

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C.4111/2016

Judgment reserved on: 16.04.2018
Date of decision: 26.07.2021

ANKUR MUTREJA Petitioner
Through: In person.

versus

STATE OF DELHI Respondent
Through: Mr.Ashish Dutta, APP for State

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT
ANU MALHOTRA, J.

1. The petitioner vide the present petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure assails the impugned order dated 1.9.2016 of the learned ASJ-04 Shahdara in C.R. No. 15/2016 as well as order dated 2.2.2016 of the learned Metropolitan Magistrate-01, Shahdara, Delhi in CC No.90/2013 and simultaneously seeks the direction to the State of Delhi, represented by the Delhi Police, to immediately restrain the location of halwais/private caterers in any open area in and around the Gagan Vihar Community Hall, whether within or outside the premises of the Gagan Vihar Community Hall or from creating any other public nuisance in whatever manner as well as quashing the impugned orders as specified hereinabove.

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2. Oral and written submissions have been made on behalf of either side. The petitioner, in the instant case, is a resident of Unit 1, Ground floor, 156, Gagan Vihar Extension, Delhi-110051, which is located next to the Master Plan Road over Disused Canal. The petitioner submits that there is a community hall commonly known as Gagan Vihar Community Hall, located near his property and also next to the Master Plan Road over disused canal which community hall is managed by the Aviation Employees Co-operative House Building Society (hereinafter referred to as AECHBS). The petitioner submits that there is an open area on the rear side forming part of the community hall and on the western side is an internal road of Gagan Vihar Extension Colony, which is under dispute in the Court of ADM(E) Delhi in a complaint filed by the petitioner himself under Section 133 of the Code of Criminal Procedure. The petitioner submits that the open areas are often used by the various people who organize functions in the community hall and the open areas are used for locating halwais/private caterers either by AECHBS or the organizers themselves with the support and encouragement of AECHBS and that the halwais/private caterers are almost always more than 10 in number and carry out various cooking and ancillary activities including washing of utensils in the open areas and such user increases manifold during the marriage season and occurs almost on daily basis.
3. The petitioner further submits that the location of halwais/private caterers in the open area is a public nuisance and cognizable offence under various sections of Chapter 14 of the Indian Penal Code and

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submits to the effect:

“a. That the halwais private caterers locate themselves in the most haphazard manner, which per se is a public nuisance as being an eye sore directly visible from the Master Plan Road. The location of halwais/private caterers in the western open area, whenever it happens, is also an obstruction to the right of way access through internal road of Gagan Vihar Extension colony.

b. That the halwais/private caterers also wash utensils in the open areas, which create loud noise including at odd hours of night and wee hours of morning, and even otherwise the activities of the halwais/private caterers create loud noise.

c. That the washing of utensils is accompanied by creation of dirty water and garbage, which is drained and collected into the adjacent footpath, and is also left unattended in the said open areas for long periods. The other activities also create lots of garbage, which is also left unattended in the said open areas for long periods. The above creates lots of bad smell and also the risk of spread of deadly diseases like dengue, malaria, chicken guinea etc.

d. That certain kind of cooking activities per se create bad smell and smoke.

e. That the presence of unknown persons of doubtful credentials i.e. the halwais/private caterers, who often enter into fights and other undesirable activities in and around the community hall premises, per se is a nuisance.

f. That the halwais/private caterers often use the adjacent footpath, the western open area and the master plan road for loading and unloading of articles, which creates loud noise and obstruction on the road.

*g. The photographs showing the nuisance activities are enclosed herewith as **Annexure P-4**.*

h. That I filed several complaints with the SHO of the local police station, the ACP of the Preet Vihar division, the DCP of the East Delhi district, the Addl. CP of the East Delhi district, the Joint CP of the New Delhi range, and the CP of the Delhi from the year 2008 to 2011 complaining about the above

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nuisance, but no action was taken by Delhi Police.”

4. The petitioner further submits that on 5.12.2011, he made a complaint to the police control room complaining about the public nuisance occurring in the community hall and as earlier nobody came to attend his complaint despite his further emailed complaints to the DCP, PCR, DCP(East) and CP, Delhi in relation to the public nuisance and no action was taken.
5. The petitioner submits that he then filed a criminal complaint under Section 200 of the Code of Criminal Procedure read with Section 156(3) of the Code of Criminal Procedure in relation to the public nuisance on 5.12.2011 (which complaint is pending bearing CC No. 90/1/13, Police Station Jagatpuri), the records of which were requisitioned specifically vide order dated 23.2.2018. Although, in as much as vide order dated 22.12.2016, the Trial Court Record was directed to be requisitioned to this Court before the next date of hearing which was 24.3.2017, the perusal of the Trial Court Record received indicated as observed vide order dated 23.2.2018 that the Trial Court Record received was in relation to CR No. 15/16.
6. The proceedings on the record of the Trial Court Record of CC No.90/13, Police Station Jagatpuri, indicate that the matter is at the stage of consideration of the application under Section 202 of the Code of Criminal Procedure for a police enquiry.
7. The prayers made in the said CC No.90/13 were to the effect:

“I. This Hon'ble Court may, with or without enquiry, be pleased to take cognizance of the above mentioned offences against the accused persons and, in order to do complete

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justice, give appropriate directions to the local police to prevent the occurrence of any further cognizable offences of public nuisance by the accused' persons.

