

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 08TH DAY OF JULY, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.2776 OF 2022

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BETWEEN:

1. SRI SHIVASWAMY
2. SRI A.M.MANOHARA
3. SRI ANAND KARMOKAR
4. SMT. BASANTHI RANI PAUL

5. SRI PALASH KARMOKAR

... PETITIONERS

(BY SRI NITIN RAMESH, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY KODIGEHALLI POLICE STATION
REPRESENTED BY
THE STATE PUBLIC PROSECUTOR
BENGALURU DISTRICT
HIGH COURT BUILDINGS
BENGALURU - 560 009.

2. SMT.P.C.LEELAVATHI

... RESPONDENTS

(BY SMT.K.P.YASHODHA, HCGP FOR R1;
SRI SAMPAT ANAND SHETTY, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE CHARGE SHEET IN C.C.NO.5835/2019 IN CR.NO.163/2018 FOR THE OFFENCES P/U/S 143, 427, 447, 448, 506 R/W 149 OF IPC REGISTERED BY KODIGEHALLI POLICE STATION, BENGALURU DISTRICT, PENDING ON THE FILE OF VII ADDL.C.M.M., BENGALURU AND ALL CONSEQUENT PROCEEDINGS.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 30.06.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners are before this Court calling in question proceedings in C.C.No.5835 of 2019 pending before the VII Additional Chief Metropolitan Magistrate, Bangalore arising out of Crime No.163 of 2018 registered for offences punishable under Sections 143, 427, 447, 448, 506 and 149 of the IPC.

2. Heard Sri Nitin Ramesh, learned counsel for petitioners, Smt. K.P.Yashodha, learned High Court Government Pleader for respondent No.1 and Sri Sampat Anand Shetty, learned counsel for respondent No.2.

3. Brief facts, as projected by the prosecution, are as follows:-

The 2nd respondent is the complainant. On 01-08-2018 the complainant registers a complaint before the Kodigehalli Police Station that on 13-01-2018 at about 9-00 a.m. the petitioners/accused have allegedly trespassed into her house, threatened her tenants to vacate the house, caused loss by disconnecting electricity. It is further alleged that the accused even have trespassed into houses belonging to others. Based upon the said complaint, a criminal case came to be registered in Crime No.163 of 2018 for offences punishable under Sections 143, 427, 447, 448, 506 and 149 of the IPC. The police, on conduct and completion of investigation, filed a charge sheet against the petitioners for the aforesaid offence in C.C.No.5835 of 2019. On filing of the charge sheet and cognizance being taken by the learned Magistrate, the petitioners have knocked the doors of this Court in the subject petition. This Court, by its order dated 19-04-2022, has granted an interim order of stay of all further proceedings against the petitioners and the proceedings have since then not proceeded further.

4. The learned counsel appearing for the petitioners would contend that the issue in the case at hand is purely civil in nature, the complainant is trying to arm twist the petitioners for having lost all the litigations concerning the property. The learned counsel would further submit that the incident, according to the complaint, had taken place on 13-01-2018 but the complaint is registered after about seven months on 2-08-2018. If trespass, intimidation or any other offence that is alleged had happened on 13-01-2018 nothing stopped the complainant from registering the crime immediately, but is registered after 7 months. This fact would be enough circumstance to demonstrate *mala fide* action on the part of the complainant in registering the complaint.

5. On the other hand, the learned counsel representing the 2nd respondent/complainant would seek to refute the submissions to contend that the complainant is in possession of the property and the petitioners had sought to trespass into the property and destroyed belongings of all the persons who are on rent in the property belonging to the complainant. However, he would accept the fact of registering the complaint after seven months and

attributes the said delay for following up in the civil proceedings that were pending between the parties. He would seek that it is a matter of trial in which the petitioners will have to come out clean.

6. The learned High Court Government Pleader would also toe the lines of the learned counsel for the 2nd respondent in her submission that this is a matter of trial for the petitioners to come out clean since charge sheet is already filed by the police.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record.

