

CC No.3044/2018
Dolly Gera vs. Manjeet Singh & Ors.
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. Learned Counsel was already intimated by Ahlmad/ Asst. Ahlmad regarding the date and time of pronouncement of order.

27.05.2020

Present: Sh. Sumit Ahuja (enrol. no. D-1981/03) Learned counsel for the complainant through video conferencing.

Vide this order, I shall decide application under Section 156(3) Cr.P.C filed on behalf of the complainant.

It is stated in the application that in the year 2011, the complainant was approached by accused no.4 Santra Devi for selling three shops bearing no. B-5, B-12A and B-14 situated at property no. 258A, Old Court Road, Model Town, Rewari Haryana. Santra Devi and her husband Om Prakash assured the complainant that Santra Devi was absolute and exclusive owner of all three shops. They offered to sell the shops and the complainant agreed to purchase for consideration of Rs. 6 Lacs. A registered sale deed dated 27.05.2011 was executed before the Sub-Registrar. Since the year 2011, the complainant and her husband were in continuous and uninterrupted possession of the three shops.

It is further stated that in the end of July 2017, one Parminder Singh approached the complainant and informed that he was residing in USA and he asked about the details of her ownership documents regarding the shop no. B-5. When the complainant asked

him as to why he was inquiring, he stated that the entire property no. 258A, Old Court Road, Model Town Rewari was owned by his father Manjeet Singh. His father Manjit Singh and his brother Gurmeet Singh had taken a loan of Rs. 1.80 Crores in 2013 from Bank of Maharashtra and the shop no. B-5 was also kept as mortgage including other shops/portions. Parminder Singh also showed copy of petition filed by Bank of Maharashtra before DRT for recovery of loan against Manjeet Singh, Gurmeet Singh and his firm. The chain of documents which was provided to the complainant at the time of sale by accused Santra Devi showed that the shop no. B-5 was firstly sold by Manjeet Singh to one Chiranji Lal in the year 1989 by way of registered sale deed dated 07.09.1989. Thereafter in the year 1997 Chiranji Lal sold shop no. B-5 to Santra Devi. The accused namely Manjeet Singh and Gurmeet Singh had mortgaged the shop with Bank of Mahashtra which was already sold to Chiranji Lal in 1989 and subsequently to Santra Devi. Parminder Singh also claimed his right, title or interest in the shop no. B-5 and stated that he had paid money to Manjeet Singh and Gurmeet Singh for doing investment in the property and Manjeet Singh and Gurmeet Singh had assured to give half share in the property. Parminder Singh also claimed that he was cheated by his father Manjeet Singh and his brother Gurmeet Singh as they had not given any share to him and they had sold out the shops and also mortgaged the shops with Bank of Maharashtra. Parminder Singh had also lodged a complaint in PS Patel Nagar and he has filed complaint U/s. 156(3) Cr.PC.

It is further stated that the officials of Bank of Maharashtra, East Patel Nagar Branch were hand in gloves with the

accused persons as they had kept as mortgage shop no.5 in the year 2013 though the shop was already sold out in 1989. The Bank of Maharashtra would have surely done title search of the entire property before keeping it as mortgage and before giving the loan. Bank was very well aware of the sale deeds. The Bank of Maharashtra, despite being aware of the sale deeds executed in respect of shop no. B-5, went on to grant a loan. The Bank of Maharashtra would have surely done physical inspection of the property and would have seen that the complainant and her husband were in actual physical possession of the shop. Neither Bank of Maharashtra nor any other accused have got any right, title or interest in shop no. B-5. It clearly shows that the complainant has been cheated and defrauded by the accused persons. The complainant lodged a complaint first in Rewari and then, in PS Patel Nagar. No action was taken by the police. Hence, the application has been filed before this Court.