OR IN ALTERNATIVE

II. This Hon'ble Court may be pleased to direct the police to file FIR with respect to the offences mentioned above, investigate the matter accordingly, and file status reports and other reports in this Hon'ble Court. This Hon'ble Court may \ be further pleased to advice ACP, Preet Vihar or SHO, Jagatpuri to take immediate steps including passage of appropriate orders to prevent the occurrence of any further cognizable offences of public nuisance by the accused persons.

III. This Hon'ble Court may be pleased to pass further and other orders as deemed appropriate in the circumstances of the case.”

8. The Trial Court Record indicates that vide order dated 12.12.2011, the learned Metropolitan Magistrate (East) called for a status report from the concerned police station for 31.1.2012 pursuant to which the status report dated 31.1.2012 was submitted.
9. Copy of the DD Entry No.52B dated 5.12.2011 was also annexed thereto as per which it was stated that on attending the PCR Call, SI C.P.Singh had reached the spot, 156 Gagan Vihar, Near Karkari Flyover and found that behind the community hall, there was no Tandoor and that the function was going on within the community hall and DD No.28A was thus sent untraced. The status report received as forwarded by the SHO Police Station Jagatpuri indicates it further that the complainant herein had also lodged a complaint under Section 473 of the Delhi Municipal Corporation Act, 1957 which offence was non-cognizable and the proceedings in relation thereto were pending at that stage.

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- 10.** The petitioner herein filed a rebuttal to the status report filed by the police dated 5.3.2012 which was taken on record and denied that he had ever complained of any Tandoor in his complaints to the Police Control Room and thus submitted that the status report submitted by the State was wholly erroneous and contemptuous.
- 11.** Vide order dated 13.3.2012, the learned Trial Court observed to the effect that in the facts of the case in as much as, the perusal of the material on record and submissions of the counsel indicated that the identity of the accused was known to the complainant and so were all the facts and circumstances of the case were appeared to be within the knowledge of the complainant and evidence could be conveniently taken without assistance of police investigation, the learned Trial Court vide order 13.3.2012 held that there was no requirement of police investigation though if there was any further need of the same, the police enquiry could be done under Section 202 of the Code of Criminal Procedure and thus the application under Section 156(3) of the Code of Criminal Procedure was dismissed. The learned Trial Court vide order 13.03.2012 took cognizance of the offence and relisted the matter for pre-summoning evidence directing the complainant, the present petitioner to produce the witnesses on his own efforts.
- 12.** The petitioner led the pre-summoning evidence by producing himself in the witness box and was examined on 24.11.2012 and 13.10.2014. The complainant further filed an application under Section 202 of the Code of Criminal Procedure on 13.10.2014. Vide order dated 11.9.2015 the learned Trial Court directed as under:-

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“I have perused the complaint and evidence led by the complainant. No cognizable offence is made out against the respondents. As per complaint of complainant it appears that respondents have violated the order of Id. ASJ for which they may be prosecuted under Contempt of Court Act. Since no offence committed, hence the complaint is dismissed.”

13. The learned Trial Court thus dismissed the complaint observing that no offence had been committed and no cognizable offence was made out against the respondent and that as per the complaint of the complainant it appeared that the respondents had violated the order of the Additional Sessions Judge, for which they may be prosecuted under the Contempt of Courts Act.
14. The complaint dated 9.12.2011 CC No. 90/13 indicates that it had been averred in para 7 thereof to the effect:

“7. That the public nuisance emanating from the halwai activities in the said rear open area is a recurring activity which increases manifold in the marriage season. I have already filed a complaint u/s 473 DMC Act against AECHBS for removal of the nuisance activity which is pending in the court of Sh Gajendar Singh Nagar, Ld. MM, KKD Courts, Delhi. An interim order had also been passed by Ms. Savita Rao, Ld. ASJ-II (E), Delhi in a revision petition filed in the said complaint restraining AECHBS from collecting water on the said adjacent footpath. It is pertinent to mention here that the collection of water and garbage on the adjacent footpath can very well lead to spread of deadly diseases like dengue and malaria, and the Ld. ASJ also appreciated this apprehension of mine. However, AECHBS has been constantly disobeying the order of the Ld. ASJ also. The said order was disobeyed on 05.12.2011 too. AECHBS also gave an assurance to the Ld.

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MM in one of the proceedings in the court that they shall not collect water on the adjacent footpath thenceforth but the disobedience has continued. The assurance has been recorded in Order dt. 28.04.2011 of the Ld. MM. The copies of the above mentioned orders are enclosed herewith as Annexure C-5 {colly}.

8. That it is deemed that there is/are some person/s responsible for managing day-to-day affairs of the said community hall but his/their identity is not known to me. AECHBS, this/these unknown person/s and the event organizer entered into a conspiracy on to carry out the said public nuisance on 05.12.2011. The halwais were hired either by AECHBS itself or by the event organizers in connivance with and/or being promoted by AECHBS. They abetted the said public nuisance caused by the said halwais and some unknown police officers helped them by omitting to take any action in spite of my several complaints.

9. That the said activities of halwais etc in the open area increase manifold in the marriage season which has already started. It is therefore pertinent that the above mentioned public nuisance which is a cognizable offence ought to be immediately stopped. It is pertinent to mention that u/s 149 CrPC the police may interpose for preventing the commission of cognizable offence of public nuisance. The Hon'ble Kerala High Court while referring to Section 149 CrPC, in WP(C) No, 12775 of 2006(S), upheld the order passed by ACP, Crime Detachment, Cochin City directing the Chairman of the lottery firm to stop collection of money in any way from depositors until further direction from the investigating officer in a case where the ACP reached the conclusion that money was being collected from the depositors in violation of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978, which was a cognizable offence. Similarly, the Hon'ble Bombay High Court while referring to Sec 149 CrPC, in 1997 (4) BomCR 271, issued directions to the State of Goa and other respondents to take all the steps to give full effect to the provisions contained in the Prevention of Cruelty to Animals Act, 1968 and thereby to prevent cruelty to the animals thereby prohibiting bull fights &

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all other fights of like nature involving animals including birds which can cause injuries and cruelty to the animals.”

