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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 30th August, 2018

+ CRL.M.C. 4226/2016

ASHISH KUMAR AGGARWAL Petitioner

Through: Mr. Ashish Kumar Aggarwal,
Advocate

versus

VAKIL AHMED & ORS Respondents

Through: Mr. Vikas Arora and Ms. Radhika
Arora, Adv. for R-2

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner had filed a petition (CC no.1334/1/07) on 03.03.2005 styled as an application under Section 156(3) of the code of Criminal Procedure, 1973 (Cr.P.C.) in the court of the Additional Chief Metropolitan Magistrate with the prayer that cognizance be taken on his "complaint", directions be given for the same to be investigated into, allegations primarily being that on 18.02.2005 while going towards Janpath via Barakhamba Road on the public street, he was stopped by the first respondent, a public servant (police officer) who was arrayed in the said petition as accused and inquiries were made about his driving licence and about a packet which one Mohit,

riding on the pillion of his vehicle, was carrying. He alleged that the first respondent told him that he was to be prosecuted for traffic offence because he was carrying commercial goods on a two wheeler vehicle. But, when the petitioner raised questions for basis of such action, the first respondent demanded illegal gratification of Rs.500/- to settle. He alleged that, upon his refusal to pay the bribe, the first respondent used abusive language and committed assault on him followed by similar assault by other traffic officials, who had also reached the spot. He alleged that he was falsely implicated in case FIR 85/05 which was registered on complaint of the first respondent involving offences punishable under Sections 186, 353, 352 IPC.

2. The criminal complaint was dismissed by the Metropolitan Magistrate by order dated 07.01.2016, *inter alia*, on the grounds that dismissal of the similar complaint earlier had been concealed. The Metropolitan Magistrate also observed in the said order that in absence of a sanction under Section 197 Cr. P.C., the complaint could not be proceeded with.

3. The petitioner challenged the said order in the court of Sessions by criminal revision no.13/16, which was dismissed by order dated 03.10.2016.

4. Challenging the aforesaid orders of the two courts below, the petition came up with the petition at hand invoking the inherent power and jurisdiction of this court under Section 482 Cr. P.C. read with Article 227 of the Constitution of India.

5. Having heard the submissions in the matter and having gone through the record, this court finds that aside from the reason of absence of sanction for prosecution, there is one more reason – a more fundamental one – as to why the criminal complaint cannot be acted upon and that relates to the jurisdiction of the forum where the petition was presented.

6. In almost similar fact-situation in *Criminal MC 2095/15*, titled *S.P. Gupta and Vs. State of NCT and Anr.* decided on 24.07.2018, where the challenge was to the direction of the Metropolitan Magistrate for investigation under Section 156(3) Cr. P.C., this court ruled as under :-

“5. As noted above, the criminal complaint which was entertained by the Metropolitan Magistrate alleged offence also under the Prevention of Corruption Act, 1988. The jurisdiction to deal with the offences under the said special law vests in the court of Special Judge. The court of Metropolitan Magistrate cannot be equated with the court of Special Judge under the Prevention of Corruption Act, 1988 which is a special law with its own special machinery. The Metropolitan Magistrate had no power or jurisdiction “to inquire into or try” the offences under the said special law. It necessarily follows that the Magistrate had no jurisdiction to direct such FIR to be registered under Section 156 (3) Cr.P.C. The proceedings before the Magistrate being unauthorized, the impugned order directing registration of FIR and investigation cannot be allowed to stand.

6. The learned counsel for the respondents made a feeble attempt to argue that the case also involves offences punishable under IPC. But then, the allegation in the complaint are interlinked and have to be

considered and construed in their entirety. The FIR is “an inseparable corollary to the impugned order” which, given the above noted lack of jurisdiction, is a nullity [State of Punjab vs. Davinder Pal Singh Bhullar & Ors. (2011) 14 SCC 770].”

7. The above reasoning squarely applies to the case at hand.
8. The petition is dismissed.

R.K.GAUBA, J.

AUGUST 30, 2018

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