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

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Reserved on: 27.10.2022
Pronounced on: 31.10.2022

+ **CRLM.C. 4730/2022**

BRIJ MOHAN SEHGAL Petitioner
Through: Mr. Ranvijay Kumar, Advocate

Versus

PANKAJ SANGHI ... Respondent
Through: Mr. Puneet Mittal, Senior Advocate
and Mr. Vipul Sanghi, Advocate with
respondent in person.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. That the present Criminal Miscellaneous Petition under Section 482 Cr.P.C. is directed against the impugned order dated 14.11.2019 passed by learned MM-07 (Central) Delhi, Tis Hazari Courts, Delhi in Criminal Complaint Case No. 2750/2019 and impugned order dated 13.04.2022 passed by learned ASJ (Central) Delhi, Tis Hazari Courts, Delhi, in Criminal Revision No.82/2020, titled as 'Sh. Brij Mohan Sehgal vs. Pankaj Sanghi' under Section 200 of Cr.P.C., whereby the learned Magistrate and the learned ASJ, dismissed the CC No.2750/2019 and Criminal Revision Petition No.82/2020 by passing the impugned orders dated 14.11.2019 and

13.04.2022 respectively, challenged on the ground of non-application of judicial mind.

2. The brief facts leading to the filing of the present criminal revision petition are that the respondent had illegally purchased “*biometric machines*” in violation of Rule 4 of Delegation of Financial Power Rules, 1978 which provides that no expenditure shall be incurred except on legitimate objects, Rule 149 of the General Financial Rules 2017 (hereinafter referred to as ‘GFR 2017’) which calls for a detailed assessment before any procurement on an indent from the User Department being the indenter, the Office of Directorate of Prosecution, GNCT, in the present case. It is further alleged that the respondent had illegally transferred and posted Public Prosecutors in violation of Sections 24 & 25 of Cr.P.C., thereby adversely impacting delivery of justice due to shortage of public prosecutors. It is alleged that the courts had to adjourn matters including discharging victims and witnesses in rape cases since no public prosecutor was posted in their court. In this regard, it is pointed out that the respondent was responsible for financial decisions and overall administrative control over public prosecutors in Delhi.

3. It is stated that two junior prosecutors during an illegal enquiry against the son of the petitioner, had demanded Rs.35 lakhs from the petitioner on behalf of the respondent and when the petitioner had filed a corruption complaint, the said complaint was replaced with forged signatures of the petitioner containing false facts. It is stated

that the petitioner was forced by circumstances to rebut the claims of the respondent assassinating the character of the petitioner and his family while dealing with Criminal Revision Petition No.82 of 2020. It is stated that the learned ASJ was biased and was influenced by irrelevant facts while passing the impugned order.

4. It is pointed out that as per RTI replies received by the petitioner dated 24.11.2018 from the Directorate of Prosecution GNCTD of Delhi, two Public Prosecutors were transferred to special investigation team, one to Delhi Commission for Women, four to Home Department Govt. of NCT of Delhi, two to Chief Minister Grievance Redressal Cell and three to Delhi Law Ministry. It is stated that as per law, the prosecutors appointed in the Directorate of Prosecution are deputed to conduct criminal cases on behalf of the State in Subordinate Courts and unlike employees of other Government Departments, the Prosecuting Officers cannot be transferred to any other department except to Food Safety Department and Police Training College, the respondent, however, has arbitrarily transferred the public prosecutors to various departments as mentioned above. It is alleged that the respondent had no power or authority to make inter-departmental postings or transfers of Prosecuting Officers of Directorate of Prosecution.

5. It is also stated that the Prosecuting Officers are Gazetted Officers and there is already a manual system of registering attendance being maintained for them and, as such, there was no necessity to replace the manual system of attendance of Prosecuting

Officers with ‘Aadhar Enabled Biometric Attendance System’ procured by the Directorate of Prosecution, Government of NCT of Delhi. It is stated that the respondent is a public servant within the meaning of Section 24 IPC but sanction under Section 197 Cr.P.C is not required in view of judgment of Hon’ble Apex Court in ***State of Kerala vs. Padamnabhan Nair reported as 1999 (3) SCR 864.***

6. It is stated that the orders passed by the learned MM and learned ASJ dated 14.11.2019 and 30.04.2022 respectively, are unsustainable and bad in law and are liable to be set aside. It is stated that learned ASJ committed an error by not ordering an enquiry or investigation to examine illegal procurement of biometric system for a consideration of Rs.1,19,283.96 from M/s. Coraamandal Electronics Pvt. Ltd. (“now Jarvis Infratech Pvt. Ltd.”)