15. Vide judgment dated 4.11.2016 in Criminal Revision No. 22/15 filed by the petitioner herein assailing the order dated 11.9.2015 of the learned Additional Chief Metropolitan Magistrate, Shahdara, the learned ASJ-Shahdara remanded back the matter to the learned Trial Court directing it to pass a speaking order in terms of the provisions under Section 203 or 204 of the Code of Criminal Procedure with directions also to the learned Trial Court to decide the application filed by the petitioner, the complainant under Section 202 of the Code of Criminal Procedure before taking a final call in respect of the complaint of the revisionist, i.e., the petitioner. The observations of the learned Revisional Court vide paragraphs 10 to 12 are as under:-

10. The complaint of revisionist could not have been thrown away, on the presumption that the respondent could be prosecuted under Contempt of Court Act. The criteria to appreciate the complaint should be on the basis of ingredients of alleged offences and satisfaction of such ingredients by the facts and evidence produced by the revisionist. It was not so done by the trial court, while passing the impugned order so as to dismiss the complaint. It is worth to mention here that if a set of facts constitute commission of cognizable or non-cognizable offence, then irrespective of the fact that on the basis of same facts complainant may have option to launch prosecution under Contempt of Court Act, the Magistrate is duty bound to act against the culprits under criminal law. The additional option at the hands of the complainant should not come in the way of Magistrate, to act against the culprits of alleged criminal offences and it cannot be said to be a case of double jeopardy.

11. In view of my forgoing discussions and observations, I find

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that the impugned order dated 11.09.2015 suffers from illegality and has caused prejudice to the revisionist because the trial court has failed to appreciate the facts disclosed by the revisionist regarding commission of offence. Hence, the order is set aside and the complaint is restored back to its original number. The case is remanded back to the trial court with direction that the trial court shall appreciate the facts stated by the complainant/revisionist, on the parameters of ingredients of alleged offences and shall pass a speaking order in the terms of provisions under Section 203 or 204 Cr.PC.

12. At the same time, I also find that there was an application of the revisionist for making an enquiry under Section 202 Cr.PC. It is incumbent upon the trial court to decide this application, before he takes a final call in respect of the complaint of the revisionist.

- 16.** During the matter having taken up on remand, the petitioner therein, is indicated to have filed an application under Section 190 of the Code of Criminal Procedure for *ex parte ad interim* relief dated 14.12.2015 with the prayer to the effect:

“It is therefore most respectfully prayed that this Hon'ble Court may be pleased to issue appropriate ad-interim directions to Delhi Police to immediately stop the location of halwais/Private Caterers' in the rear and side open areas of the Gagan Vihar Community Hall. Further, any other or further orders deemed appropriate in the facts and circumstances of the case may be passed.”

- 17.** Vide order dated 2.2.2016 the learned Metropolitan Magistrate-01, Shahdara dismissed the said application and listed the matter in the complaint case for submissions on the pending applications under Section 202 of the Code of Criminal Procedure for police inquiry which application is still pending. The order dated 2.2.2016 of the learned Metropolitan Magistrate-01 Shahdara, was challenged by the

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petitioner herein vide Crl.Rev. No. 15/16 which Crl.Rev. 15/16 was dismissed vide order dated 1.9.2016 by the learned Additional Sessions Judge-04, Shahdara, Karkardooma Courts. Both the orders dated 2.2.2016 of the learned Metropolitan Magistrate-01, Shahdara and 1.9.2016 of the learned Additional Sessions Judge-04, Shahdara are assailed in the present petition. The said orders dated 2.2.2016 and the order dated 1.9.2016 of the learned Additional Sessions Judge-04 Shahdara read to the effect:

Order dated 2.2.2016

“Vide this order, I decide the application of complainant moved under section 190 Cr.P.C for Ex-Parte Ad-Interim Relief.

I have perused the contents of application and relevant record filed along with the application as well as case file. Complainant prayed that appropriate ad-interim directions may be issued to Delhi Police to immediately stop the location of halwais/private caterers' in the rear and open areas of Gagan Vihar Community Hall. It is stated in the application that application is extremely urgent in nature as the marriages are happening on almost daily basis in the marriage season and the similar cognizable offences are being committed. It is also stated that offences are made out against the various accused persons as elucidated in the written submissions. Complainant argued that the present court has implied power to pass such direction under section 190 Cr.P.C.

I have considered the submissions and perused the record carefully. The present complaint case was dismissed by Ld. ACMM vide order dated 11.09.2015 and vide order dated 04.11.2015, Ld. ASJ, Shahdara District remanded back the matter with direction to pass a speaking order in the terms of provisions under section 203 or 204 Cr.P.C. It is also observed by Ld. ASJ that trial court shall decide the application under section 202 Cr.P.C. pending on record before taking a final call in respect of the complaint of the revisionist. Hence, the

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question of summoning is yet to be decided in this case. Simply the fact that the court has taken cognizance and fixed the matter for pre-summoning evidence under section 200 Cr.P.C. does not indicate that court has come to conclusion that there is sufficient evidence that accused persons have committed the alleged offences. Hence, it is pre-mature to pass any such ex-parte ad interim relief under section 190 Cr.P.C. as prayed by the complainant. Moreover, the court is of considered view that present court has no implied power under Code of Criminal Procedure to pass such directions as prayed for. The judgment relied upon are not applicable to the facts of present case as implied power may be exercised only where there is express power to do certain things. The Code of Criminal procedure does not empower a magistrate to issue directions to Delhi police to stop nuisance under section 190 Cr.P.C. Hence, the magistrate cannot issue direction for ex-parte ad interim relief in the absence of any express provision under section 190 Cr.P.C. Accordingly, application is dismissed.

