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

+ **W.P.(CRL) 611/2018**

SUNIL PURI

..... Petitioner

Represented by: Mr. Jayant Bhatt, Mr. Hamid Khan and Ms. Mekhala Pande, Advocates.

versus

STATE (NCT DELHI)& ORS

..... Respondent

Represented by: Mr. Premsagar Pal and Ms. Suman Saharan, Advocates on behalf of Mr. R.S. Kundu, ASC for the State with SI Amit Dutt, PS Lajpat Nagar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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05.03.2018

CrI.M.A. No. 3602/2018 (Exemption)

Allowed, subject to all just exceptions.

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1. By this petition, the petitioner prays as under:-

- a. Issue the writ of certiorari or any other writ as the court may deem fit for quashing or amending the impugned order dated 01.08.2017 passed by the Public Grievances Commission and taking appropriate action against the officials involved in the misconduct: and*
- b. Pass such other order(s) as this Hon'ble Court may deem fit in the interests of justice.*

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2. The grievance of the petitioner is that the petitioner had been agitating against the problem of parking and had also required the SHO PS Lajpat Nagar to investigate on the frequent damage happening to his car irrespective of the place where it was parked. Petitioner also states that he had lodged a report for his missing Maruti Alto car No. DL-3CF-9372. In the report the petitioner also mentioned that he had been threatened by one Yogesh Methani. The petitioner also complained about the threat of assault by the said Yogesh Methani. It is the case of the petitioner that the petitioner was taken inside the police station, brutally assaulted and detained without unlawful authority and an illegal kalendra was prepared against him in PS Amar Colony.

3. Complaining against the above noted serious misconduct of the police officers, the petitioner filed a complaint before the Public Grievance Commission. Action taken report on the complaint of the petitioner was sought by the Commission whereafter vide the order dated 1st August, 2017, the Public Grievance Commission passed the order closing the complaint of the petitioner. Challenging the order dated 1st August, 2017 the petitioner had earlier filed a writ petition being W.P. CrI. 2844/2017 before this Court which after some arguments was dismissed as withdrawn.

4. When it was brought to the notice of the learned counsel for the petitioner by this Court that for the same grievance, the petitioner had earlier filed a writ petition which was withdrawn, learned counsel for the petitioner states that in the present writ petition his grounds are limited and two fold, which were not agitated in the earlier writ petition, being that the petitioner was given an intimation on SMS by the police officer about towing away of

his car which is contrary to the law and that in the order of the Public Grievance Commission facts stated in the Status report were noted as it is.

5. These two grounds of challenge have not been taken by the petitioner in the present writ petition. Furthermore the grounds urged in the present writ petition are similar to those urged in the earlier writ petition filed by the petitioner.

6. To check the facts in the earlier petition this Court has also called for the file of earlier writ petition filed by the petitioner being W.P. Crl. 2844/2017 wherein after hearing learned counsel for the petitioner and petitioner himself this Court granted leave to withdraw the petition and passed the following order on 18th December, 2017:

By the present petition the petitioner challenges the order dated 28th February, 2017 passed by the Public Grievance Commission.

After some arguments learned counsel for the petitioner and the petitioner himself, who is present in Court, seeks leave to withdraw the present petition.

Leave granted.

Petition is dismissed as withdrawn.

7. A perusal of the W.P. Crl. 2844/2017 shows that the petitioner had taken exhaustive grounds therein and having perused the petition as also hearing learned counsel for the petitioner and the petitioner as well when this Court was not inclined to grant the relief, the petitioner withdrew the writ petition.

8. Hon'ble Supreme Court in the decision reported as 1986 (1) SCC 100 Forward Construction Co. & Ors. vs. Prabhat Mandal (Regd.), Andheri & W.P.(CRL) 611/2018

Ors. while dealing with the scope of constructive res-judicata in Writ petitions under Articles 226 and 32 of the Constitution of India noted as under:

20. *So far as the first reason is concerned, the High Court in our opinion was not right in holding that the earlier judgment would not operate as res judicata as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to Section 11 CPC provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject-matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. The first reason, therefore, has absolutely no force.*

9. The present writ petition is thus dismissed being barred by the principle of constructive *res judicata* imposing a cost of ₹10,000/- to be deposited with the Delhi High Court Legal Services Committee.

MUKTA GUPTA, J.

**MARCH 05, 2018/‘yo’
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