ATR was called. In the ATR, it is stated that during inquiry it was found that property no. 258A, Old Court Road, Model Town, Rewari, Haryana is a commercial shopping complex which was developed by Manjeet Singh in the year 1986-87. Some of the shops were sold to different persons by executing sale deed and remaining portion has been mortgaged with Bank of Maharashtra for taking loan by Gurmeet Singh. A loan was taken in the name of Vinuss Food Product on the said property by Gurmeet Singh and Manjeet Singh became the guarantor for repayment of loan. The loan amount had already been repaid on 27.02.2018 and the Bank of Maharashtra had issued letter dated 17.03.2018 wherein it has mentioned that the amount has been settled. The original Conveyance Deed and other sale

documents in favour of Manjeet Singh have been returned by the bank. In view of the fact that the entire loan amount has been paid, the petition filed before DRT was withdrawn. The complainant failed to produce any notice being served to her by Bank of Maharashtra in respect of the alleged loan. The complainant has also filed a similar complaint at PS Model Town, Rewari. The part of property which was mortgaged to the bank by the alleged persons for loan did not belong to the present complainant.

Written arguments were filed on behalf of the complainant. In the written arguments, it is stated that accused Bank in a hurried manner settled the loan account for a meager sum which was much less than the actual principal amount. The settlement was done by the accused persons only to save the skin of Bank officials who were involved in fraud and forgery. The settlement cannot absolve the accused persons from the criminal legal actions as offence already stood committed against the complainant as soon as the suit property was given in mortgage. It is also argued that the accused Bank has illegally released the mortgaged suit property in favour of accused no. 1 and it illegally acknowledged and certified the accused no.1 as owner of the suit property, which proves conspiracy between the accused persons. There is need of investigation by the police because there were several forged and fabricated documents such as Affidavits, Declaration, Undertaking etc. executed by accused nos.1 and 2 in respect of the suit property i.e. Shop No. B-5 in order to obtain loan from accused Bank and none of the forged documents are in possession or custody of the complainant. The documents can be brought through police investigation. Further, the Police investigation

is required to unearth and bring on record Non-Encumbrance Report, who prepared it, who sanctioned it, what documents were annexed in support of that and what all Bank officials were involved in commission of the offence against the complainant. Hence, the application under section 156(3) Cr.P.C may be allowed and directions may be issued for registration of FIR.

This Court has considered the submissions of Learned Counsel for the complainant and perused the material on record. Written arguments filed on behalf of the complainant is also perused.

Along with the complaint, the complainant has filed copy of complaint lodged with the police, copy of sale deeds, copy of petition filed by Bank of Maharashtra against Vinuss Food Product and Ors. before Debt Recovery Tribunal.

Perusal of the petition filed before DRT would show that the Bank was having only original Provisional Clearance Certificate, original deed of Conveyance dated 05.12.1986 in respect of property no. 258-A, Old Court Road, Model Town, Rewari in favour of Manjeet Singh, sale deed dated 18.07.2012 executed by one Suman Devi in favour of Manjeet Singh and sale deed dated 29.12.2010 executed by one Manoj Mridul in favour of Manjeet Singh. Sale deed in favour of Chiranji Lal or Santra Devi or Dolly Gera has not been deposited with the Bank. The petition also shows that the Bank had asked for sale of shop no. B-5 as well. However, ATR and statement of Manjeet Singh during inquiry is clear that the loan has been settled and DRT petition has been withdrawn. Bank has also issued letter in this regard.

The documents allegedly executed by Manjit Singh and Gurmeet Singh for obtaining loan are in custody of the Bank and only the original title documents have been returned to Manjit Singh. The Bank has also got the details of the officials who had prepared non-encumbrance report or sanctioned the loan to Vinuss Food, Manjit Singh and Gurmeet Singh. The documents can always be summoned by the Court and the details of the officials concerned can also be summoned from the Bank.

It has been settled that the order of registration of an FIR can not be passed mechanically. Hon'ble High Court of Delhi in Crl M.C. No. 6122-23 & 6133-34 of 2005 titled as **Sh. Subhakaran Luharuka & Anr Vs State (Govt. of NCT of Delhi) & Anr.**, after extensive discussion of the relevant law and various judgments on the subject has held as under:

“52....

