

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

*Judgment Reserved on: December 03, 2013*

*Judgment Pronounced on: January 03, 2014*

+ **CRL.M.C. No. 3422/2012**

LAXMI NARAIN .....Petitioner

Through: Mr. C.L. Gupta, Advocate

versus

KRISHAN KUMAR & ANR. ....Respondents

Through: Mr. Aman Mehta, Advocate for  
respondent No.1

Mr. Ravi Nayak, Additional  
Public Prosecutor for respondent  
No.2-State

**CORAM:**

**HON'BLE MR. JUSTICE SUNIL GAUR**

% **J U D G M E N T**

1. Petitioner is Assistant Commissioner of Police in Delhi, who has been summoned as an accused in Complaint No. 92/1/2003, under Section 218/201 I.P.C., registered at police station Prasad Nagar, Delhi vide order of 22<sup>nd</sup> April, 2004 and petitioner appearing before trial court, Notice under Section 251 of Cr.P.C. for the offence under Section 201 of I.P.C. has been framed against him on 8<sup>th</sup> May, 2012. Quashing of aforesaid complaint, summoning order and Notice framed is sought in this petition on merits.

2. At the hearing, learned counsel for petitioner had submitted that no such raid, as alleged by respondent- complainant was conducted in

pursuance to any kind of information being supplied by respondent-complainant, who is a police informer and infact, the instant complaint is a counter blast to proceedings initiated against respondent-complainant for the offence under Section 182 of I.P.C. It was vehemently contended that a departmental enquiry was conducted upon similar complaint of respondent/complainant by vigilance department of Delhi Police and respondent-complainant had participated in the above said enquiry proceedings, in which petitioner has been exonerated. Certified copy of Enquiry Report of 23<sup>rd</sup> February, 2001 on record is relied upon in which there is a reference to initiation of proceedings under Section 182 of the I.P.C against respondent/complainant. Thus, it was contended that filing of the instant complaint subsequent to the enquiry report i.e. on 4<sup>th</sup> May, 2001 is an abuse of process of the court and so the complaint and proceedings emanating there-from deserve to be quashed, as no sanction under Section 197 of Cr.P.C. or under Section 140 of *The Delhi Police Act* has been obtained although in the instant complaint there is specific averment that a separate application for permission under Section 197 of Cr.P.C. shall be moved at appropriate time. Petitioner's counsel had asserted during the course of hearing that the copies of the ACRs reports filed by him along with the rejoinder in this case clearly shows that petitioner has an unblemished service record and petitioner has been rated as a very good officer and that the allegations levelled against him in this complaint are baseless and motivated.

3. To seek quashing of the proceedings arising out of complaint in question, reliance is placed by petitioner's counsel upon decisions in *Inspector Rajender Saini & anr. Vs. State* 2005 [2] JCC 735 & *Z.U.*

*Siddiqui Vs. Bal Kishan Kapoor & ors.* 2005 [2] JCC 1149 wherein it has been declared that Magistrate could not have taken cognizance of the offence under Section 201 of I.P.C. without prior sanction under Section 197 of Cr.P.C. or under Section 140 of *The Delhi Police Act*.

4. To resist this petition, it was vehemently urged by learned counsel for respondent-complainant that this petition deserves to be out-rightly dismissed being hit by inordinate delay and latches and because second revision petition in garb of a petition under Section 482 of the Cr.P.C. is not maintainable. It was urged that Section 197 Cr.P.C. and Section 140 of *The Delhi Police Act* are not attracted to facts of instant case as petitioner had allowed accused in a gambling case to go scot free after taking money from them and such an act was not done under the colour of official duty. It was also urged that whether instant complaint is a counter blast to proceedings under Section 182 of the Cr.P.C. initiated against respondent-complainant is an aspect which cannot be gone into in these proceedings and it is required to be tested at trial. In support of above submissions, reliance is placed upon decisions in *Rajan Kumar Manchanda Vs. State of Karnataka* 1990 (Supp.) SCC 132; *Bata @ Batakrushna & ors. Vs. Anama Behra* 1990 CrL. L.J. 1110; *H.H.B. Gill & Anr. Vs. The King* A.I.R. (35) 1948 Privy Council 128; *S.B. Saha & ors. M.S. Kochar* AIR 1979 SC 1841; *Madan Mohan Kesar Vs. State & Anr.* 2010 [1] JCC 310; *Paul George Vs. State of N.C.T. of Delhi* 2008 [2] JCC 858; *Inspector Bal Krishan Vs. State of Delhi* 2000 [1] JCC [Delhi] 102; *Bholu Ram Vs. State of Punjab & Anr.* 2008 CrL. L.J. 4576; *State of Haryana Vs. Jagdish Chander* 1996 (3) C.C. Cases 500 (HC); *Shabir Tambawala Vs. State of Maharashtra & Anr.* 1997 (3) CCrJ 212

and *Rajesh Chetwal Vs. State* in Crl. M.C. No. 1656/2011, rendered on 24<sup>th</sup> August, 2011.