7. It is alleged that the purchase of biometric machines was in violation of law laid down by Hon’ble Apex Court and without following GFR 2017. It is also stated that the learned Magistrate and learned ASJ did not consider the provisions of Sections 24 & 25 of Cr.P.C. and the mandate of law that Prosecuting Officers cannot be transferred to any other department except Food Safety Department and Police Training College as laid down in the case of ***A.K. Padhy vs. Govt. of NCT of Delhi decided on 02.07.2015.*** It is, therefore, prayed that the respondent be prosecuted and convicted as per law.

8. It is also stated that this Court in Writ Petition No. 1549 of 2009 titled “*Court on its own motion vs. Government of NCT of Delhi*” had passed orders regarding shortage of prosecutors in the

criminal courts in Delhi and had passed directions to Government of NCT of Delhi to ensure that in each District at least 10 per cent of the APPs shall be appointed, over and above the existing sanction strength of APPs who shall remain in the common pool so that absence of any APP on any ground does not affect court work. It is alleged that the learned MM and learned ASJ failed to take note of such directions of this Court. It is also alleged that the respondent has misused his official power and position and has caused loss to the Department by making transfers and postings of Prosecuting Officers to other unwanted departments without any valid authority of law.

9. It is further alleged that the learned MM and learned ASJ also failed to take note of violation of Financial Rules under the delegation of Financial Power Rules 1978 and GFR 2017 by the respondent thereby making him liable to be convicted under Section 166/409 of IPC.

10. It is also alleged that, in the impugned orders, the learned Trial Court failed to take note of the fact that the expenditure by the respondent could not be incurred except on some legitimate object. It is, therefore, prayed that the impugned order dated 13.04.2022 passed in Criminal Rev. Petition No. 82 of 2020 by the Court of learned ASJ, Tis Hazari Courts (Central) Delhi, be set aside.

11. Learned counsel for the respondent argued that there is no infirmity or illegality in orders impugned before this Court as the petitioner has not been able to make out any case against the respondent. It is also argued that the present petition is filed with

malafide intentions on account of some official dispute between respondent and the petitioner who was working as a Public Prosecutor. It is argued that the son of the complainant/revisionist was posted as Assistant Public Prosecutor in the Directorate of Prosecution, Government of NCT of Delhi at Rohini Court, who was married to another Assistant Public Prosecutor, Directorate of Prosecution, Government of NCT of Delhi posted at Karkardooma Court. Due to matrimonial disputes between them, the daughter-in-law of the petitioner had made a representation to the Principal Secretary (Home), GNCTD regarding demand of dowry, mental and physical harassment, misbehavior and mis-conduct by her husband i.e., the Assistant Public Prosecutor, son of the petitioner and her in laws. The said representation was sent to the Directorate of Prosecution by Home Department for taking departmental action against the officer, i.e., the son of the petitioner. The matter had been marked to Chief Prosecutor for enquiry, however, none of the parties joined the enquiry on one pretext or the other. The petitioner, however, made false, frivolous and baseless allegations against the Enquiry Officer and, therefore, on the request of the said Enquiry Officer, the matter was marked to another Enquiry Officer who tried to reconcile the disputes between the parties but no fruitful result could be achieved. The daughter-in-law of the petitioner requested the Principal Secretary (Home) to change the second Enquiry Officer and desired an independent enquiry to be conducted by Home Department at its end. The representation was rejected by the Home Department and the same was informed to daughter-in-law of the

