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

+ W.P.(CRL) 3448/2016 and CrI.M.A. No.18758/2016

MRIDULA VASHISHT

..... Petitioner

Through: Mr. Arun Maitri & Ms. Radhika
Chandrasekhar, Advocates.

versus

STATE & ORS.

..... Respondents

Through: Ms. Kamna Vohra, ASC along with
Inspector Sanjay Sharma, & SI G.P.
Pal, PS – Civil Lines, for the State.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
19.12.2016

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The status report has been filed. Counter affidavit has been filed by respondent no.3.

The petitioner has preferred the present writ petition to seek quashing of the notice dated 02.07.2014 issued in FIR No.86/2014 registered at PS-Civil Lines, Delhi on the ground that the same is in contravention of Section 41A Cr.P.C. and that it amounts to an abuse of power. The petitioner also seeks a direction to the Commissioner of Police to complete the disciplinary action against respondents No.2 & 3 for their alleged misuse of powers while issuing the aforesaid impugned communication.

The case of the petitioner is that the petitioner is resident of Property No.4A/6, Raj Narayan Marg, Delhi. The petitioner had dispute with the other occupant in the building. The said disputes were pending adjudication in High Court. The High Court had passed certain directions with regard to the interim living arrangement between the parties in the said suit. According to the petitioner, the respondent in the writ proceedings misused the authority of respondents No.2 & 3 by getting the impugned notice issued to the petitioner purportedly in respect of FIR No.86/2014 under Section 341/ 506/ 34 IPC registered at PS – Civil Lines. The impugned notice directed the petitioner to comply with the order dated 29.05.2014 passed by the High Court in W.P. (C.) No.2903/2014 in the following manner:

“1.) Access to premises from the common entrance shall not be impeded or blocked either physically or by placement of any material such as car, bicycles etc.

2.) To open the entrance of common premises and to hand over the key of the lock to the ground floor owner.

3.) And also reconnect the water supply of ground floor owner from the over head tank which is reportedly disconnected.

A photo copy of order is enclosed herewith. Non-compliance will be treated as contempt of the Court. Local police is bound to take action against you as per law.”

Mr. Maitri submits that the said order of the High Court, firstly, did not direct the police officials to ensure its compliance. Secondly, the order dated 29.05.2014 - a copy whereof has been placed on record, nowhere directed the petitioner to remove his car from the common passage so that

the common entrance is not impeded or blocked. Moreover, in the impugned notice, respondents No.2 & 3 took it upon themselves to warn the petitioner that “*non-compliance will be treated as contempt of the Court*”.

While issuing notice, respondent No.3 was directed to file his own affidavit, which has been filed, as aforesaid. Respondent No.3 is also present in Court in person.

Ms. Vohra has submitted that post the filing of the present writ petition, the SHO, PS – Civil Lines, Delhi has issued a communication on 14.12.2016 withdrawing the notice in question. Ms. Vohra submits that the present petition has, therefore, become infructuous.

Respondent No.3 does not deny the fact that the order of the Court did not specifically require the SHO, PS-Civil Lines to enforce the said order. He also does not deny the fact that the order of the Court did not require the petitioner to remove his car from the common passage with a view to provide unhindered access to the respondent in the civil writ petition.

On a query by the Court, respondent No.3 states that the impugned communication was issued inadvertently and without due application of mind. He admits that the same was a mistake on his part. He also states that he has not issued any such communication in any other case to any other party.

Since the impugned communication has already been withdrawn on 14.12.2016, I am refraining from making any observations. However, I must observe that issuance of the impugned communication is most unusual and uncalled for. The disputes between the petitioner and the respondents were pending in a writ petition. The police was not even called upon to ensure compliance or monitor implementation of the said order of the Court dated

29.05.2014. In these circumstance, the police had no business to issue the impugned communication dated 02.07.2014 and that too, by requiring the implementation of the Court order in the manner not contemplated by the Court order itself. It was not for the respondents No.2 & 3 to warn the petitioner that non-compliance of the order – as understood by them, would tantamount to contempt of Court. If any private person, including the respondents in the writ petition had any grievance with regard to the non-compliance of the order dated 29.05.2014, it was for them to take up the issue before the Court. It is also pertinent to note that the notice in question had no relation whatsoever to case FIR No.86/2014. Even according to the respondent No.3, the mention of the said FIR was erroneous.

In view of the aforesaid, it is clear that the impugned notice was issued without any authority or justification. Had the same not have been withdrawn, the same would have been liable to be quashed by this Court. Respondents No.2 & 3 are directed to be cautious in future and not to undertake such conduct again. They would be better advised to know the bounds of their limits of authority.

The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

DECEMBER 19, 2016

B.S. Rohella