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

% *Date of decision: 24th April, 2025*

+ **W.P.(CRL) 3187/2019**

1. SARABJEET SINGH @ BINNY

S/o Sh. Mohinder Jit Singh
R/o 1/7544, Gali No. 12,
East Gorakh Park,
Shahdara, Delhi

.....Petitioner No.1

2. MD. SHAHID @ BITTU

S/o late Sijau-ur-Rehman
R/o 9080, Pul Bangash,
Nawab Ganj, Azad Market,
Delhi-110006

....Petitioner No.2

Through: Mr. Hitender Kapur & Mr. Yatin
Dhawan, Advocates

versus

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

2. PUSHPENDER KUMAR

Sub-Inspector,
P.S. Bara Hindu Rao
Delhi Police

....Respondent No.2

3. STATION HOUSE OFFICER

P.S. Bara Hindu Rao

....Respondent No. 3

4. SMT. PRATIBHA MANGHANI

A-151, Chattarpur Enclave,
Phase-II, Mehrauli,
Delhi

...Respondent No.4

Through: Mr. Anmol Sinha, Additional Public
Prosecutor for Respondent-State



CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. Criminal Writ Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, has been filed on behalf of the Petitioners, for restoration of possession of two Hall Rooms in property bearing No. 9078, Nawab Ganj, Gali Zamir Wali, Azad Market, Delhi which has been illegally handed over by the Respondent Nos. 2 and 3 to the Respondent No. 4, Smt. Pratibha Manghani in FIR No. 47/2019 under Section 448/380 of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*) Police Station Bara Hindu Rao.
2. It is submitted that the Petitioner has been implicated falsely in FIR No. 47/2019 by the Complainant in collusion with Mr. Raj Kumar Bajaj and the Police of Police Station Bara Hindu Rao. The mother of the Petitioner No. 1 was the owner of one Hall forming part of Property No. 9078, Nawab Ganj, Gali Zamir Wali, Azad Market, Delhi, which was purchased through the registered Sale Deed dated 21.12.1993, from Mr. Raj Kumar Bajaj.
3. Petitioner No. 1, Mr. Sarabjeet Singh @ Binny was in possession of second Hall in the property in question, which was handed over to him in the year 1999 by Mr. Raj Kumar Bajaj initially as a tenant and thereafter, it was agreed to be purchased by the Petitioner No. 1, for a total consideration of Rs.2,30,000/- out of which Rs.2,00,000/- were paid and the Sale Deed was to be executed in his favour.
4. The third Hall which was earlier in possession of Mr. Goverdhan Dass



and his wife, Smt. Lajwanti, was sublet to the Petitioner No. 1, in the year 1999 as they were not having sufficient means to pay the rent. However, the Petitioner No. 1 allowed them to continue to live in the said portion as they were not having any income and no family member was supporting them. He also used to give them financial assistance such for food and other basic needs.

5. Pertinently, Electricity meter bearing CA No. 100477024, which was earlier in the name of Mr. Goverdhan Dass, was transferred in the name of the Petitioner No. 1, after this portion was sublet to him. After the demise of her husband somewhere in the year 2004, Smt. Lajwanti shifted to her daughter's house and died in the year 2017.

6. Mr. Raj Kumar Bajaj, the landlord was aware that the said Hall, which was earlier in possession of Mr. Goverdhan Dass and Smt. Lajwanti, had been sublet to the Petitioner No. 1 for last more than 17 years and the petitioner had been in use and occupation of the said premises.

7. Petitioner No. 1 sometime in the month of June, 2019, sublet the portion of this Hall to one Mohd. Shahid @ Bitto by executing a Memorandum of Understanding, which was in the knowledge of Mr. Raj Kumar Bajaj, the landlord.

8. According to the Applicants, Mr. Raj Kumar Bajaj entered into the conspiracy with the Complainant/Respondent No. 4, Ms. Pratibha Manghani and filed a false Complaint against the Petitioners in order to take the possession of the premises in collusion with the local Police. Consequently, a false FIR No. 47/2019 was registered on the false allegations that the Petitioners had illegally trespassed into the portion, which was earlier



occupied by Smt. Lajwanti. Petitioner No. 2, namely, Md. Shahid 2 Bittu was arrested by the Police and remanded to Judicial Custody. He was granted Regular Bail by the learned Sessions Judge on 23.07.2019 while Petitioner No. 1 was granted Anticipatory Bail on 23.07.2019.

9. It is asserted that taking advantage of the false FIR, Police of Bara Hindu Rao in collusion with Mr. Raj Kumar Bajaj and the Respondent No. 4, have illegally handed over the possession to Smt. Pratibha Manghani and Mr. Raj Kumar Bajaj of the portion which was in occupation of the Petitioner No. 2.