Be listed for submissions on pending application under section 202 Cr.P.C. for police enquiry on 01.03.2016.”

And order dated 1.9.2016

1. This revision is directed against the order dated 02.02.2016 passed by Sh. Muneesh Garg, Ld. M.M, Shahdara, Karkardooma Courts, Delhi, in the complaint case bearing No. CO No. 90/13, titled as Ankur Mutreja v. AEGHBS & Ors. vide aforesaid impugned order, Ld. M.M has dismissed the application filed by the petitioner U/s 190 Cr.P.C.

2. The brief facts which are necessary for the adjudication of the present petition are that the petitioner has filed a complaint against the respondents U/s 269, 270, 278, 283, 290, 109, 117, 120A, 291, 150, 143 IPG on the ground that the respondent no. 1 is managing the Gagan Vihar community hall which is near to his house, and the hall is being used for social functions and there is an open area on the rear side of this hall which is used for cooking and washing the utensils. The said activity causes nuisance as well as pollution.

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3. The complaint of the petitioner is pending at pre-summoning stage and petitioner moved an application u/s 190 Cr.P.C seeking ex-parte add interim relief. The petitioner prayed in his application that the direction may be issued to Delhi Police to immediately stop sitting of the private caterers/halwais in the open area situated at the back side of the community hall. The said application has been dismissed by Ld. MM on the ground that there is no express provision in the Section 190 Cr.P.C to issue such directions and aggrieved of the impugned order, the petitioner has filed the present petition, mainly on the ground that the Ld. Trial court has the jurisdiction to issue such directions and Ld. Trial court has failed to exercise the jurisdiction. It is stated that in one case the implied powers have been exercised by Sh. Puneet Pahwa Ld,MM, PHG, New Delhi.

4. I have heard the submissions of petitioner as well as Ld. Addl. PP and gone through the record of the case. Petitioner submitted that the Ld. MM has the power to issue directions u/s 149 Cr.PC and in this regard he relied upon the order dt. 30.08.2013 passed by Hon. High Court W.P (CrI. 1037/2012) passed in the case titled as Ankur Mutreja Vs. Delhi Police. The petitioner has also referred the other judgments of Hon'ble Supreme Court and Hon'ble High Court in support of his submissions.

5. The complaint of the petitioner is pending trial and during trial petitioner moved aforesaid application. It is pertinent to mention here that the petitioner had filed a writ petition before Hon'ble High Court where he had made the same prayer which was declined by Hon'ble High Court. Thereafter, the petitioner had assailed the said order in the appeal, i.e., LPA no. 809/2013 titled as Ankur Mutreja Vs. Delhi Police. The said appeal was dismissed by Hon'ble High Court with the following observations :

"3. A perusal of the paper book reveals that respondent No.2 before the learned Single Judge had taken the stand that appellant petitioner is neither an owner nor a lawful occupant of property bearing No.156, Gagan Vihar

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Extension, Delhi and that appellant-petitioner along with parents had encroached upon 40 sq. yds. of land owned by DDA/PWD/Government of India, which had been earmarked for a footpath. It is also the case of the society that after encroaching upon the aforesaid land, appellant petitioner had raised unauthorised construction by raising a room and it is only to protect his illegal and unauthorised construction over the said land, he has filed a number of complaints and petitions.

4. Appellant, who appears in person, contends that three complaints pending before the Additional District Magistrate, Municipal Magistrate and Additional Chief Metropolitan Magistrate are not alternative remedies as none of the Magistrates have the power to issue directions to respondent No.1 to take action under Section 149 Cr.P.C. in terms of the relief claimed in the writ petition. He further states that the public nuisance complained against in the writ petition is an attack on the fundamental right to life and good environment guaranteed under Article 21 of the Constitution and protected under Chapter 14 of the Indian Penal Code. He submits that availability of an alternative efficacious remedy is not a bar to initiation of proceedings under Article 226 of the Constitution. He also denies the allegations of unauthorised construction and encroachment.

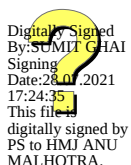
5. We are of the opinion that the writ petition should not have been entertained by the learned Single Judge on the ground that it involves disputed questions of fact.

6. We are also surprised to find that on one cause of action appellant- petitioner has initiated not only civil, but also multiple criminal proceedings.

7. Consequently, present Letters Patent Appeal and applications are dismissed on the ground of disputed questions of fact and the trial Courts are directed to be vigilant in scrutinizing the facts before passing any order in any of the cases filed by the appellant."

6. It is clear from these facts and circumstances that the

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Hon'ble High Court dismissed the appeal filed by the petitioner as he had already filed several litigations for the same cause of action and declined the prayer of the appellant to issue directions u/s 149 Cr.PC. It is also clear from the record that petitioner submitted before Hon'ble High Court that Ld. MM does not have power to issue direction u/s 149 Cr.P.C. Thus, it is clear from these facts and circumstance that firstly petitioner do not have a case to seek direction u/s 149 Cr.P.C as his aforesaid prayers had already been declined by Hon'ble High Court and secondly, he himself submitted before Hon'ble High Court that the Ld MM does not have such powers. The petitioner has moved his application u/s 190 Cr.P.C. which is meant for taking cognizance and cognizance on the complaint of petitioner has already been taken and his application u/s 202 Cr.P.C. seeking police inquiry to ascertain the name of the accused persons is pending and thereafter, the matter will be proceeded as per u/s 203/204 Gr.P.C. Thus, even otherwise the application of the petitioner is not maintainable as the Id. MM does not have power to issue the aforesaid direction u/s 190 Cr.P.C.

