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

+ **CRL.M.C. 5523/2024**

AMIT KUMAR

.....Petitioner

Through: Mr. Chander Vardhan, Mr. Rahul Saini and Mr. Himanshu Bhardwaj, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP for the State. SI Sudeep Kumar, PS Bindapur, HC Jagveer, PS Chhawla

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **22.07.2024**

CRL.M.A. 21063/2024 (Exemption)

Allowed, subject to all just exceptions.

CRL.M.C. 5523/2024

1. Petitioner has approached this Court seeking quashing of FIR No.606/2023, dated 07.09.2023, registered at Police Station Bindapur for offences under Section 3 of the Delhi Prevention of Defacement of Public Property Act 2007 on the ground that the present FIR cannot be proceeded with as the Complainant and the Investigating Officer are the same person.
2. Learned Counsel for the Petitioner places reliance on the Judgment passed by a Co-ordinate Bench of this Court in Prerna v. State, **2019 SCC OnLine Del 11804**, which placed reliance on the Judgment passed by the Apex Court in State of Bihar v. P.P. Sharma, **1991 AIR 1260** & State v. Rajangam, **(2010) 15 SCC 369**, and has observed as under:



“Vide the present petition, the petitioner seeks direction thereby to quash the criminal proceedings pending against the petitioner in criminal case No. 58944/2016 and FIR No. 520/2015 dated 10.09.2015 under section 3 of The Delhi Prevention of Defacement of Property Act, 2007 before the learned CMM, Patiala House Court, New Delhi.

2. It is not in dispute that the complainant and the IO in the present case is the same officer and as submitted by learned counsel for the petitioner that complainant has investigated the case and if he makes deposition before the court then the conviction will be in his credit. However, the complainant being the IO of the case is against the natural justice and fair trial.

3. Similar issue came before this Court in Crl.M.C. 4544/2019 decided on 03.12.2019 wherein, the complainant was a police officer who himself investigated the present case and filed chargesheet. This court held, it is well-settled law that the complainant and IO cannot be the same, however, in the present case, also it happened. Thus, the chargesheet, in the present case, suffers from defects and the petitioner cannot be held guilty for the offences mentioned in the chargesheet.

4. In case of Babu Bhai v. State of Gujarat, (2010) 12 SCC 254 has held as under:—

“The Investigating Officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The Investigating Officer “is not to bolster up a prosecution case with such evidence as may enable the court to record conviction but to bring out the real unvarnished truth”

5. In the State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC



222 : 1991 AIR 1260, it was observed by the Hon'ble Supreme Court that:—

“Investigation is a delicate painstaking and dextrous process. Ethical conduct is absolutely essential for investigative professionalism.... Therefore, before countenancing such allegations of mala fides or bias it is salutary and an onerous duty and responsibility of the court, not only to insist upon making specific and definite allegations of personal animosity against the Investigating Officer at the start of the investigation but also must insist to establish and prove them from the facts and circumstances to the satisfaction of the court....”

6. It is observed in *State v. Rajangam*, (2010) 15 SCC 369 that the accused preferred an appeal before the High Court by stating that the officer who had registered the crime, also investigated the said case. According to the submission advanced on behalf of the accused, the crime ought to have been investigated by another independent officer and not by P.W.6 (complainant). Accordingly, the High Court found substance in the submission and acquitted the accused.

7. In *Laltu Prasad v. State of West Bengal*, 2017 (2) R.C.R. (Criminal) 237 (Calcutta) (DB), held that the complainant himself acted as the investigating officer by violating the principles of fair and impartial investigation, but should not be resorted to and it is a disturbing feature.

8. Accordingly, keeping in view the facts of the present case and the settled position of law, I hereby quash the in criminal case No. 58944/2016 and FIR No. 520/2015 dated 10.09.2015 under section 3 of The Delhi Prevention of Defacement of Property Act, 2007 and emanating proceedings thereto qua the petitioner.

9. The petition is allowed and disposed of.



10. Order dasti.”

3. In view of the above, this Court is inclined to quash the present FIR.
4. Accordingly, FIR No.606/2023, dated 07.09.2023, registered at Police Station Bindapur for offences under Section 3 of the Delhi Prevention of Defacement of Public Property Act 2007 and the proceedings emanating therefrom are hereby quashed.
5. The Petition is disposed of along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

JULY 22, 2024

Rahul