8. The allegation of the complainant in the complaint registered on 02-08-2018 is that the petitioners **seven months ago** trespassed into the property and created ruckus, took away the belongings and have intimidated the tenants residing in the property allegedly belonging to the complainant. It is the case of the petitioners that the land in Sy.No.11 of Kodigehalli Village Yelahanka Hobli, Bangalore North Taluk was acquired by the Bangalore Development Authority ('BDA' for short) by issuance of

preliminary notification on 3-01-1985 and later a final notification on 25-09-1986 for the benefit of NTI Housing Co-operative Society. The 1st petitioner by way of a registered sale deed dated 14-03-2013 purchased the said property from the Society and later got all the revenue records mutated into his name. Likewise, all the petitioners have purchased their portions of property on different dates by way of registered sale deeds and are in possession of the property and residing in the said addresses.

9. It is a matter of record that the complainant along with one Channabasanagouda Polis Patil and others challenged the aforesaid acquisition made in the year 1986 before this Court in Writ Petition No.4470 of 2019. This Court by its order dated 2.02.2022 dismissed the claim of the complainant and another by clearly holding that possession was handed over to the Society on 25-10-2003 after the BDA taking over possession on 13-06-2002. The observations of this Court, insofar as they are germane for the present *lis*, are as follows:

"8. The material on record disclose that it is the specific contention urged by the petitioners that petitioner No.1 had acquired the suit schedule property under a registered sale deed dated 10-08-1983 and formed the lay-

out in the same and sold some of the sites in favour of petitioners 2 to 9 during the period 31-03-1995 to 4-08-2014. **Meanwhile, the subject land was notified for acquisition vide preliminary notification dated 3-01-1985 and final notification dated 22-09-1986; since there were litigations including W.P.No.292 of 1987 challenging the said notifications tili the same were disposed of on 11.10.1993, the award was passed on 14-09-1995, pursuant to which, possession was taken by the SLAO on 15-02-2002 followed by a notification dated 13-06-2002 issued under Section 16(2) of the L.A.Act; thereafter, the subject land was handed over to the possession of 3rd respondent-Society on 25-10-2003, pursuant to which, sites have been sold/allotted in favour of its members including respondents 5 to 9.** It is therefore, clear that petitioners 2 to 9 herein claimed to be the purchasers of portions of the subject land after issuance of preliminary and final notifications dated 3-01-1985 and 22-09-1986 respectively; It follows there from that petitioners 2 to 9 being subsequent purchasers do not have locus standi to challenge the preliminary and final notifications, which were undisputedly issued prior to them purchasing their respective portions as stated supra and consequently, the claim and contention of petitioners 2 to 9 is not maintainable and liable to be rejected, since the said sale deeds in favour of petitioners 2 to 9 after issuance of the aforesaid notifications are null and void as held by the Apex Court in the case of Shivkumar and another v. Union of India and others – (2019) 10 SCC 229.”

... ..

16. A perusal of the said order makes it amply clear that the same cannot be treated as conclude as having reserved any liberty in favour of petitioner No.1 and consequently, the said order in W.A.No.1993 of 2013 cannot be relied upon by petitioner No.1 in support of his case. **In this context, it is necessary to state that despite repeatedly and unsuccessfully challenging the impugned notification, petitioner No.1 is attempting to circumvent all the earlier orders passed against him with mala fide intention and ulterior motives which cannot be countenanced by this Court in the present petition. Under these circumstances, even this**

contention urged by the petitioners is liable to be rejected.

17. In view of the aforesaid discussion and the material on record obtaining in the instant case, I do not find any merit in this petition and the same is liable to be dismissed."

(Emphasis supplied)

The complainant in the impugned complaint along with others preferred a review petition before the learned Judge who had rejected their claim in Review Petition No.394 of 2022 by order of this Court dated 21-04-2022 holding that the order did not suffer from any error apparent on the face of the record. This was in vindication of the claim of the petitioners that they are in possession of the property pursuant to the sale deeds executed in their favour and the contrary claim was rejected by this Court.

