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

+ **CRL.M.C. 6725/2024 & CRL.M.A. 25684/2024**

D.P. MITTAL

.....Petitioner

Through: Mr. Puneet Srivatava, Advocate with
petitioner in court.

versus

ASHWINI RAM NATH

.....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER
29.08.2024

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CRL.M.A. 25683/2024

Exemption allowed, subject to just exceptions.

The application stands disposed-of.

CRL.M.C. 6725/2024

By way of the present petition filed under section 482 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner impugns order dated 03.07.2024 made by the learned Additional Sessions Judge, Patiala House Courts, New Delhi, whereby, on a revision petition under section 397 Cr.P.C., the learned ASJ has been pleased to set-aside summoning order dated 30.06.2022 passed by the learned Additional Chief Metropolitan Magistrate, Patiala House Courts, New



Delhi, insofar as the respondent is concerned, and has remanded the matter back to the learned Magistrate “... .. *to obtain appropriate and comprehensive investigation/inquiry report u/s. 202 CrPC to ascertain the exact source of seepage in the flat of respondent no.1*”.

2. Though the present petition has been filed under the provisions of the Cr.P.C., in the opinion of this court, on a plain reading of section 531(2)(a) of the Bharatiya Nagarik Suraksha Sanhita 2023 (‘BNSS’), proceedings are to be “*disposed of, continued, held or made*” in accordance with the Cr.P.C. *only* in cases where ***such proceedings***, viz. “*any appeal, application, trial, inquiry or investigation*”, were already ***pending*** immediately before the date on which the BNSS came into force, *i.e.* 01.07.2024. It appears therefore, that while inserting the repeal and savings provision in section 531 of the BNSS, the intention of Parliament was to not disrupt on-going proceedings by changing the governing law during the pendency of such proceedings.
3. Since the present petition has been *filed after 01.07.2024*, in the opinion of this court, the present petition ought to have been filed under the BNSS. Be that as it may, in order to obviate any unnecessary delay, the present petition is treated as one under section 528 of the BNSS.
4. Briefly, the matter arises from an allegation made by the petitioner, who resides on the ground floor of a block of DDA apartments, that by reason of negligent acts on the part of the residents of the 01st floor and the 02nd floor above him there has been seepage in his



apartment, which according to the petitioner's amount to offences punishable under sections 269/290/426 of the Indian Penal Code, 1860.

5. The petitioner had arrayed the resident of the 01st floor as well as of the 02nd floor above his apartment, as accused in the matter.
6. By way of the summoning order dated 30.06.2022 passed in Ct. Cases No. 5242/2021, the learned Magistrate had issued summons to the residents of both 01st floor and the 02nd floor, though for somewhat different offences. However, by way of order dated 03.07.2024, the learned ASJ has set-aside the impugned order only insofar as it relates to the resident of the 02nd floor with a direction as noted above, since the learned ASJ found that in Inquiry Report dated 02.06.2022 the enquiry officer under section 202 Cr.P.C. had given a vague and ambiguous conclusion that "... .. *the condition of the ground floor flat is in poor condition because of the seepage from upper floor flats of the alleged persons*".
7. Evidently therefore the learned ASJ has taken the view that though the seepage, and the resulting public nuisance and negligent acts, could have arisen by reason of default on the part of resident of the 01st floor, it needs further inquiry as to whether that was a result of default on the part of the resident of the 02nd floor or whether it was by reason of some inherent defect in construction of the ground floor itself.
8. In the circumstances, especially the fact that by way of the impugned order the learned ASJ has only remanded the matter back for reconsideration by the learned Magistrate based on a more



comprehensive enquiry under section 202 Cr.P.C., this court is not inclined to interfere with the impugned order.

9. The petition is accordingly dismissed *in-limine*.
10. Pending applications, if any, stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

AUGUST 29, 2024
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