petitioner. The complaint/representation was sent to the police for further necessary action at their end as per direction of the Home Department. Thereafter, Vigilance Officer of the Directorate of Prosecution was appointed as Enquiry Officer. The petitioner and his son made several frivolous complaints against different officers of the Directorate of Prosecution, the first Appellate Authority under RTI Act, the Chief Prosecutor (First Enquiry Officer), and other officer etc. concerned with the enquiry against son of the revisionist/complainant and used derogatory language against them which was then dealt with by the Home Department GNCT Delhi and strict orders were passed against the son of the petitioner, posted as an APP. The Home Department had asked the Directorate of Prosecution to put up a proposal for charge-sheeting the revisionist and APP in view of above stated misconduct, misbehaviour, insubordination and indiscipline and had also sought a draft charge sheet from Directorate of Prosecution. Accordingly, it was prepared and sent to Home Department. Thereafter, the present complaint was filed in the court of the learned MM against the respondent in order to threaten and pressurize him and other concerned officers of Directorate of Prosecution. It is also argued by learned counsel for the respondent that the revisionist had filed a false and frivolous complaint against the respondent because the son of the revisionist, who was an APP was transferred to Police Training College Zharodkalan by respondent, the then Directorate of Prosecution. It is argued that the petitioner was performing public functions on the directions of the Controlling Authority i.e., the Home Department,

GNCTD. It is, therefore, argued by the learned counsel for the respondent that the complaint being devoid of any merit was dismissed in accordance with the law by a reasoned order passed by the learned ASJ and, therefore, the present petition be dismissed.

12. Having heard the learned counsel for the petitioner as well as the learned counsel for the respondent, this Court is of the opinion that the present petition has raised two issues before this Court and before the learned Trial Court as follows: -

- (i) Illegal procurement of biometric attendance machine.
- (ii) Illegal transfer of Public Prosecutors to various other govt. departments.

13. This Court will now examine the impugned order as to whether the same was passed as per law or not. A perusal of record as well as the impugned order reveals that 12 prosecuting officers, who were sent in diverted capacity to various departments of the Delhi Government were posted there at different points in time by orders of the Competent Authority i.e., the Home Department, GNCTD. It is not disputed that even the predecessors and the successors of Directorate of Prosecution have passed such orders in compliance with directions of Competent Authority to transfer prosecuting officers to perform legal work as per requisition and requirements of different departments of the Government of NCT of Delhi. The petitioner has not been able to place on record any order whereby any bar was imposed by any departmental circular or directions on posting or transferring such officers to the other department of Govt. of NCT of Delhi. This Court had put a specific query to the petitioner

to point out a criminal act of commission or omission by the petitioner in ordering such transfers. The learned counsel on behalf of the petitioner drew attention of this Court to Sections 24 and 25 of Cr.P.C. in this regard, Section 24 Cr.P.C. reads as under:-

“ 24. 1 Public Prosecutors.

(1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.

(2) The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district or local area.

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district: Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.

(5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless

1. Subs. by Act 45 of 1978, s. 8, for s. 24 (w. e. f. 18- 12-1978).

his name appears in the panel of names prepared by the District Magistrate under sub- section (4).

(6) Notwithstanding anything contained in sub- section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the

State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre: Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub- section (4).

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub- section (1) or sub- section (2) or sub- section (3) or sub- section (6), only if he has been in practice as an advocate for not less than seven years.

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.

(9) For the purposes of sub- section (7) and sub- section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an advocate.] Section 24 deals with making appointment of Public Prosecutor for every High Court in any district. Thus, Section 24 Cr.P.C. is an enabling provision laying down the procedure for appointment of public prosecutors. No offence is granted nor any punishment is prescribed under Section 25 of Cr.P.C. Similarly, Section 25 lays down the procedure for appointment of any district of one or more public prosecutor for conducting prosecution in the court of Magistrate and does not deal with any act or omission punishable in law in any manner. The learned counsel was specifically asked to point out as to what offence under the Indian Penal Code or any other law was committed by the respondent by such transfers. The learned counsel pointed out Sections 166, 409 and 406 of IPC. Learned counsel again had stated that he was aggrieved by transfer of 12 public prosecutors to different departments of Delhi Government as they were without any authority and infringed

Sections 24 and 25 of the Cr.P.C. causing injury to the directorate of prosecution as such transferred by resulted into consequential scarcity of public prosecutors in the district courts at Delhi resulting in delays in dispensation of criminal justice”.

