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

Delivered on: 19th October, 2015

+ **CRL.M.C. 3066/2014**

P S BHARDWAJ

..... Petitioner

Represented by: Mr. Manoranjan, Adv.

Versus

MUNNA LAL GUPTA

..... Respondent

Represented by: Mr. Vivek Kumar Singh,
Adv.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the present petition; petitioner seeks directions thereby quashing the orders dated 06.09.2013 and 29.04.2014 passed in CC NO. 24/1 and Crl. Rev. Petition no.08/2014 respectively with emanating proceedings thereto.

2. The aforesaid case was registered on the complaint of the respondent Sh. Munna Lal Gupta alleging therein that he is the owner of the property bearing house no. 9, Gali no. 12, Jagatpur Extension, Delhi-110084 and had constructed a house over the said plot however the accused persons had tress passed the said property. He had also filed a Civil Suit bearing no. 88/2010 in respect of the house in question against the accused persons in which vide order

dated 15.07.2010 the *status quo* was passed in his favour thereby restraining the defendants therein from any possession.

3. The facts of the case in brief are that on 30.04.2011, alleged accused persons with the help of the police officials of PS-Timar Pur, Delhi forcibly entered the house of the complainant by breaking the lock. Accordingly, he lodged a complaint with the DCP North and CBI; and accused no. 6 (petitioner herein) was booked in separate FIR NO.02/2011 for demanding bribe from the complainant.

4. The complainant alleged that accused persons have committed an offence punishable under sections 448/506/34 IPC and in order to prove his case, he examined himself as CW1, wherein he reiterated all the allegations levelled in the complaint.

5. CW2 is the employee of the complainant who deposed about the incident of tress pass took place on 30.04.2011. Accordingly, vide order dated 06.09.2013, ld. MM issued summons against accused no.1, 4, 5 and 6 (petitioner herein) for the offences punishable under Sections 448/34 IPC.

6. Being aggrieved, petitioner filed Crl. Rev. Petition no. 8/2014 on the ground that on the given date and time he was serving as a Sub-Inspector and acting in discharge of his official duties under the directions of SHO, Inspr. Rajneesh Parmar, PS-Timar Pur. Therefore, sanction under Section 197 Cr.P.C is required and in the absence of sanction ld. MM ought not have taken cognizance against him.

7. Ld. Counsel appearing on behalf of the petitioner submitted that present petition has been filed on the ground that the Revisional Court has come to a totally wrong conclusion that the petitioner is not a public servant removable with the sanction of the Government.

8. Ld. Counsel further submitted that the public servant has been defined in Section 21 of the Indian Penal Code as under:

“Public Servant” – The words “Public Servant” denote a person falling under any of the descriptions herein after following, namely:

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Seventh – every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth – Every Officer of [the Government] whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice or to protect the public health, safety or convenience.

.....

.....

Twelfth – Every person –

(a) In the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government.

Therefore, Petitioner being a Sub-Inspector with the Delhi Police is covered under the aforementioned descriptions, seventh, eighty and twelfth (a) and therefore falls within the meaning of “Public Servant”. Thus, the petitioner being a “Public servant” is protected by Section 197 Cr.P.C. and therefore, if the acts alleged against the petitioner are believed to be true, then also the said acts of the petitioner having been committed in discharge of his official duties. Therefore, Id. Trial Court should not have taken cognizance of the alleged offences against the petitioner without the prior permission of the Government.

9. Ld. Counsel submitted that Id. Trial Court in its order dated 06.09.2013 failed to appreciate the contents and applicability of Section 140 of Delhi Police Act, which reads as under:

“140. Bar to suits and prosecutions.- (1) In any case of alleged offence by a police officer or other person, or of a wrong alleged to have been done by such police officer or other person, by any act done under colour of duty or authority or in excess of any such duty or authority, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained and if entertained shall be dismissed if it is instituted, more than three months after the date of the act complained of:

Provided that any such prosecution against a Police officer or other person may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence.”