10. In the teeth of the claim of the complainant, and the order passed by this Court, it is germane to notice the complaint that is registered by the complainant. The complaint is registered on 02.08.2018 for an incident that has happened seven months ago *i.e.*, on 13-01-2018 at 9.00 a.m. The narration in the complaint clearly indicates that there are civil proceedings pending between

the parties in O.S.No.403 of 2018 to 407 of 2018. The complaint reads as follows:

ದಿನಾಂಕ:01/08/2018

ಇಂದ,

ಲೀಲಾವತಿ ಪಿ.ಸಿ.
ಕೋಂ ಚಂದ್ರಶೇಖರ್ 35 ವರ್ಷ
ನಂ.123, 5ನೇ ಕ್ರಾಸ್, 3ನೇ ಮೇನ್
ಮಹಾಗಣಪತಿ ನಗರ
ಡಬ್ಲ್ಯು.ಸಿ.ರೋಡ್. ಬೆಂಗಳೂರು -40.
ಮೊಬೈಲ್ ನಂ.7975455004.

ರವರಿಗೆ,

ಪೊಲೀಸ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್
ಕೊಡಿಗೇಹಳ್ಳಿ ಪೊಲೀಸ್ ಠಾಣೆ
ಬೆಂಗಳೂರು ನಗರ.

ಮಾನ್ಯರೇ,

ವಿಷಯ: ಎಸ್.ಶಿವಸ್ವಾಮಿ ಮೊಬೈಲ್ ನಂ.9880727795, ಎ.ಎಂ.ಮನೋಹರ್, ಆನಂದ್ - ಕರ್ಮಾಕರ್
ಮೊಬೈಲ್ ನಂ.9902021290, ಶ್ರೀಮತಿ ಬಸಂತಿರಾಣಿ ಪಾಲ್ ಮೊಬೈಲ್ ನಂ.9739154527,
ಪಾಲೇಶ್ ಕರ್ಮಾಕರ್ ಮೊಬೈಲ್ ನಂ.9845767966 ಹಾಗೂ ಇತರರ ವಿರುದ್ಧ ದೂರು.

ಮೇಲ್ಕಂಡ ವಿಷಯ ಮತ್ತು ಉಲ್ಲೇಖದ ಸಂಬಂಧವಾಗಿ ತಮ್ಮಲ್ಲಿ ಮನವಿ
ಮಾಡಿಕೊಳ್ಳುವುದೇನೆಂದರೆ, ಕೊಡಿಗೇಹಳ್ಳಿ ಸರ್ವೆ ನಂ.11 ರಲ್ಲಿನ ಜಮೀನಿನಲ್ಲಿ ಸಿ.ಎ.ಪಾಟೀಲ್ @ ನಿಂಗನ
ಗೌಡಹೊಸಮನಿ ಎಂಬುವವರು ಪಾಟೀಲವಿಹಾರ್ ಹೆಸರಿನ ಬಡಾವಣೆಯನ್ನು ನಿರ್ಮಾಣ ಮಾಡಿದ್ದು
4ನೇ ನಂಬರಿನ ನಿವೇಶನವನ್ನು ನಾನು ಖರೀದಿ ಮಾಡಿ ನನ್ನ ಸ್ವಾಧೀನದಲ್ಲಿ ಇಟ್ಟುಕೊಂಡು ಅದರಲ್ಲಿ
ಆರ್.ಸಿ.ಸಿ. ಮನೆಯನ್ನು ಕಟ್ಟಿ ಬಾಡಿಗೆಗೆ ಕೊಟ್ಟಿದ್ದೆನು. ಈ ಬಡಾವಣೆಯ ಉಳಿದ 2ನೇ ಸಂಖ್ಯೆ
ನಿವೇಶನವನ್ನು (ಹೂಗಾರ್ ರವರ ಸೊಸೆ) ವಿನುತಾ ಹೆಚ್.ಕೋಂ ಜಗದೀಶ್‌ಚಂದ್ರ ಸಿ.ಹೆಚ್. ಎಂಬುವರು
ಖರೀದಿ ಮಾಡಿದ್ದು ಅವರೂ ಸಹ ಸದರಿ ನಿವೇಶನದಲ್ಲಿ ಆರಸಿಸಿ ಮನೆಯನ್ನು ಕಟ್ಟಿ ಬಾಡಿಗೆಗೆ
ಕೊಟ್ಟಿರುತ್ತಾರೆ. 8ನೇ ನಂಬರಿನ ನಿವೇಶನವನ್ನು ಸೋಮಶೇಖರ್ ಮತ್ತು ಅರುಣ್ ಕುಮಾರ್
ಎಂಬುವವರು ಖರೀದಿ ಮಾಡಿದ್ದು ಅವರು ಅದರಲ್ಲಿ ಶೀಟ್‌ಮನೆಯನ್ನು ಕಟ್ಟಿ ಬಾಡಿಗೆಗೆ ಕೊಟ್ಟಿದ್ದರು.
9ನೇ ನಂಬರಿನ ನಿವೇಶನವನ್ನು ಶ್ರೀಧರ್ ಎಂಬುವವರು ತೆಗೆದುಕೊಂಡಿದ್ದು ಸದರಿ ನಿವೇಶನದಲ್ಲಿ ಚಿಕ್ಕ
ಶೀಟ್‌ಶೆಡ್ ಅನ್ನು ಕಟ್ಟಿರುತ್ತಾರೆ. ಉಳಿದ ನಿವೇಶನ ಸಂಖ್ಯೆ -1 ಸಿ.ಎ.ಪಾಟೀಲ್ @
ನಿಂಗನಗೌಡಹೊಸಮನಿ ರವರು ಇಟ್ಟುಕೊಂಡಿದ್ದು ಅವರು ಅದರಲ್ಲಿ ಶೀಟ್‌ಮನೆ ಕಟ್ಟಿರುತ್ತಾರೆ.

