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

+ **CRL.M.C. 7691/2023**

DR SAROJ SHARMA

.....Petitioner

Through: Mr. S. Rajappa R. Gowrishankar and
Ms. G. Dhivyasri, Advocates.

versus

THE STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for the State.
SI Ghanshyam, PS Wazirabad.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

04.03.2025

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1. This hearing has been done through hybrid mode.
2. The present petition under Section 482 of the Code of Criminal Procedure, 1973, (for short, 'CrPC') has been filed seeking following prayers:

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"a) Quash the Kalandara DD No. 09 of 2022 under Section 174 and Section 175 of Indian Penal Code, 1860, P.S. Wazirabad, Delhi
b) Quash the Summons dated 04.03.2023 issued by Ld. Metropolitan Magistrate, Tis Hazari Courts, Central, Delhi.
c) Set Aside the impugned order dated 03.03.2022 and 22.11.2022. passed by the Ld. Metropolitan Magistrate, Tis Hazari Courts, Delhi.
d) Pass and order and further order as this Hon'ble Court may deem fit and appropriate in the facts and circumstances of the case."

3. The proceedings in the aforesaid Kalandara arises out of the FIR No. 101/2019, under Sections 419/420/465/468/471/120B of the IPC, registered at PS Wazirabad. The aforesaid FIR was registered against one Sanjay Sahani, who was found appearing for some other candidate in National School of Open Schooling (NIOS) examination. During investigation of the aforesaid



FIR, the concerned Investigating Officer issued various notices under Section 160/91 of the CrPC to NIOS to obtain all original documents including the statement of impersonation, statement of invigilator, actual copy of the candidate for whom the aforesaid person was found impersonating, however, no reply was received from the office of NIOS. It is the case of the prosecution that various emails were also sent to NIOS, however, no reply was given by NIOS. Thereafter, when no reply was given by NIOS, Kalandara under Sections 174/175 of the IPC was filed against NIOS and the present petitioner was arrayed as accused in her capacity of being the Chairman of NIOS. Learned Metropolitan Magistrate after taking cognizance of the said offences issued summons against the present petitioner *vide* order dated 03.03.2022. Hence, the present petition has been filed assailing the aforesaid Kalandara as well as the summoning order.

4. Learned counsel for the petitioner has submitted that the learned Metropolitan Magistrate has erred in taking cognizance of the offences alleged in the Kalandara filed against the present petitioner as the same has been filed without any sanction for prosecution in terms of Section 197 of the CrPC. In view of the same, it is submitted that all the proceedings emanating therefrom are liable to be set aside.

5. *Per contra*, learned APP for the State has submitted that Kalandara in the present case has been filed before the Court of competent jurisdiction and learned Metropolitan Magistrate after taking cognizance of the offences alleged in the Kalandara had issued summons against the present petitioner. She has handed over a status report dated 04.03.2025 authored by SHO, Wazirabad in Court today and the same is taken on record.

6. Heard learned counsel for the parties and perused the record.



7. Admittedly, as per the case of the prosecution, the aforesaid Kalandara was initiated against the present petitioner in her capacity as Chairperson of NIOS, and thus, a public servant. The aforesaid Kalandara has been filed for violation of Sections 174/175 of the IPC which read as under : -

“174. Non-attendance in obedience to an order from public servant.— Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

175. Omission to produce document to public servant by person legally bound to produce it.— Whoever, being legally bound to produce or deliver up any [document or electronic record] to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the [document or electronic record] is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

8. As per the status report filed, the summons under Sections 160/91 of the CrPC were addressed to NIOS for obtaining all original documents including first copy, statement of impersonation, statement of invigilator, fake id card, fake admit card etc., and in non-compliance thereof the prosecution



for the offences punishable under Sections 174/175 of the IPC was initiated against the present petitioner. At this stage, it would be apposite to refer to provision of the Section 197 of the CrPC which reads as under: -

“197. Prosecution of Judges and public servants.—(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, **no Court shall take cognizance of such offence** except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]—

(a) **in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;**

(b) **in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:”**
(emphasis supplied)

9. In the present case the alleged violation of the provisions of Section 174/175 of the IPC is in respect of the petitioner’s capacity as the Chairman of NIOS, and therefore, while she was acting or purporting to act in discharge of her official duty. The case of the petitioner is squarely covered by the aforesaid provision, and admittedly, no sanction for prosecution was taken by the Investigating Officer for her prosecution in the present case.

10. In view of the aforesaid discussion and in absence of any sanction for prosecution under Section 197 of the CrPC, the present proceedings cannot be sustained in law.

11. In view of these circumstances, the present petition is allowed, the impugned Kalandara No. 09/2022, under Sections 174/175 of the IPC,



registered at PS Wazirabad along with all other proceedings emanating therefrom including the impugned summoning order dated 03.03.2022 passed by learned Metropolitan Magistrate are set aside.

12. Pending applications, if any, also stand disposed of accordingly.

13. Copy of the order be sent to the concerned learned Trial Court for necessary information and compliance.

AMIT SHARMA, J

MARCH 04, 2025/kr/bsr/ns

Click here to check corrigendum, if any