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

+ W.P.(CRL) 95/2014

DR DURGA PRASAD RAY

..... Petitioner

Through: Mr. Vivek Kumar, Advocate

versus

D K SETH

..... Respondent

Through: Mr.Sudhir Nandrajog, Sr. Advocate  
with Mr. Deepak Vohra, Mr. Kamal  
Dave & Mr. Abhinav Agnihotri,  
Advocate

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**ORDER**

**17.01.2017**

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The petitioner has preferred the present writ petition to assail the order dated 07.08.2013 passed by the learned Additional Sessions Judge-02, Central, Delhi, in Criminal Revision No. 92/2013 arising out of CC No. 1161/1/12 falling within the jurisdiction of PS Subzi Mandi under Section 500 IPC registered as case ID No. 02401R0205442013. By the impugned order, the revision petition preferred by the respondent herein has been allowed and the order dated 22.01.2013 summoning the respondent/accused, passed by the learned MM-III/N, Tis Hazari Courts, Delhi, in CC No. 1161/1, on 22.01.2013 has been set aside.

A perusal of the summoning order dated 22.01.2013 shows that the learned Magistrate had summoned the respondent/accused on the premise that he had sent a communication dated 27.02.2012, wherein he had expressed his opinion that the petitioner suffers from mental disorder, perhaps, paranoid delusions. The accused suggested that the administration should take his history into account and keeping his mental health in mind to refer him or to get his treatment done from good Psychiatrist. He opined that it would go a long way to help the petitioner in Hindu Rao Hospital fraternity. This communication of the respondent accused was then circulated and even acted upon by the Additional Commissioner who opined that an assessment of the petitioner's mental condition be got made from a Board of Psychiatrist of AIIMS/IHBAS.

The respondent then preferred the aforesaid revision petition. The revision was allowed on several grounds, including, on the ground that the sanction under Section 197 Cr.P.C. had not been obtained prior to the taking of the cognizance by the learned Magistrate. Learned counsel for the respondent points out that the aforesaid opinion had been formed by the accused and communicated in response to the complaint of the petitioner which had been forwarded for the comments of the accused. Thus, the opinion had been rendered in discharge of official functions of the respondent accused and, consequently, sanction under Section 197 Cr.P.C. should have been obtained prior to cognizance being taken on the complaint of the petitioner.

I may observe that the revisional court has gone into other aspects in the impugned order which, in my view, the said court should not have gone into at such an early stage of the proceedings. The trial court had merely

summoned the accused and the matter had not proceeded to trial. However, a perusal of the impugned order shows that the revisional court has virtually rendered a decision on merits which was neither proper nor competent for it to do.

The submission of learned counsel for the petitioner is that even if the opinion of the revisional court was that the sanction should have been obtained under Section 197 Cr.P.C. at the initial stage, in the factual background, the revisional court should have remanded the case back to the Magistrate and not rendered a decision on merits. I find merit in this submission of learned counsel for the petitioner. Accordingly, the impugned order is set aside on all other aspects except on the findings returned by it that the sanction under Section 197 Cr.P.C. was necessary to be obtained for prosecuting the accused in the facts of the present case, and the matter is remanded back to the trial court for proceeding as and when the sanction is obtained for prosecution of the respondent under Section 197 Cr.P.C. No observation made in the impugned order on merits shall come in the way of the trial court at any stage of the proceedings.

The petition stands disposed of.

**VIPIN SANGHI, J**

**JANUARY 17, 2017**

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