ಹೀಗಿರುವಾಗ ದಿನಾಂಕ:13/01/2018 ರಂದು ಬೆಳಿಗ್ಗೆ ಸುಮಾರು 9-00 ಗಂಟೆ ವೇಳೆಯಲ್ಲಿ
ಎನ್.ಟಿ. ಕೋ ಆಪರೇಟಿವ್ ಸೊಸೈಟಿಯ ಕಡೆಯವರಾದ ಶಿವಸ್ವಾಮಿ, ಎ.ಎಂ.ಮನೋಹರ್, ಆನಂದ್

ಕರ್ಮಾಕರ್, ಬಸಂತಿ ರಾಣಿ ಪೌಲ್, ಪಾಲೇಶ್ ಕರ್ಮಾಕರ್ ಎಂಬುವವರು ನನ್ನ ಮನೆಗೆ ಹಾಗೂ ಮೇಲ್ಕಂಡ ಶ್ರೀಮತಿ.ವಿನುತಾ. ಹೆಚ್. ಕೋಂ ಜಗದೀಶ್‌ಚಂದ್ರ. ಸಿ.ಹೆಚ್. ರವರಿಗೆ ಸೇರಿದ ನಿವೇಶನ ಸಂಖ್ಯೆ 2 ರಲ್ಲಿನ ಮನೆಗೆ, ಶ್ರೀ.ಸೋಮಶೇಖರ್ ಮತ್ತು ಅರುಣಕುಮಾರ್ ರವರಿಗೆ ಸೇರಿದ ನಿವೇಶನ ಸಂಖ್ಯೆ 3 ರಲ್ಲಿನ ಮನೆಗೆ, ಶ್ರೀಮತಿ.ಶ್ರೀಧರ್ ರವರ ನಿವೇಶನ ಸಂಖ್ಯೆ-9 ರಲ್ಲಿನ ಮನೆಗೆ ಶ್ರೀ.ಸಿ.ಎ.ಪಾಟೀಲ್ ನಿವೇಶನ ಸಂಖ್ಯೆ-1 ರಲ್ಲಿನ ಮನೆಗೆ ಅತಿಕ್ರಮ ಪ್ರವೇಶ ಮಾಡಿ ಸದರಿ ಮನೆಗಳಲ್ಲಿದ್ದ ಬಾಡಿಗೆದಾರರನ್ನು ಹೆದರಿಸಿ ಬೆದರಿಸಿ ಮನೆಯಿಂದ ಹೊರಗಡೆ ಓಡಿಸಿರುತ್ತಾರೆ ಮತ್ತು ಸದರಿ ನಮ್ಮ ಮನೆಗಳಲ್ಲಿ ನಾವುಗಳು ವಿದ್ಯುತ್ ಸಲುವಾಗಿ ನಮ್ಮ ಖರ್ಚಿನಲ್ಲಿ ಹಾಕಿಸಿದ್ದ ವಿದ್ಯುತ್ ಮೀಟರ್ ಅನ್ನು ಕತ್ತೆಸೆದು ಅವರು ಬೇರೆಯ ವಿದ್ಯುತ್ ಮೀಟರ್ ಅನ್ನು ಹಾಕಿಕೊಂಡಿರುತ್ತಾರೆ. ತದನಂತರ ನಮಗೆ ಸದರಿ ವಿಷಯ ಗೊತ್ತಾಗಿ ನಾವು ನಮ್ಮ ಮನೆಗಳ ಬಳಿಗೆ ಸುಮಾರು 10-00 ಗಂಟೆ ವೇಳೆಗೆ ಅಲ್ಲಿಗೆ ಹೋಗಿ ಸದರಿ ವ್ಯಕ್ತಿಗಳನ್ನು ಪ್ರಶ್ನಿಸಲು ಹೋದಾಗ ಅವರುಗಳು ನಮಗೆ ಒಳಗಡೆಗೆ ಹೋಗಲು ಬಿಡದೆ ನಮಗೆ ಜೀವ ಬೆದರಿಕೆಯನ್ನು ಹಾಕಿರುತ್ತಾರೆ. ನಮ್ಮ ಮನೆಗಳ ಕಾಂಪೌಂಡ್‌ಗೋಡೆಗಳ ಮೇಲೆ ಒ.ಎಸ್.ನಂಬರ್ ಹಾಗೂ ಅವರುಗಳ ಪೋನ್‌ನಂಬರ್ ಬರೆದು ಡ್ಯಾಮೇಜ್ ಮಾಡಿರುತ್ತಾರೆ. ಈ ಬಗ್ಗೆ ನಾವು ಹಾಗೂ ಮೇಲ್ಕಂಡ ನಿವೇಶನಗಳ ಮಾಲೀಕರು ಹಲವಾರು ದೂರುಗಳನ್ನು ಸಹ ಪೊಲೀಸ್ ಠಾಣೆಗೆ ನೀಡಿರುತ್ತೇವೆ.

