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

+ **W.P.(CRL) 2833/2019**

ANIL KUMAR

..... Petitioner

Through Ms Harsh Chachra, Advocate.

versus

STATE & ORS

..... Respondents

Through Mr Rajesh Mahajan, ASC for State.

Mr Tushar Sannu, Advocate for R1 with

Mr Ayush Dixit, Advocate for NDMC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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15.11.2019

CRL.M.A. 37503/2019

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

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3. The petitioner has filed the present petition, *inter alia*, praying as under:-

“issue a writ, order, direction in the nature of mandamus thereby directing respondent Nos. 1 to 3 for demolition of the illegal and unauthorized encroachment and construction raised by respondent no. 3 in front of MCD Primary School near New Community Centre, Village Tekhand, Okhla Industrial Area Phase-1, New Delhi -110020, on footpath creating hindrance to the general public where the respondent No. 3 is illegally selling alcohol, ganja,

charas openly in the garb of tea shop in collusion of respondent No.1 and 2 and spoiling the atmosphere of the locality and direct the respondent 1 and 2 to take necessary legal action against respondent no.3..”

4. Although, an allegation is made that alcohol, *ganja*, *charas*, are being sold openly in the guise of a tea shop, the principal prayer is for demolition of an alleged illegal and unauthorized construction raised by respondent no.3. Clearly, such a prayer does not fall within the scope of a criminal writ petition.

5. The learned counsel appearing for the petitioner has referred to an order dated 13.09.2019 in W.P. (C) 9944/2019 by a Division Bench of this Court. She submits that the Division Bench had rejected the said writ petition with an observation permitting the petitioner to file a criminal writ petition. The said contention is unmerited. A plain reading of the order dated 13.09.2019 indicates that the Division Bench had rejected the petitioner’s prayer (which was similar to the one made in this petition) on the ground that the same did not fall within the scope of a Public Interest Litigation.

Paragraph 3 of the said order reads as under:-

“It appears that this is not a Public Interest Litigation at all. In fact, all canons of allegations are against the private respondent – Respondent No.4. In such type of cases, the only remedy available with the petitioner is to lodge a criminal complaint or any other proceedings in his individual capacity before the appropriate authority or Court or forum, so that Respondent No.4 can file a proper reply, along with the reply to be given by the Municipal Corporation but not by way of Public Interest Litigation at all.”

6. It is at once clear from the said order that the petitioner was permitted

to file a criminal complaint or initiate any other proceedings in an individual capacity. This Court is unable to accept that the Division Bench had permitted the petitioner to file a criminal writ petition.

7. Insofar as the petitioner's prayer that an illegal construction be demolished is concerned, he is also not precluded from taking appropriate remedies. He may also make a complaint to the Special Task Force constituted by the Supreme Court in respect of unauthorized construction in Delhi.

8. Insofar as the petitioner's grievance regarding the sale of alcohol, drugs, etc. is concerned, the petitioner is at liberty to make an appropriate criminal complaint to the concerned authorities.

9. This Court does not consider it apposite to examine such allegations, in the first instance, in these proceedings.

10. The petition is disposed of with liberty to the petitioner to avail of alternate remedies.

VIBHU BAKHRU, J

NOVEMBER 15, 2019

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