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

+ **W.P.(CRL) 2666/2015**

KASHMIRI LAL GARG & ANR

..... Petitioners

Through: Mr. Satish Tamta, Senior Advocate
with Mr. Manish Bansal and Ms.
Aarti Tyagi, Advocates.

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Through: Ms. Nandita Rao, ASC (Crl.)
GNCTD with ASI Devendera Singh,
PS-Defence Colony.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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12.10.2018

This petition impugns an order dated 31.07.2015, rejecting the petitioners application dated 22.08.2014, whereby they had sought sanction under section 140 of the Delhi Police Act, 1978, to prosecute the erring police officials on 22.08.2014; the Enquiry Report of the Investigating Officer was filed on 08.01.2011. The petitioners received the information of the said Report through RTI on 07.08.2014; the bail application of Yogesh Gupta was dismissed on 04.07.2013. The sanction has been filed after more than a year of their having the aforesaid information. The statutory period for doing so under section 140 of the Delhi Police Act, 1978 is one year. The said section reads as under:-

*“Section 140. **Bar to suits and prosecutions.** (1) In any case of alleged offence by a police officer or other person or of a wrong alleged to have been done by such police officer or other person, by any act done under colour of duty or*

authority or in excess of any such duty or authority, or wherein it shall appear to the court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained and if entertained shall be dismissed if it is instituted, more than three months after the date of the act complained of: Provided that any such prosecution against a police officer or other person may be entertained by the court, if instituted with the previous sanction of the Administrator, within one year from the date of the offence. (2) In the case of an intended suit on account of such a wrong as aforesaid, the person intending to sue shall give to the alleged wrongdoer not less than one month's notice of the intended suit with sufficient description of the wrong complained of, and if no such notice has been given before the institution of the suit, it shall be dismissed. (3) The plaint shall set forth that a notice as aforesaid has been served on the defendant and the date of such service and shall state what tender of amends, if any, has been made by the defendant and a copy of the said notice shall be annexed to the plaint endorsed or accompanied with a declaration by the plaintiff of the time and manner of service thereof”.

In view of the above, the impugned order cannot be faulted with.

At this stage, the learned counsel for the petitioners submits that he has otherwise also a good case on merits. The Court considers the case on merits as under:-

This petition seeks quashing of the order dated 31.07.2015 passed by the learned Lieutenant Governor of Delhi, rejecting the sanction to prosecute the police officers, who had been entrusted with the investigation of the complaint filed by the petitioners. According to the police officer, the case was more in the nature of a civil dispute and no criminality was found. Therefore, he recommended closure of the case. His report was forwarded to the SHO Defence Colony, who forwarded the same to the ACP – Defence

Colony with the remarks “from the contents and enquiry, the matter seems to be of civil nature and the complainant is in possession of property. Hence, no action is needed”. The Status Report on behalf of the State records the reasoning of the DCP which formed the basis of a decision by the Lieutenant Governor of Delhi in declining to prosecute the police officer. The report reads as under:-

“After enquiry an explanation has been called from ASI Shamsudeen (now SI retired) and Insp. Vijay Singh, the then SHO PS/Defence Colony. Explanation of ASI Shamsudeen (now SI retired) was not found satisfactory and punishment of censure was awarded to him. The reply of explanation issued to Insp. Vijay Kumar was found satisfactory, hence the explanation notice was filed vide order no 2722-29/HAP (P-III)/7th Bn. DAP dated New Delhi 26/05/2015.

The petitioners filed an application u/s 140 Delhi Police Act for seeking permission to prosecute the alleged police officials before the Lt. Governor, Delhi which has been rejected on the ground of limitation”.

The learned counsel for the petitioners submits that two complaints were filed simultaneously against the real estate developer, one before the Commissioner of Police and another before the EOW. The first one was disposed-off in terms of the above. However, apropos the second complaint before the EOW, an FIR was registered, the matter was looked into and a Closure Report was filed on the ground that there was no criminality in the matter and the case was of a civil nature. The petitioner protested against the Closure Report. Their protest was accepted and further proceedings ensued. The learned counsel for the petitioners submits that the Investigation Officer at Police Station Defence Colony deliberately did the same and states that there are many other cases for which similar reports had been filed,

involving the same real estate developer.

The Court is of the view that in a matter as of the present nature, when the police officer had in the first instance formed an opinion that the case did not involve any criminality, therefore, for all similar cases, he would logically hold/carry similar view. Just because he had a view which does not concur with the petitioners' desire to prosecute the real estate developer, would not be good enough to prosecute the police officer. If that were so, no police officer would be able to discharge his duty independently.

The petition is without merit. Accordingly, it is dismissed.

NAJMI WAZIRI, J

OCTOBER 12, 2018

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