ಸದರಿ ವ್ಯಕ್ತಿಗಳು ನಮ್ಮ ವಿರುದ್ಧ ಮಾನ್ಯ ಆಡಿಷನಲ್ ಸಿಟಿ ಸಿವಿಲ್ ಮತ್ತು ಸೆಷನ್ಸ್ ಕೋರ್ಟ್ ಬೆಂಗಳೂರು ರಲ್ಲಿ ಒ.ಎಸ್. ನಂ.403/2008 ರಿಂದ 407/2018 ಅನ್ನು ದಾಖಲಿಸಿ ದಿನಾಂಕ: 17/01/2018 ರಂದು ತಾತ್ಕಾಲಿಕ ತಡೆಯಾಜ್ಞೆಯನ್ನು ಪಡೆದುಕೊಂಡಿದ್ದು, ತದನಂತರ ನಾವು ಮಾನ್ಯ 7ನೇ ಸಿಟಿಸಿವಿಲ್ ನ್ಯಾಯಾಲಯಕ್ಕೆ ದಾಖಲೆಗಳನ್ನು ಸಲ್ಲಿಸಿ ಮೇಲ್ಕಂಡ ದಾವೆಗಳಲ್ಲಿ ಹೊರಡಿಸಿರುವ ತಾತ್ಕಾಲಿಕ ತಡೆಯಾಜ್ಞೆಯನ್ನು ತೆರವುಗೊಳಿಸುವಂತೆ ಕೋರಿದ್ದು, ದಾಖಲೆಗಳನ್ನು ಪರಿಶೀಲಿಸಿ ವಿಚಾರಣೆ ನಡೆಸಿದ ಮಾನ್ಯ ನ್ಯಾಯಾಲಯವು ಒ.ಎಸ್.ನಂ.403/2008 ರಿಂದ 407/2018 ರಲ್ಲಿ ದಿನಾಂಕ:17/01/2018 ರಂದು ನೀಡಿದ್ದ ತಾತ್ಕಾಲಿಕ ತಡೆಯಾಜ್ಞೆಯನ್ನು ದಿನಾಂಕ:31/05/2018 ರಂದು ತೆರವುಗೊಳಿಸಿ ಆದೇಶ ಮಾಡಿರುತ್ತದೆ.