10. Ld. Counsel submitted that reference of Section 140 of Delhi Police Act emphasises about the condition of previous sanction of the Administrator within one year from the date of alleged offence and not about lodging of the complaint within three months of the alleged allegations against the petitioner. Therefore, ld. Trial Court has failed to appreciate that if the acts of the petitioner was done under the colour of duty or authority or in excess of any such duty or authority then in both the cases it is mandatory that previous sanction of the Administrator is must in case of Delhi Police officials before the court entertains the prosecution. However, in the present case, no such sanction has been taken from the Administrator. Moreover, CW1 has made no allegations against the petitioner with regard to alleged incident of 30.04.2011 which could have warranted summoning of the petitioner under Section 448 IPC.

11. Ld. Counsel further submitted that the documents including DD No. 63A dated 30.04.2011 clearly reveals that petitioner had gone to the alleged place of incident on 30.04.2011 along with SHO after receiving a PCR call vide DD No.28A at PS-Timar Pur regarding a quarrel at House no.9, Gali no.12, Jagat Pur Extension, Delhi from Mobile Phone no. 8860460899. The said complaint was marked to ASI Gajender, who went to the spot and informed the then SHO, PS- Timarpur (accused no.5) by phone that the call has been made by one Ms. Neelam Gupta, who was not being allowed to enter her house and the main entrance is locked from inside. Thereafter, SHO,

PS-Timarpur along with petitioner, who then was a Division Officer of that area, reached the spot and found that Neelam Gupta (accused no. 1) was standing outside the aforesaid property and informed that she had been released from jail and was trying to enter house, however, the house is locked from inside and nobody is opening the gate even after pressing the door bell and knocking the door. On this, as per the statement of CW-2, Prem Shankar, SHO knocked the door and on enquiry told to make inspection of the property. On which, CW-2 opened the door. He further stated that SHO told to waiting Neelam Gupta and other two accused persons to enter the house. Therefore, in view of the aforesaid facts it is categorically clear that SHO was performing his legally required responsibility placed on him.

12. Ld. Counsel further submitted that CW-2, who was stated to be present at the spot on the date of incident and the only eye witness, has not stated anything or attributed any role to the petitioner.

13. To strengthen his arguments, ld. Counsel appearing on behalf of the petitioner has relied upon a case of **Anil Kumar and Ors. v. M.K. Aiyappa and Anr. 2013 10 SCC 705** whereby the Hon'ble Apex Court noted as under:

“14. Further, this Court in Criminal Appeal NO. 257 of 2011 in the case of General Officer, Commanding v. CBI and 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 performing his duty. In order that a 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 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. Ld. Counsel further submitted that apart from the sanction, there is no merit in the complaint case however, keeping in view the statements of CW1 and CW2, summons were issued against the petitioner. He further submitted Petitioner was the Investigating Officer in case FIR no. 186/2010, registered at PS-Timar Pur, wherein the complainant was accused, thus, the complainant had enmity with the petitioner and just to take revenge, he had falsely implicated the petitioner in this case.

15. On the other hand, ld. Counsel appearing on behalf of the complainant submitted that DD No. 28A dated 30.04.2011 was not handed over to the petitioner. Therefore, there was no occasion before the petitioner to come to the spot. Moreover, in DD No. 63A recorded by the petitioner himself, there was nothing to show that petitioner was not a part of the police party, however called by the SHO and only thereafter, he was there.

16. Ld. Counsel further submitted that so far as Section 140 of Delhi Police Act is concerned, the complainant made a complainant on the

very same evening at about 5 PM to DCP by Fax, whereas the alleged incident took place on 30.04.2011 at 3.45 Pm. Thus, Section 140 of the Delhi Police Act does not apply. Moreover, closure report of case FIR no. 186/2010 registered against the complainant was filed by the petitioner. In addition to that there was a *status quo* order dated 15.07.2010 passed in favour of the complainant in respect of the property in question in the case titled as Munna Lal Gupta v. Neelam Gupta and Ors. and the copy of the same was also provided to the SHO concerned. Therefore, Neelam Gupta had no right to enter into the property in question. Despite, the petitioner along with other police officials made her forcibly entered into the said property. Therefore, the offence under Section 448/34 IPC is *prima facie* made out against the petitioner.