*“(ii) The magistrate should then form his own opinion whether the facts mentioned in the complaint disclose commission of the cognizable offences by the accused persons arrayed in the Complaint which can be tried in his jurisdiction. **He should also satisfy himself about the need for investigation by the Police in the matter.** A preliminary enquiry as this is such enquiry has been done by the SHO, then it is all the more necessary for the Magistrate to consider all these factors. For that purpose, the Magistrate must apply his mind and such application of mind should be reflected in the Order passed by him. Upon a preliminary satisfaction, unless there are exceptional circumstances to be recorded in writing, a status report by the police is to be called for before passing final orders.”*

Hon'ble Supreme Court of India in case titled as **Mrs.**

Priyanka Srivastava & Anr. Vs State of U.P & Ors. Crl Appeal No. 781 of 2012 dated 19.03.2015 has held that the allegations made in the complaint should not be taken on the face of it and to curb the tendency of making false and baseless allegations in the complaint, one detailed affidavit should also be taken from the complainants in support of allegations made therein. It was also observed by the Hon'ble Supreme Court that the Magistrate should exercise the discretion u/s 156(3) Cr.P.C. in a wise manner and should apply his judicial mind before directing any police investigation in the matter.

In the present case, all the facts and circumstances of the case are within the knowledge of the complainant. The complainant is well aware of the addresses of the accused persons as appearing in the memo of parties. The complainant has not suffered any financial loss during the loan transaction nor she was served with notice by the Bank in respect of the shop no.5. There is no requirement of collection of evidence by the police as the complainant can lead her evidence. The court may issue summons to any relevant witness/person/authority at the instance of Complainant for bringing full fact and material pertaining to the allegations made in the complaint. Moreover, subsequently, after evidence of complainant, if it is deemed necessary, then police inquiry as envisaged U/s. 202 of CrPC can be initiated. **Therefore, the present application u/s. 156(3) Cr.P.C. is dismissed.** The complainant can lead her pre summoning evidence on the complaint under Section 200, Cr. P.C.

Be put up for pre-summoning evidence on 20.06.2020.

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CC No.2119/2018

Dr. Ramesh Gupta vs. State of Delhi & Ors.

PS Patel Nagar

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

27.05.2020

Present: Complainant Dr. Ramesh Gupta in person through video conferencing.

Vide this order, I shall decide application under Section 156(3) Cr.P.C filed on behalf of the complainant.

It is stated in the application that the complainant is working as a Teacher in the Government School since 1994. On 12th October 2017 at about 6.30 PM, when the complainant was going to his home from school, two persons including one Titu @ Bijliwal stopped his way near a dark place and one of them indulged in talking with the complainant. Suddenly, accused Teetu voluntarily hit with one brick from behind on right side of his face. The complainant lost control and fell on the bricks/ground. His two teeth were broken due to fall and his cloths were filled with blood. The complainant asked the accused persons not to do such act but they hit him with bricks and the complainant became unconscious. He remained on the ground for about 7-8 Minutes. In the meantime, the accused persons had stolen

his Rs. 20,000/- cash, one Gold ring and one wrist watch. The complainant somehow came out of the dark area and took lift in a Rickshaw to reach PS Patel Nagar. He had also called the PCR. When the complainant reached PS Patel Nagar, one Duty Officer told him to meet SI Vikas who was the concerned Beat Officer of Prem Nagar area.

It is further stated in the application that at about 7.45 PM, SI Vikas reached the place of occurrence with the complainant. Other beat constables had nabbed accused Teetu near Railway Wall of the Pathak. Beat Constables tried to pacify the matter. Accused Teetu was in fully drunken condition and he was repeatedly asking for forgiveness in front of the police officials. SI Vikas told the Beat Constables to bring Teetu to the PS. The complainant also reached to the PS with SI Vikas. In the PS, the Beat Constables connived with the accused and they did not allow the complainant to meet the SHO. SI Vikas had kept accused Teetu in the first floor inquiry room and sent the complainant for MLC at LHMC Hospital. The complainant came to know from reliable sources that SI Vikas allowed Teetu to bring some money from his home. The police official did not even get medical examination of Teetu conducted. The complainant remained in the hospital from 9.00 PM to 4.30 AM. At about 5.00 AM, the complainant reached the PS and his complaint was taken by the Duty Officer. Thereafter, the complainant again went to the hospital for treatment purpose. He again returned to the PS at 10.00 AM and remained there till 12.40 PM. He requested the police officials to bring his MLC from the hospital and also for recovery of his belongings but the police officials were busy in settlement business with accused