7. Keeping in view of the aforesaid facts and circumstances, this court does not mind any infirmity in the impugned order. Thus, the present revision petition is liable to be dismissed. Accordingly, same is dismissed. It is most respectfully observed that the judgments cited by petitioner are not applicable to the peculiar facts and circumstances of the present case. TGR be sent back alongwith copy of this order. File be consigned to Record Room.”

18. A bare perusal of the record and a consideration of the written submissions as submitted by either side and the provisions of Section 190 of the Code of Criminal Procedure, 1973 make it apparent that there is no infirmity whatsoever in the impugned orders dated 2.2.2016 of the learned Metropolitan Magistrate-01 Shahdara nor of the learned Additional Sessions Judge-04 Shahdara in as much as the prayer made seeking an ex parte ad interim relief under Section 190 of

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the Code of Criminal Procedure, 1973, as prayed by the petitioner herein cannot be granted in terms of Section 190 of the Code of Criminal Procedure, 1973 which read to the effect:

“ 190. Cognizance of offences by Magistrates.

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub- section (1) of such offences as are within his competence to inquire into or try.”

19. It is apparent on a bare perusal of Section 190 of the Code of Criminal Procedure, 1973 that the provisions of Section 190 of the Code of Criminal Procedure, 1973 *per se* do not provide for any orders for interim relief thereunder. The record indicates further that the petitioner vide the Criminal Writ Petition No. 1037/2012 under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 had sought a writ of mandamus seeking a direction to the Delhi Police to pass orders u/s 149 Cr.P.C addressed to the Secretary, Aviation Employees Co-operative House Building Society (hereinafter referred to as the 'Society') restraining them from locating halwais/private caterers in any open area in and around Gagan Vihar Community Hall, whether within or outside the premises of the Gagan Vihar Community Hall or from creating any

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other public nuisance in whatever manner and to take immediate steps on failure of the society to obey the orders passed by Delhi Police.

20. The said W.P(CrI) 1037/2012 was filed to issue a writ of mandamus seeking a direction to the Delhi Police to pass orders under Section 149 of the Code of Criminal Procedure, 1973 addressed to the Secretary of the AECHBS restraining them from locating halwais/private caterers in any open area in and around Gagan Vihar Community Hall whether within or outside the premises of the Gagan Vihar Community Hall or from creating any other public nuisance in whatever manner and to take immediate steps on failure of the society to obey the orders passed by the Delhi Police.

21. Vide the judgment dated 30.8.2013 the said writ petition was dismissed wherein it was observed as under:-

“12. A perusal of the petition itself reflects that the petitioner is availing the various statutory remedies available to him under law. He approached ADM(E) and on 01.12.2009, a conditional order u/s 133(1)(a) Cr.P.C was passed directing the society to remove the public nuisance within 10 days. Thereafter a civil suit was also filed by the petitioner. The matter was taken to the Session Court by filing criminal revision No.85/2010. On 23.12.2010, Ms. Savita Rao, learned Additional Sessions Judge directed the respondent society to ensure that if the utensils are washed in the open area of community hall premises, the said activity shall not cause any nuisance as well as collection of garbage and dirty water on the adjacent footpath and if the petitioner cannot ensure such ramification then they shall get the utensils washed inside the building of the community hall. It was alleged that the directions are not being complied with, as such contempt petition is pending.

13. The petitioner also filed a complaint u/s 156(3) Cr.P.C in

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the Court of Sh. AK.Aggarwal, M.M vide complaint case No.396/2011 and 402/2011. After calling for the status report, the learned M.M has directed the complainant to produce witnesses. All these goes to show that the petitioner has an alternative efficacious remedy available to him and in fact he is resorting to the same by filing civil or criminal cases. Under the circumstances, there is no ground to exercise the extraordinary jurisdiction of the Court by issuing writ as prayed for.

14. None of the authorities relied upon by the petitioner helps him. Bhajan Kaur (supra) was a case where a riot victim sought enhancement of amount of compensation awarded to her on account of death of her husband. National Human Rights Commission(supra) was a public interest litigation filed by NHRC to enforce its rights under Article 21 of the Constitution of about 65,000 Chakma/Hajong tribals Subhash Kumar (supra) was again a public interest litigation which was filed on the allegations that West Bokaro and Tata Iron and Steel Company are polluting the river Bokaro by discharging slurry from their washeries into the river and in fact this petition was dismissed by observing that personal interest cannot be enforced in the garb of public interest litigation and entertainment of petitions satisfying personal grudge is abuse of process of Court. In Himmatlal Harilal Mehta(supra), vires of Explanation II to s.2(g) of the Central Provinces and Berar Sales Tax Act, 1947 as further amended by Act XVI of 1949 itself was challenged which could not have been done by resorting to either civil or criminal remedy. In Peico Electronics (supra), an order passed by the Deputy Commissioner of Income Tax was challenged. Similarly in Dhanabhai(supra), the order passed by JMFC dismissing the complaint by the Magistrate was challenged. As such, none of the authorities relied upon by the petitioner has any application to the facts of the case in hand.