Section 25 Cr.P.C reads as under:

“25. Assistant Public Prosecutors.

(1) The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting prosecutions in the Courts of Magistrates.

(1A) 1 The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.]

(2) Save as otherwise provided in sub- section (3), no police officer shall be eligible to be appointed as an Assistant Public Prosecutor.

1. Ins. by Act 45 of 1978, s. 9 (w. e. f. 18- 12- 1978)

(3) Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case; Provided that a police officer shall not be so appointed-

(a) if he has taken any part in the investigation into the offence with respect to which the accused being prosecuted; or

(b) if he is below the rank of Inspector. chap power of courts chapter iii power of courts”

Section 166 IPC reads as under:-

“Section 166 Public servant disobeying law, with intent to cause injury to any person.

Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will by such disobedience, cause injury to any person, shall

be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both”.

Section 409 IPC reads as under:-

“Criminal breach of trust by public servant, or by banker, merchant or agent.

Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine”.

Section 406 IPC reads as under: -

Punishment for criminal breach of trust.

“Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both”.

14. As per Section 166 IPC, if a person being a public servant knowingly disobeys the directions of law as to the way in which he is to conduct himself as such public servant, with an intention to cause or knowing that he is thereby likely to cause injury to any person, is liable to be punished under Section 166 IPC. The argument of the learned counsel for the petitioner is that the person as referred to under Section 166 IPC in the complaint is Directorate of Prosecution and the entire criminal justice dispensation system is meritless. The learned Trial Court has rightly concluded that the exercise of the powers of transfers and postings vested in the administrative head of any department is primarily and exclusively an administrative issue. This Court is in agreement with the finding of

the learned Trial Court that the exercise of such administrative powers by virtue of Sections 24 and 25 of Cr.P.C. would, by no stretch of imagination, attract criminal culpability entailing such action to be punishable under Section 166 IPC. Such transfers are in fact related to the administrative work and the discharge of official duty of such office in the ordinary course of work. The argument of the learned counsel for the petitioner that imputes criminal culpability to such acts of transfers or postings under section 405, which deals with breach of trust, also does not find favour with this Court. The offence under Section 405 IPC is an offence against property. Public Prosecutors under the Directorate of Prosecutions cannot be interpreted or be construed to be “property” entrusted in the domain of Directorate of Prosecution.

15. The learned counsel for the petitioner also drew this Court’s attention to the case of *Delhi Prosecutors’ Welfare Association Delhi vs. Rajiv Mehrishi & Anr. (Cont. Cas (C) 224/2016) and W.P. (Crl.) 1549/2009* titled as *Court on its own Motion vs. State* dated 11.12.2017, is also misplaced. In the said case, note was taken of the shortage of available prosecutors as against number of Criminal Courts in Delhi. A perusal of the directions passed in this case would reveal that no clear consequences have been ordained for transfer of public prosecutors to other departments besides the courts of law.

16. The learned counsel for the petitioner also relied upon order passed, in this writ petition which reads as follows: -

“1. Petitioner has filed this petition in public interest invoking the writ jurisdiction of this Court and the prayer made in the writ petition reads as under: -

(a) Issue an appropriate writ/order/direction in the nature of mandamus commanding the respondent to pass necessary orders to withdraw the prosecutors illegally transferred/posted to other department (Govt. of NCT of Delhi), Delhi Law Ministry, Delhi Commission for Women, Chief Minister Grievance Redressal Cell and Special Investigation Team etc. and make their posting in criminal courts:

(b) Issue an appropriate writ/order/directions commanding the Respondent to take necessary action against erring officials who made such arbitrary and illegal transfer/posting of prosecuting officers to other department.

(c) Pass such further orders/directions which this Hon'ble Court deem fit and proper in the facts and circumstances of the case and also in the interest of justice, and

(d) Grant costs of this petition.

2. The grievance raised by the petitioner in the writ petition pertains to transfer of Public Prosecutors to various other Departments of the Government and posting of prosecuting officers to another Department should be canceled.

