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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 11th March, 2025*

+ **CRL.M.C. 2409/2021**

SH. AJAY GUPTA

S/o Late Sh. V.V. Gupta

.....Petitioner

Through: Mr. Rajiv Garg, Mr. Rajeev Kapoor,
Mr. Shivam Bharara, Mr. Shiven
Banga, Advocates.

versus

1. STATE (GOVT. OF NCT OF DELHI)Respondent No.1

2. SHRI PRAKASH SINGH

S/o Sh. Subedar Singh

...Respondent No.2

Through: Mr. Shoaib Haider, APP for the State
with SI Upender Kumar, SI Lal
Chand, PS V.K. South.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The Petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) has been filed on behalf of the Petitioner, Mr. Ajay Gupta, to challenge the Order/Judgment dated 22.02.2021, passed by the learned ASJ, confirming the Order dated 01.06.2017, passed by the learned Metropolitan Magistrate, New Delhi, directing framing of Charges under Section 341/452/506/34 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*) and Section 27/54/59 of the Arms Act, 1959.



2. The *brief facts* of the Case are that the Petitioner, Mr. Ajay Gupta, is the co-owner of Farm No. 2, Mall Road, forming part of Khasra No. 39/4, 36/17, 36/24, Village Kishan Garh, Vasant Kunj, New Delhi-110070 comprising of a constructed house and open land measuring 3 acres.
3. The Petitioner along with the co-owner had leased out the said Property to M/s G.T. Telecom Pvt. Ltd. *vide* Lease Agreement dated 15.02.2010. During the subsistence of the Lease, the Lessee Company/M/s. G.T. Telecom Pvt. Ltd. had assigned its Lease rights in favour of M/s Ganton India Pvt. Ltd. *vide* an amendment dated 01.04.2011.
4. The said Property was being used for residential purpose by Ms. Anca Maria, wife of Mr. Abhishek Verma and her family. The Lessee started defaulted in making the timely payments and after 31.03.2012, the Lessee failed to make payment of rent. Furthermore, the Property was utilized for commercial purposes, in violation of the Lease Agreement. Somewhere in June, 2012, Mr. Abhishek Verma along with his wife, Ms. Anca Maria, was arrested in naval war room leak case. Thereafter, as per the FIR, Ms. Veena Verma, mother of Mr. Abhishek Verma went to reside with her sister at Minto Road and would occasionally visit the Property.
5. On 11.08.2012, M/s Ganton India Pvt. Ltd. passed a resolution whereby Mr. Vikki Choudhry, the Director of the Company, was to cancel the Lease, in respect of the Suit Property immediately and return the Property to its landlords. From the said resolution, it further became evident that the amendment to the Lease was executed without knowledge of the Board and as such, Ms. Anca Maria and her family, were unauthorized occupants in the Suit Property.



6. Subsequently, Mr. Vikki Choudhry informed the Petitioner that M/s Ganton India Pvt. Ltd. was no longer desirous of continuing the Lease and requested that the vacant possession be taken over.

7. On 15.08.2012, the Petitioner along with his two employees and Mr. Vikki Choudhry, duly authorised representative of M/s Ganton India Pvt. Ltd. went to the Suit Property to take possession. Instead of handing over the peaceful vacant possession, some unscrupulous employees of Mr. Abhishek Verma, made a false and frivolous Complaint which resulted in registration of FIR No. 243/2012 under Section 341/452/506/34 of the IPC and Section 27/54/59 of the Arms Act registered at Police Station Vasant Kunj, New Delhi. The Charge-Sheet has also been filed in the said FIR before the Court of learned Metropolitan Magistrate.

8. The owner of the said Property filed a Civil Suit for possession bearing CS(OS) 3131/2012, titled *Nirmal Gupta & Ors. vs. M/s Ganton Pvt. Ltd. & Anr.*, which was decreed under Order XII Rule 6 of the Code of Civil Procedure, 1908 on 22.10.2013. RFA No. 27/2014 filed by Ms. Anca Maria was dismissed as withdrawn on 31.01.2014.

9. In July, 2015, the Petitioner had filed the Petition bearing Crl. M.C. No. 2670/2015 under Article 226 of the Constitution of India read with Section 482 of Cr.P.C. for quashing of FIR, which was disposed of *vide* Order dated 08.07.2015 with liberty to the Petitioner, to avail the remedy available in law, if so advised. The Petitioner made detailed arguments at the time of seeking discharge but learned Metropolitan Magistrate *vide* Order dated 01.06.2017, directed framing of Charges under Section 452/506/341/34 of the IPC and Section 27/54/59 of the Arms Act, against



the Petitioner.