15. Moreover Hon'ble Supreme Court in Sakiri Vasu v. State of U.P & Ors., AIR 2008 SC 907 also held that the writ petition should not be entertained when the petitioner has an alternative remedy available under the Code of Criminal Procedure to get an FIR registered. Since the petitioner has the alternative

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remedies available to him under various statutory provisions of law and in fact he is availing the same, as such there is no ground for exercising the extra-ordinary jurisdiction of this Court.”

22. The petitioner vide the present petition has submitted that the LPA filed by the petitioner against this order dated 30.8.2013 in which the prayer made by the petitioner was to the effect:

“a.Issue directions to the Delhi Police in the nature of mandamus to immediately pass order/s u/s 149 CrPC addressed to the Secretary, Aviation Employees Co-operative House building Society (AECHBS) restraining AECHBS their agents, attorneys, lessees, licensees etc from locating halwais/private caterers in any open area in and around the Gagan Vihar Community Hall , whether within or outside the premises of the Gagan Vihar Community Hall or from creating any other public nuisance in whatever manner, and to make public proclamation of the order/s passed, and to take further immediate steps under law on failure of AECHBS to obey the order/s passed by the Delhi Police.

b. Pass any other order deemed appropriate in the facts and circumstances of the case.”

was dismissed vide order dated 29.10.2013 and the SLP filed by the petitioner against the order dated 30.8.2013 of this Court was dismissed by the Hon’ble Supreme Court on 7.3.2014. The observations in the order in LPA No. 809/13 are reproduced in paragraph 5 of the impugned order of the learned Additional Sessions Judge-04, Shahdara dated 1.9.2016 adverted to herein above.

23. Vide paragraph 17 of the present petition, the petitioner has categorically fairly stated that the relief claimed against the Delhi Police before the learned Trial Court was indeed the same as claimed

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in the criminal writ petition filed before this Court. But it was submitted by the petitioner that the learned Trial Court had dismissed the application on the objection that it was not maintainable observing that the learned Trial Court did not have powers to grant the relief claimed. The petitioner submits however that an order dated 3.3.2015 the learned Metropolitan Magistrate in proceedings under Section 157 of the Code of Criminal Procedure, 1973 where a documentary based on the Nirbhaya case was directed not to be uploaded/transmitted/published through any web portal or print or any other media till further orders was assailed in W.P(C) 2399/15 in which the said order of the learned Metropolitan Magistrate was not set aside. The petitioner thus seeks to submit that the interim orders as prayed for by the petitioner can be granted by the learned Trial Court and ought to have been so granted. The petitioner further submits that the Delhi Police be mandated to take appropriate action under Section 149 of the Code of Criminal Procedure, 1973 to prevent the occurrence of cognizable offences and that this Court can direct the Trial Court qua the same as also direct the Delhi Police for the same.

24. Reliance was sought to be placed by the petitioner on the verdict of the Hon'ble High Court of Kerala in W.P.(C) No. 12775/2006 wherein the orders of the ACP, Crime Detachment, Cochin City directing the Chairman of the Lottery Firm to stop collection of money in any way from depositors until further directions from the Investigating Officer in a case where the ACP reached the conclusion that money was being collected from the depositors in violation of the

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Prize, Chits and Money Circulation Scheme (Banning) Act, 1978 was a cognizable offence having been upheld. The petitioner further placed reliance on the proceedings before the Hon'ble Bombay High Court in 1997(4) BomCR 271 wherein there were directions to the State of Goa to take all the steps to give full effect to the provisions contained in the Prevention of Cruelty to Animals Act, 1968 and to prevent cruelty to the animals thereby prohibiting bullfights and all other fights of like nature involving animals including birds which can cause injuries and cruelty to the animals.

25. The petitioner herein vide his written submissions dated 19.3.2017 has urged to similar effect and submits to the effect that the offences punishable under Section 278 of the Indian Penal Code and also in terms of the Noise Pollution Regulation & Control Rules, 2000, and under Section 269 of the Indian Penal Code, and Section 270 of the IPC, 1860 are made out in the instant case. The contentions raised through the said written submissions are to the effect:

14. That the following categories of public nuisance emanate out of the activities of the halwais/private caterers in the open areas in and

around Gagan Vihar Community Hall:

15. That it is submitted that the first category of nuisance is that of the nuisance caused by the vitiation of atmosphere in the neighborhood so as to make it · noxious to the health of the persons residing therein, which is a cognizable offence under Sections 278 IPC. The nuisance is caused by air, water and noise pollution emanating from the activities of the said halwais/private caterers. The nuisance photographs being filed herewith as well as with the petition are proof of the nuisance.

It is further submitted that the noise pollution being caused also falls under the provision of s. 278 IPC as noise is categorized

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as a pollutant defined u/s 2(a) of the Air (Prevention and Control of liquid or Pollution) Act, 1981 as "any solid, gaseous substance (**including noise**) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment." (Emphasis supplied)