5. The factual scenario as noticed by trial court in the impugned summoning order is as under:-

*"In this complaint, the allegations are made by the complainant that on 04/01/2001, he had given certain information to the ACP, Karol Bagh, one pertains to prosecution and other pertains to gambling. The information with regard to gambling was assigned to the Laxmi Narain, who was the SHO of PS Prasad Nagar at the relevant time. On the said information being supplied by the complainant, two raids were conducted on 07/01/2001, first at the premises No. 58A, LIG, Prasad Nagar, where Rs.14,000/- along with register, mobile phones and calculator were recovered. The second raid was conducted at house no. 6553, Gali No. 1, Block No. 9, Dev Nagar and Rs.30,000/- were recovered in cash. In the first raid, Rajesh Kumar was the public witness and in the second raid, the accused along with the seized articles were brought to the PS and they were handed over to the SHO, concerned. It is the allegation that search memo and other documents, which were prepared by the police were signed by complainant as a witness. It is the allegation that search memo and other documents, which were prepared by the police were signed by the complainant as a witness. It is alleged that on 25/01/2001, the complainant made inquiry about the case. It was found that no case was registered under the Gambling Act and the concerned SHO destroyed all the documents prepared at the time of raid. Thus, in nut shell, the allegations are that the SHO, PS Prasad Nagar after receiving the information and conducting raid in apprehension of the accused destroyed the evidence, thus,*

*collected and did not register the case and let off the accused persons. "*

6. Petitioner has been called upon to face trial for the offence under Section 201 of I.P.C. in pursuance to impugned Notice framed under Section 251 Cr.P.C. which reads as under :-

*"That on 07.01.2001, at 58-A LIG Flats, Parsad Nagar, Delhi, within the jurisdiction of PS: Pd. Nagar, Delhi on the basis of the information of gambling and cash Rs.40,000/- , mobile phone, pager, calculator, slips and register were recovered from there and some persons who were playing gambling there, were also apprehended and another raid was also conducted at house no. 6553, Gali no. 1, Block no.9, Dev Nagar, Delhi and cash Rs.30,000/- were recovered from there. Thereafter, the above-said recovered cash, articles and persons apprehended were produced before you being the SHO of PS: Pd. Nagar, Delhi and you destroyed all the above-said evidence and no action was taken against the apprehended persons and thereby you committed an offence punishable under Section 201 of IPC and same is within my cognizance.*

*Show cause why you should not be punished by this court for the said offence."*

7. Upon considering the submissions advanced by both the sides and on a careful perusal of the complaint in question, impugned order, Notice framed, Enquiry Report, the material on record and the decisions cited, this Court finds that question of sanction goes to the root of the matter and whether statutory sanction under Section 197 of Cr.P.C. or under Section 140 of *The Delhi Police Act* was mandatory or not, is a

fundamental aspect which is required to be considered while exercising jurisdiction under Section 482 Cr.P.C. and the bar of second revision would not be an impediment to do so. It is so said in view of the dictum of Apex Court in *Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460, which is as under:-

“X X X The inherent powers under Section 482 of the Code are of a wide magnitude and are not as limited as the power under Section 397. Section 482 can be invoked where the order in question is neither an interlocutory order within the meaning of Section 397(2) nor a final order in the strict sense. Reference in this regard can be made to *Raj Kapoor v. State* [(1980) 1 SCC 43 : 1980 SCC (Cri) 72 : AIR 1980 SC 258] . In that very case, this Court has observed that inherent power under Section 482 may not be exercised if the bar under Sections 397(2) and 397(3) applies, except in extraordinary situations, to prevent abuse of the process of the Court. This itself shows the fine distinction between the powers exercisable by the Court under these two provisions. In that very case, the Court also considered as to whether the inherent powers of the High Court under Section 482 stand repelled when the revisional power under Section 397 overlaps. Rejecting the argument, the Court said that the opening words of Section 482 contradict this contention because nothing in the Code, not even Section 397, can affect the amplitude of the inherent powers preserved in so

*many terms by the language of Section 482. There is no total ban on the exercise of inherent powers where abuse of the process of the court or any other extraordinary situation invites the court's jurisdiction."*

8. So far as the objection of delay and latches raised by respondent in this petition is concerned, I find that petitioner upon being summoned in the year 2004 had appeared and had filed an application for his discharge which was decided by the trial court in May, 2011 and revision against it was dismissed and thereafter, Notice under Section 251 Cr.P.C. has been framed against petitioner in May, 2011 and this petition has been filed in September, 2012. Thus, it is evident that there is no inordinate delay on part of petitioner in filing this petition.