Teetu. IO SI Vikas had also blocked the complainant's mobile number in his mobile and whenever the complainant went to meet him, he refused to meet. The complainant came to know from reliable sources that SI Vikas had taken huge money to settle down the case and therefore, the accused were neither detained nor their medical was done nor the recovery of looted articles were effected. The complainant had given complaint on 12.10.2017 vide DD No. 7A at PS Patel Nagar regarding the incident. Reminder was also sent. Complaint was also given to Commissioner and DCP. The police officials are deliberately not registering the FIR. Therefore, the complainant has filed the present application.

Alongwith the application, the complainant has filed copy of complaint; some Black and White photographs to show the exact place where the incident took place, copy of account statement and copy of MLC dated 12.10.2017.

ATR was called. In the ATR, it is stated that local inquiry was conducted at the spot regarding the incident and statement of eye witnesses were recorded. As per the eye witnesses, the complainant had a scuffle / fight with alleged Teetu and no such incident of robbery took place as alleged by the complainant. During scuffle, the complainant got injured as he fell on the bricks placed near the wall. It was also revealed that the complainant had a fight with Teetu who worked as a private Electrician in the same school where the complainant is working as a Teacher. The complainant is a habitual offender and several cases are pending against him. On the date of incident after closing of the evening session of the school, the

complainant left. Just outside gate of the school, Titu collided with the complainant and the complainant started abusing Teetu. When Teetu objected, the complainant started beating Teetu. Thereafter, scuffle started between them and during scuffle, the complainant fell on the bricks and got injured. Other eye witnesses were also present at the spot and the security guard of school was also present outside the gate of the school. The street was heavily crowded and it was not practically possible to rob a person. It is also stated in the ATR that the complainant did not call the PCR from the spot of incident and firstly, he went to his house and thereafter called the PCR.

Alongwith the ATR, the IO has filed the statement of one Sh. Kanwar Singh Yadav, Gurvinder Singh, Teetu@ Ranjan Singh, Rohit Kumar and Mohar Pal. The eye witnesses have stated that there was only scuffle/quarrel between the complainant and Electrician. Many persons gathered and intervened in the scuffle. Thereafter both parties went to their respective houses. The IO has also filed the list of cases pending against complainant Ramesh Gupta.

The complainant has filed written arguments regarding the lapses of the Inquiry Officer. It is stated that in connivance with the accused persons, SI Vikas had not made any effort to get medically examined the accused. SI Vikas had taken bribe from the accused and ignored the MLC report of the complainant. It is stated that as per the ATR, if he had beaten Teetu, then why the IO did not get the MLC of Teetu prepared. The lapses of the IO show that he did not take any action against the accused nor got MLC prepared after taking bribe. The accused persons had looted the complainant on the date of

incident and they are freely moving. Hence, it is prayed that directions may be issued for registration of the FIR.

This Court has considered the submissions of the complainant and perused the material on record.

It has been settled that the order of registration of an FIR can not be passed mechanically. Hon'ble High Court of Delhi in Crl M.C. No. 6122-23 & 6133-34 of 2005 titled as **Sh. Subhakaran Luharuka & Anr Vs State (Govt. of NCT of Delhi) & Anr.**, after extensive discussion of the relevant law and various judgments on the subject has held as under:

“52....