ಈ ಬಗ್ಗೆ ಮಾನ್ಯ ಪ್ರಧಾನ ನಗರ ಸಿವಿಲ್ ಮತ್ತು ಸೆಷನ್ಸ್ ನ್ಯಾಯಾಲಯ ಬೆಂಗಳೂರು ರಲ್ಲಿ ಒ.ಎಸ್. ನಂ.1354/2018, 1355/2018, 1172/2018 ದಾವೆಗಳನ್ನು ದಾಖಲಿಸಿದ್ದು, ವಿಚಾರಣೆ ನಡೆಸಿದ ಮಾನ್ಯ ನ್ಯಾಯಾಲಯವು ದಿನಾಂಕ:20/02/2018 ರಂದು ಮೇಲ್ಕಂಡವರ ವಿರುದ್ಧ ತಾತ್ಕಾಲಿಕ ತಡೆಯಾಜ್ಞೆಯನ್ನು ನೀಡಿರುತ್ತದೆ.

ಆದ್ದರಿಂದ ಸದರಿ ಎಸ್.ಶಿವಸ್ವಾಮಿ, ಎ.ಎಂ.ಮನೋಹರ್, ಆನಂದ್, ಕರ್ಮಾಕರ್, ಶ್ರೀಮತಿ ಬಸಂತಿ ರಾಣಿ ಪೌಲ್, ಪಾಲೇಶ್ ಕರ್ಮಾಕರ್ ಹಾಗೂ ಇತರರ ವಿರುದ್ಧ ಸೂಕ್ತ ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸಿ ನಮಗೆ ಸೂಕ್ತ ರಕ್ಷಣೆಯನ್ನು ನೀಡಿ ನ್ಯಾಯ ದೊರಕಿಸಿಕೊಡಬೇಕೆಂದು ತಮ್ಮಲ್ಲಿ ಕೋರುತ್ತೇವೆ.

ವಂದನೆಗಳೊಂದಿಗೆ,

ತಮ್ಮ ವಿಶ್ವಾಸಿ
ಸಹಿ/-
(ಲೀಲಾವತಿ ಪಿ.ಸಿ.)”

The Police after investigation filed a charge sheet in the case against the petitioners. The summary of the charge sheet as found in column No.7 reads as follows:

“ದೋಷಾರೋಪಣ ಪಟ್ಟಿ ಕಾಲಂ ನಂ.2 & 4 ರಲ್ಲಿ ನಮೂದಿಸಿರುವ ಎ1 ರಿಂದ ಎ5 ಗವಣೆಗಿನ ಆರೋಪಿತರು ದಿನಾಂಕ 13/01/2018 ರಂದು ಬೆಳಿಗ್ಗೆ ಸುಮಾರು 9-00 ಗಂಟೆ ಸಮಯದಲ್ಲಿ ಬೆಂಗಳೂರು ನಗರ ಕೊಡಿಗೇಹಳ್ಳಿ ಪೊಲೀಸ್ ಠಾಣಾ ಸರಹದ್ದಿನ, ಅಮ್ಮೋ ಲೇಔಟ್, 1ನೇ ಕ್ರಾಸ್‌ನಲ್ಲಿರುವ ಪಾಟೀಲ್ ವಿಹಾರ್ ಲೇಔಟ್ ನಲ್ಲಿರುವ ಸೈಟ್ ನಂ.1, 2 , 4, 8 & 9 ರ ಸ್ಥಳಿಗೆ ಅತಿಕ್ರಮ ಪ್ರವೇಶ ಮಾಡಿ ಮನೆಗಳಿಗೆ ಅಳವಡಿಸಿದ್ದ ವಿದ್ಯುತ್ ಮೀಟರ್ ಬೋರ್ಡ್‌ಗಳನ್ನು ಕಿತ್ತೆಸೆದು, ಮನೆಗಳಲ್ಲಿ ವಸವಾಗಿದ್ದವರಿಗೆ ಈ ಸೈಟುಗಳು ನಮಗೆ ಸೇರಿದ್ದು, ಈ ಬಗ್ಗೆ ನಾವು ನ್ಯಾಯಾಲಯದಲ್ಲಿ ದಾವೆ ಹೂಡಿರುತ್ತೇವೆ, ಈ ಕೂಡಲೇ ನೀವು ಮನೆಗಳನ್ನು ಖಾಲಿ ಮಾಡಿಕೊಂಡು ಹೋಗಿ ಎಂದು ಹೆದರಿಸಿ ಮನೆಯ ಸಾಮಾನುಗಳನ್ನು ಹೊರಗೆ ಎಸೆದು ಮನೆಯಲ್ಲಿ ವಾಸವಾಗಿದ್ದವರನ್ನು ಖಾಲಿ ಮಾಡಿಸಿರುತ್ತಾರೆ.