10. It is submitted that during the hearing of the Bail Application of the Petitioner No. 2 on 10.07.2019, the Respondent No. 4/Complainant had submitted before the learned Metropolitan Magistrate that she had got the possession of the aforesaid portion and was satisfied and had no grievance.

11. This reflects the collusion between the Respondent Nos. 2 and 3 with the Respondent No. 4 and Mr. Raj Kumar Bajaj, in illegally handing over the possession of the portion to Mr. Raj Kumar Bajaj under the garb of this FIR. It is evident that there is a deep rooted conspiracy amongst the Respondents and the law has been violated. The Petitioners had made the Complaints to the Commissioner of Police and DCP (Vigilance), Delhi but no action has been taken.

12. It is asserted that there is no provision under CrPC for handing over the possession of immovable property in an FIR registered under Section 448/380 of the IPC. The only provision is Section 456 CrPC which authorises the Court to hand over the possession of immovable property to any person who has been dispossessed, after the Accused is convicted.



13. Section 102 CrPC also does not give any power to the Police Officer to seize the immovable property. The Apex Court in *Neveda Properties Pvt. Ltd. vs. State of Maharashtra*, in Crl. A. No. 1481/2019 has observed that expression “*Circumstances which create suspicion of the commission of any offence*” in Section 102 does not refer to the opinion or an adjudication of finding by the police officer to ascertain whether or not any property is required to be seized. The word ‘suspicion’ is a weaker and a broader expression than ‘reasonable belief’ or ‘satisfaction’. The police officer is an investigator and not an adjudicator or a decision maker. In case, the police officer is allowed to seize the immovable property on a mere suspicion of commission of an offence, it would amount to giving drastic and extreme power of dispossession to the police officer merely on conjecture and surmises. The disputes relating to titles, possession, etc. of immovable property are civil disputes, which have to be decided and adjudicated by the Civil Courts.

14. It is, therefore, submitted that the appropriate Orders be made for handing over the possession of these Halls, as mentioned above to the Petitioners.

15. **Two Status Reports** have been filed on behalf of the State wherein the investigations undertaken in the FIR, as mentioned above, have been detailed.

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

17. Essentially, it is the Petitioners who were in possession of three Halls; he was the tenant in one Hall; he had entered into an Agreement for purchase in respect of the second Hall, and the third Hall had been sublet to



him by its occupants, namely, Mr. Goverdhan Dass and Smt. Lajwanti.

18. It was the claim of the Petitioners that the Hall, which was given to him by Smt. Lajwanti and Govardhan Dass, has been forcibly handed over to the Complainant/Respondent No. 4, by the police officials of Police Station Bara Hindu Rao. To buttress his contentions, it is mentioned in the FIR itself that the Petitioners had illegally trespassed into this Hall, which establishes that the Petitioners were in possession.

19. However, at the stage of Bail, it has been admitted by the Complainant that she is now in possession of the suit property. This shows that at the time of registration of FIR, Petitioners were in possession, but had been illegally dispossessed. Since the possession of the Petitioners, is fully established, they are entitled to restoration of the possession by issuing appropriate directions to the Respondents.

20. The Complaint was made by the Respondent No. 4 that she had been illegally dispossessed by the Petitioners about which she received information on 05.07.2019 from the neighbours. Since there were allegations of illegal dispossession, the FIR No. 47/2019 under Section 448/380 of the IPC, was registered. Subsequently, the Complainant may have got the possession, but that in itself does not wash away the crime that was committed on the alleged date.

21. The concern of the Petitioners is to get back the possession. However, as per their own submissions, they have asserted their right on the ground that they had been sublet this premises by the erstwhile tenants, Mr. Goverdhan Dass and Smt. Lajwanti. In the criminal proceedings, it is not the title of the parties to the Suit Property, which is to be ascertained but the



limited question is whether there is illegal dispossession.

22. As has been rightly pointed out, the Criminal Court can direct the restoration of the dispossession under Section 456 only after the conviction of the Accused. Here the trial is at the initial stage and it is a matter of trial whether the Petitioners had illegally dispossessed the Complainant or *vice versa*.

23. Insofar as the restoration of possession is concerned, it entails Civil rights which the Petitioners are at liberty to agitate before the Civil Courts. There cannot be any directions given by the Court by way of the present Petition for restoration of possession. There is no merit in the present Petition, which is hereby dismissed.

24. The Petition along with pending Application(s) is disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

APRIL 24, 2025/RS