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

+ **W.P.(CRL) 235/2017**

SUSHIL KUMAR JAIN & ANR.

..... Petitioners

Through: Mr. Manish Garg, Mr. D.C. Sahni &
Ms. Samridhi, Advocates along with
petitioners in person.

versus

GOVT. OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Sanjay Lao, ASC along with SI
Ravinder Kumar, PS-Prashant Vihar,
for the State.
Mr. R.K. Burman, Advocate for
respondent No.2.
Mr. Mukesh Gupta, Standing Counsel
for the North MCD.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

09.03.2017

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I have heard learned counsel for the petitioner, the North MCD and
Mr. Lao.

On the last date, the aspect that was noted by the Court which requires
consideration is whether respondent No.2 is covered by the definition of
“public servant” as used in Section 186 IPC.

On the aspect as to whether the respondent No.2 could be considered to be a public servant for the purpose of Section 186 IPC and Section 195 Cr.P.C., Mr. Lao has relied upon the definition of expression “public servant” contained in Section 21 of the IPC and in particular to the twelfth category which reads:

“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;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).”

From a reading of the said definition, it is clear that respondent No.2, for the limited purpose of Section 186 IPC and Section 195 Cr.P.C., is indeed a public servant.

The respondent No.2/ complainant served as contractual Domestic Breed Checker (DBC) with the MCD. With the allegation that he was obstructed from carrying out his duties as a DBC, he preferred the FIR in question, inter alia, under Section 186 IPC. The petitioner/ accused have preferred this petition to seek quashing of the said FIR No.745/2016 under Sections 186/ 353/ 332/ 323/ 341/ 506/ 34 IPC at PS – Prashant Vihar on the basis of the settlement arrived at with respondent No.2.

Section 195(2) Cr.P.C. requires that where a complaint has been made by a public servant under Section 195(1)(a), any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no

further proceedings shall be taken on the complaint. However, such withdrawal shall not be ordered if the trial in the Court of first instance has been concluded. In the present case, the trial in the case has not been concluded.

Learned counsel for the petitioner submits that Section 195 cannot be invoked in the facts of the present case inasmuch as the heading of Section reads “*Prosecution for contempt of lawful authority of public servants, for offence against public justice and for offences relating to documents given in evidence*”. He submits that the said Section, therefore, has no application since it applies in relation to the documents given in evidence.

This submission cannot be accepted. Firstly, the heading of the Section does not rule the interpretation of the substantive provision. Secondly, it is clear from the heading itself that it relates to prosecution for contempt of lawful authority of public servants. In the present case, the allegation against the accused, inter alia, is that they obstructed the complainant in discharge of his public function, i.e. they acted in contempt of lawful authority of a public servant.

The next submission of learned counsel for the petitioner is that Section 195(1)(a)(i) provides that no Court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of the IPC except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Learned counsel submits that in the present case, respondent No.2 had filed the FIR entirely on his own and without any permission or authority from his superior public servant to whom the complainant was administratively subordinate at the relevant time. He submits that compliance of Section

195(2) would be necessary only if complaint/ FIR were to be registered with the prior authority or approval of the public servant to whom the complainant is administratively subordinate.

This submission of the petitioner also has no merit. A plain reading of Section 195(1)(a) and Section 195(2) does not support this argument of the petitioner. The statutory scheme appears to be that though the public servant could make a complaint in respect of commission of offence under Sections 172 to 188 in relation to him, on his own, for its withdrawal it is essential that the public servant to whom he is administratively subordinate should grant his approval. The purpose appears to be prevent withdrawal of complaints for extraneous considerations which, otherwise, ought to be persuaded or taken to their logical conclusion. The objective also appears to be to prevent the making of vexatious complaint by public servants.

Since the public servant to whom respondent No.2 was subordinate at the relevant time has not granted his approval to the quashing of the FIR, this petition cannot be allowed.

Respondent No.2 is present in Court and he states that he shall move an appropriate application to the public servant to whom he was subordinate at the relevant time to obtain the approval, and if granted, thereafter move a fresh petition for quashing of the FIR.

The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

MARCH 09, 2017

B.S. Rohella