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**SooperKanoon Citation : [sooperkanoon.com/688367](http://sooperkanoon.com/688367)**

**Court : Delhi**

**Decided On : Aug-22-1986**

**Reported in : ILR1987Delhi537**

**Judge : Jagdish Chandra, J.**

**Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 448; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 482**

**Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1467 of 1986**

**Appellant : Suirnder Kumar Yadav and ors.**

**Respondent : Suvidya Yadav and anr.**

**Advocate for Pet/Ap. : Madan Lokur,; S.R. Singh and; G.S. Sharma, Advs**

**Judgement :**

**Jagdish Chardra, J.**

(1) This petition is directed against the order dated 6th December, 1985 passed by Shri P K Jain, Addl Sessions Judge. Delhi, in Criminal Revision No. 35 of 1984 which had in turn set aside the order dated 3rd February, 1984 passed by Shri R.S. Mahra, Metropolitan Magistrate, Delhi, whereby the accused-petioles had been discharged in case F I R No. 437/82 of Police Station Karol Bagh, New Delhi in respect of offences u/ss 448/442/323/120-D/34 IPC.

(2) The Fir was lodged by respondent No. 1 Smt. Suvidya Yadav and according to the same she along with her husband and children had been residing in Flat No. J-16, Mig, Dda Flats, Prasad Nagar, Karol Bagh, New Delhi, which had been taken by them from petitioner No. 2. Suresh Yadav in March, 1980. She further alleged that they had paid a sum of Rs. 61,000.00 in foreign exchange and another sum of Rs. 36,000.00 to Suresh Yadav on account of the price in respect of this flat but on account of relationship no deed was executed and as the marked price of this flat increased Suresh Yadav threatened them to vacate the same. It is further alleged that on 7th April, 1984 at about 11.15 A.M. petitioners 1, 3 and 4 Surinder Kumar Yadav, Chander Prakash and Shashi Bala entered the said flat followed by three other persons and all of them started forcibly throwing away the goods and articles from the bed room of Smt. Suvidya Yadav. She was caught hold of by Surinder Kumar Yadav and Chander Prakash and the remaining accomplices placed their goods inside that room and she was not allowed to go out of the flat and the door from outside was closed. One of them removed the name plate of the complainant and fixed another plate on this flat. She gave information on telephone No. 100 and at that time S.I. Raja Ram along with accused-petitioner No. 2 Suresh Yadav came there and Suresh Yadav told Smt. Suvidya that he had already lodged a report against her and her husband and they would have to vacate the flat.

(3) The learned Magistrate came to the conclusion that there was no prima facie offence made out against the accused-petitioners and he consequently discharged all of them, but this order of discharge was set aside by the learned Addl. Sessions Judge in the revision petition who directed the learned Magistrate to frame charges against all the accused-petitioners and try them in accordance with law.

(4) While discharging the accused-petitioners the learned Magistrate had also taken into consideration the documents produced by them and those documents were the electricity and water bills and ration card pertaining to accused-petitioner No. 2 Suresh Yadav showing his address of the flat in dispute. Besides a photo copy of the letter issued by the Principal showing the address of Master Vikas son of Suresh Yadav as that of the flat in question as also the school record showing Master Vikas availing the bus facility from Prasad Nagar for school, were also

produced by the accused persons and were taken note of by the learned Magistrate who also took into consideration the dismissal of the temporary injunction application filed under Order 39 Rules 1 and 2 of the Code of Civil Procedure by Shyam Singh Yadav husband of Smt. Suvidya Yadav in a suit filed by him against Suresh Yadav etc. for specific performance in respect of the flat in dispute and the observations of G.R. Luthra J. while dismissing that application that Sham Singh Yadav had no prima facie case and that the said civil suit had been filed by Sham Singh Yadav after the incident in question subject-matter of the criminal complaint, After consideration of the aforesaid documents the learned Magistrate was of the opinion that accused-petitioner No. 2 SureshYadav was in possession of a part of this flat being its lawful owner and on account of his being owner-in-possession, the provisions contained in sections 441/448/452 Ipc were not attracted as the owner could not be prosecuted for tress- passing into his own property where he was in possession of the part of the same, and thus finding no prima-facie case against the accused-petitioners ordered their discharge.