ಆರೋಪಿತರು ಸ್ವತ್ತಿನ ವಿಷಯವಾಗಿ ಸಿಸಿಹೆಚ್-15ನೇ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ದಾವೆ ಹೂಡಿದ್ದು, ದಾವೆ ವಿಚಾರಣೆಯಲ್ಲಿರುವಾಗಲೇ ಸ್ವತ್ತುಗಳಿಗೆ ಅತಿಕ್ರಮ ಪ್ರವೇಶ ಮಾಡಿ, ಗಲಾಟೆ ಮಾಡಿ, ಮನೆಗಳಲ್ಲಿದ್ದವರಿಗೆ ಬೆದರಿಸಿ ಅವರ ಗೃಹೋಪಯೋಗಿ ವಸ್ತುಗಳನ್ನು ಹೊರಗೆ ಹಾಕಿ ಮನೆಯನ್ನು ಖಾಲಿ ಮಾಡಿಸಿ, ಮೀಟರ್ ಬೋರ್ಡ್‌ಗಳನ್ನು ಕಿತ್ತೆಸೆದು, ಸ್ವತ್ತಿನ ಮಾಲೀಕರಿಗೆ ಅಕ್ರಮ ನಷ್ಟವುಂಟು ಮಾಡಿರುವುದು ಪ್ರಕರಣದ ತನಿಖೆಯಿಂದ ಸಾಬೀತಾಗುತ್ತದೆ.

ಆದ್ದರಿಂದ ಆರೋಪಿತರ ಮೇಲ್ಕಂಡ ಕಲಂ ರೀತ್ಯಾ ಶಿಕ್ಷಾರ್ಹ ಅಪರಾಧವೆಸಗಿದ್ದು, ಈ ದೋಷಾರೋಪಣ ಪಟ್ಟಿ.”

What is stated in the complaint is verbatim repeated in the summary of the charge sheet. The complaint itself was registered after seven months of the alleged incident that too for offences punishable under Sections 427 and 447 of the IPC as preliminary offences.

11. In the light of the said allegations, it is necessary to notice Sections 447 and 427 of the IPC. Section 447 reads as follows:

"447. Punishment for criminal trespass.—Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may

extend to three months, or with fine which may extend to five hundred rupees, or with both."

Section 447 deals with punishment for criminal trespass and directs that whoever commits criminal trespass shall be punished. Section 441 defines what is criminal trespass and reads as follows:

*"441. **Criminal trespass.**--Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass"."*

Section 427 deals with mischief causing damages to one's property. Mischief is as defined under Section 425 of the IPC. Both Sections 425 and 427 of the IPC read as follows:

*"425. **Mischief.**—Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".*

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.”

... ..

"427. Mischief causing damage to the amount of fifty rupees.—Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Section 447 which deals with criminal trespass hinges upon the complainant being in possession of the property, as one can trespass a property not belonging to the accused but belonging to the complainant and cause mischief or damage under Section 427 of the IPC. Therefore, Section 447 of the IPC which directs punishment for criminal trespass has in itself, a civil flavour. Therefore, Section 447 as defined under Section 441 of the IPC is an interplay between a civil right and a crime.

12. If possession is not with the complainant, she can hardly contend that the accused have trespassed into the property of the complainant. Her possession in the case at hand is determined by this Court in the aforesaid writ petition while observing that the BDA had already acquired the property for a particular purpose in

the year 1986 and the complainant being in possession was not accepted. Civil cases are also pending against each other. Therefore, if the complainant is not in possession of the property, there can be no allegation of criminal trespass into such property, in which accused themselves are in possession.

