

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

% Order delivered on: 23rd March, 2015

+ **Crl. M.C. No.5710/2014 & Crl. M.A. No.19492/2014**

B. NARAYANA PRASANNA Petitioner
Through Mr.Ravi Gupta, Sr.Adv. with
Mr.Deepak Pathak & Mr.Raghav
Chadha, Advs.

versus

STATE (NCT OF DELHI) Respondent
Through Ms.Jasbir Kaur, APP for the State
along with SI Manish Kumar, PS
Anand Parbat, in person.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner by way of the instant petition is invoking inherent powers of this Court as envisaged under Section 482 Cr.P.C. to assail the order dated 7th August, 2013 passed by the ACMM in case FIR No.39/2009, PS Anand Parbat and the order dated 6th May, 2014 passed by the ASJ, Tis Hazari Courts, Delhi in Criminal Revision Petition No.161/2013, by which the Revisionist Court dismissed the revision petition filed by the petitioner against the order of ACMM taking cognizance of the offence under Section 175 IPC and summoned the petitioner as an accused. Though both the orders are assailed by filing of the present petition, but the petitioner is primarily

aggrieved by and challenging the order of the ACMM dated 7th August, 2013.

2. The main dispute is between the complainant Smt.Urmila Devi and the accused Smt.Kailash in respect of the suit property. The documents were submitted by Smt.Kailash at the time of grant of connection in her name at the said property. The department did not direct to furnish the original documents at the time of granting the connection along with the application form nor retained the same. The new connection was made way-back in the year 2008. The department has informed the SHO that the original file was not traceable and the photocopies of the documents were made available on 19th November, 2008.

3. During the investigation of the case bearing FIR No.39/2009, PS Anand Parbat, New Delhi registered on the basis of the complaint of one Smt.Urmila Devi, requests were made on 18th November, 2008 to the BSES Yamuna Power Ltd. (BYPL) to supply the documents pertaining to the Application for New Electricity Connection bearing No.N 114108091418 sanctioned in the name of Smt.Kailash at the premises of basement of Plot No.8/78, Industrial Area, Anand Parbat. On such request, the BYPL officials supplied the entire documents of the records so sought vide letter dated 19th November, 2008. Further, letter dated 2nd June, 2010, BYPL informed the concerned SHO that the original files of the said connection were not traceable, but the said matter was ordered to be re-opened by the Court and notice under Section 91 Cr.P.C. was served upon the office of BYPL to which by reply dated 9th July, 2013,

the SHO concerned was informed that the original file was not traceable. The Police also searched for the original file in BSES office.

4. Though, it was argued that under law and regulation, the original of any documents are not required at the time of making application for grant of connection or at any subsequent stage and photocopies available in the record of the connection file have already been furnished. However, as the department of BYPL failed to produce the original files as sought by the ACMM and/or apprise the IO about any logical conclusion to the issue of non-availability of original documents, the ACMM vide the impugned order dated 7th August, 2013 took cognizance under Section 175 IPC and issued summons against the petitioner as accused.

5. The new connection is granted to the consumer in terms of the requirement of the documents as laid down under Regulation 15 of the DERC Supply Code 2007 and Annexe I which nowhere prescribes the requirement of submitting the original documents and as such, the order passed by the learned Trial Court is contrary to the law. Since the disputes between the complainant and the accused parties are still subjudice before the learned Trial Court which have to be determined as per the merit of the case and not on the basis of the new connection granted to Smt.Kailash. In case she has made any incorrect statement before the department, the learned Trial Court will decide the same as per the merit of the case.

6. It is a matter of fact that the petitioner joined the services of BYPL on 2nd April, 2012 and was not even in the services of BYPL in the year 2008 when the application for grant of connection was made and he joined the concerned department only on 2nd April, 2012. It is argued by Mr. Ravi Gupta, learned Senior counsel appearing on behalf of petitioner that the issuance of summons against the petitioner is bad in law and violative of fundamental rights of the petitioner.

7. Thereafter, the petitioner filed the Criminal Revision No.15/3 challenging the impugned order dated 7th August, 2013 on various grounds. In the present petition, the prayer is made for quashing of the summoning order dated 7th August, 2013 in Kalandra under Section 175 IPC in DD No.93, PS Anand Parbat as well as for setting-aside the order dated 6th May, 2014 passed by ASJ, Delhi. Learned Senior counsel appearing on behalf of the petitioner states that the said orders may be set-aside qua the petitioner and the other proceedings between the two private parties may continue in accordance with law.

8. Mr.Ravi Gupta, learned Senior counsel appearing on behalf of the petitioner has rightly argued that while passing the impugned order, the learned Trial Court has assumed that by way of sanctioning the new connection, the department has confirmed the title. I agree with him that the department even otherwise cannot confirm the title in favour of Smt.Kailash because the right between the complainant and Smt.Kailash has to be determined in accordance with law. She is duty bound to produce all the original documents

before the Court in case she is claiming any right and title qua the suit property.

9. It has come on record that the petitioner was appointed to the post of General Manager of BSES YPL vide appointment letter dated 8th February, 2012. Vide Office Order dated 12th April, 2012 bearing HR(BYPL)/2012-13/03, he was made Incharge of Key Consumer Cell (KCC), MLCC and GCC departments of BYPL. Pursuant to taking over the said charge, the petitioner received notices dated 12th June, 2013, 27th June, 2013 and 1st July, 2013 from SHO, Anand Parbat in relation to providing documents of Original K. bearing No.114108091418 file which was the subject matter of FIR No.39/2009, PS Anand Parbat. The petitioner further examined various earlier correspondences on the issue and found out that similar letters were issued to the department on 15th November, 2008, 1st September, 2009 and 26th June, 2010 and the department vide its replies dated 19th November, 2008, 2nd June, 2010, 13th September, 2010 and 1st April, 2011 which indicate that the Original K No. file was not traceable. Accordingly, the petitioner's office, vide letter dated 3rd July, 2013, sent a reply to the SHO, PS Anand Parbat that the said Original K. No. file is not traceable. He further submits that the reply was sent on the basis of the documents and records maintained by the KCC of BSES YPL and he was not officiating the department as Manager, KCC prior to 12th April, 2012.

10. It is submitted by the petitioner that he had no intention to disobey the directions of the SHO, PS Anand Parbat and the learned Trial Court in any manner and in fact, he has placed all the facts as

maintained by the department. At no point of time, he handled the processing of the said connection and never dealt in respect of the same since 19th November, 2008. The department has been maintaining the stand that the original K. File was not traceable and on the basis of the above said position, he accordingly placed the said fact before the SHO and the learned Trial Court. There is no material of any nature is available on record to show his involvement during the relevant period. There is no allegation by the complainant that the file was misplaced when he had taken the charge. In fact there is no prima facie evidence which may indicate that when the said file was misplaced.

11. In view of the statement made in the present petition as well as the affidavit filed by the petitioner, after hearing, I am of the considered view that the impugned summoning order dated 7th August, 2013 passed by the learned Trial Court in Kalandra under Section 175 IPC in DD No.93, PS Anand Parbat is to be recalled. Consequently, the order passed in the review petition is also set-aside.

12. The petition is accordingly disposed of. Pending application also stands disposed of.

(MANMOHAN SINGH)
JUDGE

MARCH 23, 2015