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

+ **CRL.M.C. 2316/2013**

JAGIR SINGH

.....Petitioner

Through: None.

versus

SURENDER KUMAR & ANR.

.....Respondents

Through: Mr. Ritesh Kumar Bahri, APP for the
State with Ms. Divya Yadav and Mr.
Lalit Luthra, Advs.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

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29.01.2025

4. The matter has been taken up today for hearing as per the directions of Hon'ble the Chief Justice.

5. No one has appeared for the petitioner.

6. It appears that the present petition under Section 482 of the Cr.PC has been instituted thereby assailing the impugned order dated 06.03.2013 passed by the learned ASJ-01, North District, Rohini Courts, Delhi, whereby the criminal revision has been preferred by the petitioner/proposed accused against the order dated 12.03.2013 passed by learned MM, thereby on taking cognizance offence under Section 220 IPC r/w Section 34 of the IPC, the petitioner was ordered to be summoned alongwith another co-accused. There has been no interim order regarding stay of the continuation of the trial. No one has been appearing for the petitioner for the last so many dates of hearing.

7. It appears that the cause of action in the present proceedings arose



when the complainant was sought to be prevented for allegedly raising some unauthorized construction at the behest of Head Constable T.S. Rathi as well as SHO Surender Kumar, PS: Alipur.

8. The grievance of the complainant is that the obstruction caused by the police official was illegal and it led to unnecessary harassment and for which he also sued the aforesaid police officials seeking damages. It is on the basis of such allegations and going through the pre-summoning evidence that the police officials were ordered to be summoned under Section 220 of the IPC. At the cost of repetition, the aforesaid order was set-aside by the learned ASJ, Rohini Courts, Delhi, *vide* impugned order dated 06.03.2013.

9. It would be expedient to reproduce the relevant observations made by the learned Sessions Court which read as under:-

“7. I have heard the argument on behalf of both the parties and also gone through the record. From perusal of impugned order dated 12.03.2012 it is evident that Id. Trial MM has taken cognizance only u/s. 220 IPC. Section 220 IPC is reproduced as under:-

220. Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.-Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

8 Thus, it is evident that Section 220 IPC is applicable against a person who hold an office which empowered him to commit any person for trial or to confine. Secondly, he must do the said act maliciously or corruptly.

9. It is admitted fact that, both the revisionists have taken the action against the respondent by filing a charge sheet u/s. 188 Cr.P.C. in FIR No.107/01, hence there act was under the colour of the duty. Definitely



asking bribe of Rs.5,000/-, does not come in the colour of duty, but revisionists have not been summoned for asking bribe which is punishable under the Prevention of Corruption Act, but they have been summoned u/s 220 IPC. The act of the revisionists/accused persons comes under the colour of their official duty. Hence, in my view permission u/s. 140 D.P. Act is required before taking cognizance against the revisionists/accused persons u/s 220 IPC.

10. Respondent/complainant was also very well aware that he required to give notice u/s. 140 D.P. Act before taking any action against the respondent complainant that why he has sent a notice Court of D Bank of the u/s. 140 D.P. Act to Hon'ble L.G and to Commissioner of Police on 25.03.2003 (Annexure H). But same was sent after one year from the date of alleged offence. Hence, same was time barred. That is the reason his suit for seeking damages was dismissed by the then Ld. ADJ Shri Nepal Singh, vide judgment dt. 18.8.2003. And said order was uphold right up to the Hon'ble Supreme Court.

11. Since, the requirement of notice u/s. 140 D.P. Act is necessary before proceedings against any police offence in both civil as well as criminal proceedings, therefore, when against same cause of action civil suit was dismissed for sending notice after the requisite period. Further the criminal proceedings on the same caused of action also cannot be initiated. Hence, Id. MM has committed gross error by taking cognizance u/s 220 IPC and ordered the summoning to revisionists. Hence, I set aside the impugned order dated 12.03.2012 passed by the Id. MM.

12. Trial court record be sent back to the trial court concerned along with copy of order. File be consigned to record room.

10. *Prima-facie*, this Court finds that there is no legal infirmity or incorrect approach adopted by the learned ASJ. Moreover, the petitioner/complainant is not even pursuing this remedy for long. He appears to have lost interest in the present matter.

11. Hence, the present petition is dismissed.

DHARMESH SHARMA, J.

JANUARY 29, 2025/sp