It is furthermore submitted that the judicial notice may be taken of the loud noise generated from the activities involving banging of large utensils, conversation between large number of people in a factory like environment, movement of furniture and other paraphernalia, etc. from the nuisance photographs filed herewith as well as with the petition. There is a recent precedence of this Hon'ble Court **Madhav Roy v. UOI & ors; WP (C) 7942 of 2011** (filed herewith), wherein this Hon'ble Court vide order dt. 06.01.2012 took judicial notice of the loud noise created by loudspeaker installed at boundary walls of the Mosque and the Temple in Ekta Vihar, Delhi. Similarly, the Hon'ble Madras High Court's order dt. 23.12.2009 in **D.Vikram VS Dr. Jayavarthavavelu; Crl. R.C.No. 1195 of 2009** (filed herewith), has held that "the Court can take judicial notice that keeping even 6 or 7 dogs in a residential area will cause public nuisance on account of barking and howling of the dogs, similarly, emitting foul smell by the dogs cannot be ruled out, which would also cause public nuisance." It is submitted that the analogy though unfortunate is apt in the present case: the creation of loud noise in the said activities involving large number of people in a factory like environment, can't be ruled out especially at night. It is pertinent to mention here that the ambient noise level for residential areas in Delhi is 55 decibels during day and 45 decibels at night as per the Noise Pollution Regulation and Control Rules, 2000 (filed herewith). The above mentioned activities generate noise anywhere between 80 to 90 decibels at the boundary of the community hall premises far exceeding the ambient noise levels and are thus a noise pollution noxious to the health of persons in the neighborhood. A comparison chart showing noise generated by similar activities is as follows :

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Noise source	Decibel Level	Decibel Effect
Jet take-off (at 25 meters)	150	Eardrum rupture
Aircraft carrier deck	140	
Military jet aircraft take-off from aircraft carrier with afterburner at 50 ft (130 dB).	130	
Thunderclap, chain saw. Oxygen torch (121 dB).	120	Painful. 32 times as loud as 70 dB.
Steel mill, auto horn at 1 meter. Turbofan aircraft at takeoff power at 200 ft (118 dB). Riveting machine (110 dB); live rock music (108 - 114 dB).	110	Average human pain threshold. 16 times as loud as 70 dB.
Jet take-off (at 305 meters), use of outboard motor, power lawn mower, motorcycle, farm tractor, jackhammer, garbage truck. Boeing 707 or DC-8 aircraft at one nautical mile (6080 ft) before landing (106 dB); jet flyover at 1000 feet (103 dB); Bell J-2A helicopter at 100 ft (100 dB).	100	8 times as loud as 70 dB. Serious damage possible in 8 hr exposure
Boeing 737 or DC-9 aircraft at one nautical mile (6080 ft) before landing (97 dB); power mower (96 dB); motorcycle at 25 ft (90 dB). Newspaper press (97 dB).	90	4 times as loud as 70 dB. Likely damage 8 hr exp
Garbage disposal, dishwasher, average factory, freight train (at 15 meters). Car wash at 20 ft (89 dB); propeller plane flyover at 1000 ft (88 dB);	80	2 times as loud as 70 dB. Possible damage in 8 hr exposure.

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diesel truck 40 mph at 50 ft (84 dB); diesel train at 45 mph at 100 ft (83 dB). Food blender (88 dB); milling machine (85 dB); garbage disposal (80 dB).		
Passenger car at 65 mph at 25 ft (77 dB); freeway at 50 ft from pavement edge 10 a.m. (76 dB). Living room music (76 dB); radio or TV-audio, vacuum cleaner (70 dB).	70	Arbitrary base of comparison. Upper 70s are annoyingly loud to some people.
Conversation in restaurant, office, background music, Air conditioning unit at 100 ft	60	Half as loud as 70 dB. Fairly quiet
Quiet suburb, conversation at home Large electrical transformers at 100 ft	50	One-fourth as loud as 70 dB
Library, bird calls (44 dB); lowest limit of urban ambient sound	40	One-eighth as loud as 70 dB
Quiet rural area	30	One-sixteenth as loud as 70 dB. Very Quiet
Whisper, rustling leaves	20	
Breathing	10	Barely audible

16 . That it is submitted that the second category of nuisance is that of negligent/malignant act likely to spread infection of disease dangerous to life as provided for u/s 269 IPC and u/s 270 IPC. It is submitted that the garbage and water created out of the halwais/private caterers activities spills onto the adjacent footpath and gets collected over there. The water so collected can and do lead to mosquito breeding leading to a credible apprehension of spread of water borne deadly diseases like Dengue, Malaria, Chicken Guinea, etc. It is pertinent to mention here that I have already suffered from Dengue because of the said collection of water on the footpath. The copy of Complete Haemogram Test Report of mine showing dangerous fall in hemoglobin levels is enclosed herewith. Furthermore, the Ld.ASJ (E) Delhi passed an interim order dt. 23.12.2010 in

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a complaint u/s 473 DMC Act restraining the washing of utensils in the open area if it couldn't be controlled (copy's order is enclosed herewith). However, the order has been breached with impunity, which is clearly evidence from nuisance photographs filed herewith as well as with the petition. The breach per se is an offence u/s 291 IPC and further it clearly shows the malignant acts, which makes it an offence u/s 270 IPC as well.

17. That it is submitted that the third category of offence is that of obstruction in public way, which is an offence under s.283 IPC. The nuisance photographs filed herewith as well as with the petition clearly show the spill over of the halwais/private caterers activities onto the adjacent footpath thereby obstructing the public way, i.e., the footpath.

18. That it is submitted that the Ld. MM, Sh. A. K. Aggarwal, took cognizance of all the above mentioned offences vide his order dt. 13.03.2012 passed in the said C.C. No. 90/2013, which is enclosed along with the petition as Annexure P-6.

19. That it is submitted that the activities of the private caterers in the said community hall are completely illegal. The persons using the community hall employ private caterers for cooking food in the community hall premises, and no license has been obtained from the municipal corporation as required under Sec.417(1)(a) of the DMC Act. Also para 13 of the lease deed of the community hall (enclosed herewith) prohibits carrying out of commercial cooking activities in the community hall.