9. The moot question which is required to be considered is whether the act purportedly committed by petitioner while working as Station Head Officer (S.H.O.) on 7<sup>th</sup> January, 2001 of destroying the documents prepared at the time of raid, falls within the discharge of his official duty or not. According to respondent -complainant, petitioner had purportedly destroyed the documents which were prepared during the raid whereas according to petitioner, no such raid was conducted. Assertion of respondent-complainant of petitioner taking money and destroying the documents prepared during the raid, is based upon information purportedly supplied by Constable- *Pratap, Rajbir & Jitender* of that very police station. In the departmental enquiry, in which respondent-complainant had participated, petitioner has been exonerated in February, 2001 and instant complaint has been filed in May, 2001.

10. In *Z.U. Siddiqui (supra)*, a public servant was being prosecuted under Section 201 of I.P.C. with the allegation of colluding with co-accused to save another person from prosecution in a case of dowry death and such an accused was discharged by a Coordinate Bench of this Court by holding that a public servant is entitled to protection under Section 197 of Cr.P.C. and his prosecution for the offence under Section 201 of the I.P.C. without sanction is bad in law. This Court concurs with the reasoning adopted in *Z.U. Siddiqui (supra)*, as statutory protection provided under Section 197 of Cr.P.C. or under Section 140 of *The Delhi Police Act* is available to an accused like petitioner who claims that no offending act was done by him and particularly in view of the fact that petitioner stands exonerated in the departmental proceedings. To say the least, exoneration of petitioner in departmental proceedings in respect of the purported act in question, entitles him to statutory protection either under Section 197 of the Cr.P.C. or under Section 140 of *The Delhi Police Act*. Respondent-complainant was not oblivious of this requirement and for this reason he has specifically averred in the complaint in question that a separate application under Section 197 of Cr.P.C. for appropriate permission shall be moved at the appropriate time.

11. In view of the aforesaid, and in the facts of the instant case, I am of the considered opinion that it cannot be outrightly said that petitioner had not acted in discharge of his official duties and so, his prosecution in the absence of sanction under Section 197 of Cr.P.C. or under Section 140 of *The Delhi Police Act* is expressly barred. Such a view is being taken in the peculiarity of the fact that the instant complaint is preceded by an

Enquiry Report which clearly exonerates petitioner, who has an unblemished service record.

12. The mandatory character of protection afforded to a public servant by virtue of Section 197 of the Cr.P.C., as noticed by a three Judge Bench of the Apex Court in *State of Uttar Pradesh Vs. Paras Nath Singh* 2009 (6) SCC 372, is as under :-

*“6. ....And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than a police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, ‘no court shall take cognizance of such offence except with the previous sanction’. Use of the words ‘no’ and ‘shall’ makes it abundantly clear that the bar on the exercise of power of the court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word ‘cognizance’ means ‘jurisdiction’ or ‘the exercise of jurisdiction’ or ‘power to try and determine causes’. In common parlance, it means taking*

*notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty."*

13. Afore-noted dictum has been reiterated by Apex Court in Crl. Appeal No. 1590-1591 of 2013, *Anil Kumar & Ors. Vs. M.K. Aiyappa & Anr.*, rendered on 1<sup>st</sup> October, 2013, which needs to be highlighted. It reads as under:-

*"Further, this Court in Criminal Appeal No. 257 of 2011 in the case of General Officer, Commanding v. CBI and Anr.. opined as follows:*

*Thus, in view of the above, the law on the issue of sanction can be summarized to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him..... If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab-initio."*

14. By applying the afore-noted dictum to facts of the instant case, impugned summoning order and Notice framed are quashed with liberty to respondent-complainant to obtain statutory sanction under Section 197 of Cr.P.C. or under Section 140 of *The Delhi Police Act* and only upon such sanction being granted, trial court shall proceed with the complaint in question.

15. This petition is accordingly disposed of while not commenting on the merits of this case.

**(SUNIL GAUR)**  
**JUDGE**

**JANUARY 03, 2014**

r