17. I have heard Id. Counsel for the parties.

18. The case of the petitioner is that he was serving as a Sub-Inspector and acting in discharge of his official duties under the directions of SHO / Inspr. Rajneesh Parmar of PS-Timarpur and as such sanction under Section 197 Cr.P.C is required. Whereas the case of the complainant is that he is the owner of a property measuring 150 Sq. Yds. House no. 9 Gali No. 12, Jagat Pur Extension, Delhi and is in possession of the entire portion of the property wherein two stories were constructed.

19. The incidence took place on 30.04.2011, when according to the complainant his daughter-in-law Neelam Gupta one of the accused forcibly entered into the premises after breaking open the lock with the help of SHO, PS-Timar Pur and the petitioner. Accordingly, complainant made a complaint to DCP, Civil Lines on the same day. On his complaint, CBI swung into action against the petitioner and SHO and a case FIR no. 2/11 dated 04.05.2011 for demanding a bribe from the complainant to get the premises vacated from the other accused persons and for restoration of possession of the complainant in the aforesaid premises was registered against the petitioner and SHO of PS-Timarpur.

20. CW1 / complainant narrated all the facts and circumstances which led him to file the complaint and attributed specific role to the petitioner and co-accused persons. CW2 Prem Shankar, who was an employee of the complainant also stated that on 30.04.2011 at 3.45 PM, SHO Rajneesh Parmar along with 10 other police officials including the petitioner came to the property mentioned above and knocked at the door. On enquiry, they told that they were to inspect the property. When the aforesaid witness opened the door, all of them entered into the premises and he was caught hold of by his hair and taken to the Police vehicle parked outside the premises. Thereafter, he was taken to Police station and detained till 11.30 PM.

21. It is not in dispute that on return from the spot petitioner recorded DD No. 63A. However, there is nothing in the DD entry to

suggest that petitioner was acting under the directions of the SHO at the time when he and other accused persons visited the spot. Moreover, in the said DD petitioner recorded that CW2 Prem Shankar himself opened lock of the Gate and Neelam Gupta entered into the house without any obstruction. The aforesaid DD also does not reveal that SHO and the petitioner entered the premises or that they got delivered the possession of the premises to the said Neelam Gupta. So on one hand, there is a version of complainant and his employee, whereas on the other hand, there is a version of the petitioner recorded in DD No. 63A. Until and unless these versions are tested by the Trial Court as to which one is correct, no opinion can be given at this stage. So far as the version of the petitioner is concerned, it would be considered by the Id. Trial Court at the appropriate stage.

22. It is not in dispute that the petitioner is already facing proceedings under the Prevention of Corruption Act for demand of bribe as he offered to get the possession of the property restore to the complainant on receiving an amount of Rs.1,00,000/-.

23. So far as the provisions of Section 197 Cr.P.C. are concerned, it provide that a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the Government.

24. The benefit of the case of *Anil Kumar (Supra)* is not available to the petitioner for the reason that Anil Kumar was involved in a commission of offence under the Prevention of Corruption Act wherein the High Court observed that Spl. Judge could not take notice of private complaint unless the same was accompanied by a sanction order. Accordingly, the order passed by the Spl. Judge was quashed and confirmed by the Apex Court also.

25. The petitioner being a Sub-Inspector in Delhi Police can be removed from Service by DCP concerned. Accordingly, provisions of Section 197 Cr.P.C. are not applicable in the present case.

26. As argued by the counsel for the petitioner before the Revisional Court and this Court that in view of Section 140 of Delhi Police Act, no prosecution can be entertained against the police official if lodged after more than 3 months of the incident. However, in the case in hand, incidence took place on 30.04.2011 and the complainant reported the matter to concerned DCP on the same day and the complaint came to be instituted on 28.05.2011. So, even provisions of Section 140 of Delhi Police Act are not attracted at this stage so far as the limitation for initiation of the prosecution is concerned.

27. It is not disputed that the petitioner received a call from Neelam Gupta and accordingly, attended the call. However, he went to the spot and joined the other police officials and entered into the premises which established that the petitioner tress passed the property without

any authority despite the fact that *status quo* was granted by the Court against the said property.

28. In view of above discussion, I am of the considered opinion that there is no perversity and illegality in the orders passed by the Id. Trial Court and Revisional Court as well.

29. Accordingly, the petition is dismissed being devoid of any merit.

30. No order as to costs.

SURESH KAIT, J

OCTOBER 19, 2015

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