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

Date of Order: March 3, 2015

+ CRL.M.C. 557/2015

DINESH SHARMA

..... Petitioner

Through: Mr. J.K. Singh, Advocate

versus

STATE (DELHI ADMN)

..... Respondent

Through: Ms. Nishi Jain, Additional Public
Prosecutor for State
Mrs. Monika Arora, and Mr.
Rajeev Yadav, Advocates for
Respondent No. 2/MCD

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL)

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Petitioner is an accused in FIR No. 448/1999, under Sections 466A/432/461 of *Delhi Municipal Corporation Act, 1957* registered at Police Station Sarai Rohilla, Delhi and his application under Section 258 of Cr. P.C. for dropping of the proceedings stands dismissed by the trial court vide order of 20th September, 2014 which has been affirmed by Revisional Court vide impugned order of 9th January, 2015.

Learned counsel for petitioner submits that the impugned orders are liable to be quashed because the complaint of respondent-MCD is barred by time and it was not filed before the Municipal Magistrate, so

the cognizance taken on respondent's complaint was bad in law from the very beginning. Reliance is also placed on the decision in *MCD Vs. Sunil Sabharwal* 1995 (33) DRJ, to submit that the period of limitation has to be computed from the date of knowledge of offence.

Learned counsel for respondent-MCD places reliance on Apex Court's decision in *Attiq-Ur-Rehman vs. Municipal Corporation of Delhi & Anr.* (1996) 3 SCC 37 to submit that in the absence of courts of special jurisdiction i.e. Municipal Magistrate to be appointed under Section 469 of *the Delhi Municipal Act*, a Judicial Magistrate of First Class or a Metropolitan Magistrate has the jurisdiction to deal with such complaint and so the cognizance taken was proper. It is submitted that in paragraphs No. 7 and 8 of the impugned order, the plea of limitation has been rightly dealt by the Revisional Court and there is no infirmity in the impugned order. Reliance is placed upon decision in *Municipal Corporation of Delhi v. Ravindra Kumar Mahindra* 42(1990) DLT 13 to submit that limitation has to be reckoned from the date when existence of the offence is brought to the notice of the complainant.

After having heard both the sides and on perusal of impugned order, the material on record and the decisions cited, I find that there is no jurisdictional error in entertaining respondent's complaint by the Metropolitan Magistrate instead of Municipal Magistrate as in the year 2000, no Municipal Magistrates were notified.

As regards, question of limitation is concerned, this Court finds that it is a mixed question of fact and law, which cannot be gone into in exercise of jurisdiction under Section 482 Cr.P.C. The question of limitation is left open to be considered by the trial court.

This petition is accordingly disposed of while refraining to comment upon merits, lest it may prejudice either side before trial court.

(SUNIL GAUR)
JUDGE

MARCH 03, 2015

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