(5) On revision the learned Addl. Sessions Judge was of the opinion that the learned Magistrate had erred in law completely disregarding the provisions of Sections 239 and 240 of the Code of Criminal Procedure, 1973, by taking into consideration the documents beyond the scope of these provisions of law and which had been produced by the accused-petitioner No. 2 Suresh Yadav. Section 239 Cr. P.C. 's reproduced below :

'239. When accused shall be discharged-If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.'

(6) The learned Addl. Sessions Judge was of the view that Section 236 Cr. P.C. contemplated the consideration by the Magistrate only the police report and the documents sent with it under section 173 Cr. P.C. and no other documents and not even the ones produced by the accused which were not relied upon by the

prosecution in the report u/s. 173 Cr. P.C., and thus discarding the documents produced by the accused, and relying only upon the statements of the complainant Smt. Suvidya Yadav and her husband and the three eye witnesses namely Smt.Kiran, Miss Kalpana and B, Bhagat in support of her allegations and the documents taken into possession from the complainant and copy of D.D. Entry No. 16 lodged by accused-petitioner No. 2 Suresh Yadav, came to the conclusion that the complainant and her husband were in possession of the entire flat and that the accused persons in conspiracy with their other accomplices succeeded in committing criminal trespass with the necessary intention and that Smt. Suvidya had received simple injuries in the process of struggle with the accused-petitioner 1, 3 and 4 which fact was borne out from her medical examination and thus the prosecution was armed with sufficient evidence which presented a prima facie case u/ss 448/452/323/120-B IPC.

(7) Thus the question falling for determination is whether the documents produced by the accused-petitioner No. 2 Suresh Yadav could be taken into consideration or not by the learned Magistrate u/s 239 Cr. P.C. for coming to the conclusion that the charge against the accused-petitioners was groundless and so to discharge them. The plain reading of Section 239 Cr. P.C. would go to show that whereas this provision talks of the consideration of documents sent by the prosecution along with the police report u/s 173 Cr. P.C. and the police report, it is silent about any documents to be produced by the accused, it simply talks of the examination, if any, of the accused as the Magistrate thinks necessary and also an opportunity to the prosecution as well as the accused of being heard. It is not open to the Magistrate to consider any other document which is not covered by the provisions of section 207 Cr. P.C. as that would widen the scope of the inquiry and necessitate an inquiry about the nature and origin of such documents, which can be done only during the trial, which means after charges have been framed (vide *Sabarimuthu Lemalias v. Arunambalam*, 1969 Ker LT. 874. In *Om Prakash and another v. State*, 1983 Cr. L.J. 1151 the Magistrate while concluding that there was no prima facie case against the accused persons and discharged them and in arriving at that conclusion he had not only referred to the statement u./s.161 Cr. P.C. but also the statement of the father of one of the accused, even though that statement did not form part of the children so as to be considered as a document

within the meaning of section 173 Cr. P.C. and had also looked into the statement of the accused in the case diary even though he had not examined the accused after their appearance, it was held by the Calcutta High Court that the statement of the father of one of the accused and the statement of the accused in the case diary were extraneous matters which could not be considered for the purpose of section 239 Cr. P.C. while ordering discharge, it was also held similarly in *K.D. Appachu v. State of Mysore*, Air 1962 Mys 167 .

(8) The examination, if any, of the accused under the provisions of this section must necessarily be with regard to the material against him in the documents referred to in Section 207 Cr. P.C. and the answers given by him during such examination explaining those documents can at the most be the material on which a Magistrate can discharge the accused or frame a charge against him (*State v. Sitaram Dayaram*, 0043/1958 : AIR 1958 MP99 ; *Hanumappa v. State of Mysore* (1971)2 Mys. L.J. 499). If document produced by the accused are also taken into consideration by the Magistrate u/s. 239 Cr. P.C.. the prosecution would, at that stage, have no opportunity of challenging the correctness or genuineness of the same. The contrary authorities are *Thirthraj Upendra Joshi v. State of Karnataka*, 1983 CrL L.J. 318 and *Guman Singh v. State of Rajasthan*. 1977 Cri L J. 239 . In the former authority the accused had filed a list of documents in support of his arguments and the Magistrate did not even refer to these documents before passing the order framing the charge. It was held that it was incumbent upon him to advert to those documents as he was expected to hear both the parties in respect of the framing of the charge and that the fact that he had not adverted to those documents clearly indicated that the accused was not given sufficient opportunity that he was entitled to u/s 239 Cr. P.C. and consequently the impugned order was liable to be set aside. In the latter authority it was held as follows:

'SECTION 239 clearly lays down that the prosecution and the accused should be given an opportunity of being heard before determining the question whether accused should be discharged or charge-sheeted. If the accused at that stage refers to any document, which has an important bearing on the question whether the charge against him is or is not groundless the Court trying him should look into

the documents and arrive at a correct conclusion.'

(9) In view of plain language pertaining to documents of section 239 Cr. P.C. the consideration of any other documents including the documents produced by the accused cannot be taken into consideration by the Magistrate while passing the order of discharge and this view stands fortified from the authorities, already referred to above and the contrary authorities, with all respect, cannot be relied upon, and in this view of the matter the learned Addl. Sessions Judge was right in coming to the conclusion which he arrived at in regard to the interpretation of this provision of law and then thereby setting aside the order of the learned Magistrate.

(10) The locus standi of the complainant Smt. Suvidya Yadav in filing the revision petition before the learned Addl Sessions Judge against the order of the Magistrate, was also challenged by the learned counsel for the accused petitioners but that contention cannot be accepted as in the matter of revision u/s 397(1) Cr. P.C. the Sessions Judge is entitled to call for and examine the record of any proceeding before and inferior criminal court situate within his local jurisdiction for the purpose of satisfying himself as to the correctness, legality or propriety of any fine, sentence or an order, recorded or passed and as to the irregularity of any proceedings of such inferior court. This may happen when it comes to the notice of the Sessions Judge and the complainant Smt. Suvidya Yadav could bring the illegality to the notice of the Sessions Judge which she did by filing the criminal revision before him and thus the filing of the criminal revision could not be left necessarily only for the State. The learned Addl. Sessions Judge took note of the Supreme Court authority reported as *Thakur Ram v. State of Bihar*, 1966 Cr. L.J. 700, which has laid down as follows :

'IN a case which has proceeded on a police report a private party has really no locus standi. No doubt the terms of Section 435 under which the jurisdiction of the learned Sessions Judge was invoked are very wide and he could even have taken up the matter suo-motu, it would, however, not be irrelevant to bear in mind the fact that the Court's jurisdiction was invoked by a private party. The criminal law is not to be used as an instrument of wreaking private vengeance by an aggrieved party against the person who according to that party, had caused injury to it.

Barring a few exceptions, in criminal matters the party who is treated as the aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interests of the community to book'.

That was the authority u/s. 435 of the old Code of Criminal Procedure, 1898 which provision of law is corresponding to Section 397 of the present Code of Criminal Procedure 1973. He was of the opinion that the fundamental principle of criminal law, as laid down by their Lordships of the Supreme Court to the effect that in a police case, a private party has no locus standi to come in revision against an order passed by a Magistrate, could not be disputed, but found it further clear from that very authority that u/s. 435 (now section 397) the Jurisdiction of the Sessions Judge was very wide and he could even take up the matter suo motu. It has, however, to be borne in mind that the criminal law is not to be used as an instrument of wreaking private vengeance by an aggrieved party against the person who according to that party had caused injury to it. When the learned Magistrate appeared to the learned Addl. Sessions Judge to have taken an erroneous view on the interpretation of the legal proposition posed by Section 239 Cr. P.C., he was justified in entertaining and deciding the revision petition though filed by the complainant in a case instituted on police report.

(11) No other point was urged at the bar and in view of the above discussion, the petition fails and is dismissed. Parties are directed to appear before the learned Sessions Judge for appropriate orders in terms of para 17 of the impugned order dated 6th December, 1985 of the learned Addl. Sessions Judge.

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