*“(ii) The magistrate should then form his own opinion whether the facts mentioned in the complaint disclose commission of the cognizable offences by the accused persons arrayed in the Complaint which can be tried in his jurisdiction. **He should also satisfy himself about the need for investigation by the Police in the matter. A preliminary enquiry as this is such enquiry has been done by the SHO, then it is all the more necessary for the Magistrate to consider all these factors. For that purpose, the Magistrate must apply his mind and such application of mind should be reflected in the Order passed by him. Upon a preliminary satisfaction, unless there are exceptional circumstances to be recorded in writing, a status report by the police is to be called for before passing final orders.**”*

Hon'ble Supreme Court of India in case titled as **Mrs. Priyanka Srivastava & Anr. Vs State of U.P & Ors. Crl Appeal**

No. 781 of 2012 dated 19.03.2015 has held that the allegations made in the complaint should not be taken on the face of it and to curb the tendency of making false and baseless allegations in the complaint, one detailed affidavit should also be taken from the complainants in support of allegations made therein. It was also observed by the Hon'ble Supreme Court that the Magistrate should exercise the discretion u/s 156(3) Cr.P.C. in a wise manner and should apply his judicial mind before directing any police investigation in the matter.

The IO has recorded statement of school guard and other eye-witnesses who had stated that there was scuffle / fight between the complainant and alleged Titu and during fight, the complainant fell on the bricks. It is also stated in the ATR that Titu was working as electrician in the same school where the complainant is a teacher. However, perusal of the complaint dated 13.10.2017 would show that in the complaint, the complainant had not stated as to how he knew Titu @ bijliwala. Further, in the complaint, the complainant has initially stated that his mobile was also robbed, then he had cut the word “mobile” and this cutting is apparent. The complainant had called PCR after reaching his house and not from the spot. This fact is also written in the complaint dated 13.10.2017. There is no explanation as to why PCR call was not made from the spot.

The copy of MLC placed on record show that the complainant had sustained some injury on that day and he had mentioned alleged history of injury as assault. The offence of assault and simple hurt are non-cognizable offences.

In the present case, the accused and the complainant are known to each other. All the facts and circumstances of the case are

within the knowledge of the complainant. No investigation by the police appears to be required. The court may issue summons to any relevant witness/person/authority at the instance of the complainant for bringing full fact and material pertaining to the allegations made in the complaint. Moreover, subsequently, after evidence of complainant, if it is deemed necessary, then police inquiry as envisaged U/s. 202 of CrPC can be initiated. **Therefore, the present application u/s. 156(3) Cr.P.C. is dismissed.**

Record shows that the complainant has not filed any separate complaint under section 200 Cr.P.C. The complainant is given liberty to file a complaint and lead pre-summoning evidence on the allegations made.

Be put up for further proceedings on 23.06.2020.

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Manish Goel vs. Anil Kumar Gupta & Ors.
CC No. 11168/2016
PS Kamla Market

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.

27.05.2020

Present: Sh. Atul Kumar, 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 complainant. In the written arguments of the complainant, it is stated that the complainant was residing on rental basis since 1994 and he was in possession of three rooms, small store room and washroom which is a portion of built up property bearing MCD no. 4143, first floor, Gali-Shehar, Ajmer Gate, Delhi-06. It is argued that signature of the complainant on some blank papers on the pretext to get the Medical Test and medicine on rebate was taken by the accused no.1 and his family members. On 02.06.2011 in the evening, the accused no.1 along with accused/respondent no. 4 to 7 and some other persons were trying to break open the lock of the door of the complainant in the aforesaid property. Thereafter PCR call was made and police took the complainant and the accused persons to chowki Ajmeri Gate. The parties compromised the matter as the police officials had put undue pressure upon the complainant. However,

after 2-3 hours of the settlement, the accused persons made a false complaint against the complainant that he had broken the locks. The complainant also came to know that the accused persons had forged and fabricated Surrender Deed, Receipts etc. It is also argued that on 07.06.2011 at about 7:30 pm, all accused persons along with their associates had broken the lock of the 3rd room of the complainant and put their articles. When the complainant objected, they threatened to kill him.

In para no. 6 of the written submissions, it is stated that accused persons have illegally trespassed in the house of the complainant and threatened the complainant and his family members to kill. Hence the accused be summoned for offences U/s. 447/448/506/120B/34 IPC. It is further argued that the accused persons have converted the residential property into commercial property by constructing the same despite stay order. The documents produced by the accused persons are forged and fabricated. Despite request of the complainant, the police did not send it to CFSL for verification. The complainant was suffering from mental disease and he was taking treatment from doctors. The accused persons had taken undue advantage of his mental condition. Hence, the accused persons be summoned for the alleged offences.

