, the ATR report and statement of alleged Baby show that Baby is in possession of the property. Baby has claimed that she was given possession by Om Prakash. The circumstances of the case show that the seal of the property put by the Government Department was illegally removed. The allegations made by the complainant disclose commission of cognizable offences of criminal trespass and intentionally disobeying order of government servant.

In these circumstances, SHO PS Ranjit Nagar is directed to register an FIR under relevant provisions of law. Copy of order be sent electronically (via email) to the SHO concerned for registration of FIR. Compliance report be called for 09.07.2020.

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