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

+ CRL.M.C. 5270/2017

LUKMAN KHAN

..... Petitioner

Through Mr. S M Hussain, Adv

versus

STATE (NCT OF DELHI)

..... Respondent

Through

Ms. Meenakshi Dahiya, APP for State
ASI Ramesh, PS Malviya Nagar.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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06.02.2018

By this petition under Section 482 of the Code of Criminal Procedure, petitioner has prayed for quashing of the FIR No.250/2006 under section 3 of West Bengal Prevention of Defacement of Property Act, 1976 ("The Act", for short), registered at police station Malviya Nagar, Delhi.

A perusal of FIR indicates that same was registered on the complaint of SI Dharampal on 3rd March, 2006 who has alleged therein that on 3rd March, 2006 he was on patrolling duty with constable Subhash Chandra and when they reached at 'Triveni Complex', they noticed a poster posted on the wall of market; whereby the petitioner, who was General Secretary of Delhi Pradesh Congress, had expressed his greetings to the public at large. As per the complainant the act of pasting of poster on the wall amounted to

defacement of the property within the meaning of Section 3 of the Act.

Learned counsel for the petitioner submits that the petitioner was never summoned by any court in the said FIR, inasmuch as he was not even aware about registration of the FIR till he applied for issuance of the passport. Pursuant to his application passport authorities had sought police verification from the local police; which submitted a report indicating that FIR 250/206 under section 3 of the Act was pending against the petitioner. Learned counsel submits that only thereafter petitioner approached the concerned Metropolitan Magistrate but did not find any such case pending in the court. Petitioner filed an application before the concerned Metropolitan Magistrate wherein a report was obtained from the concerned police station. In response thereto SHO reported that SI Dharampal had retired and record pertaining to the FIR had been destroyed in the year 2008. It was further reported that the aforesaid FIR was handed over to SI Dharampal vide RC No.140/2016 on 6th May, 2006 for submitting the charge-sheet and subsequent details were not available. It was reported that SI Dharampal was contacted on phone and he informed that he had filed the FIR in the concerned court.

Despite several opportunities granted to the concerned SHO by the court, no details could be furnished regarding the filing of the charge sheet. It is submitted that there is no record available in the court record regarding the filing of charge sheet inasmuch as, no case was found pending in respect of the said FIR. Eleven years have gone by. Petitioner had not received any summon/ warrants from the any

court concerning the FIR. Petitioner cannot suffer endlessly on the ground of pendency of a nonexistent case against him. Accordingly, FIR may be quashed since it has not culminated in filing of the charge sheet.

Learned counsel for the petitioner submits that even on merits, no case is made out against the petitioner since the prosecution has failed to show as to how the property was defaced in public view by writing or marking with ink, chalk, paint or any other material.

Reliance has been placed on T S Marwah & Ors. vs. State 2008 (4) JCC 2561 wherein it is held as under:-

“2. According to the prosecution case, one banner was found affixed on an electric pole having the photograph of accused Talvinder Singh Marwah with a request to the general public to cast the vote in his favour. The police on investigation found that the banner was put up by petitioner no. 2 for the benefit of petitioner no. 1, Talwinder Singh Marwah who at that time was contesting the assembly election. Upon conclusion of the investigation, charge-sheet was filed against the petitioners under Section 3(2) of The West Bengal Prevention of Defacement of Property Act, 1976 as extended to the Union Territory of Delhi. It is submitted by learned counsel for the petitioners that assuming the allegations made against the petitioners are correct, yet no case is made out against them under section 3 (2) of the aforementioned act. In order to appreciate the submission of the learned counsel, it is necessary to reproduce the definition of defacement as contained in Section 2 and 3 of the said Act. The same runs as under :

(2) Definitions: In this Act, unless the context otherwise requires, -

(a) "Administrator" means the Administrator of

the Union Territory of Delhi, appointed by the President under Article 239 of the Constitution;

(aa) "defacement" includes impairing or interfering with the appearance beauty, damaging, distinguishing, spoiling or injuring in any other way whatsoever, and the word "deface" shall be construed accordingly;

(b) "property" includes any building, hut, structure, wall, tree, fence, post, pole or any other creation;

(c) "writing" includes decoration, lettering, ornamentation, etc. produced by stencil.

(3) Penalty for defacement of property-

(1) Whoever defaces any property in public view by writing or marking with ink, chalk, paint or any other material, except for the purpose of indicating the memo and address of the owner or occupier of such property, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

3. A bare look at Section 3(1) goes to show that the offences committed therein would be punishable only if the defacement is done in respect of property in public view by writing or marking with ink, chalk, paint or any other material. There is nothing in the charge sheet filed against the petitioners to indicate that any property was defaced by writing or marking with ink, chalk, paint or any other material. The only allegation is that the banner was put on an electric pole. Mere putting of the banner will not get covered by section 3(1) of the west bengal prevention of defacement of property act, 1976. It is true that Section 2 (aa) defines defacement which includes impairing or interfering with the appearance beauty, damaging, distinguishing, spoiling or injuring in any other way whatsoever, but Section 3 (1) is not all embracing and it refers only such type of defacement

for the purpose of prosecution as is done by writing or marking with ink, chalk, paint or any other material”.

In this case FIR was registered in the year 2006. Maximum prescribed period of sentence, as envisaged under Section 3 of the Act, is six months. Charge sheet has not seen light of the day. Eleven years have passed since the registration of FIR. Record has been destroyed. Petitioner cannot be made to suffer agony of alleged criminal act endlessly. Even on merits no prima facie case is made out, in the facts as detailed above. It appears that for this reasons, petitioner was not sent up to face trial.

For the forgoing reasons, FIR No.250/2006 under section 3 of West Bengal Prevention of Defacement of Property Act, 1976 is quashed.

Petition is disposed of.

A.K. PATHAK, J

FEBRUARY 06, 2018

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