This Court has considered the submissions of Learned counsel for the complainant and perused the record. Written arguments filed on behalf of the complainant are also perused.

The complainant, in his pre-summoning evidence as CW-1, has deposed that accused no.1 and his family used to visit his house on regular basis as they were his neighbours. When he was bed

ridden, accused no. 1 took his signature on some blank papers on the pretext of better treatment. He came to know that the accused prepared some forged documents on the blank papers with signature of the complainant. On 02.06.2011 in the evening time, when he reached at his house at Ajmeri Gate, he saw that accused no.1 along with accused no.4 to 7 were trying to break open the lock of the door and they had also stolen some articles after making big hole on the wall from backside. He immediately called 100. The police reached at the spot and stopped the accused persons from doing illegal activity. The police took both parties to GB road chowki. A compromise was arrived between the parties at the chowki. After 2-3 hours of settlement, the accused person made false complaint in PS Kamla Market that the complainant had broken the locks. The police officials took signatures of the complainant on blank papers but did not provide the copy of statement to him. He came to know that the accused persons had prepared fake surrender deed, receipts and one site plan of his property. Thereafter on 07.06.2011, all accused came at about 7:30 pm with 8-10 associates and broke open the lock of third room. When he objected, the accused persons threatened to kill. He called PCR and lodged complaint to SHO, PS Kamla Market.

The complainant has also examined his wife as CW-2. She has deposed on the same lines as CW-1.

The complainant has also examined his friend Girish Kumar as CW-3, who has deposed that on 07.06.2011 at about 6:00 to 7:00 pm, he went to property bearing no. 4143 as he was having some work with Manish. Some 15-20 persons including Anil Gupta, two ladies and other persons came at aforesaid property. He was

sitting with Manish along with his wife in the room. He saw that Anil Gupta and his associates broke the lock of the third room, entered the same and put their belongings in the room. The goods of the Manish was also lying there. Manish called the police.

The complainant has also summoned the record of PCR calls made by him. The record has been proved by CW-2 Wct. Anita as Ex. CW-2/A to Ex. CW-2/D. Record shows that the PCR call Ex.CW-2/A was made by Manish Goel alleging *Makan ka tala tod kar kabja kar rahe hai*. Second call Ex.CW2/B was made alleging *Anil Gupta jo hamara padosi hai ne room ka lock tod kar kabja kar liya hai*.

The complainant has also examined HC Sushil Kumar as CW2. He produced the record of complaint dated 09.06.2011 as Ex. CW-2/A, complaint dated 10.06.2011 to Commissioner, MCD as CW-2/B and complaint dated 10.06.2011 as Ex. CW2/C.

CW-3 Ct. Ravi Kumar has produced the record of complaint made by the complainant against Anil Gupta at PS Shakarpur.

In the pre summoning evidence, the complainant has stated that on 02.06.2011, the accused removed his articles after making holes in the floor and wall. In the police complaint as well in the complaint U/s. 200 Cr.PC, the complainant has stated that as regards the incident dated 02.06.2011, he had made PCR call and at the police chowki compromise was arrived between the parties. Thus, it is clear that as regards the incident of trespass and theft of articles on 02.06.2011, the complainant had already settled the matter with the accused. Therefore, the accused persons can not be summoned for

any of the alleged offences committed on 02.06.2011.

The complainant has further deposed about incident dated 07.06.2011 that on that day, the accused persons had broken the lock of the 3rd room and kept their articles in that room. PCR call Ex. CW2/A was made on 07.06.2011 by Manish Goel that "*Hamare Makan Ka Tala Tod Kar Kabja Kar Rahe Hai*". PCR call has been proved by CW-2 W Ct. Anita. CW-3 Girish has also deposed that lock of third room of Manish was broken on 07.06.2011 and Anil Gupta and his associates entered the same.