3. The matter pertains to the transfer of officials, namely public prosecutors to various Departments of the Government and in a Public Interest Litigation merely on account of there being shortage of Public Prosecutors, we see no reason to make any indulgence into the matter.

4. The writ petition stands dismissed”.

17. A perusal of the same rather reveals that the petitioner had remained unsuccessful in challenging the transfers and postings of the Public Prosecutors in the said writ petition and thereafter, questioned those very transfers and postings imputing criminal

intention and criminal act on part of the respondent. However, no such criminality or illegality can be inferred by any stretch of imagination. The learned Trial Court has rightly observed that the allegations are far-fetched, being ludicrous in themselves. The transfers and postings even if thought to be arbitrary by the Competent Authority would not attract criminal consequences under Sections 166, 405 or Section 409 of IPC. An arbitrary act may not necessarily amount to a criminal offence punishable under Indian Penal Code. The criminal offences and criminal acts defined under the IPC or any other law are those offences for which a person can be held liable whether it be an act or an omission. A person can be held guilty or liable to punishment in accordance with the law as per the definition of offences described under IPC or any other law in force. This Court, therefore, holds that there is no illegality or infirmity in the order of the learned Trial Court regarding the finding that there was no criminal offence made out in transfers and postings of the Public Prosecutors to various departments of Government of Delhi as they were made as per directions of the Competent Authority.

18. Coming to the second issue of unnecessary and arbitrary procurement of 'Aadhar Enabled Biometric Attendance System' for marking attendance of the Public Prosecutors causing pecuniary loss to the Directorate of Prosecution, it is not disputed that the procurements have been made as per GFR rules through GEM Portal and as per the prescribed rules & regulations. The learned counsel for the petitioner could not point out financial irregularities in the

procurement process to constitute an offence under Sections 405 & 409 IPC wherein financial irregularity is the basic ingredient, which is not made out in the present case. It is also not in dispute that following the procurement process which concluded in the year 2017 on the representation of the vendor, machines were returned to the vendor and no payment was made in consideration thereof. The learned Trial Court, therefore, rightly observed that since no pecuniary loss occasioned from the procurement process, consequently no offence is made out in this case.

19. It is not the case of the petitioner that the machines so procured had been misappropriated by the respondent by abusing official capacity. It is also not the case of the petitioner that the respondent had converted or had put to his own use, the said machines in any manner whatsoever and, therefore, there is no ground for this Court to hold that any case under Sections 405 and 409 IPC is made out against the respondent on the basis of the procurement process. The decision to procure the Biometric machines might have been a questionable policy decision and might have been unnecessary to an extent, however, such a policy decision cannot attract or constitute a criminal offence. The propriety of any administrative decision, and its implementation in the discharge of official functions by the Competent Authority cannot be assessed or looked into by a criminal court by taking cognizance for commission of offences alleged under sections 405, 409 IPC and under Section 200 Cr.P.C without there being allegations of financial irregularities, actual pecuniary loss or

illegal gain. A mere imaginary loss cannot constitute an offence under Sections 405 and 409 IPC, neither can it be termed as a financial irregularity. In case, it is held so, it will become very difficult for any administrative authority to have administrative control or take decision in discharge of its official duties.

20. In view thereof, this Court holds that the learned Magistrate and the learned ASJ have not committed any error by holding that allegations in the complaint do not constitute any criminal offence which could persuade the learned Magistrate to take cognizance in terms of Section 190 (1)(a) Cr.P.C. It has also been rightly held that of the facts set out in the complaint do not constitute any offence, the Magistrate is not called upon to follow the procedure under Chapter XV and examine the complainant under Section 200 Cr.P.C. Since the complaint of the petitioner failed to disclose any offence from the facts set out under the complaint, the learned Magistrate could not have taken cognizance in accordance with Section 190 (1)(a) Cr.P.C. and there was no occasion for the learned Magistrate to record the statement of the complainant under Section 200 Cr.P.C.

21. The present revision petition is accordingly dismissed.

**SWARANA KANTA SHARMA
(JUDGE)**

OCTOBER 31, 2022
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