10. Aggrieved by the said Order, Criminal Revision Petition No. 437/2017, had been filed before the learned ASJ but the same also got dismissed on 22.02.2021.

11. By way of the present Petition, the Order directing framing of Charge has been challenged by the Petitioner.

12. The *main grounds* are that the Charge-Sheet had been filed on false and concocted facts presented by unscrupulous employees at the behest and incitement of Mr. Abhishek Verma and his family, who wanted to grab the Suit Property. The entire dispute is merely between Lessee and Lessor and possession has been handed over to the Petitioner, by the Orders of this Court. Learned ASJ has misconstrued that the entry of the Lessor in his own Property, cannot be termed as trespassed. The Petitioner being the co-owner went to the Property to take the vacant peaceful possession. There was no intent to commit any offence or cause any harm to the persons in possession of the Suit Property. Furthermore, Mr. Abhishek Verma, his wife, family and employees, were *in fact* unauthorised occupants, who had no right to use or be in the said Property.

13. Despite many dates, Complainant is not appearing which reflects that she is not interested in perusing the Complaint. It is a matter of fact that the Complainant was not the Lessee or an employee of Lessee Company and had no personal interest in the leased Property and has not been claiming any right, title or interest whatsoever the differences had arisen due to criminal intent of the employee of Ms. Anca Maria, who had instigated the



employee to keep possession of the Property belonging to the Petitioner in any manner, without payment of agreed rent/lease money against the intention of the Lessee Company, to return the Possession.

14. The learned ASJ has wrongly mentioned in the impugned Order that the Property in question was on the date of incident in the possession of Mr. Abhishek Verma and his wife and mother. Mr. Abhishek Verma and his wife, Ms. Anca Maria, were involved in various criminal matters and were lodged in jail during that period. It was the employees of the Complainant, who were in wrongful possession of the Suit Property. No useful purpose would be served in continuing with the trial, as the possession of the Property, has already been received by the Petitioner by the Order of this Court.

15. The Prosecution has failed to prove or establish that any Charge is made out against the Petitioner. It is a frivolous FIR that got registered. Hence, the prayer is made that the impugned Order of Charge be set-aside.

16. Learned Prosecutor submits that the Charges have been framed correctly on the basis of the Complaint and the investigations conducted. There is no infirmity in the impugned Order and the Petition is liable to be dismissed.

17. **Submissions heard and the record perused.**

18. As per the submissions made on behalf of the Petitioner, he being the co-owner, had rented out Property to one Company, which had further let it out to M/s Ganton India Pvt. Ltd. *vide* amended Lease Deed dated 01.04.2011. It is the case of the Petitioner himself that M/s Ganton India Pvt. Ltd had permitted Ms. Anca Maria, an employee of M/s G.T. Telecom Pvt.



Ltd. to occupy the suit premises, who was residing there along with her husband, Mr. Abhishek Verma, mother, family members and the employees.

19. It is not in dispute that M/s Ganton India Pvt. Ltd. agreed to hand over the possession of the Property to the Petitioner, but was unable to do so as Ms. Anca Maria was not inclined to hand over the possession. A Civil Suit was also filed by the owners for Recovery of Possession.

20. According to the Petitioner, he with the representative of M/s Ganton India Pvt. Ltd and other associates, had gone to the Suit Premises on the date of incident for the purpose of taking the possession back from Ms. Anca Maria, but a false Complaint got registered.

21. It is evident from the submissions made that the Property was in possession of Ms. Anca Maria and whether she was authorised or unauthorised, is not significant or material as possession could have been taken only by following due process of law. Even if she was an unauthorised occupant, the possession could have been taken only by due process of law; *in fact* a Civil Suit was filed which was the appropriate remedy which had been availed by the Petitioner.

22. This does not absolve him of the alleged offences committed by him as when we went into the property, it was in occupation of Ms. Anca Maria, who had been inducted by leasee. So, even if the Complainant may have become an unauthorised occupant, but that does not give any right to any person including the owner, to enter into the premises and extend threats. There are specific averments of brandishing of the revolver by the Petitioner and of trespass and threats. Prima facie, the offence was committed; learned Metropolitan Magistrate has rightly directed framing of Charges under the



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relevant Section.

23. There is no infirmity in the Order of the learned Metropolitan Magistrate, which has been upheld by the learned ASJ. Insofar as, the grievance of the Petitioner that the Complainant is not appearing for last many dates despite repeated summons is concerned, the submissions be made to the learned Trial Court who is directed to proceed in accordance with law.

24. The Petition is dismissed and disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 11, 2025/RS