There is specific statement of the complainant, his wife and Girish Kumar that on 07.06.2011, the accused persons had broken the lock of third room and had taken forcible possession. The accused persons had put their belongings in that room. CW-3 Girish has also deposed that articles of Manish was lying in that room. CW2 Sujata has also deposed that belongings of her husband Manish were lying in that room. The material on record *prima facie* shows that all accused persons, in furtherance of their common intention, had committed house-breaking by removing the lock put by the complainant to take possession of the room and they had also removed articles of the complainant lying in the room. ***The allegations are therefore sufficient to summon all the accused persons for offences punishable U/s. 453/380/34 IPC.*** There is nothing to show that house-breaking was done by night or the accused persons had tried to commit house trespass by concealing such trespass. ***Hence, the accused persons are not summoned for offence punishable under section 457 IPC.*** Further, in view of the fact that the accused persons have been summoned for offence of

house-breaking, the accused are not summoned for offence of criminal trespass or house trespass.

In the pre summoning evidence, CW-1 Manish and CW-2 Sujata have specifically stated that they were threatened by the accused persons on 07.06.2011. ***The allegations are therefore sufficient to summon all the accused persons for offence punishable U/s. 506 IPC.***

The complainant has also alleged offence punishable U/s. 420 IPC. The complainant has alleged that on the pretext of his treatment, his signatures were taken on certain papers by the accused no.1 which were later converted into Surrender deed, Receipts, etc. The circumstances of the case *prima facie* suggest that accused Anil Kumar Gupta had induced the complainant to sign some documents and the documents were later converted into valuable receipts. ***Hence, the accused no. 1 namely Anil Kumar Gupta is summoned for offence punishable U/s. 420 IPC.*** There is no allegation of cheating against any other accused. ***Hence, remaining accused are not summoned for offence of cheating.***

The complainant has also alleged forgery against the accused persons. The complainant has alleged offences punishable U/s. 467/468/471 IPC. The complainant has stated in his complaint as well as in pre summoning evidence that his signatures were taken by the accused no.1 on some papers. He had alleged that those papers were later converted into Surrender Deed, Receipts etc. The complainant has also alleged that he never executed those documents and his blank signed documents were misused by the accused. In the

pre-summoning evidence, the complainant has stated that the accused no.1 has taken his signatures. There is no allegation that any other accused had also taken his signatures on any document. The allegations *prima facie* show that accused Anil Kumar had made false documents .i.e. surrender deed, valuable receipts, etc. by misusing the documents signed by the complainant. ***Hence, the material is sufficient to summon only accused Anil Kumar Gupta for offence punishable under section 467 IPC. Remaining accused are not summoned for offence punishable under section 467 IPC.***

There is nothing to show that any of the accused had used the false documents to cheat the complainant. ***Hence, the accused persons are not summoned for offence punishable under section 468 IPC.***

The allegations of the complainant also *prima facie* show that accused Anil Kumar Gupta had used false receipts etc. to claim right in the property. ***The material is therefore sufficient to summon accused Anil Kumar Gupta for offence punishable under section 471 IPC.*** There is no specific allegation of use of false document by any other accused. ***Hence, remaining accused are not summoned for offence punishable under section 471 IPC.***

Let all accused be summoned for offences punishable under section 453/380/506/34 IPC and accused Anil Kumar Gupta be also summoned for offences punishable under section 420/468/471 IPC on filing of PF and complete set of documents for 20.06.2020.

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FIR No. 358/2018
State vs. Raj Bahadur and Vikas Babbar
PS Rajouri Garden

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 counsels were already intimated by Ahlmad/ Asst. Ahlmad regarding the date and time of pronouncement of order.

27.05.2020

Present: Sh. Ravinder Singh (enrol. no. D-2846/2011), Learned Counsel for accused Vikas Babbar through video conferencing

Sh. Sunil Kumar (enrol. no.D-459/2012), Learned Counsel for accused Raj Bahadur through video conferencing.

The matter is fixed for order on charge.

Learned counsel for accused Raj Bahadur has argued that accused Raj Bahadur was only a labour and he had put the posters as per the instructions and received payment.

