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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 24th July, 2018

+ CRL. M.C. 4467/2016

D.V. VERMA & ORS. Petitioners

Through: Mr. Mukesh Gupta, Adv.

versus

PAWAN KUMAR KOHLI Respondents

Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioners have been summoned by the Metropolitan Magistrate by order dated 08.06.2016 on the basis of pre-summoning inquiry held into the criminal complaint (CC No. 162/P/14) of the respondent to stand trial for the offence under Section 211 of Indian Penal Code, 1860 (IPC). Feeling aggrieved, they have approached this Court by the petition at hand under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C) on the submission that the process initiated before the Court of Magistrate in the said complaint case is an abuse of the process of law.

2. The petitioners concededly are municipal employees, they being posted in the Karol Bagh Zone during the relevant period. On the allegations and reports of unauthorized construction certain action under the building bye-laws and Delhi Municipal Corporation Act, 1957 was initiated in respect of certain portion of property bearing no.

A-64/66, West Patel Nagar, New Delhi. Eventually, a report was lodged statedly at the instance of, or by the petitioners, for registration of a cognizable offence under Section 188 IPC and Section 461 of Delhi Municipal Corporation Act, 1957. The said report was examined by police station Patel Nagar. It was, however, found that copy of sealing order had not been provided and, therefore, no action for it having been disobeyed leading to commission of offence under Section 188 IPC could be initiated by registration of FIR. This was communicated by the police to the municipal authority. There is nothing on record to show any further action taken in the follow-up by any quarter.

3. It is against this backdrop that the petitioner filed the criminal complaint alleging that the petitioners had committed the offence under Section 211 IPC.

4. There are two prime reasons why the criminal prosecution before the Court of Magistrate ought not continue. The petitioners are concededly employees of Delhi Municipal Corporation. They are entitled to protection under Section 477 of Delhi Municipal Corporation Act, 1957, which reads thus:-

“477. Protection of action of the Corporation, etc.—No suit or prosecution shall be entertained in any court against the Corporation or against any municipal authority or against any municipal officer or other municipal employee or against any person acting under the order or direction of any municipal authority or any municipal officer or other municipal employee, for anything which is in good faith done or intended to be done, under this Act or any rule, regulation or bye-law made thereunder”.

5. There is nothing shown in the complaint or the pre-summoning evidence from which bad faith in the impugned acts could be inferred. The protection under Section 477 of Delhi Municipal Corporation Act, 1957 cannot be taken away. The proceedings, therefore, ought not be allowed to continue [*R.R. Gautam & Anr. vs. State & Anr. 2008 (1) JCC 766*].

6. On the given facts, no case of offence under Section 211 IPC can be made out. All that the petitioners are stated to have done is to make a request to the police for registration of FIR. The request was turned down since the sealing order on the basis of which it was based was not shared with the police. Neither the charge has been framed nor any criminal proceedings have been taken out in the court of law.

7. The continuation of the criminal complaint in the above backdrop would be an abuse of the process of law. Hence, the petition is allowed. The proceedings arising out of aforesaid criminal complaint are quashed.

R.K.GAUBA, J.

JULY 24, 2018

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