13. Criminal trespass as obtaining under Section 447 of the IPC and defined under Section 441 of the IPC can be committed only when a person enters into or upon any property, which is in possession of another with intent to commit an offence or intimidate, insult or annoy any person in possession of such property. If possession itself is not with the complainant as is held by this Court (*supra*), there can be no offence of criminal trespass into the property not belonging to the complainant. If there is no criminal trespass into the property, causing damage under Section 427 of the IPC, by way of mischief of destruction of property also cannot be alleged, as they are inseparable, in the peculiar facts of this case.

14. The contention of the learned counsel appearing for respondent No.2 that respondent No.2 is in possession of the

property holds no water, in the light of the finding rendered by the Co-ordinate Bench of this Court *albeit* in a different proceeding. The other ground that the 2nd respondent would urge is that the criminal petition is preferred after 3 years after registration of the crime and the petition should be dismissed on account of delay. This statement is noted only to be repelled, as delay in every case would not disentitle the accused for a relief if it is available in law and this Court at its discretion, in exercise of its power under Section 482 of the Cr.P.C., to prevent miscarriage of justice, can interfere despite delay, in a given case.

15. The judgments relied on by the learned counsel for the 2nd respondent in the case of ***PRITI SARAF AND ANOTHER v. STATE OF NCT OF DELHI & ANOTHER – 2021 SCC Online 206*** and in the case of ***SAU.KAMAL SHIVAJI POKARNEKAR v. THE STATE OF MAHARASHTRA AND OTHERS – (2019) 14 SCC 350*** are of no avail as they are inapplicable to the facts of the case at hand. ***PRITI SARAF*** was concerning offences punishable under Sections 406 and 420 of the IPC. The finding of the Apex Court therein was inducement and criminal breach trust was writ large in

the facts of that case. The Apex Court holds that merely because the matter is civil in nature or civil proceedings are pending, the Court should not quash the proceedings. The same goes with the case of **KAMAL SHIVAJI POKARNEKAR** (*supra*) which would also direct that merely because civil proceedings are pending, the same should not be quashed if the complaint discloses *prima facie* offence. There again, the offences were of forgery and using a forged document to gain benefit. It is considering those offences *qua* the facts obtaining in those cases the Apex Court holds that jurisdiction under Section 482 of the Cr.P.C. ought not to have been exercised.

16. The facts obtaining in the case at hand are clearly different from the facts obtaining before the Apex Court. The case at hand is for offence under Section 447 of the IPC, for which the most relevant factor would be exclusive possession of the property, on which the accused is alleged to have trespassed. If exclusive possession is not with the complainant, the complaint of criminal trespass into the property and damage to that property under Section 427 of the IPC can hardly be alleged, as observed

hereinabove. The petitioners have also placed abundant material by way of documents that are unimpeachable and of sterling quality, which would undoubtedly overpower the documents and submissions of the learned counsel appearing for the respondent No.2. If Sections 427 and 447 of the IPC cannot be seen to be present in the case at hand, the other offences for the ones punishable under Sections 448, 506 and even 143 of the IPC can hardly be alleged, as Section 447 deals with criminal trespass into a property. Section 448 makes house trespass a punishment and Section 427 damage to the property by way of mischief.

17. If the possession of the property itself is in doubt, driving home the offences beyond all reasonable doubt, would without doubt become doubtful. On such a premise, if further proceedings are permitted to continue against the petitioners, notwithstanding the fact that charge sheet has been filed by the Police, would become an abuse of the process of law and result in miscarriage of justice.

18. For the aforesaid reasons, I pass the following:

ORDER

- (i) Criminal Petition is allowed.
- (ii) All proceedings in C.C.No.5835 of 2019 pending before the VII Additional Chief Metropolitan Magistrate, Bangalore stand quashed, *qua petitioner*.
- (iii) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of the petitioner under Section 482 of Cr.P.C. and the same shall not bind or influence any further proceedings before any judicial fora.

Consequently, I.A.No.2/2022 stands disposed.

**Sd/-
JUDGE**

bkp
CT:MJ