Learned counsel for accused Vikas has argued that Raj Bahadur has failed to identify accused Vikas and Vikas was not the person who had given order of putting posters at public place.

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

It is stated in the charge-sheet that complainant Mohan Das of DEMS Ward no. 5, has stated in his complaint that some unknown persons had put posters near Metro Station and other places on 03.06.2018 and 07.06.2018. There is no name of the printing press

or the person who had pasted the posters. Because of these posters, there was problem in the work of the department. On the complaint of Mohan Dass, the present FIR was registered.

It is further stated in the charge-sheet that the inspection of the area was done and the CCTV footage placed outside Sri Guru Harkishan School was checked. In CCTV footage, one person was found affixing posters. Sanjay Bhatia also gave complaint on 14.06.2018 that somebody had put posters against him in the area on 03.06.2018 and 07.06.2018. He had tried to get the number of the contractor and came to know that Thekedar behind putting of posters was Budhram and labour was one Lucky. They are professional persons to put posters. Action may be taken against those who got the posters printed and affixed.

It is further stated that inquiry was made from thekedar Budhram and CCTV was shown to him. Budhram identified Raj Bahadur Dube @ Lucky who was putting the posters. Thereafter on 09.09.2018 Budhram produced accused Raj Bahadur Dube. Accused Raj Bahadur was arrested and his disclosure statement was recorded.

It is further stated that Raj Bahadur Dube, in the disclosure statement, stated that on 03.06.2018 at about 7:00 am near Tagore Garden, Metro Station he was putting the posters. One person came to him on scooty and stated that he would give one thousand posters to paste it and he would pay for the same. Thereafter that person took him in ED Block, Tagore Garden and asked him to put the posters in the area. Later, he came to know that the person who had given the posters to him was Vikas Babbar s/o. Dharambir Babbar. It is further stated that inquiry was made from Vikas Babbar.

Thereafter, charge sheet has been prepared against Raj Bahadur Dube @ Lucky and Vikas Babbar.

The charge-sheet has been filed for offence punishable under section 3 of Delhi Prevention of Defacement of Public Property Act. Along with the charge-sheet, the IO has filed the CCTV footage. Two photographs have been given by the complainant to show that public property was defaced. There is specific statement of Budhram on record that he had not given posters to Lucky @ Raj Bahadur to be put at the places. Budhram has also stated that Vikas met Raj Bahadur on 03.06.2018 and Vikas had given posters to Raj Bahadur to be put in Tagore Garden and Rajouri Garden. Further, there is specific statement dated 11.07.2018 and disclosure statement dated 09.09.2018 of accused Raj Bahadur that the person who had given posters to him on 03.06.2018 disclosed his name as Vikas and he can identify Vikas.

No doubt, there is no specific identification of accused Vikas Babbar by accused Raj Bahadur. However this is a matter of trial whether accused Vikas Babbar is the same person who gave posters to Raj Bahadur. There is specific statement on record that accused Vikas had given posters to be put at public places. Further, the fact that Raj Bahadur was only a labour does not absolve him from the alleged liability. There is nothing to show that Vikas Babbar had any authority to put the posters or that Raj Bahadur had seen any authority of Vikas Babbar before putting the posters. It was duty of Raj Bahadur to see whether Vikas Babbar was authorized to put the posters at such public places.

Section 3(1) of DPDP Act provides penalty for defacement of property. It reads as, “(1) *Whoever defaces any property in public view by writing or marking with ink, chalk, paint or any other material except for the purpose of indicating the name and address of the owner or occupier of such property, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both.*”

The offence alleged by the prosecution is a summons triable offence. There is no provision of discharge in summons triable offence. Further, it is prima facie clear from the charge-sheet that accused Raj Bahadur had put the posters at the instructions of Vikas Babbar and public property has been defaced by Raj Bahadur at the instructions of Vikas Babbar. ***In these facts and circumstances, this Court is of the view that the material on record is sufficient to frame notice for offence punishable under section 3 of DPDP Act against both accused namely Raj Bahadur and Vikas Babbar.***

Be put up for framing of notice on 04.07.2020.

NEHA
ACMM(W):DELHI:27.05.2020

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