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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 41/2015 & CRL.M.A. 168/2015, 2835/2015**

JATINDERJIT SINGH MAJITHIA Petitioner

Through: Mr. Nimit Mathur, Adv.

versus

GOVERNMENT OF NCT OF DELHI & ORS Respondents

Through: Ms. Puja Kalra, Adv. for North MCD.
Sukhdeep Singh Chowdhary, Adv. for
R3 and R4.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **07.08.2018**

On the criminal complaint (CC No. 2M/1/14) instituted in 2005 by erstwhile Municipal Corporation of Delhi (now North MCD), the petitioner is facing prosecution on the charge for offences punishable under Sections 317/332/344/461 of the Delhi Municipal Corporation Act, 1957, the gravamen of the accusations leading to the said case being that unauthorised construction had been carried out at the second floor of property bearing No. 31/23 old Rajinder Nagar, New Delhi at his instance, this leading to deviation/excess coverage and projections over municipal land in contravention of and against the building plans, which were sanctioned on 03.07.2004.

It appears that the petitioner was the owner of the property bearing the aforesaid municipal number and that he had entered into a collaboration agreement for its re-development with the third respondent. It further appears that pursuant to the collaboration agreement, the third respondent

had undertaken the task of re-development of the property and further that in lieu of certain further consideration payable, he was to get the ownership rights *qua* the second floor portion which he eventually transferred for consideration, in favour of the fourth respondent.

Referring to above facts, the petitioner had earlier approached this court by criminal appeal 3444/2007 which was disposed of by order dated 26.05.2009. The counsel representing the Municipal Corporation of Delhi (MCD) had informed the court, at that stage, that in view of the subsequent developments, it would move the trial court so as to 'implead' the builder as well as the occupier as parties. The court disposed of the earlier petition by order dated 26.05.2009 taking note of the submission of the counsel for MCD, the petitioner not pressing his said petition at that stage, though reserving right to approach this court to raise all other grounds also before the tribunal – presumably referring to the MCD Appellate Tribunal which deals with the issues relating to proposed demolition or sealing action in such cases.

Against the above backdrop, application under Section 319 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was moved by MCD which was dismissed by the Metropolitan Magistrate by order dated 08.07.2014 holding that the occasion to exercise the jurisdiction under the said provision of law had not yet arisen since no evidence had by then been adduced.

Challenging the afore-said order, the present petition has been filed invoking the jurisdiction of this court under Article 227 of the Constitution of India read with Section 482 Cr. P.C. with the prayer that the criminal case be quashed.

There is no occasion against the above backdrop, for this court to quash the criminal action. The complaint case will have to be taken to its logical end after the completion of trial pending before the Metropolitan Magistrate. At the same time, the North, MCD, as submitted by its counsel at the hearing, has the liberty to move a fresh application under Section 319 Cr.P.C for additional accused to be summoned if evidence as to their complicity has been brought out on the on-going trial. It is hoped and expected that the Municipal Corporation of Delhi will take all necessary follow-up action in light of above facts.

With these observations, the petition and the applications filed therewith are disposed of.

R.K.GAUBA, J.

AUGUST 07, 2018/uj