19. That the reason for commission of cognizable offence is that the halwais/Private Caterers ' activities are being carried out in the rear and side open areas of the Community Hall as shown in the photographs filed herewith. The commission of these activities in open areas is naturally prone to cause public nuisance as air, water and noise pollution emanating from such factory like activities can only be contained if such activities are carried out in an enclosed area

with a proper roof and proper drainage, in such a manner that none of the activities carried out in the enclosed area percolate into the open areas. Therefore , the public nuisance can only be stopped if the said halwais/Private Caterers' activities are

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stopped altogether in the said open areas.”

26. It is essential to observe that the relief that had been sought through the writ petition W.P.(Crl) 1037/2013 was virtually the same as prayed vide the present petition though it has been filed inter alia assailing the impugned orders dated 2.2.2016 of the learned Metropolitan Magistrate-01, Shahdara and the order dated 1.9.2016 in Crl.Rev. No. 15/16 and of the learned Additional Sessions Judge-04, nevertheless infact substantially seeks the same relief as was sought vide the prayer made in W.P(Crl.) No. 1037/2012 which has already since been declined. Though in the same there were directions specifically sought under Section 149 of the Code of Criminal Procedure, 1973, seeking to be issued to the Delhi Police to be addressed to the Secretary AECHBS restraining them from locating halwais/private caterers in any open area in an around Gagan Vihar Community Hall whether within or outside the premises of the Gagan Vihar Community Hall or from creating any other public nuisance in whatever manner and to take immediate steps on failure of the society to obey the orders passed by the Delhi Police, and though in the instant petition dated 26.10.2016 there is no prayer seeking orders to the Delhi Police to addressed to the Secretary AECHBS the prayer made vide the present petition vide the prayer clause 23 to *issue directions to the State of Delhi representing Delhi Police to immediately restrain the location of halwais/private caterers in any open area in and around the Gagan Vihar Community Hall, whether within or outside the premises of the Gagan Vihar Community Hall,*

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or from creating any other public nuisance in whatever manner by quashing the order dated 01.09.2016 of ASJ-04-Shahdara, Delhi; is virtually similar. The previous petition W.P.(CrI.) 1037/2012 having been declined vide order dated 30.8.2013 which judgment has also already been upheld as in the LPA No. 809/13, and the SLP (CrI.) No. 1560/2014 against the same was also dismissed in *limine* stands admitted as brought forth through the written submissions of the petitioner himself and taking into account the written submissions made by the State also under signatures of the SHO Police Station Jagatpuri as filed on 21.3.2017.

27. Furthermore, the status report filed in December, 2016 vide Diary No. 337367 by the State under signatures of the SHO Police Station Jagatpuri reads to the effect:

“ ... During pendency of the complaint case u/s 200 CrPC , Petitioner filed an application u/s 190 CrPC before the Ld. Court of Sh. Munish Garg, KKD Court Delhi for obtaining interim relief for giving directions to police authority to stop illegal activity i.e Cooking and washing of utensils in the back yard of Community Hall with immediate effect. The said application was dismissed by the Ld. Court of Sh. Munish Garg, MM, KKD Court on 2.2.16 and subsequently revision against the said order dated 2.2.16 was also dismissed by the Ld. ASJ, Shahdara Distt, KKD Court, Delhi on 1.9.16.

As per the enquiry at the community center, they stated that they generally used rear gate area of Community center for cooking and other work, but in shortage of space, they used the alleged rear portion of the hall for cooking but they cleaned the space after using it.

Keeping in view of the facts and circumstances, Undersigned shall abide with any direction passed by this Hon'ble Court.”

coupled with the factum that the petitioner during the course of the

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present petition had also filed CrI.M.A. No. 884/2019 seeking to the effect:

“It is, therefore, most respectfully prayed that this Hon' ble Court may be pleased to direct the Respondent to ensure the restriction of private caterers' activities in the rear portion of Gagan Vihar Community Hall within the enclosure shown as Point A in the site plan annexed herewith as Annexure A, and/or the Hon'ble Court may be pleased to pass any other or further orders deemed appropriate in the facts and circumstances of the case.”

which application was however, dismissed as withdrawn by the petitioner on 15.5.2019 submitting that the said application had become infructuous,

- 28.** On a perusal of the entire record, the Court is of the considered view that in view of the order in W.P.(CrI.) No. 1037/2012 dated 30.8.2013 which has been upheld both by the Hon'ble Division Bench of this Court and the Hon'ble Supreme Court coupled with the factum that there is no infirmity in the impugned orders 2.2.2016 of the learned Metropolitan Magistrate-01 Shahdara and the order dated 1.9.2016 of the learned Additional Sessions Judge-04, Shahdara in as much as the powers as sought by the petitioner for ad interim relief cannot be granted under Section 190 of the Code of Criminal Procedure, 1973, it is not considered appropriate to grant the petitioner the relief, as prayed for, vide exercise of any extraordinary jurisdiction by this Court as has already been held vide order dated 30.8.2013 in W.P.(CrI.) 1037/2013 and the petitioner cannot thus reagitiate the same prayer seeking the same relief repeatedly.

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29. The petition is thus dismissed.

Nothing stated herein above shall however amount to an expression on the merits or demerits of CC No. 90/1/13 Police Station Jagatpuri pending before the learned Trial Court, the records of which are directed to be returned forthwith to the learned Trial Court with the matter being directed to be placed before the learned Trial Court for the date 17.9.2021. The records of the revisional Court qua C.R. 15/2016 be also returned.

ANU MALHOTRA, J.

JULY 26, 2021

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